We the people of the City of San Marcos declare our intent to restore to our community the historic principles of self-governance inherent in the doctrine of home-rule. Sincerely committed to the belief that local government has the closest affinity to the people governed, and firm in the conviction that the economic and fiscal independence of our local government will better serve and promote the health, safety and welfare of all the citizens of this City, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this Charter for the City of San Marcos.

CHARTER

Article I - Municipal Affairs; Generally

Section 100. Municipal Affairs. Each of the responsibilities of governance set forth and described in this Charter, and as established by the Constitutional, statutory and judicially defined law of the State of California, is hereby declared to be a municipal affair or concern, the performance of which is unique to the benefit of the citizens of the City of San Marcos.

Article II - Revenue, Savings and Generation

Section 200. Public Works Contracts. The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work.

Section 201. Public Financing. The City shall have the power to establish standards, procedures, rules or regulations related to any public financing.

Section 202. Utility Franchises

202.1. The City shall have the power to adopt any ordinance providing for the acquisition, development, or operation by the City of any public utility, or any ordinance providing for the granting of a franchise to any public utility not owned by the City which proposes to use or is using City streets, highways or other rights-of-way.

202.2. Notwithstanding the terms of §202.1, after the effective date of this amendment, the City, a utility established by the City, or any commission, agency or unit of the City government (individually or collectively hereinafter “City”) shall not, prior to November 2, 2014, itself or through a third party, provide Distribution Services within the boundaries of the City unless each of the following conditions shall have first been met:

202.2.1 The City shall charge the same or a lower cumulative rate (taking into account all cost factors) for Distribution Services for each consumer classification as that which is charged by the City’s incumbent franchisee.

202.2.2 The City shall have the financial ability and provide the Distribution Services without incurring debt or encumbering the general fund of the City.

202.2.3 Prior to any election required by the terms hereof, a qualified, independent auditor shall certify that the Distribution Services proposed will satisfy subsections 202.2.1 and 202.2.2 above.

202.2.4 At an election to be scheduled by the City, the voters of San Marcos shall approve proposed Distribution Services.

202.2.5 Distribution Services shall mean ownership and/or operation of any pipes, wires, and electric and gas utility plant and related services for the delivery of electricity or natural gas to consumers but only within the boundaries of the City of San Marcos.

Section 203. Enterprises. The City shall have the power to engage in any enterprise deemed necessary to produce revenues for the general fund or any other fund established by the City Council to promote a public purpose.

Article III - Revenue Retention

Section 300. Reductions Prohibited. Any revenues raised and collected by the City shall not be subject to subtraction, retention, attachment, withdrawal or any other form of involuntary reduction by any other level of government.

Section 301. Mandates Limited. No person, whether elected or appointed, acting on behalf of the City, shall be required to perform any function which is mandated by any other level of government, unless and until funds sufficient for the performance of such function are provided by said mandating authority.
Article IV - Rent Stabilization

Section 400. Mobile Home Rent Stabilization. The City shall have the power to establish the specific terms and conditions pursuant to which residential mobile home rental rates shall be regulated and the means by which such regulations shall be enforced.

Article V - General Laws

Section 500. General Law Powers. In addition to the power and authority granted by the terms of this Charter and the Constitution of the State of California, the City shall have the power and authority to adopt, make, exercise and enforce all legislation, laws and regulations and to take all actions and to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority. In the event of any conflict between the provisions of this Charter and the provisions of the general laws of the State of California, the provisions of this Charter shall control.

Section 501. Land Use, Planning & Zoning Matters. Notwithstanding its Charter city status, the City shall be governed by State law as it applies to general law cities with respect to the application, interpretation and enforcement of land use, planning and zoning matters, including, but not limited to, the requirement of consistency between the General Plan of the City and the terms of its zoning ordinances.

Article VI - Interpretation

Section 600. Construction & Interpretation. The language contained in this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter which is a municipal affair.

Section 601. Severability. If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.
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1.08.010 Rules of Construction of this Code. Notwithstanding any rule or construction of the English language or case law authority holding to the contrary, in the interpretation or construction of this Code and of all ordinances of the City, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the City Council: (Ord. No. 2014-1401, 10/28/14)

City, this city, the city. The words "the city" or "this city" shall mean the City of San Marcos, California. The words "in the city" shall mean and include all territory over which the city now has or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.

Computation of time. Unless otherwise specifically provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last; except that the last day shall be excluded if it is Sunday or a holiday.

Chief of police. The term "chief of police" shall mean the Sheriff of San Diego County as ex officio chief of police of the city.

City Council, Council. Whenever the term "City Council" or "Council" is used in this Code, it shall be construed to mean the City Council of the City of San Marcos, California.

County. The words "the County" or "this County" shall mean the County of San Diego in the State of California.

Day. A day is the period of time between any midnight and the midnight following.

Daytime, nighttime. "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.
**Delegation of authority.** Whenever a provision appears requiring the head of a department or other officer of the city to do some act or perform some duty, or granting some right to him as such official, it shall be construed to authorize such department head or officer to designate, delegate and authorize subordinates to do the required act or perform the required duty, or it shall grant to them such right, unless the terms of the provisions designate otherwise.

**Gender.** A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

**Interpretation.** In the interpretation and application of any provision of this Code, it shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of this Code imposes greater restrictions upon the subject matter than any general provisions imposed by this Code, the provisions imposing the greater restriction or regulation shall be applicable.

**Joint authority.** Whenever a joint authority is given to three (3) or more persons or officers, it shall be construed as giving such authority to a majority of them.

**May.** The term “may” is permissive. *(Ord. No. 2014-1401, 10/28/14)*

**May not.** The term “may not” means not permitted to. *(Ord. No. 2014-1401, 10/28/14)*

**Month.** The singular word "month" shall mean a calendar month.

**Number.** The singular number shall include the plural and the plural number shall include the singular.

**Oath.** The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

**Official time.** Whenever certain hours are named in this Code, they shall mean Pacific Standard Time or Pacific Daylight Saving Time, as may be in current use in the city.

**Officials, officers, departments, etc.** Whenever reference is made to officials, boards, commissions, departments or other municipal agents by title only, such reference shall be read as though followed by the words "of the City of San Marcos, California."

**Or, and.** "Or" may be read "and" and "and" may be read "or" if the sense requires it.

**Owner.** The word "owner" applied to real estate shall include any part owner, joint owner, tenant in common, tenant in partnership, joint interest or other fee interest in the whole or part of such real estate.

**Person.** The word "person" shall include any person, firm, partnership, association, organization, business trust, corporation or company.

**Personal property** includes every species of property, except real property, as defined in this section.

**Police department.** The term "police department" shall mean the office of the Sheriff of San Diego County, acting under contract as the police department for the city.
**Preceding, following.** The words "preceding" and "following" mean next before and next after, respectively.

**Process** includes a writ or summons issued in the course of judicial proceedings of either a civil or criminal nature.

**Property.** The word "property" shall include real and personal property.

**Real property** shall include lands, tenements and hereditaments.

**Shall, must.** The terms "shall" and "must" are mandatory, except as to the City, and as to the City such terms are to be construed as directory. *(Ord. No. 2014-1401, 10/28/14)*

**Signature or subscription; mark.** "Signature" or "subscription" includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but, a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two (2) witnesses so sign their own names thereto.

**State.** The words "the state" or "this state" shall mean the State of California.

**Street.** The word "street" shall be construed to include streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public ways in the city and shall include all parts thereof constituting the designated right-of-way.

**Tenant or occupant.** The word "tenant" or "occupant" applied to a building or land shall include any person holding a written or an oral lease of, or who occupies the whole or a part of, such building or land, either alone or with others.

**Tenses.** The present tense includes the past and future tenses, and the future includes the present.

**Week.** A week consists of seven (7) consecutive days.

**Writing.** Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this Code, it shall be made in writing in the English language, unless otherwise expressly prohibited.

**Year.** The word "year" shall mean a calendar year unless otherwise provided.

**1.08.020 Provisions considered as continuations of existing Ordinances.** The provisions appearing in this Code, so far as they are the same as those of ordinances existing at the time of the effective date of this Code, shall be considered as continuations thereof insofar as they apply to conditions existing prior to the effective date of this Code.

**1.08.030 Catchlines of sections.** The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the sections unless otherwise expressly provided, nor, unless expressly so provided, shall they be so deemed when any of such sections including the catchlines, are amended or reenacted.
1.08.040  Effect of repeal of ordinances. The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding for violation of said ordinance pending at the time of the repeal.

1.08.050  Altering code. It shall be unlawful for any person to change or amend by additions or deletions, any part or portion of this Code or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the City of San Marcos to be misrepresented thereby.

1.08.060  Amendments to Code; effect of new ordinances; amendatory language. All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. When subsequent ordinances repeal any title, chapter or section or any portion thereof, such repealed portions may be excluded from the Code by omission from reprinted pages. The subsequent ordinances as numbered and printed or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new code by the city Council.

Amendments to any of the provisions of this Code may be made by amending such provisions by specific reference to the section number of this Code in the following language: "The section of the Code of Ordinances of the City of San Marcos, California is hereby amended to read as follows:....." The new provisions shall then be set out in full as desired.

In the event a new section not heretofore existing in the Code is to be added, the following language may be used: "That the Code of Ordinances of the City of San Marcos, California, is hereby amended by adding a section, to be numbered ___, which said section reads as follows:...." The new section shall then be set out in full as desired.

All titles, chapters, sections or provisions desired to be repealed must be specifically repealed by title, chapter or section number, with reference to the subject matter, as the case may be.

1.08.070  Provisions of the county code adopted. Chapter 1, Division 1, Title 1 (Sections 11.101-11.120); Division 2, Title 1 (Sections 12.101-12.117); Chapter 1, Division 3, Title 1 (Section 13.101) of the San Diego County Code are adopted by reference. One copy of said sections is on file with the office of the City Clerk.

1.08.080  Limitation on Liability. Except when otherwise specifically indicated, the obligations imposed upon City officers or employees by this code for implementation and enforcement of this code, or by other City ordinances are directory in nature. Nothing in this code or other City Ordinance shall be construed as limiting or eliminating any defense or immunity from liability for the City or its officers or employees established by the provisions of Title 1, Division 3.6 of the California Government Code or by any other provision of law. Except when otherwise specifically indicated in this code or other City ordinance, the manner and timing of enforcement and implementation of this code or other City Ordinances shall be within the discretion of the City Manager or other designated City officers or employees. Except when otherwise specifically indicated this code shall not be construed to hold the City or any officer or employee of the City responsible for any damage resulting to persons or property by reason of a failure to enforce, implement or execute any of the provisions of this code. Nothing in this code shall be construed to hold the City or any officer or employee of the City responsible for any damage resulting to persons or property by reason of any interpretation of this code by any City officer or employee.(Ord. 90-861, 9-11-90)
CHAPTER 1.12

GENERAL PENALTY

SECTIONS:

1.12.010 Criminal Violations – Misdemeanors and Infractions
1.12.020 Civil Violations – Injunctions and Civil Penalties
1.12.030 Penalties - Traffic
1.12.040 Citation in Lieu of Arrest - Notice to Appear
1.12.050 Warning in Lieu of Citation
1.12.060 Bail Schedule
1.12.070 Effect of Conviction Upon Liability
1.12.080 Separate Offense/Cumulative Remedy
1.12.090 Public Nuisance
1.12.100 Conflict with Other Penalty Provisions
1.12.110 Duties of City Manager
1.12.120 Inspection Warrants
1.12.130 Appeal

1.12.010 Criminal Violations – Misdemeanors and Infractions. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Municipal Code.

(a) Except as provided elsewhere in this Municipal Code, a violation of any of the provisions or a failure to comply with any of the mandatory requirements of this Municipal Code shall constitute an infraction for the first three (3) violations of the same provision within any one (1) year period. (Ord. No. 2003-1170, 1-28-03)

(b) Except as provided elsewhere in this Municipal Code, a fourth or subsequent violation of the same Municipal Code provision within one (1) year shall constitute a misdemeanor. (Ord. No. 2003-1170, 1-28-03)

(c) Any person convicted of an infraction under the provisions of this Municipal Code shall be punishable upon conviction by a fine set forth in the City of San Marcos Infraction and Misdemeanor Bail Schedule as established by resolution of the City Council, and as may be amended by the City Council from time to time. Any person convicted of a misdemeanor under the provisions of this Municipal Code shall be punishable upon conviction by a fine set forth in the City of San Marcos Infraction and Misdemeanor Bail Schedule as established by resolution of the City Council, and as may be amended by the City Council from time to time, or by imprisonment in the San Diego County Jail for a period not to exceed six (6) months, or by both fine and imprisonment. (Ord. No. 2003-1170, 1-28-03)

(d) Any person violating any provision or failing to comply with any of the requirements of this Municipal Code may be charged with a separate offense for each and every day during any portion of which any violation of any provision of this Municipal Code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly. (Ord. No. 2003-1170, 1-28-03)

(e) In addition to any other remedy provided by this Municipal Code, the violation of any provision of this Municipal Code may be enforced by an administrative citation issued under Chapter 1.14. (Ord. No. 2006-1267, 6-27-06)
1.12.20  Civil Violations – Injunctions and Civil Penalties.

(a) In addition to any other remedy provided by this Municipal Code, any provision of this Municipal Code may be enforced by injunction issued by the Superior Court upon a suit brought by the City. As part of a civil action filed to enforce provisions of this Code, a court may assess a maximum civil penalty of two thousand five hundred dollars ($2,500) per violation of the Municipal Code for each day during which any person commits, continues, allows or maintains a violation of any provision of this Municipal Code.  (Ord. No. 2003-1170, 1-28-03)

(b) Each and every day a violation of any provision of this Municipal Code or applicable state code exists constitutes a separate and distinct violation.  (Ord. No. 2003-1170, 1-28-03)

(c) All civil penalties shall be deposited in a fund established by the City to reimburse investigative costs. Civil penalties deposited in this fund shall be appropriated and allocated in a manner determined by the City Manager. The City Finance Officer shall establish accounting procedures to ensure proper account identification, credit and collection.  (Ord. No. 2003-1170, 1-28-03)

(d) In addition to any other remedy provided by this Municipal Code, the violation of any provision of this Municipal Code may be enforced by an administrative citation issued under Chapter 1.14.  (Ord. No. 2006-1267, 6-27-06)

1.12.030  Penalties - Traffic. Any person violating or failing to comply with the requirements of any provision of this code regulating vehicles and traffic shall be guilty of an infraction or misdemeanor, as more specifically provided in Section 4000 of the State Vehicle Code.

1.12.040  Citation in Lieu of Arrest - Notice to Appear. If any person is arrested for a violation of one or more provisions of this code and such person does not demand to be taken before a magistrate, as more specifically set forth in the State Penal Code, the arresting officer shall prepare, in duplicate, a written notice to appear in court (citation). Said notice shall contain:

   (1) The name and address of such person;
   (2) The offense charged and applicable bail amount; and
   (3) The time and place when and where such person shall appear in court (time specified shall be at least five days after the date of arrest).

Notices to appear may be served in person or by certified mail, in a sealed envelope, postage prepaid, addressed to the person to be notified at their last known address, or any other address which is reasonably calculated to produce actual notice.

1.12.050  Warning in Lieu of Citation. Upon a determination that the public health, safety and welfare are not immediately at risk, any official authorized pursuant to Section 1.12.110 may issue a written Notice of Code Violation in place of a citation as the first official demand made upon a violator. Such notice shall be served as provided in Section 1.12.040

1.12.060  Bail Schedule. The actual fine amount due the City for various violations of the provisions of this code shall be as set forth in the City of San Marcos Bail Schedule. Said schedule shall be established by resolution of the City Council and may be amended by the Council as necessary.
1.12.070 Effect of Conviction Upon Liability. The conviction of any person for any violation of this code shall not excuse or exempt such person from complying with any provision or requirement of the code section violated or from the payment of any license due or unpaid at the time of conviction.

1.12.080 Separate Offense/Cumulative Remedy. Every day during any portion of which any violation of this code is committed, continued or permitted to exist shall constitute a separate offense. The remedies provided by this article shall be cumulative and not exclusive. Nothing herein shall prevent the City from pursuing both criminal and civil proceedings for the same violation or offense.

1.12.090 Public Nuisance. In addition to the penalties provided above, any condition caused or permitted to exist in violation of any provision of this code shall be deemed a public nuisance and may be abated as such by the City in accordance with the provisions of Chapter 10.

1.12.100 Conflict with Other Penalty Provisions. In the event of conflict between the provisions of this Chapter and penalty provisions found elsewhere in this code, the provisions of this Chapter shall prevail.

1.12.110 Duties of City Manager.

(a) The City Manager shall designate one or more City personnel empowered to enforce the provisions of this code and to arrest violators thereof.

(b) The City Manager shall direct the preparation of written procedures governing code enforcement activity within the City.

1.12.120 Inspection Warrants. Any official duly authorized to enforce the provisions of this code shall be empowered to seek, obtain and employ inspection warrants issued by court order, if necessity is clearly demonstrated, in the interests of protecting public health, safety and welfare.

1.12.130 Appeal. No determination by a duly authorized official regarding violations of this code shall prevent the exercise of such rights to appeal as may be provided elsewhere in this code.
CHAPTER 1.14

ADMINISTRATIVE CITATIONS AND FINES

Sections:

1.14.010  Findings and Purpose
1.14.020  Definitions
1.14.030  Issuance of Administrative Citation
1.14.040  Service Procedures
1.14.050  Contents of Notice
1.14.060  Satisfaction of Administrative Citation
1.14.070  Appeal of Citation
1.14.080  Hardship Waiver
1.14.090  Hearing Officer
1.14.100  Hearing Procedure
1.14.110  Hearing Officer’s Decision
1.14.120  Failure to Pay Fines
1.14.130  Reduction of Cumulative Fines
1.14.140  Late Payment Charges
1.14.150  Judicial Review
1.14.160  Procedural Compliance
1.14.170  Remedies Cumulative

1.14.010  Findings and Purpose.

(a) The City Council finds that there is a need for an alternative method of enforcement for ordinances, permits and entitlements, reviews, and city agreements. The City Council also finds that an appropriate method for enforcement of various violations is an Administrative Citation Program that will reduce the burden on the judicial system while providing full due process for those cited. (Ord. No. 2006-1267, 6-27-06)

(b) The procedures established in this Chapter are in addition to criminal, civil or other legal remedies that may be available to the City of San Marcos to enforce the provisions of this Municipal Code and/or permits and entitlements, as defined in this Chapter. (Ord. No. 2006-1267, 6-27-06)

(c) The City Council finds that administrative penalties, which are authorized by California Constitution Article XI, Section 7 and Government Code Section 53069.4, are an appropriate alternative method of enforcement of the provisions of this Municipal Code. (Ord. No. 2006-1267, 6-27-06)

(d) The City Council finds and determines that enforcement of the provisions of the San Marcos Municipal Code and enforcement of the conditions of entitlements or permits are municipal affairs as well as matters of purely local concern to the citizens of San Marcos. (Ord. No. 2006-1267, 6-27-06)

(e) The City Council finds that the adoption and implementation of this Administrative Citation Program is within the power and authority of the City of San Marcos and will achieve the following goals: (Ord. No. 2006-1267, 6-27-06)
(1) To protect the public health, safety, and welfare of the citizens of the City of San Marcos;

(2) To help ensure compliance with the Municipal Code and State Codes, ordinances, permits and entitlements, reviews, and city agreements in a timely and efficient manner;

(3) To provide for an administrative process to appeal the imposition of administrative citations and fines that will fully comport with due process;

(4) To provide a method to hold parties responsible when they fail or refuse to comply with the provisions of the Municipal Code, ordinances, permits and entitlements, reviews, and city agreements in the City of San Marcos;

(5) To reduce the burden on the judicial system and minimize the time and expense of defending the citation on the part of the person cited.


(a) **Administrative Citation** means a written notice, on a form to be approved by the City Manager, which mandates corrective action and establishes a fine as a penalty for non-compliance. *(Ord. No. 2006-1267, 6-27-06)*

(b) **City Agreement** includes but is not limited to a development agreement, owner participation agreement, disposition and development agreement, road maintenance agreement, easement, license, other real property use agreement, and agreement to implement an ordinance, plan, permit, entitlement, or review approved by the City. *(Ord. No. 2006-1267, 6-27-06)*

(c) **City Manager** means the City Manager of the City of San Marcos, or his or her designee. *(Ord. No. 2006-1267, 6-27-06)*

(d) **Enforcement Officer** shall mean any person authorized by the City Manager to enforce the provisions of the San Marcos Municipal Code. *(Ord. No. 2006-1267, 6-27-06)*

(e) **Hearing Officer** means the person selected by the City Manager to conduct an administrative hearing pursuant to the provisions of this Chapter. *(Ord. No. 2006-1267, 6-27-06)*

(f) **Environmental Review** includes but is not limited to a development review, environmental impact report, mitigated negative declaration, negative declaration, and determination of categorical exemption. *(Ord. No. 2006-1267, 6-27-06)*

(g) **Municipal Code** shall mean the San Marcos Municipal Code and/or any other statutes or authorities referenced and/or incorporated therein. *(Ord. No. 2006-1267, 6-27-06)*

(h) **Permit or Entitlement** includes, but is not limited to, a conditional use permit, sign permit, variance, specific plan, parcel map, subdivision map, building or grading permit, encroachment or right-of-way permit, business license, storm water permit, and/or any other permit or approval that is required or authorized by, or promulgated pursuant to, the San Marcos Municipal Code, City Agreement, Federal law, State law and/or any regulations promulgated thereunder. *(Ord. No. 2006-1267, 6-27-06)*

(i) **Responsible Person** means an individual, partnership, corporation, limited liability company, nonprofit corporation, trustee, association or any other legal entity, and who is any of the following: *(Ord. No. 2006-1267, 6-27-06)*

1. The owner or occupant of real property;
2. The holder or the agent of the holder of any permit, entitlement, or review;
3. The party or the agent of a party to an agreement covered by this Chapter;
4. The owner or the authorized agent of any business, company, or entity subject to this Chapter; or
5. The parent or legal guardian of any such person under the age of 18 years and who violates any ordinance, regulation, permit, entitlement, review, or agreement described in Section 1.14.030.

1.14.30 Issuance of Administrative Citation, Fines.

(a) Any person who violates any provision of the San Marcos Municipal Code or regulation of the City, any condition of approval of a permit or entitlement, any condition of an environmental review, or any term or condition of any City agreement made pursuant to the City’s police power and regulatory authority may be issued an administrative citation by an Enforcement Officer as provided in this Chapter. A violation of this Code includes, but is not limited to, all violations of the Municipal Code and the failure to comply with any condition imposed by any entitlement, permit, City agreement or environmental review issued or approved pursuant to this Code. *(Ord. No. 2006-1267, 6-27-06)*

(b) Each and every day that a violation of the Municipal Code, permit and/or entitlement exists constitutes a separate and distinct offense. A separate citation may be issued for each day a violation occurs. *(Ord. No. 2006-1267, 6-27-06)*

(c) A civil fine shall be assessed by means of an administrative citation issued by the Enforcement Officer and shall be payable directly to the City of San Marcos. *(Ord. No. 2006-1267, 6-27-06)*

(d) Fines shall be assessed in the amounts specified by resolution of the City Council, or where no amount is specified, as follows: *(Ord. No. 2006-1267, 6-27-06)*

1. A fine not exceeding one hundred dollars ($100.00) for a first violation;
2. A fine not exceeding two hundred dollars ($200.00) for a second violation of the same ordinance or permit within an eighteen-month (18) period from the date of the first violation;
3. A fine not exceeding five hundred dollars ($500.00) for the third violation of the same ordinance or permit within an eighteen-month (18) period from the date of the first violation;
4. A fine not exceeding one thousand dollars ($1,000.00) for each additional violation of the same ordinance or permit within an eighteen-month (18) period from the date of the first violation.

(e) A second or subsequent violation need only be of the same ordinance, term, or condition to require the larger fine, and need not involve the same personnel or property, provided that the same responsible person is cited. The fine amounts shall be cumulative where multiple citations are issued. *(Ord. No. 2006-1267, 6-27-06)*
(f) If the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health and safety, then the responsible person shall be issued a warning only on the first violation. The warning will advise the responsible person of the nature of the violation and the date by which the violation must be corrected. The responsible person will be given fifteen (15) days to correct the violation. If the violation is not corrected within that time period, an administrative citation with a fine shall be issued. Notwithstanding the foregoing, an administrative citation may be issued without compliance with the prior notice requirement, or with a reduced period within which a violation must be corrected if such violation creates an immediate danger to health or safety. (Ord. No. 2006-1267, 6-27-06)

1.14.40 Service Procedures.

(a) An administrative citation may be issued to the responsible person by an Enforcement Officer for violations of the Municipal Code, permit or entitlement and/or City agreement in the following manner: (Ord. No. 2006-1267, 6-27-06)

(1) Personal Service. In any case where an administrative citation is issued: (Ord. No. 2006-1267, 6-27-06)

   a. The Enforcement Officer shall attempt to locate and personally serve the responsible person and obtain the signature of the responsible person on the administrative citation. (Ord. No. 2006-1267, 6-27-06)

   b. If the responsible person served refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the administrative citation or of subsequent proceedings. (Ord. No. 2006-1267, 6-27-06)

(2) Service of Citation by Mail. If the Enforcement Officer is unable to locate the responsible person, the administrative citation shall be mailed to the responsible person by certified mail, postage prepaid with a requested return receipt. Simultaneously, the citation may be sent by first class mail, postage prepaid. If the citation is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the citation sent by first class mail is not returned. The failure of any responsible party to receive a properly addressed administrative citation shall not affect the validity of the notice. Service of the administrative citation in the manner described above shall be effective on the date of mailing. (Ord. No. 2006-1267, 6-27-06)

(3) Service by Citation by Posting Notice. If the Enforcement Officer does not succeed in personally serving the responsible person, or by certified mail or regular mail, the Enforcement Officer shall post the administrative citation in a conspicuous place upon any real property within the City in which the City has knowledge that the responsible person has a legal and/or beneficial interest, and such posting shall be deemed effective service. Failure of a posted notice to remain in place after posting shall in no way affect the validity of the citation or the subsequent posting. (Ord. No. 2006-1267, 6-27-06)

(b) The Enforcement Officer must complete a declaration regarding the date, time and manner of service of the citation. (Ord. No. 2006-1267, 6-27-06)

1.14.050 Contents of Notice.

(a) Each administrative citation shall contain the following information: (Ord. No. 2006-1267, 6-27-06)
(1) Date, approximate time, and address or detailed description of the location where the violation(s) was observed;

(2) The Code sections or conditions violated and a description of the violation(s);

(3) An order to the responsible person to correct the violations within the time specified in Section 1.14.030, above, if applicable, and an explanation of the consequences of failures to correct the violation(s);

(4) An order prohibiting the continuation or repeated occurrence of the violation described in the administrative citation;

(5) The amount of the fine for the violation(s);

(6) An explanation of how the fine shall be paid and the time period by which it shall be paid;

(7) A notification that payment of the fine does not excuse or discharge the failure to correct the violation and does not bar further enforcement action by the City;

(8) A statement that if the fine is not timely paid, a late payment penalty of twenty-five (25) percent of the amount of the fine will be added to the fine;

(9) Identification of rights of appeal, including the time within which the citation may be contested and the place to obtain a request for hearing form to contest the administrative citation; and

(10) The name and signature of the Enforcement Officer, the name and address of the responsible person, and, if possible the signature of the responsible person.

1.14.60 Satisfaction of Administrative Citation.

(a) Upon receipt of an administrative citation, the responsible person must do the following:  
(Ord. No. 2006-1267, 6-27-06)

(1) Correct the violation by the correction date on the administrative citation; and

(2) Pay the specified fine to the City within thirty (30) days from the date the administrative citation is served. All fines assessed shall be payable to the San Marcos City’s Treasurer. Payment of a fine shall not excuse or discharge the failure to correct the violation(s) nor shall it bar further enforcement action by the City; or

(3) Contest the administrative citation and request an Administrative Hearing within thirty (30) days from the date the administrative citation is served.

1.14.70 Appeal of Citation.

(a) Any recipient of an administrative citation may contest that there was a violation of the Municipal Code or that he or she is the responsible person by completing a request for hearing form and returning it to the City within thirty (30) days from the date the administration citation is served. The request must be made in writing, and may be delivered in person or by first class mail, postage prepaid. If the request is delivered by mail, it shall be deemed received as of the
two days following the date of posting. The request shall be filed with the Code Compliance Division of the City Manager’s Office. The person requesting the administrative review shall set forth, with particularity, the reasons he or she believes a violation did not occur or that the person cited is not the responsible party, together with a copy of the administrative citation in question. Failure to timely file a written request for an Administrative Hearing shall constitute a bar to any further administrative review rights. (Ord. No. 2006-1267, 6-27-06)

(b) The request for hearing form must be accompanied by either an advanced deposit of the fine or a request for hardship waiver. Any administrative citation fine which has been deposited shall be refunded if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation(s) that there was no violation(s) as charged in the administrative citation. (Ord. No. 2006-1267, 6-27-06)

1.14.80 Hardship Waiver.

(a) A person who files a request for an Administrative Hearing may also contemporaneously request a hardship waiver of the fine deposit. To seek such a waiver and obtain a separate hearing on the request, the responsible person must check the box indicating this request on the form contained on the reverse side of the citation and attach a statement of the grounds for the request. To be effective, the request for the hardship waiver and the request for an Administrative Hearing must both be received by the City Manager’s office within 15 days of the date the citation is issued. (Ord. No. 2006-1267, 6-27-06)

(b) The request for waiver of the advance deposit must also be accompanied by a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the City Manager of the person’s actual financial inability to deposit with the City the full amount of the fine in advance of the hearing. (Ord. No. 2006-1267, 6-27-06)

(c) The City Manager shall inform the party requesting the waiver whether the waiver was approved, by serving the party with a written determination of the request either personally or by mail at the addressed provided in the waiver application. The City Manager’s determination on the waiver request shall be final and is not subject to appeal to the City Council. (Ord. No. 2006-1267, 6-27-06)

(d) If the waiver is denied, the responsible party shall submit the fine amount to the City within ten (10) days. Failure to make the deposit by the time required shall be deemed an abandonment of the contest, and renders the fine delinquent. (Ord. No. 2006-1267, 6-27-06)

1.14.90 Hearing Officer.

(a) The City Manager shall select a fair and impartial hearing officer from a panel of hearing officers selected by City Council for the administrative citation hearing or Administrative Cost Hearing. The Hearing Officer shall not be a current San Marcos City employee. (Ord. No. 2010-1330, 3-9-10)

(b) The employment, performance evaluation, compensation and benefits of the Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of administrative citation fines or costs upheld by the Hearing Officer. (Ord. No. 2010-1330, 3-9-10)

1.14.100 Hearing Procedure.

(a) No hearing to contest an administrative citation before a Hearing Officer shall be held
unless and until a request for hearing form has been completed and submitted, and, the fine has been deposited in advance, or an advance deposit hardship waiver has been approved by the City Manager.  (Ord. No. 2006-1267, 6-27-06)

(b) A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this Chapter. The responsible party requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing. (Ord. No. 2006-1267, 6-27-06)

(c) At least ten (10) days prior to the hearing, the recipient of an administrative citation shall be provided with copies of the citations, reports and other documents submitted or relied upon by the Enforcement Officer including documentation of any fee, cost or charge incurred by the City if the violation is for nuisance under Chapter 10.04.020. If the hearing is an Administrative Cost Hearing, a copy or copies of the itemized account of the cost of abatement shall be included with the Notice of Administrative Cost Hearing in accordance with Chapter 10.04.090. If, after copies of documents have been provided to the responsible party, the City determines to submit to the Hearing Officer additional documents, then a copy of such documents shall be provided to the party at least three (3) days prior to the hearing or as the parties may otherwise agree. No other discovery is permitted. Formal rules of evidence shall not apply. (Ord. No. 2010-1330, 3-9-10)

(d) The hearing officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the responsible person has caused or maintained the violation(s). If the violation is for nuisance under Chapter 10.04.020, the Hearing Officer shall also consider all factors under Chapter 10.04.060. During an Administrative Cost Hearing, only the costs of abatement shall be considered. Courtroom rules of evidence shall not apply. Relevant hearsay evidence and written reports may be admitted whether or not the speaker or author is present to testify, if the Hearing Officer determines that the evidence is reliable. Admission of evidence and the conduct of the hearing shall be controlled by the Hearing Officer in accordance with the fundamentals of due process. The Hearing Officer may limit the total length of the hearing to one hour, and shall allow the responsible party at least as much time to present its case as is allowed the City. (Ord. No. 2010-1330, 3-9-10)

(e) At the hearing, the party requesting the hearing shall be given the opportunity to present, either themselves or through a representative, evidence and testimony concerning the administrative citation or costs of abatement. The City’s case shall be presented by an Enforcement Officer or by any other authorized agent of the City. (Ord. No. 2010-1330, 3-9-10)

(f) The failure of the responsible party, either personally or through counsel, of an administrative citation to appear at the administrative citation hearing shall be deemed an admission that the citation in question was appropriately and validly issued, resulting in a forfeiture of the fine. The failure of the responsible party, either personally or through counsel, to appear at the Administrative Cost Hearing shall be deemed an admission that the Costs in question are appropriately and validly assessed. (Ord. No. 2010-1330, 3-9-10)

(g) The Hearing Officer may consolidate administrative citations issued to the same owner or responsible party. (Ord. No. 2006-1267, 6-27-06)

(h) The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the administrative citation or Notice of Administrative Cost Hearing prior to issuing a written decision. (Ord. No. 2010-1330, 3-9-10)
(i) The City Manager shall establish all appropriate administrative regulations for implementation of this Chapter, the conduct of the administrative hearings and the issuance of decisions pursuant to this section. *(Ord. No. 2010-1330, 3-9-10)*

**1.14.110 Hearing Officer’s Decision.**

(a) After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer may announce a decision orally, but in any event, shall prepare a written decision. The decision shall be provided to the parties within ten (10) days of the hearing and shall either affirm the issuance of the citation as issued or dismiss the citation. The decision shall briefly state the reasons for the conclusion of the Hearing Officer. If the violation involves a determination of nuisance on real property under Chapter 10.04.020, the Hearing Officer shall include in the decision an Administrative Abatement Order as required under Chapter 10.04.060. If the hearing is an Administrative Cost Hearing, the Hearing Officer shall either confirm, reject or modify the abatement costs in accordance with Chapter 10.04.100. The City shall either make arrangements for personal service of the Notice of Decision for the Administrative Hearing to the responsible party, or for the mailing of the same by certified mail, postage prepaid, return receipt requested. The decision of the Hearing Officer shall be final. If the Hearing Officer determines that First Amendment rights are involved, the decision shall be issued orally at the conclusion of the hearing and shall be effective immediately. A written decision shall thereafter be issued as provided here in below. *(Ord. No. 2010-1330, 3-9-10)*

(b) If the Hearing Officer affirms the issuance of the administrative citation, then the deposit with the City shall be retained by the City. If a hardship waiver was granted, the decision shall set forth a payment schedule for the fine. *(Ord. No. 2006-1267, 6-27-06)*

(c) If the Hearing Officer determines that the administrative citation should be canceled, then the City shall refund any deposit within ten (10) days of the Hearing Officer’s decision. *(Ord. No. 2006-1267, 6-27-06)*

(d) The Hearing Officer shall not have the power to reduce the fine. The Hearing Officer may impose conditions and deadlines to correct any violations or require payment of any outstanding penalties. *(Ord. No. 2006-1267, 6-27-06)*

**1.14.120 Failure to Pay Fines.**

(a) The failure of any person to pay the civil fines imposed by an administrative citation within the time specified on the citation may result in the filing of a claim with the Small Claims Court or the Superior Court for recovery of the fine. The only issue to be adjudicated by the court shall be whether or not the fines were paid. A person cited may only obtain judicial review of the validity of the citation by writ of mandate after exhausting their administrative remedies by requesting and participating in an administrative hearing before a hearing officer. In the court action, the City may also recover its collection costs, including the cost of the Hearing Officer, and any court fees, according to proof. *(Ord. No. 2006-1267, 6-27-06)*

(b) In lieu of or in addition to the filing of a court action, the City may impose a Code Enforcement Lien, in the amount of the fine plus interest and late charges, on the real property upon which the violation occurs. Any lien imposed pursuant to this chapter shall attach upon the recordation of a Notice of Code Enforcement Lien in the Office of the County Recorder. *(Ord. No. 2006-1267, 6-27-06)*
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(c) The City at its discretion may pursue any and all legal and equitable remedies for the collection of unpaid fines, interest and penalties. The use of one recovery method does not preclude the use of any other recovery method. (Ord. No. 2006-1267, 6-27-06)

1.14.130 Reduction of Cumulative Fines. If the violation is corrected within a reasonable time after the decision of the hearing officer, the City Manager shall have the discretion to reduce any cumulative fines to a total of not less than one thousand dollars ($1,000.00) upon good cause shown by the responsible person. The determination of the City Manager shall be final and shall not be subject to appeal or judicial review. Fines shall not otherwise be reduced. (Ord. No. 2006-1267, 6-27-06)

1.14.140 Late Payment Charges. Any responsible party who fails to pay a fine imposed by this Chapter on or before the date that payment is due, shall also be liable for the payment of a late payment charge of twenty-five percent (25%) of the fine. In addition, delinquent fines shall accrue simple interest at the rate of ten percent (10%) per year, excluding penalties, from the due date. (Ord. No. 2006-1267, 6-27-06)

1.14.150 Judicial Review. Any party aggrieved by an administrative decision of a hearing officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the San Diego Superior Court in accordance with the timelines and provisions as set forth in California Government Code Section 53069.4. Said procedure shall fall under this Chapter, notwithstanding that the term or condition being enforced pursuant to this Chapter may not be a matter covered by Section 53069.4(a). Judicial review of a citation shall not be available without first participating in a hearing as provided in this Chapter. (Ord. No. 2006-1267, 6-27-06)

1.14.160 Procedural Compliance. Failure to comply with any procedural requirement of this Chapter, to receive any notice or decision specified in this Chapter, or to receive any copy required to be provided by this Chapter shall not affect the validity of proceedings conducted hereunder unless the responsible person is denied constitutional due process thereby. (Ord. No. 2006-1267, 6-27-06)

1.14.170 Remedies Cumulative. The remedies afforded to the City by this Chapter for violations of this Municipal Code are cumulative in nature and are in addition to any other remedy provided by this Municipal Code including, without limitation, those set forth in Chapter 1.12 of this Municipal Code. (Ord. No. 2006-1267, 6-27-06)
1.14.160 **Procedural Compliance.** Failure to comply with any procedural requirement of this Chapter, to receive any notice or decision specified in this Chapter, or to receive any copy required to be provided by this Chapter shall not affect the validity of proceedings conducted hereunder unless the responsible person is denied constitutional due process thereby. *(Ord. No. 2006-1267, 6-27-06)*

1.14.170 **Remedies Cumulative.** The remedies afforded to the City by this Chapter for violations of this Municipal Code are cumulative in nature and are in addition to any other remedy provided by this Municipal Code including, without limitation, those set forth in Chapter 1.12 of this Municipal Code. *(Ord. No. 2006-1267, 6-27-06)*
2.04.010 City Seal Adopted; Described

(a) There is hereby adopted an official seal of the City, having around its perimeter the words "CITY OF SAN MARCOS, CALIFORNIA" and, inside a circle, the words "INCORPORATED JANUARY 28, 1963."

(b) That all forms of corporate seal heretofore adopted, established or used by or for said City shall be and the same are hereby abandoned and nullified for use after the effective date of this ordinance; and the only form of corporate seal for use by or for said City, after such effective date, shall be the form of seal herein above set forth in subsection (c).

(c) That it shall be unlawful for any person to make or use the seal of the City of San Marcos, or any cut, facsimile, or reproduction of said seal, or make or use any seal or any design which is an imitation of said seal, or of the design thereof, or which may be mistaken for the seal of said City, or the design thereof, for any purpose other than for City of San Marcos, or for the purposes of any board, officer, or department thereof.
(d) That the City Clerk shall have the official custody of the said official seal of said City.

(e) That it shall be unlawful for any person to display or place, either temporarily or permanently, the official seal of said City, or any facsimile, or representation, or near representation thereof on any privately owned vehicle, unless by written permit first had and obtained from the City Council of said City so to do. In the event any such permit is so granted by said Council, it shall be unlawful for any person to place or display such seal in any manner, or at any time contrary to or in violation of the provisions of such permit.

(f) That until the further order of the City Council, the Director of Public Works of said City shall designate the particular motor vehicles or other vehicles or items of property belonging to the City of San Marcos, on or in connection with which replicas or near representations of the official seal of said City shall be used; and when so designated the officers or employees having immediate charge or control of such vehicles or equipment so designated, shall obtain such replicas from the City Clerk and affix the same thereto and maintain the same thereon, until the further order of said Director of Public Works.

(g) That the word "person" as used in this ordinance shall include person, firm, association and corporation, and whether acting as principal, agent, employee or otherwise.

(h) That any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction of any such violation such person shall be punishable in accordance with the provisions of section 1.12.010.

2.04.020  City Offices Designated. The offices of all agencies, departments, officers and employees of the City, including the Council chambers of the City Council shall be located and maintained at 1 Civic Center Drive, San Marcos, California.

2.04.030  Hours of Operation of the City Offices. The City offices shall be closed on Saturdays, Sundays and on holidays determined by resolution of the City Council. The City offices shall be open to the public for business from 7:30 a.m. to 5:30 p.m. and on alternating Fridays on all other days of the year.

2.04.040  Contracts with the County; Conferment of Authority on County Officers. The City Council shall have the right to contract with the county pursuant to the laws of the state and the charter of the county, for the performance and execution by designated county officials of the rights, powers and duties of officers, officials and employees of the City. Whenever in this Code whether set forth in full or by adoption by reference, any power or authority is granted to an officer, official or employee, the power or authority is conferred upon the appropriate officer, official or employee of the City or the appropriate officer, official or employee of the county with whom a contract has been entered into.

2.04.050  When Fees Payable to County. Wherever pursuant to the provisions of the county code adopted by reference by this Code, fees are to be paid to a county officer or department, the fees shall continue to be so collected and retained by the county officer or department if, in fact, the county officer or department is authorized to and actually does perform the services for which the fee is charged.

2.04.060  Applications and Fees to be Filed with the City Clerk. Any applications required to be filed with the City or fees required to be paid to the City pursuant to the provisions of this Code, shall be filed with or paid to the City Clerk, unless otherwise provided by this Code.

2.04.070  Removal of Papers or Documents from the City Hall. No person, unless authorized by the City Clerk, the Mayor or the City Attorney, shall remove any papers or documents from the City hall.
2.04.80 Locations for Posting of Notices of Resolutions, Ordinances and Other Legal Notices.

(a) The following locations are hereby officially designated as public places for the posting of all ordinances, resolutions or notices adopted or approved by the City:

1. City Hall/Civic Center
   1 Civic Center Drive
   San Marcos, California 92069-2949

2. United States Post Office
   420 North Twin Oaks Valley Road
   San Marcos, California 92069-9998

3. San Marcos County Branch Library
   2 Civic Center Drive
   San Marcos, California 92069

(b) All ordinances and all resolutions required by law to be published or posted, shall be posted in at least three (3) of the public places set forth in subsection (a) in accordance with the provisions of section 36933 of the state Government Code. (Ord. 94-970, 09/27/94)

2.04.090 Persons Authorized to File Documents Designated. The Mayor, the City Clerk, the City Attorney and the Mayor pro tem are each appointed the authorized agent of the City for the filing with such offices and officers of the state and of the county of certified copies of ordinances and resolutions and such other documents as may be required for the proper and efficient conduct of the City's business.

2.04.100 Signing Instruments; City Manager Authorization. As provided by Government Code Section 40602, the City Manager, in addition to the Mayor, is hereby authorized to sign all warrants drawn on the City Treasury, all written contracts and conveyances made or entered into by the City, or all instruments requiring the City Seal.
CHAPTER 2.08
CITY COUNCIL

SECTIONS:

2.08.010 Council Chambers Designated
2.08.020 Election; Term of Mayor and Councilmembers
2.08.030 Compensation of Councilmembers and Mayor
2.08.040 Designation of Mayor Pro Tem
2.08.050 Reimbursement of Council, Board and Commission Expenditures
2.08.060 Reserved (Repealed by Ord. 91-888)
2.08.070 Reserved (Repealed by Ord. 91-888)
2.08.080 Redevelopment Agency - Need Declared
2.08.090 Redevelopment Agency - Membership
2.08.100 Redevelopment Agency - Compensation
2.08.110 Industrial Development Authority - Need Declared
2.08.120 Industrial Development Authority - Board of Directors
2.08.130 Industrial Development Authority - Name
2.08.140 Industrial Development Authority - Compensation of Members,
Other City Employees
2.08.150 Notices of Restriction on Real Property
2.08.160 Review of Decisions of Commissions, Committees and Boards
2.08.170 Establishment of City Council Electoral Districts
2.08.180 Election Schedule

2.08.010 Council Chambers Designated. The room designated as the Council chambers, located at 1 Civic Center Drive, San Marcos, California, shall be the Council chambers of the City Council of the City and all meetings of the City Council shall be held therein.

2.08.20 Election; term of Mayor and Councilmembers.

(a) Pursuant to Section 36503.5 of the California Government Code General Municipal Elections for the City of San Marcos shall be held on the same day as the day of the statewide General Election.

(b) The Governing Board of the City of San Marcos is the City Council consisting of the Mayor and four Councilmembers. In accordance with a vote of the qualified electors of the City, the office of the Mayor is an elected office. The term of the office of Mayor shall be four years from the first Tuesday following the election until a successor is elected and qualified. The provisions of this Section shall apply to the term of office of the Mayor elected at the November 6, 1990 election. (Ord. 92-921, Approved by the voters on November 6, 1990)

(c) The office of elective Mayor shall be filled by the candidate for Mayor receiving the highest vote tally in the City-wide election held in November of each year, beginning November, 1986.

(d) The office of the Councilmembers shall be filled through by-district elections, pursuant to California Government Code Section 34886, beginning in November 2018, pursuant to the schedule established in Section 2.08.180 of this Chapter. (Ord. 2016-1430, 10/11/2016)

(i) Members of the City Council shall be elected in the electoral districts established by Section 2.08.170 of this Chapter and subsequently reapportioned pursuant to applicable State and federal law. Elections shall take place on a by-district
basis as that term is defined in California Government Code Section 34871, pursuant to subdivision (c) of that section.

(ii) Except as provided in subdivision (iii) herein, the Councilmember elected to represent a district must reside in that district and be a registered voter in that district, and any candidate for City Council must live in, and be a registered voter in, the district in which he or she seeks election at the time nomination papers are issued, pursuant to California Government Code section 34882 and Elections Code section 10227. Termination of residency in a district by a Councilmember shall create an immediate vacancy for that Council district unless a substitute residence within the district is established within thirty (30) days after the termination of residency.

(iii) Notwithstanding any other provision of this section, and consistent with the requirements of California Government Code Section 36512, the Councilmembers in office at the time the Ordinance codified in this Chapter takes effect shall continue in office until the expiration of the full term to which he or she was elected and until his or her successor is qualified. At the end of the term of each Councilmember, that Councilmember's successor shall be elected on a by-district basis in the districts established in Section 2.08.170 and as provided in Section 2.08.180 of this Chapter.

(e) This ordinance shall become operative upon the approval of the Board of Supervisors, County of San Diego, California.

(f) No person shall serve more than three (3) consecutive terms in any elected municipal office. This provision shall apply to elections held in November, 2000, and thereafter. Any person holding, or who has held, elected office prior to the November, 2000, election shall not have prior or current terms counted for the purpose of applying any term limit provision to the November, 2000, election, and thereafter. (Ord. No. 99-1052, 2-1-99)

2.08.030 Compensation of Councilmembers and Mayor

(a) Each member of the City Council, including the Mayor, shall receive a salary in the sum of $600.00 per month, as authorized by Section 36516 of the Government Code, payable at the time and in the manner as salaries are paid to other officials of the City. The salaries established by this Section are exclusive of any amounts payable to each member of the City Council, including the Mayor, as reimbursement for actual and necessary expenses incurred in the performance of the official duties for the City, or as received by the City Council, including the Mayor, acting in the capacity as members of the Legislative Body of the Redevelopment Agency, the Mobilehome Rent Review Commission, and the Industrial Development Authority. The salary established by this Section may be adjusted by ordinance of the City Council pursuant to the provisions of the State Government Code in an amount not to exceed 5% per year. (Ord. No. 90-866, Approved by a Vote of the People on November 8, 1988)

The salary established by this Section shall be effective for all members of the City Council, including the Mayor, as of the date that the term of office of the Mayor and Councilmembers elected at the November 8, 1988, election commences. (Ord 90-866, Approved by a vote of the People on November 8, 1988)

Annual adjustments have been periodically incorporated into the City Council compensation. As of February 9, 2009, the City Council's monthly salary is $977.64. In accordance with subsection (a), above, increases to City Council compensation have been limited to an amount not to exceed five percent (5%) per year. Under the plenary authority granted it by Article XI, Section 5, of the
Constitution of the State of California, and by Section 100 of the Charter of the City of San Marcos, and notwithstanding the provisions of Government Code Section 36516(c), the compensation of the City’s officers, officials and employees is declared to be a municipal affair, and the provisions of this Section 2.08.030 shall govern with respect to the implementation of the limits on City Council compensation increases set forth in subsection (a) above. The salary established by this section shall be increased annually by an amount representing the upward adjustment in the Consumer Price Index (San Diego, All Items, Base Year 1982-84) for the prior calendar year, which amount is used as the basis of cost-of-living increases for City employees; provided, however, that such increase shall not exceed five percent (5%) per annum. As provided in subsection (a), above, cost-of-living adjustments that exceed five percent (5%) per annum must be submitted to the voters for approval prior to implementation. (Ord. No. 2003-1168, 1/28/03/Ord. No. 2009-1315, 2/24/09)

(b) Each member of the City Council, including the Mayor, shall receive a stipend in the amount of $50.00 per meeting when acting in the capacity as members of the Legislative Body of the Redevelopment Agency, the Industrial Development Authority, San Marcos Public Facilities Authority, the Mobilehome Park Financing Authority, the San Marcos Fire Protection District, the Discovery Valley Utility and/or the City Council when holding hearings relating to Community Development Block Grant (CDBG) funds. The meeting stipend established by this section shall be exclusive of any salary payable to each member of the City Council, including the Mayor, or received as reimbursement for any actual necessary expenses incurred in the performance of the official duties for the City. Said meeting stipend shall only be received by the City Council, including the Mayor, when the legislative body in question has an item on the agenda for that particular meeting, and that member attends such meeting. The stipend established by this Section may be adjusted by ordinance of the City Council in an amount not to exceed 5% per year.

(c) Each member of the City Council, including the Mayor, shall receive an auto allowance in the amount of $300 per month. The stipend established by this section may be adjusted by ordinance of the City Council in an amount not to exceed 5% per year.

(d) The report published by the City Clerk pursuant to Section 2.08.050 (h) shall include the then-current amount of the salary and the meeting stipends paid to the City Council and Mayor.

2.08.040 Designation of Mayor Pro Tem. In order to expedite the orderly procedure of the City Council meetings in the event the Mayor cannot be present, the City Council shall elect one member of the City Council who shall act as Mayor pro tem in the absence of the Mayor.

2.08.050 Reimbursement of Council, Board and Commission Expenditures. (Ord. No. 2003-1167, 1-28-03)

(a) Upon the submission of an itemized account, any member of the City Council or member of the various City board and commissions may be reimbursed for his or her actual and necessary expenses incurred in the performance of official duty for the City.

(b) Expenses, including expenses charged to General, Special Revenue and Capital Project funds (such as Redevelopment Agency and other such funds under the control or jurisdiction of the City), that may be incurred by a City Council member or a member of the various City boards and commissions in a given month and which are less than $50.00 shall be submitted for reimbursement on a City expense reimbursement form and shall include a brief written explanation of the nature of the expenses, and where possible, receipts are to be provided.

(c) Expenditures of $50.00 or more but less than $250.00 incurred in a given month shall be submitted for reimbursement on a City expense reimbursement form and shall include a brief written explanation of the nature of the expenses together with verifiable receipts.
(d) Expenditures of $250.00 or more incurred in a given month shall be submitted in writing to the Council and paid upon approval of such expenditure by the affirmative vote of four Councilmembers. In the event of an urgent and/or emergency situation where prior approval at a regularly scheduled Council meeting is not practical, a request for payment may be submitted to the City Manager. The City Manager shall determine if budgeted funds are available and, if so, pay the expenditure subject to City Council ratification as set forth above. An expense report, including written explanation of the nature of the expenditure, together with verifiable receipts, shall be submitted on the next regularly scheduled City Council meeting agenda for approval.

(e) If an expenditure is not ratified by the affirmative vote of four Councilmembers, the expenditure shall be repaid to the City prior to the next regularly scheduled pay period. If not repaid, any such expenditure shall be deducted from the next regularly scheduled payroll check of the member of the City Council, board or commission, as appropriate.

(f) Expenditures related to or made on behalf of spouses of members of the City Council, boards or commissions, except for previously approved events attended by the Mayor and the Mayor’s spouse, shall not be paid or reimbursed by the City.

(g) All expenditures that may be incurred as outlined in subsections (b) through (f) shall be paid by City check, and will appear on the City’s warrant register for approval on the consent calendar portion of the agenda for the next regularly scheduled meeting of the City Council.

(h) No later than September 30th of each year, the City Clerk shall cause to be published a report of all expenditures made for or reimbursed to each Council, Board or Commission member in a newspaper of local circulation. Said report shall include salaries, stipends, benefits and related costs, reimbursements for incurred expenses and any compensation paid to Council, board or commission members for serving as the City’s representative on any committees or panels of any other public agencies. The information contained in the published disclosure shall be for the fiscal year ending June 30th of each year.

(i) In addition to reimbursement for actual and necessary expenses incurred in the performance of official duty, each member of the City Council shall be entitled to receive a monthly car allowance in an amount, established from time to time, by the City Council for the purpose of compensating each member for the use of his or her personal automobile for official City business. No member may be reimbursed by the City for automobile mileage in addition to receiving the monthly car allowance.

(j) In the event any other governmental agency, organization, board or commission on which the Councilmember serves as a representative of the City offers to reimburse the Councilmember for travel expenses (including mileage reimbursement), meals, lodging or other legitimate expenses already paid in full or in part by the City, the Councilmember shall take one of the following actions:

   (i) Decline such reimbursement; or

   (ii) Accept the reimbursement on behalf of the taxpayers of the City and deliver such reimbursement to the City Manager for deposit into the City’s general fund.

2.08.060 Reserved. (Repealed by Ord. 91-888)

2.08.070 Reserved. (Repealed by Ord. 91-888)

2.08.080 Redevelopment Agency - Need Declared. The City Council has investigated and determined that there is a compelling community economic need for a redevelopment agency in the City of San Marcos and does hereby so declare that there is a need for a redevelopment agency to
function within the City of San Marcos, a general law City of the State of California.

2.08.090  Redevelopment Agency - Membership.  The City Council does hereby declare itself to be the redevelopment agency of the City of San Marcos and the members of said agency in that the population of said City is less than two hundred thousand (200,000).

2.08.100  Redevelopment Agency Compensation.  The compensation of the members of said Redevelopment Agency shall be the maximum amount allowed per meeting under Health and Safety Code Section 33114.5, as amended.  Any City department heads required to attend said meetings shall be compensated at their regular hourly rate and any other City staff shall be compensated by overtime pay or compensatory time off, in accordance with City personnel rules and regulations.  (Ord. No. 99-1078, 1/11/2000)

2.08.110  Industrial Development Authority - Need Declared.  The City Council hereby finds and declares that there is a need for an industrial development authority to function in the City of San Marcos.

2.08.120  Industrial Development Authority - Board of Directors.  The City Council hereby further declares itself to be the board of directors of such industrial development authority, and all the rights, powers, privileges, duties, liabilities, disabilities and immunities vested in such a board shall be vested in the City Council as such board.

2.08.130  Industrial Development Authority - Name.  The authority established in the City of San Marcos by the California Industrial Development Financing Act and authorized to transact business and exercise its powers thereunder by sections 2-14 through 2-16 shall be known as the "Industrial Development Authority of the City of San Marcos."

2.08.140  Industrial Development Authority - Compensation of Members, Other City Employees.  The compensation of members of said Industrial Development Authority shall be in accordance with the provisions of Government Code Section 91522(c), as amended.  Any City department heads required to attend said meeting shall be compensated at their regular hourly rate and any other City staff members required to attend said meeting shall be compensated by overtime pay, or compensatory time off in accordance with City personnel rules and regulations.  (Ord. No. 99-1078, 1/11/2000)

2.08.150  Notices of Restriction on Real Property.  The City Clerk shall record with the County Recorder of San Diego County all documents relating to real property in the City with respect to building, planning, zoning and engineering matters, if it is determined to be in the best interests of the City of San Marcos.  The determination as to the necessity for recordation shall be made by the City Council, City Manager, City Clerk, Planning Division Director, Director of Developmental Services, or City Attorney, and such determination shall be conclusive.

Any fees charged by the Recorder for the recordation of the documents are to be borne by the property owner or developer.

2.08.160  Review of Decisions of Commissions, Committees and Boards.  Decisions of all commissions, committees and boards established or appointed by the City Council may be reviewed by the City Council in accordance with the provisions of this Section.  (Ord. No. 2001-1131, 12-11-01)

(a) Within ten (10) calendar days of the resolution or memorandum of decision of any City commission, committee or board, the City Council, or any individual Councilmember, may request review of the decision.  If there is no resolution or memorandum of decision, review must be requested within ten (10) calendar days of the date of the commission, committee or board action.  Such review shall be requested in writing and shall be filed with the City Clerk.
(b) The City Council shall set all reviews of decisions of any commission, committee or board for hearing before the City Council within thirty (30) days of the date the request for review is filed. Following any such hearing, the City Council may approve, modify or disapprove the decision of the commission, committee or board.

(c) The decision of the City Council in the case of any such review shall be final.

2.08.170 Establishment of City Council Electoral Districts. Subject to Section 2.08.180, City Councilmembers shall be elected on a “by-district” basis from the Council districts described as follows, which shall continue in effect until they are amended or repealed in accordance with law: (Ord. No. 2016-1430, 10/11/2016)

(a) Council District 1 shall comprise all that portion of the City beginning at the General Municipal Election in November 2018

(b) Council District 2 shall comprise all that portion of the City beginning at the General Municipal Election in November 2018

(c) Council District 3 shall comprise all that portion of the City beginning at the General Municipal Election in November 2020

(d) Council District 4 shall comprise all that portion of the City beginning at the General Municipal Election in November 2020

2.08.180 Election Schedule. Except as otherwise required by California Government Code Section 36512, Councilmembers shall be elected in Council Districts 1 and 2 beginning at the General Municipal Election in November 2018, and every four years thereafter, as such Council districts shall be amended. Councilmembers shall be elected from Council Districts 3 and 4 beginning at the General Municipal Election in November 2020, and every four years thereafter, as such Council districts shall be amended. The election schedule for the Mayor is not affected by this Section. (Ord. No. 2016-1430, 10/11/2016).
CHAPTER 2.12

CITY COUNCIL MEETINGS

SECTIONS:

2.12.010  Time for Council Meetings; Location
2.12.020  Cancellation of Meetings
2.12.030  Special Meetings; Call; Notice
2.12.040  Preparation of Agendas
2.12.050  Order of Business Generally
2.12.060  Unfinished Business
2.12.070  Oral Communications
2.12.080  Ordinances
2.12.090  Resolutions
2.12.100  Discussion Procedure
2.12.110  Copies of Minutes to be Furnished to Members
2.12.120  Robert's Rules of Order Adopted; Scope
2.12.130  Majority Vote Required

2.12.010  Time for Council Meetings; Location.  From and after the first day of October, 1994, regular meetings of the City Council shall be held on each of the second and fourth Tuesdays of each calendar month at such hour as may be established by resolution of the City Council, at the City Hall in the City of San Marcos, 1 Civic Center Drive, San Marcos, California. If at any time any regular meeting falls on a holiday observed by the city, such regular meeting shall be held on the next business day; however, the City Council may hold a regular or special meeting on a holiday should the necessity arise. (Ord. 94-970, 09/27/94)

2.12.020  Cancellation of Meetings.  The City Council, at any regular meeting may cancel the holding of the next regular meeting of said Council, and notice of the cancellation shall be posted conspicuously by the City Clerk on or near the door of the Council chambers within twenty-four (24) hours after the meeting ordering the cancellation.

2.12.030  Special Meetings; Call; Notice.  A special meeting of the City Council may be called at any time by the Mayor or by a majority of the members of the City Council, by delivering personally or by mail written notice to each member of the City Council and to each local newspaper of general circulation, radio or television station requesting notice in writing.  The notice must be delivered personally or by mail at least twenty-four (24) hours before the time of the meeting as specified in the notice.  The call and notice shall specify the time and place of the special meeting and the business to be transacted.  No other business shall be considered at a special meeting by the City Council.  The written notice may be dispensed with as to any member who at, or prior to, the time the meeting convenes files with the City Clerk a written waiver of notice.  The waiver may be given by telegram.  The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

2.12.040  Preparation of Agenda.  
(a) The City Council agenda is the official order of business at Council meetings.  Reports, communications or other matters to be presented at a City Council meeting may be prepared and submitted by City staff through the City Manager, on the request of two (2) Council Members, or on the request of the Mayor.  Agenda items shall be submitted to the City Clerk in writing before 5:00 p.m. on Monday, the fifteenth day, preceding the City Council meeting.  Thereupon, the City Clerk shall prepare
a list setting forth such matters and the nature thereof under their appropriate headings to come before the City Council meeting in the correct order of business as established in this section.  
(Ord. No. 2012-1365, 4-24-12)

(b) Matters deemed by the City Council to be an emergency are excepted from the provision of subsection (a).  

2.12.050 Order of Business Generally. Promptly at 6:30 p.m. on the night of each regular meeting, the members of the City Council, the City Clerk, the City Attorney or other officers, shall assemble at their regular stations in the council chamber, whereupon the business of the meeting shall be taken up in the order as the City Council may from time to time prescribe by resolution.

2.12.060 Unfinished Business. Any matter, the consideration of which has not been completed at any meeting of the City Council and which has not been continued to a specific date, shall be listed for consideration at the next regular meeting of the City Council under the heading of "unfinished business."

2.12.070 Oral Communications. Members of the public shall have the opportunity to personally or through their representatives address the City Council on any item included in the agenda or on any item of interest to the public that is within the jurisdiction of the City Council pursuant to Government Code Section 54954.3. Persons speaking on behalf of groups or associations shall submit the documentation as may be specified by City Council Policy, which Policy may be amended from time to time. Any person wishing to speak before the Council must complete an oral communications speaker slip and submit it to the City Clerk. The City reserves the right to adopt reasonable policies in relation to the oral communications portion of the City Council meeting so as not to disrupt the flow of the meeting including, but not limited to, limiting the total amount of time allocated for oral communications and for each individual speaker to address the Council.  
(Ord. No. 2012-1365, 4-24-12)

2.12.075 Applicability of Government Code Provisions. The provisions of Article 2 (Enactment) of Chapter 2 (Ordinances), Part 2 (Legislative Body), Division 3 (Officers), Title 4 (Government of Cities), of the California Government Code shall not apply within the chartered City of San Marcos except as follows: Sections 36933 (relating to the publication of ordinances), 36936.1 (relating to the fixing of tax rates), and 36937 (relating to the effective date of ordinances) shall continue to apply within the City as currently enacted and as they may be amended from time to time.  
(Ord. No. 2009-1323, 11-10-09)

2.12.080 Ordinances. Ordinances may be introduced by reading the title only unless the reading of the text of the ordinance is requested by a Council Member. Ordinances receiving a majority vote of the City Council at introduction shall be placed on the consent calendar for consideration at any subsequent regular or special meeting of the City Council. Ordinances placed on the consent calendar may be adopted by reading the title only unless the reading of the text of the ordinance is requested by a Council Member.  
(Ord. No. 2009-1323, 11-10-09)

2.12.090 Resolutions. Resolutions may be introduced by reading the title only unless the reading of the text of the resolution is requested by a Council Member.  
(Ord. No. 2009-1323, 11-10-09)

2.12.100 Discussion Procedure. While discussing any question under consideration by the City Council, it shall be the duty of the members thereof to remain seated and address their remarks to the presiding officer and their fellow members. Any remarks or orders to the audience shall be addressed by the presiding officer or, with his permission, by members of the City Council.
2.12.110  Copies of Minutes to be Furnished to Members. Following each City Council meeting, the City Clerk shall distribute a copy of the minutes thereof to each Member of the City Council for consideration at the following regular meeting. Unless the reading of the minutes by the City Clerk at the following meeting is requested by a Council Member, minutes may be approved without reading. Minutes may be taken up under the consent calendar. (Ord. No. 2009-1323, 11-10-09)

2.12.120  Robert's Rules of Order Adopted; Scope. In all matters and things not otherwise provided for in this division, the proceedings of the City Council shall use as a guideline "Robert's Rules of Order, Newly Revised." However, no ordinance, resolution, proceedings or other action of the City Council shall be invalidated, or the legality thereof otherwise affected, by the failure or omission to observe or follow such rules. (Ord. No. 2012-1365, 4-24-12)

2.12.130  Majority Vote Required. Resolutions, orders for the payment of money, and all ordinances shall require a recorded majority vote of a quorum of the City Council for passage. (Ord. No. 2009-1323, 11-10-09)
CHAPTER 2.14

ADMINISTRATIVE HEARINGS

SECTIONS:

2.14.010 Purpose
2.14.020 Hearing - Appeal
2.14.030 Hearing - Application
2.14.040 Hearing - Inquiry
2.14.050 Hearing - Review
2.14.060 Representation
2.14.070 Presenting Officer
2.14.080 Notice
2.14.090 Exchange of Information
2.14.100 Continuances
2.14.110 Oral Evidence
2.14.120 Documentary Evidence
2.14.130 Subpoena
2.14.140 Evidence
2.14.150 Argument
2.14.160 Determination

2.14.010 Purpose. When the City Council is to render an adjudicatory decision after consideration of evidence, an "administrative hearing" will be conducted in accordance with this chapter, unless a public hearing is required by law. This chapter does not apply when a public hearing is required for matters such as subdivisions, variances, special use permits, and planned developments. An administrative hearing shall be further labeled by the City Clerk for City Council action to indicate the type of matter involved, as exemplified by, but not limited to, the types of administrative hearings described in this chapter.

2.14.020 Hearing-Appeal. Where an appeal is filed seeking the City Council to review a final, determinative action of a City committee or commission, or employee, an "Administrative Hearing: Appeal" shall be set for hearing and the parties shall be denoted as follows:

A. The "appellant" who files the appeal;
B. The "real party in interest," if not the appellant, whose interest is affected by the committee or commission action.

2.14.030 Hearing-Application. Where an application is filed seeking a right or entitlement, and "Administrative Hearing: Application" shall be set for hearing and the party who is seeking the right or entitlement shall be known as the "applicant."

2.14.040 Hearing-Inquiry. Where a Notice of Violation of Code is filed by the City seeking to determine whether a person's conduct is in conflict with applicable laws, rules or regulations, an "Administrative Hearing: Inquiry" shall be set for hearing, and the party whose conduct is in question shall be known as the "respondent."

2.14.050 Hearing-Review. Where the City Council is determining whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned, an "Administrative Hearing: Review" shall be set for hearing and the party whose entitlement is in question shall be known as the "respondent."
2.14.060  **Representation.** In proceedings under this chapter, an individual party may appear in person, or be represented by an agent with written authorization, a corporate party by an authorized officer or employee, and a partnership or joint venture by an authorized member or employee. Any party may be represented by a member in good standing of the State Bar of California.

2.14.070  **Presenting Officer.** The City Manager or whomsoever the City Manager may designate shall present the prehearing position of the City and shall be referred to as the "presenting officer."

2.14.080  **Notice.** The parties shall be given reasonable notice of the date set for hearing.

2.14.090  **Exchange of Information.**

(a) No later than 5:00 p.m., six days prior to the date set for hearing, each party and the representing officer shall file with the City Clerk a list of all witnesses to be presented by such person and ten copies of each written or graphic item such person intends to offer into evidence during the hearing.

(b) In like manner, the presenting officer shall file a proposed decision with proposed findings.

2.14.100  **Continuances.** Continuances or extensions of time may be granted by the City Council for good cause or upon agreement of all parties and the presenting officer.

2.14.110  **Oral Evidence.**

(a) Only a party or the presenting officer or a person whose name appears on a filed witness list shall present oral evidence.

(b) Oral evidence shall be taken only under oath or affirmation.

2.14.120  **Documentary Evidence.** Only those documents and graphic items filed with the City Clerk in accordance with Section 2.14.090 shall be considered for admission into evidence.

2.14.130  **Subpoena.** For good cause the City Council or the Mayor may cause a subpoena to be issued. The Mayor shall sign the subpoena attested to by the City Clerk.

2.14.140  **Evidence.**

(a) Each party and the presenting officer shall have the right to fully present evidence in accordance with this chapter.

(b) Each party and the presenting officer shall have the right to present evidence in explanation or rebuttal.

(c) The hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs. The presiding member of the City Council may set reasonable time limitations on the presentation of evidence.

(d) The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized by law.

(e) Irrelevant and unduly repetitious evidence shall be excluded.
(f) Each party and the presenting officer may propound questions through the presiding member of the City Council to the opposing side.

2.14.150 Argument. Upon the submission of the evidence, only the presenting officer, a party, or a legal representative of a party may present argument. The presiding member may limit the time for said argument.

2.14.160 Determination. Applying rules and regulations to the specific evidence presented during the hearing, the City Council shall make an adjudicatory decision regarding the rights, duties, and entitlements of involved persons under the laws and regulations of the City and may direct that such action be taken as the City Council deems necessary.
2.16.010 Purpose and Intent

It is the intent of the City Council of the City of San Marcos in enacting this Article to place realistic and enforceable limits on the amount which may be contributed to political campaigns in municipal elections, for the purpose of preventing potential improper or undue influence over elected officials by campaign contributions, and to insure against election victories based primarily on the amount expended on campaigns.

This Article is intended to supplement the Political Reform Act of 1974, and in the event of a conflict between that Act and this Article, that Act shall prevail. This Article is enacted pursuant to Article XI, Section 7 of the Constitution of the State of California, and Section 22808 of the California Elections Code.

This Article shall not apply to contributions or other amounts given to a committee which is organized solely for the purpose of supporting or opposing the qualifications for the ballot or the adoption of one or more City measures.

2.16.020 Definitions

The definitions of the words and phrases defined in the Political Reform Act of 1974 (commencing with Government code Section 81000) or in the regulations adopted by the Fair Political Practices Commission (commencing with 2 California Code of Regulations Sections 18202) shall apply to this Chapter. (Ord. 90-842, 4-10-90)

2.16.030 Campaign Contributions - Limitations

(a) It is unlawful for a candidate, controlled committee, or any other person acting on behalf of a candidate or controlled committee, to accept a contribution from any person other than an individual, except that a political party committee shall not be prohibited from making contributions to a candidate or controlled committee in a municipal candidate election, but shall be subject to the contribution limits set forth in section 2.16.030(c), below. (Ord. No. 2013-1383, 9/24/13)

(b) No person other than a candidate shall make, and no candidate, campaign treasurer or controlled committee shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of such candidate, including contributions to all controlled committees, to exceed two hundred and fifty dollars ($250). (Ord. No. 2013-1383, 9/24/13)
(c) No political party committee shall make, and no candidate, campaign treasurer or controlled committee shall solicit or accept, a contribution which will cause the total amount contributed by such political party committee with respect to a single election in support of such candidate, including contributions to all controlled committees, to exceed an amount that is two times (2x) the amount set forth in section 2.16.030(b), above.  (Ord. No. 2013-1383, 9/24/13)

(d) Except as provided in subdivision (e) below, an extension of credit which consists of a receipt of goods or services pursuant to an agreement between the provider of the goods or services and a candidate or controlled committee, and where payment is not made until a later date, is a contribution subject to this section, 2.16.030.  (Ord. No. 2013-1383, 9/24/13)

(e) For purposes of this section, 2.16.030, an extension of credit is not a contribution made by the provider of the goods or services or a contribution accepted by the candidate or controlled committee if either subdivision (d)(1) or (d)(2) of this section is met:  (Ord. No. 2013-1383, 9/24/13)

   (1) Payment is made on or before the later of the following dates:

      (a) 60 days after the date of the invoice; or

      (b) 60 days from the date the goods or services are delivered; or

      (c) For services that are ongoing in nature, 60 days after the date of the invoice, where services are billed no less frequently than on a three-month billing cycle.

   (2) All of the requirements of subsections (d)(2)(A)-(E) of this section are met:

      (a) The credit arrangement is set forth in a written instrument which is contemporaneous with the initiation of the credit arrangement, and which instrument shall be made available upon request of Elections Counsel appointed pursuant to Section 2.16.080 below:

      (b) It is part of the regular business of the provider of goods or services to provide similar goods or services;

      (c) The provider provides the goods and services in the ordinary course of business and on the same terms and conditions offered to customers generally

      (d) The provider of goods or services enters into the agreement with the intent that the candidate or controlled committee be required to pay in accordance with the terms of the agreement and does not have actual knowledge that the candidate or controlled committee may not be able to pay in accordance with such terms; and  (Ord. No. 2013-1383, 9/24/13)

      (e) The provider of goods or services makes reasonable efforts to collect the full amount of the balance owed within 60 days of the date that the payment for the goods or services becomes due under the terms of the agreement.  (Ord. No. 2008-1304, 05/13/08)

(f) Nothing in this section is intended to limit the amount of his or her own money or property that a candidate may contribute, loan to or expend on behalf of the candidate's own campaign.  (Ord. No. 2003-1169, 1/28/03)
(g) No candidate or controlled committee shall accept anonymous contributions in an amount exceeding ninety-nine dollars ($99). (Ord. No. 2003-1169, 1/28/03) (Ord. No. 2013-1383, 9/24/13)

(h) If any person is found to have violated the terms of subsections (a) or (b) of this section, 2.16.030, whether by civil or criminal enforcement action, the amount of funds received constituting such violation shall be paid by the candidate or committee that received such funds to the City Manager for deposit into the City’s general fund. If any person is found to have violated the terms of any other subsections of this section, 2.16.030, the fine imposed in connection with such violation shall be in the amount of $250 for the first 30 days after said violation, $500 for the next 60 days after said violation and $1,000 for any period in excess of 90 days following said violation, and shall be paid to the City Manager for deposit into the City’s general fund. (Ord. No. 2003-1169, 1/28/03 & Ord. No. 2008-1304, 05/13/08)

(i) The provisions of the Political Reform Act of 1974, as may be amended from time to time, and the regulations of the Fair Political Practices Commission implementing the Political Reform Act with respect to: (i) the receipt and/or acceptance of contributions and the requirement to report the same; (ii) allowing the return of contributions that exceed limits, and (iii) the ability of candidates and committees to file amended campaign statements, are applicable to the local requirements set forth in this Chapter, 2.16. (Ord. No. 2008-1304, 05/13/08)

2.16.040 Campaign Statements. Each candidate and each committee shall be required to file those campaign statements mandated by the Political Reform Act of 1974, as amended (Government Code Sections 84100 through 84305), in the times and in the manner required by the Act. This Article imposes an additional local filing requirement on candidates and committees, as follows: (Ord. No. 2008-1304, 05/13/08)

Pre-election campaign statements shall be filed by each candidate and committee, including independent committees, covering the period from the last reporting date through midnight of the second Sunday prior to the election, which statements shall be filed with the City Clerk by 5:30 p.m. on the last City business day of the week immediately preceding the election date. The required statements may be completed on campaign statement forms, required to be filed by state law, so long as such forms are completed in sufficient detail to comply with the requirements of this Chapter. (Ord. No. 2008-1304, 05/13/08)

2.16.045 Public Record. Campaign statements filed with the City Clerk shall be a matter of public record. The City Clerk shall, within three (3) City business days of the date of filing, post copies of campaign statements online at the City’s website. (Ord. No. 2008-1304, 05/13/08)

2.16.050 Violations and Penalties – Criminal and Civil Enforcement.

(a) Any person who knowingly or willfully violates any provision of this Chapter is guilty of a misdemeanor and shall be punishable in accordance with Section 1.12.020. The maximum fine that may be imposed for each misdemeanor conviction shall be ten thousand dollars ($10,000) or three times (3x) the amount illegally reported, contributed, expended or given, whichever is greater. (Ord. No. 2003-1169, 1/28/03)
(b) In addition to the criminal penalty set forth above, or any other penalty provided by law, any violation of this Chapter may be enforced by civil action brought by the City. As part of any civil action filed to enforce provisions of this Chapter, a court may assess a maximum civil penalty of ten thousand dollars ($10,000) or three times (3x) the amount illegally reported, contributed, expended or given, whichever is greater, per violation of this Chapter, for each day which any person commits, continues, allows or maintains a violation of any provision of this Chapter. (Ord. No. 2003-1169, 1/28/03)

(c) In addition to any other penalty provided by law, any willful or knowing failure to report contributions, done with the intent to mislead or deceive, shall be punishable by a fine of not less than five thousand dollars ($5,000). (Ord. No. 2003-1169, 1/28/03)

(d) For purposes of this Chapter, civil or criminal enforcement actions may be brought on behalf of the City by the Office of the District Attorney pursuant to the delegation provided by California Government Code Section 91001, or by special counsel retained by the City for such purpose. Whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith shall be considered in applying the remedies and sanctions of this Chapter. (Ord. No. 2003-1169, 1/28/03)

2.16.060 Effect of Violation on Election.

(a) The election to office of any candidate who is convicted of a violation of any provision of this Article shall be void, and such office shall become vacant immediately if the candidate is the incumbent, or upon the date the candidate would otherwise have taken office. The vacancy shall be filled in the same manner as other vacancies in the City offices are filled. If a candidate is convicted of a violation of this Article prior to the time when the election is to take place, his or her candidacy shall be terminated immediately and he or she shall be ineligible for that election. Any person convicted of a violation of this Article shall be ineligible to hold any City office, whether elective or appointive for a period of five (5) years for each such conviction from and after the date of conviction.

(b) The City Clerk shall not issue any Certificate of Election to any candidate until the campaign statements required by Section 2.16.040, or, if no campaign statement is required, the written declaration permitted by Section 84212 of the California Government Code, have been filed in the form and at the place required by the Political Reform Act of 1974 as amended. The City Council shall not adopt a resolution declaring any candidate to be nominated or elected until such statements or declaration have been filed in accordance with the provisions of this Article. (Ord. 90-842, 4-10-92)

2.16.070 Voting and Receipt of Funds.

(a) Within twelve (12) months after receiving a campaign contribution or other income totaling one hundred dollars ($100) or more from any source (other than extensions of credit received for the purchase of goods and services when such extensions are made by regular suppliers of such goods and services or by a financial institution regulated under the laws of the United States or the State of California in the normal course of business under terms and conditions available to the general public, and/or money or property that a candidate may contribute, loan to, or expend on behalf of his or her own campaign), no City Councilmember shall make, participate in making or attempt to influence any government decision or action that will have a reasonably foreseeable material financial effect on the campaign contributor or other source of income that is distinguishable from its impact on the public generally or a significant segment of the public, as defined by the Political Reform Act of 1974. (Ord. No. 2014-1402, 10-28-14)
(b) Other than money or property that a candidate may contribute, loan to, or expend on behalf of his or her own campaign, no City Councilmember shall accept any campaign contribution or other income from any source totaling one hundred dollars ($100) or more within twelve (12) months after he or she has made, participated in making, attempted to influence or influenced any government decision or action that had a material financial effect on the campaign contributor or other source of income that is distinguishable from its impact on the public generally or a significant segment of the public, as defined by the Political Reform Act of 1974. (Ord. No. 2014-1402, 10-28-14)

2.16.080 Review of Complaints, Appointment of Elections Counsel, Enforcement Actions. The City shall review and investigate written complaints of alleged violations of this chapter. In the event such complaints are received, the City Attorney shall appoint a qualified and independent special counsel (“Elections Counsel”) in consultation with the City Manager and on such terms and conditions as are generally available in the San Diego County legal community for such work, which Elections Counsel will commence and carry out such review and investigation. If the Elections Counsel determines that there is a reason to believe that a violation of this chapter has occurred, Elections Counsel shall conduct an investigation as it deems necessary for the enforcement of this chapter.

1. The Elections Counsel shall have such investigative powers as are necessary for the performance of duties described in this chapter and may demand and shall be furnished records of campaign contributions and expenditures of any person or committee subject to this chapter. In the event that production of such records is refused, the Elections Counsel may commence civil litigation to complete such production.

2. Persons residing in the City who believe that a violation of this chapter has occurred may file a written complaint with the City Attorney for review by the special counsel. While names of complainants shall not be subject to disclosure unless required by the Public Records Act, anonymous complaints will not be reviewed and/or investigated. If the complaint presents probable cause to believe that a violation has occurred, the special counsel will initiate an investigation of such violation.

3. Action to Enforce. If the Elections Counsel determines that there is good reason to believe that a violation of this chapter has occurred, Elections Counsel may commence such administrative, civil or criminal legal action as it deems necessary for the enforcement of this chapter.

4. Review, investigation, enforcement, litigation, and prosecution by other than the District Attorney under this chapter shall be commenced and carried out only by the appointed Elections Counsel. Activity by Elections Counsel in accordance with this chapter shall not be subject to review or control by the City Council or City Attorney. The City Attorney shall not review, investigate, prosecute or otherwise deal with any alleged violation of this chapter, but shall defend the constitutionality and legality of this chapter in any civil proceeding in which the City or the City Council is a party. (Ord. No. 2008-1304, 05/13/08)

2.16.090 Time Limitations. Any action alleging a violation of this chapter must be commenced no later than one (1) year from the date of the alleged violation. (Ord. No. 2008-1304, 05/13/08)
CHAPTER 2.20
CITY OFFICERS

SECTIONS:

2.20.010  Bonds of the City Clerk and the City Treasurer
2.20.020  Office of City Manager Established
2.20.030  Appointment; Basis; Term of Office
2.20.040  Persons Eligible
2.20.050  Residency Requirements
2.20.060  Bond
2.20.070  Compensation; Expenses
2.20.080  Removal
2.20.090  City Manager Pro Tem
2.20.100  Powers and Duties Generally
2.20.110  Not to Exercise Legislative Functions
2.20.120  City Council to Deal with Administrative Matters through the City Manager
2.20.130  Cooperation by City Attorney
2.20.140  Office of Director of Finance Created; Purpose
2.20.150  Appointment; Term of Office
2.20.160  Residence
2.20.170  Bond
2.20.180  Compensation
2.20.190  Powers and Duties Generally
2.20.200  Acting Director of Finance
2.20.210  Power of City Manager to Lease City-Owned, Held or Controlled Property for a Period Exceeding 55 Years But Not Exceeding 99 Years
2.20.220  Master Bond or Insurance Policy as Alternate to Official Bonds

2.20.010  Bonds of the City Clerk and the City Treasurer.  The City Clerk and the City Treasurer, upon the entry to their duties of office, shall execute a bond to the City in conformity with bonds of public officers and in conformity with the provisions of the Governmental Code of the state relating thereto, in an amount as shall be established from time to time by the City Council by resolution. The bond requirement of this Section may be met by coverage furnished under Section 2.20.220 of this Chapter. (Ord. No. 2012-1371, 12/11/12)

2.20.020  Office Established.  The office of City Manager is hereby established.

2.20.030  Appointment; Basis; Term of Office.  The City manager shall be appointed by the City Council wholly on the basis of his executive and administrative qualifications and ability and shall hold office for and during the pleasure of the City Council.

2.20.040  Persons Ineligible for Appointment.  No person elected as a member of the City Council shall, subsequent to his election, be eligible for appointment as City manager until after two (2) years have elapsed after the City Councilmember shall have ceased to be a member of the City Council.

2.20.050  Residency Requirements.  Residence in the City at the time of the appointment of the City manager shall not be a condition of the appointment. Notwithstanding the foregoing, the city Council may at its discretion require the City manager to reside within a reasonable and specific distance from the City’s jurisdictional boundaries.  (Ord. No. 2013-1379, 5/14/13)
2.20.060 Bond. The City manager shall furnish a corporate surety bond, to be approved by the City Council, in such a sum as may be determined by the City Council, which bond shall be conditioned upon the faithful performance of the duties imposed upon the City manager as prescribed in this chapter. Any premium for such bond shall be a proper charge against the City. The bond requirement of this Section may be met by coverage furnished under Section 2.20.220 of this Chapter. (Ord. No. 2012-1371, 12/11/12)

2.20.070 Compensation; Expenses.

(a) The City manager shall receive such compensation and expense allowances as the City Council shall from time to time determine and fix by resolution and the compensation and expenses reimbursements shall be a proper charge against such funds of the City as the City Council shall designate.

(b) The City manager shall be reimbursed for all sums necessarily incurred or paid by him in the performance of his duties. Reimbursement for expenses shall be made pursuant to the approved compensation and reimbursement policy. (Ord. No. 2012-1371, 12/11/12)

2.20.080 Removal. The removal of the City manager shall be only upon a majority vote of the whole City Council. Notwithstanding other provisions of this division, the City manager shall not be removed from office during or within a period of sixty (60) days next succeeding any general City election held in the City at which election a member of the City Council is elected.

20.090 City Manager Pro Tem. The City manager must appoint, subject to the approval of the City Council, one of the other officers or department heads of the City to serve as City manager pro tem during any temporary absence or disability of the City manager. If the City manager fails to appoint a manager pro tem, the City Council may designate a duly qualified person to perform the duties of the City Manager. The City manager pro tem shall be subject to the bond requirement under Section 2.20.220 of this Chapter, or in the alternative, shall furnish a corporate surety bond conditioned upon faithful performance of the duties required to be performed by the City manager. Any premium for such bond shall be a proper charge against the City. (Ord. No. 2013-1379, 5/14/13)

2.20.100 Powers and Duties Generally. The City Manager, who shall be responsible to the City Council, shall be the chief administrative officer of the government of the City, under the direction and control of the City Council, except as otherwise provided in this division; he shall be responsible for the efficient administration of all the affairs of the City which are under his control. In addition to his general powers as administrative head and not as a limitation thereon, it shall be his duty and he shall have the powers set forth in the following sections:

(a) Enforcement of laws. It shall be the duty and authority of the City manager to see that all laws, provisions of this Code and other ordinances of the City are duly enforced and that all franchises, permits and privileges granted by the City are faithfully observed.

(b) Personnel direction. It shall be the duty and authority of the City manager to control, order and give directions to all appointive department heads and to subordinate officers and employees. In departments of the City, orders and directions shall be given to employees of the department through the department head. The City manager may transfer employees from one department to another and may consolidate or combine offices, positions, departments or units under his direction. The City Manager has the authority to reassign employees under his supervision temporarily or permanently during an emergency.
(c) **Personnel appointment, advancement and removal.** It shall be the duty and authority of the City manager to appoint, remove, suspend, promote and demote any and all appointive officers and employees of the City in accordance with the personnel provisions of this chapter and other City ordinances and the personnel rules and regulations of the City, except the City Attorney. Political beliefs or affiliations shall not be a basis for appointment or removal. The City manager or his delegatee shall have the authority to adjust during a fiscal year any salary inequity caused by the addition of duties and the City Council shall be notified of the adjustment. *(Ord. No. 2013-1379, 5/14/13)*

The City manager shall make and keep up-to-date job or position descriptions for all employees of the City.

(d) **Departmental and personnel control.** It shall be the duty and authority of the City manager to exercise control over all departments of government of the City and over all appointive officers and all employees thereof.

(e) **Council meetings.** It shall be the duty and authority of the City manager to attend all meetings of the City Council unless excused therefrom by the City Council, except when his removal is under consideration by the City Council.

(f) **Recommendations to the City Council.** It shall be the duty and authority of the City manager to recommend to the City Council for adoption such measures and recommendations as he deems necessary or expedient.

(g) **Financial matters.** It shall be the duty and authority of the City manager to keep the City Council at all times fully advised as to the financial conditions and needs of the City.

(h) **Budget.** It shall be the duty and authority of the City manager to prepare and submit before the first day of June of each year, the proposed total annual budget, including the proposed annual salary plan, to the City Council for its consideration. The City manager shall be responsible for the administration of the budget after its final adoption and he shall keep the City Council informed with respect thereto.

(i) **Purchases; inventory.** It shall be the duty and authority of the City manager to purchase all supplies for all the departments or divisions of the City. No expenditure shall be submitted or recommended to the City Council, except on report or approval of the City manager. The City manager shall also cause to be made and kept up-to-date an inventory of all property, real and personal, owned by the City.

Any limitations on the maximum amounts which may be spent by the City Manager shall be set forth from time to time by policy statements by the City Council.

(j) **Investigations.** It shall be the duty and authority of the City manager to make investigations into the affairs of the City and any department or division thereof and any contract or the proper performance of any obligations running to the City.

(k) **Complaints; services rendered by public utilities.** It shall be the duty and authority of the City manager to investigate all complaints in relation to matters concerning the administration of the City government and in regard to the service maintained by public utilities in the City and to see that all franchises, permits and privileges granted by the City are faithfully performed and observed.
(l) **Public property.** It shall be the duty and authority of the City manager to exercise general supervision over all public buildings, public parks and all other public property which is under the control and jurisdiction of the City Council.

(m) **Working time.** It shall be the duty and authority of the City manager to devote his entire working time to the duties of his office in the interests of the City.

(n) **Public relations.** The City manager shall serve as a public relations officer of the City government and shall follow through and endeavor to adjust all just complaints filed against any employee, department, division or service of the City.

(o) **City and City Council mail.** The City manager shall receive and open all mail addressed to the City, the City Council and City departments and give his immediate attention thereto, to the end that all administrative business referred to in the communication and not necessarily requiring action by the City Council may be disposed of between City Council meetings.

(p) **Meeting of boards and commissions.** The City Manager, or his designee, shall attend all meetings of the planning commission and may attend meetings of any other commission, boards or committees heretofore and hereinafter created by the City Council.

(q) **Records and accounts.** It shall be the duty of the City manager to direct that the records and accounts of the City are maintained in accordance with industry standards.

(r) **ABC Licensing.** The City Manager shall have the authority to investigate and make determinations of public convenience and necessity, file protests on behalf of the City or make other recommendations concerning alcoholic beverage control licenses for establishments within the City’s jurisdiction pursuant to California Business & Professions Code Section 23958.4. The powers and authority granted under this division are not intended to replace or usurp any powers or authority vested in the California Department of Alcoholic Beverage Control.

(s) **Additional authority and duties.** It shall be the duty and authority of the City manager to perform such other duties and exercise such other authority as may be delegated to him from time to time by ordinance, resolution or other action of the City Council.

**2.20.110 Not to Exercise Legislative Functions.** The City manager shall act as the agent for the City Council in the discussion of its administrative functions, but shall not exercise any policy-making or legislative functions whatsoever, except as delegated to the City Manager by the city Council nor shall he attempt to commit or bind the City Council or any member thereof to any action, plan or program requiring official action by the City Council, except as authorized by the City Council.  **(Ord. No. 2012-1371, 12/11/12)**

**2.20.120 City Council to Deal with Administrative Matters through the City Manager.** The City Council and its members shall deal with the administrative services of the City only through the City manager, except for the purpose of inquiry, and neither the City Council nor any member shall give orders to any subordinates of the City manager.

**2.20.130 Cooperation by the City Attorney.** It shall be the duty of the City Attorney, who shall be appointed directly by the City Council, to cooperate with and assist the City Manager in administering the affairs of the City most efficiently, economically and harmoniously so far as may be consistent with his duties as prescribed by law, the provisions of this code and other ordinances of the City.
2.20.140 Office of Director of Finance Created; Purpose. The Finance Department is hereby created and established, the head of which shall be the Finance Director, which office shall be appointed by the City Manager. (Ord. No. 2012-1371, 12/11/12)

2.20.150 Appointment; Term of Office. The director of finance shall be appointed by the City manager and shall serve at the pleasure of the City manager.

2.20.160 Residence. Residence in the City shall not be deemed a necessary prerequisite to appointment as director of finance.

2.20.170 Bond. The director of finance shall furnish a corporate surety bond, to be approved by the City Council, in such sum as may be determined by the City Council, which bond shall be conditioned on the faithful performance of the duties imposed on the director of finance by this division. The bond shall be at least equal to the bond required of the City Clerk under the provisions of section 36518 of the state Government Code. The bond fee shall be a proper charge against such funds of the City as the City Council shall designate. The bond requirement of this Section may be met by coverage furnished under Section 2.20.220 of this Chapter. (Ord. No. 2012-1371, 12/11/12)

2.20.180 Compensation. The director of finance shall receive such compensation as the City Council shall from time to time determine and fix by resolution, and the compensation shall be a proper charge against such funds of the City as the City Council shall designate.

2.20.190 Powers and Duties Generally.

(a) The Director of Finance, under the supervision of the City Manager, shall have charge of the administration of the financial affairs of the City and he/she shall have the following powers and duties.

(1) Compile the budget expense and capital estimates for the City Manager.

(2) Supervise and be responsible for the disbursement of all monies and have control over all expenditures which have been budgeted.

(3) Maintain a general accounting system for the City government and of its offices, departments, and agencies; keep books for, prescribe the financial forms to be used by and exercise financial budgetary control over each office, department or agency.

(4) Submit to the City Council, through the City Manager, statements of all receipts and disbursements in sufficient detail to show the exact financial conditions of the City.

(5) Prepare for the City Manager, as of the end of each fiscal year, a complete financial statement and report.

(6) Collect all taxes, special assessments, license fees and other revenues of the City for whose collection the City is responsible and receive all money receivable by the City from the State or Federal government, or from any court, or from any office, department or agency of the City.

(7) Receive and have custody of all monies receivable by the City from any source.

(8) Deposit all monies received in such depositories as may be designated by the City Manager and in compliance with all provisions of the State Constitution and laws of the State governing the handling, depositing and securing of public funds.
(9) Have custody of all investments and invested funds of the City government, or in possession of such government in a fiduciary capacity, and have the safe-keeping of all bonds and notes of the City and the receipt and delivery of City bonds and notes for transfer, registration or exchange.

(10) Have the right to audit the accounting functions performed by all other departments and divisions of the City; and

(11) Perform such other functions as the City Manager may specify or as may be prescribed by action of the City Council. (Ord. No. 2012-1371, 12/11/12)

2.20.200 Acting Director of Finance. Should the Director of Finance be absent or disabled, the City manager shall designate an acting director of finance.

2.20.210 Power of City Manager to Lease City-Owned, Held Or Controlled Property for a Period Exceeding 55 Years But Not Exceeding 99 Years.

The City Manager, in conjunction with his duty and authority to exercise general supervision over all public buildings and public property pursuant to Chapter 2.20, Section 2.20.100(l), shall have the authority and discretion to negotiate and enter into leases of City-owned, held or controlled property for periods which are in excess of fifty-five (55) years but do not exceed ninety-nine (99) years in accordance with the following limitations and procedures:

(a) In no event shall the initial term of the lease be for a period in excess of fifty-five (55) years;

(b) In no event shall the initial term of the lease plus any extensions thereto exceed ninety-nine (99) years;

(c) The lease shall be made subject to periodic review by the City Manager at defined intervals. During such reviews, the City Manager shall take into account the then-current market conditions and shall re-set the terms of the lease to market levels; and

(d) Any provision in the initial lease containing an option or options to extend the term of the lease beyond fifty-five (55) years must include a requirement that such options cannot be exercised by either the City or the lessee unless the lessee substantially reinvests in the property in a manner and/or amount to be agreed upon by the City and the lessor during initial lease negotiations.

(e) Proposed leases with initial annual rents due to the City in excess of Three Hundred Fifty Thousand Dollars ($350,000.00) shall be approved by resolution of the City Council before being executed on behalf of the City by the City Manager. All other leases may be executed by the City Manager on behalf of the City without obtaining City Council approval.

(f) The City Manager shall enter into only those leases that are economically beneficial to the City. (Ord. No. 98-1042, 12-9-98)

(g) Prior to the execution of leases which are subject to this Section 2.20.210, the City Manager shall provide a written summary of proposed lease terms to the City Council. (Ord. No. 99-1051, 2-1-99)
2.20.220  Master Bond or Insurance Policy as Alternative to Individual Bonds

(a) Pursuant to Section 1481 of the Government Code, as that section may be amended from time to time, a master bond may be used as an alternative to any official bond required under this Chapter.

(b) Pursuant to Section 1463 of the Government Code, as that section may be amended from time to time, a government crime insurance policy or employee dishonesty insurance policy, including faithful performance, may be used as an alternative to any master bond or official bond required under this Chapter.

(c) A master bond or insurance policy procured pursuant to this Section must provide coverage to at least the same extent, in the same or greater amount, and on substantially similar terms as those bonds otherwise required by this Chapter.  (Ord. No. 2012-1371, 12/11/12)
CHAPTER 2.24
CLAIMS AGAINST THE CITY

SECTIONS:

2.24.010  Filing and Denial of Claim Prerequisite to Suit
2.24.020  Claims to be Itemized
2.24.030  Claims for Liability
2.24.040  Procedure for Tort Claims
2.24.045  Procedure for Claims Challenging City Taxes, Charges and Fees
2.24.050  Presentation of Claims to the City Council
2.24.060  Restrictions on the Presentation of Claims or Demands by City Officers
2.24.070  Opposition to Claims
2.24.080  Rejection or Allowances of Claims
2.24.090  Preparation of Warrant on Payment of Claim
2.24.100  Payment of Warrant

2.24.010  Filing and Denial of Claim Prerequisite to Suit. Any claim or demand against the City or against any City officer in his official capacity, payable out of any City funds or any funds under control of the City Treasurer, shall be filed and presented to the party or entity delegated to review and act on any such claim as provided in this Chapter before any suit may be brought thereon. No suit may be brought on any claim until it has been rejected in whole or in part. (Ord. No. 2012-1365, 4/24/12)

2.24.020  Claims to be Itemized. The City Council, or other party or entity delegated to review and act on any claim under this Chapter 2.24, shall not hear, consider, allow or approve any claim, bill or demand against the City unless the claim is itemized, giving names; dates; the particular services rendered; the character of process served and upon whom; the distance traveled; the character of the work done; the number of days engaged; the materials and supplies furnished, when and to whom and in what quantity furnished; the price therefor; and any other pertinent details as the case may be. (Ord. No. 2012-1365, 4/24/12)

2.24.030  Claims for Liability. The functions of the City Council required to be performed in considering and rejecting, approving, compromising, or settling claims for liability against the City or any City officer acting in his or her official capacity are hereby delegated to and shall be performed as provided for in this Section 2.24.030.

(a)  Claims Covered Under the CJPIA Memorandum of Liability Coverage. The City delegates to the California Joint Powers Insurance Authority (CJPIA), of which it is a member, the authority to act on its behalf to defend and indemnify the City from all liability claims covered under the City’s Memorandum of Liability Coverage. Pursuant to Government Code Sections 910, et seq., the CJPIA is further authorized to issue notices relating to claims against the City or any City officer acting in his or her official capacity covered under the Memorandum of Liability Coverage, and to accept, reject, return as insufficient, or return as untimely any such claims.

(b)  Claims Not Covered Under the CJPIA Memorandum of Liability Coverage. For all other liability or other claims against the City or any City officer acting in his or her official capacity not covered under the CJPIA’s Memorandum of Liability Coverage, the claim shall be referred to the City Manager, City Attorney and/or Risk Management Division for consideration if the claim reasonably appears to be for an amount less than fifty thousand dollars ($50,000.00). The authority designated to review and act on any such claim shall have the right to accept or reject the claim as limited by this Section 2.24.030.
Claims not covered under the Memorandum of Liability Coverage that are fifty thousand dollars ($50,000.00) and above shall be referred to the City Council for review and action. Notwithstanding this delegation of authority, the City Council may consider any claims brought before the City. *(Ord. No. 2012-1365, 4/24/12)*

**2.24.040 Procedure for Tort Claims.** Claims and demands arising out of tort and all claims and demands not found upon contract shall comply with the provisions of Sections 900 and 951 of the Government Code of the State. The approval or rejection of tort claims or demands by the City Council or its designee shall be in compliance with the applicable provision of the Government Code of the State. *(Ord. No. 2012-1365, 4/24/12)*

**2.24.045 Procedure for Claims Challenging City Taxes, Charges and Fees.** Any claim filed against the City to dispute a City-imposed tax, charge or fee shall satisfy the requirements of this Section 2.24.045

(a) **Payment Required Before Filing Claim.** Prior to filing a claim to challenge a City-imposed tax, charge or fee, a disputant must pay the full tax, charge or fee amount owed, including any interest and penalties thereon.

(b) **Statute of Limitations Period.** Any claim to challenge a City-imposed tax, charge or fee must be made by the payer within one year of incurring the disputed tax, charge or fee. This one year statute of limitations period does not begin to run anew each time a tax, charge or fee is paid, with the exception of a disputed general tax.

(c) **Administrative Remedy Process.** Following compliance with Sections 2.24.045(a) and 2.24.045(b), the aggrieved payer must file an appeal with the City pursuant to Section 2.14.020 of this Code. The disputant may also wish to present a claim pursuant to any other administrative remedy specified by law. An administrative hearing shall be scheduled by the City and the claim shall be heard by a neutral examiner. The decision of the neutral examiner may be appealed by either party to the City Council. The City Council must render an adjudicatory decision on the challenged tax, charge or fee before the disputant may file suit against the City.

(d) **Prohibition of Class Claims.** No claim disputing any tax, charge or fee may be filed against the City on behalf of a class of persons, unless such a claim is verified by each member of the class. *(Ord. No. 2011-1356, 1/10/12)*

**2.24.050 Presentation of Claims to the City Council.** Any claim or demand required to be presented to the City Council for review and action pursuant to this article shall be presented to the City Council in writing. The City Council shall audit the presented claims and demands as required by law. *(Ord. No. 2012-1365, 4/24/12)*

**2.24.060 Restrictions on the Presentation of Claims or Demands by City Officers.** No City officer shall, except on his own behalf, present any claim, account or demand for allowance against the City or in any way, except in the discharge of his official duty, advocate the relief asked in a claim or demand against the City made by any other person.

**2.24.070 Opposition to Claims.** Any person may appear before the City Council and oppose the allowance of any claim or demand made against the City.
2.24.080 Rejection or Allowance of Claims.

(a) If the City Council finds that any claim or demand presented to it pursuant to this article is not a proper charge against the City, it shall be rejected by resolution or minute action and the fact of rejection shall be plainly endorsed upon the claim by the City Clerk or his authorized representative.

(b) If any claim or demand presented to the City Council pursuant to this article is determined to be a proper charge against the City, it shall be allowed only by resolution setting forth as to each claim the name of the claimant, a brief statement of the claim, and the amount allowed. If any claim or demand is approved and allowed by the City Council, the City Clerk shall endorse upon each of the duplicate copies thereof the words "Allowed by the City Council of the City of San Marcos," together with the resolution number allowing the claim, for what amount and from what fund and the City Clerk shall attest the copies with his signature.

(c) The City Council may allow in part and reject in part any claim presented to it pursuant to this article.

2.24.090 Preparation of Warrant in Payment of Claim.

(a) If any claim or demand is approved and allowed by the City Council pursuant to this article, the Mayor shall draw a warrant upon the City treasury therefor, which warrant shall be countersigned by the City Clerk or his authorized representative, and shall specify for what purpose the warrant is drawn and out of what fund it is to be paid.

(b) Except as otherwise provided, no warrant shall be drawn or evidence of indebtedness issued unless there is at the time sufficient money in the City treasury legally applicable to the payment of the warrant. When an order or demand is not approved for want of funds and its amount does not exceed the income and revenue for the year in which the indebtedness was incurred, the City Clerk shall endorse on it: "Not approved for want of funds," with the date of presentation and his signature. The City Clerk shall number the endorsement, register the order or demand in his records and deliver the warrant to the claimant or his order. From delivery the order or demand bears interest at six (6) per cent a year. Orders or demands shall be paid in the sequence they are registered.

2.24.100 Payment of Warrant. Upon presentation of a warrant prepared pursuant to this article, properly executed and endorsed, the City treasurer shall pay the warrant out of the funds in the City treasury properly applicable to that purpose.
CHAPTER 2.28

EMERGENCY SERVICES

ARTICLE I: STANDARIZED EMERGENCY MANAGEMENT SYSTEM

SECTIONS:

2.28.010 Purposes
2.28.020 "Emergency" Defined
2.28.030 Use of the Standardized Emergency Management System
2.28.040 Office of Director and Assistant Director of Emergency Services Created
2.28.050 Powers and Duties of Director and Assistant Director of Emergency Services
2.28.060 Emergency Organization
2.28.070 Emergency Plan
2.28.080 Expenditures
2.28.090 Violations

ARTICLE II: WARNING SYSTEMS

2.28.100 Warning Systems
2.28.110 Sounding of Warning Systems
2.28.120 Simulating Warning Signals without Authority

ARTICLE I: STANDARIZED EMERGENCY MANAGEMENT SYSTEM

2.28.010 Purposes. The declared purposes of this chapter are to provide the preparation and carrying out of plans for the protection of persons and property within the City in the event of an emergency; the direction of the emergency organization; and the coordination of the emergency functions of the City with all other public agencies, corporations, organizations, and affected private persons following the requirements set forth in the Standardized Emergency Management System. (Ord. No. 2004-1226, 5/25/04)

2.28.020 "Emergency" Defined. As used in this chapter, "emergency" shall mean the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of San Marcos caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, earthquake, terrorist attack or other conditions including conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the City, requiring the combined forces of other political subdivisions to combat. (Ord. No. 2004-1226, 5/25/04)

2.28.030 Standardized Emergency Management System (SEMS). The City shall use SEMS for coordinating all local emergencies. The basic framework of SEMS incorporates the use of the Incident Command System, multi-agency or inter-agency coordination, the State's master mutual aid agreement and mutual aid system, the operational area concept, and the Operational Area Satellite Information System. (Ord. No. 2004-1226, 5/25/04)

2.28.040 Office of Director and Assistant Director of Emergency Services Created.

(a) There is hereby created the Office of Director of Emergency Services. The City Manager shall be the Director of Emergency Services. (Ord. No. 2004-1226, 5/25/04)
(b) There is hereby created the Office of Assistant Director of Emergency Services who shall be appointed by the Director of Emergency Services.  \(\text{Ord. No. 2004-1226, 5/25/04}\)

2.28.050  Powers and Duties of Director and Assistant Director of Emergency Services.

(a) The Director is hereby empowered to:  \(\text{Ord. No. 2004-1226, 5/25/04}\)

(1) Request the City Council to proclaim the existence or threatened existence of a “local emergency” if the City Council is in session, or to issue such proclamation if the City Council is not in session.  \(\text{Ord. No. 2004-1226, 5/25/04}\)

(2) Request the Governor to proclaim a “state of emergency” when, in the opinion of the Director the locally available resources are inadequate to cope with the emergency.  \(\text{Ord. No. 2004-1226, 5/25/04}\)

(3) Control and direct the effort of the emergency organization of the City for the accomplishment of the purposes of this chapter.  \(\text{Ord. No. 2004-1226, 5/25/04}\)

(4) Direct cooperation between the coordination of services and staff of the emergency organization of the City; and resolve questions of authority and responsibility that may arise between them.  \(\text{Ord. No. 2004-1226, 5/25/04}\)

(5) Represent the City in all dealings with public or private agencies on matters pertaining to emergencies as defined herein.  \(\text{Ord. No. 2004-1226, 5/25/04}\)

(6) In the event of the proclamation of a “local emergency” as herein provided, the proclamation of a “State of Emergency” by the Governor or the Director of the State Office of Emergency Services, or the existence of a “State of War Emergency”, the Director is hereby empowered:  \(\text{Ord. No. 2004-1226, 5/25/04}\)

(a) To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practical time by the City Council;  \(\text{Ord. No. 2004-1226, 5/25/04}\)

(b) To obtain vital supplies, equipment, and such other properties found lacking and needed for the protection of life and property and to bind the City for the fair value thereof and, if required immediately, to commandeer the same for public use;  \(\text{Ord. No. 2004-1226, 5/25/04}\)

(c) To require emergency services of any City officer or employee, and, in the event of the proclamation of a “State of Emergency” in the county in which this City is located or the existence of a “State of Emergency”, to command the aid of as many citizens of this community as he deems necessary in the execution of his duties; such persons shall be entitled to all privileges, benefits, and immunities as are provided by state law for registered disaster service workers;  \(\text{Ord. No. 2004-1226, 5/25/04}\)

(d) To requisition necessary personnel or material of any City department or agency; and  \(\text{Ord. No. 2004-1226, 5/25/04}\)
2.28.060 - 2.28.100

2.28.060  Emergency Organization. All officers and employees of the City, together with those volunteer forces enrolled to aid them during an emergency and all groups, organizations, and persons who may by agreement or operation of law, pressed into emergency service duties, specific to the protection of life and property in the City during such emergency, shall constitute the emergency organization of the City of San Marcos. (Ord. No. 2004-1226, 5/25/04)

2.28.070  Emergency Plan. The City of San Marcos Fire Department shall be responsible for the development of the City of San Marcos Emergency Plan, which shall provide for the effective mobilization of all of the resources of the City, both public and private, to meet any condition constituting a Local Emergency, State of Emergency, or State of War Emergency; and shall provide for the organization, powers and duties, services, and staff of the emergency organization. Such plan shall take effect upon adoption by resolution of the City Council. The Director of Emergency Services shall have the authority to make administrative changes to the Emergency Plan, which changes shall be brought forward to the City Council for their information. (Ord. No. 2004-1226, 5/25/04)

2.28.080  Expenditures. Any expenditures made in connection with emergency activities, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the City of San Marcos. (Ord. No. 2004-1226, 5/25/04)

2.28.090  Violations. It shall be a misdemeanor, punishable in accordance with section 1.12.020, et. seq., for any person during an emergency to: (Ord. No. 2004-1226, 5/25/04)

(a)  Willfully obstruct, hinder, or delay any member of the emergency organization with enforcement of any lawful rule or regulation issued pursuant to this Chapter, or in the performance of any duty imposed upon him by virtue of this Chapter.

(b)  Do any act forbidden by any lawful rule or regulation issued pursuant to this chapter, if such act is of such a nature as to give or be likely to give assistance to the enemy or to imperil the lives or property of inhabitants of this City, or to prevent, hinder, or delay the defense or protection thereof. (Ord. No. 99-1053, 2/1/99)

ARTICLE II: WARNING SYSTEMS

2.28.100  Warning Systems. For the purpose of this chapter, there are three systems used to systems used to warn citizens of a local emergency. They are the Lifesaving Information for Emergencies Radio System (LIFE), the Emergency Alert System (EAS), and the use of public address systems located on emergency vehicles. (Ord. No. 2004-1226, 5/25/04)
(a) The LIFE system consists of approximately 200 black boxes that have been distributed throughout the County at school districts, Fire Departments, Police and Sheriff Stations, City Administrators’ offices and Radio/TV Stations. It sends an alert tone to the boxes throughout the County and opens their receivers and speakers so that an emergency message can be broadcast. The media generally puts out that information as soon as is practical, and anyone with a radio or television set turned on will get the message. (Ord. No. 2004-1226, 5/25/04)

(b) The Emergency Alert System (EAS), which is an updated version of the old Emergency Broadcast System (EBS). EAS uses both voice and digital information. EAS information is broadcast by local radio, cable and television networks. (Ord. No. 2004-1226, 5/25/04)

(c) The final method of getting information out is through the use of helicopters, patrol cars, and fire emergency vehicles equipped with public address systems. (Ord. No. 2004-1226, 5/25/04)

2.28.110 Sounding of Warning Systems. Warning systems may be used as deemed necessary by the Director of Emergency Services in concert with the County Office of Emergency Services. (Ord. No. 2004-1226, 5/25/04)

2.28.120 Simulating Warning Signals without Authority. Any person who shall use any of the warning systems in order to broadcast a false warning message shall be guilty of an infraction. (Ord. No. 2004-1226, 5/25/04)
CHAPTER 2.29

EMERGENCY PRICE CONTROLS

SECTIONS:

2.29.010 Purpose
2.20.020 Definitions
2.29.030 Applicability
2.29.040 Prohibition - Retail Establishments
2.29.050 Prohibition - Residential Housing Prices
2.29.060 Penalty

2.29.010 Purpose. The purpose of this Chapter is to protect the health, safety and welfare of the citizens of San Marcos during declared emergencies by providing temporary controls on the price for which certain supplies, goods and services may be sold.

2.29.020 Definitions. When used in this chapter the following terms shall have the meaning set forth in this section unless from the context in which the term is used it is evident that a different meaning is intended:

1. "Food item" is any article which is used or intended for use for food, drink confection or condiment by humans or by domestic animals.

2. "Repair or reconstruction services" are services provided in connection with the repair or reconstruction of commercial or residential structures or property of any type which are damaged as a result of a disaster including contractor services as defined by California Business and Professions Code sections 7025, 7026, 7026.1 and 7026.3.

3. "Emergency supplies" are any goods, materials or supplies necessary or convenient to allow humans to respond to an emergency and to sustain life activities and maintain sanitation, including, without limitation, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, toilet paper, construction materials, tools, cooking and food preparation supplies or equipment, camping gear, motor oil and gasoline.

4. "Medical supplies" includes, without limitation, prescription and non-prescription drugs, bandages, gauze, splints, first aid supplies, ointments, eye care products, spectacles, isopropyl alcohol and disinfectants.

2.29.030 Applicability. This chapter shall apply upon the proclamation of a public emergency within the City by the Mayor, the City Council or other authorized public officer of the City pursuant to the provisions of Chapter 2.28 of this Code or state statute, or upon the declaration of a local disaster or emergency by the President of the United States or the Governor of California, and shall continue to apply during the duration of the disaster or emergency and for a period of thirty days from the date the state of emergency or disaster is terminated.

2.29.040 Prohibition - Retail Establishments. During any time when the provisions of this chapter apply, it is unlawful for any person, contractor, business, or other entity to sell or lease or offer to sell or lease any food item, repair or reconstruction service, emergency supply
or medical supply for a price which is greater than ten percent above the price charged by such person, contractor, business or other entity for such food item, repair or reconstruction service, emergency supply or medical supply during the five days before the date of proclamation or declaration of emergency, unless the person, business, contractor or other entity can establish that the price increase was directly attributable to additional costs imposed on it with respect to the goods or services.

2.29.050  Prohibition - Residential Housing Prices. During any time when the provisions of this chapter apply, it is unlawful for any person, business or other entity to charge rent for the use or occupancy of a dwelling unit in an amount greater than ten percent above the rent charged by such person, business or other entity for the use or occupancy of the dwelling unit during the five days before the date of proclamation or declaration of emergency. This section shall not apply to rent increases resulting from the operation of a lease or rental agreement entered into before the date of the proclamation or declaration of emergency.

2.29.060  Penalty. The violation of this Chapter is a misdemeanor punishable pursuant to Chapter 1.12 of the San Marcos Municipal Code. In addition, to the penalties established pursuant to Chapter 1.12, restitution to an aggrieved consumer may be ordered. (Ord. No. 92-942, 12-8-92)
CHAPTER 2.30  
PURCHASING

SECTIONS:

2.30.010 Adoption of Purchasing System
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2.30.090 Competitive Negotiations for Goods, General Services, and Professional Services
2.30.100 Public Projects
2.30.110 Cooperative Purchasing
2.30.120 Emergency Purchases
2.30.130 Goods and Services Not Governed by This Chapter
2.30.140 Local Preference Purchasing
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2.30.160 Environmentally Preferable Purchasing
2.30.170 Petty Cash
2.30.180 Credit Card

2.30.010 Adoption of Purchasing System. Pursuant to Government Code Section 54201 et seq., the purchasing system set out in this Chapter is adopted to establish efficient procedures for the purchase of Goods and Services, to secure the lowest possible cost commensurate with quality, to exercise financial control over purchases, to clearly define authority for the purchasing function, and to assure the quality of purchases. Except as provided in this Code or pursuant to an agreement approved or ratified by the City Council, the City of San Marcos, as a Charter City, is exempt from the provisions of the California Public Contract Code. (Ord No. 2010-1332, 03/09/10)

2.30.015 Definitions. For the purposes of this Chapter, the following definitions apply:

(a) “Appropriation” refers to funds set aside through the budgeting process by the City Council for a specific use.

(b) “Awarding Authority” means the entity who has the power to legally assign work, accept bids, and bind the City to a Contract.

(c) “Best Value” means the best value to the City based on all factors that may include the following:

1) Cost, including life-cycle cost where applicable;

2) The ability, capacity, and skill of a Contractor to perform a Contract or provide the Goods or Services;

3) The ability of a Contractor to provide the Goods or Services promptly or within the time specified without delay or interferences;
4) The character, integrity, reputation, judgment, experience, and efficiency of a Contractor;

5) The quality of a Contractor’s performance on previous purchases/Services with the City;

6) The ability of a Contractor to provide future maintenance, repairs, parts, and services for the use of the Goods and Services purchased; and

7) The quality of a Good or Service including such factors as warranties, vendor financial stability, performance, operational costs, compatibility with other City Goods, and other factors.

(d) “Bid” or “Construction Bid” means all bid and Contract documents used for soliciting competitive bids. The bid defines, in detail, the terms, conditions, and specifications of the Construction Projects required by the City.

(e) “Change Order” is a written amendment executed by both parties to a Contract modifying the terms of an existing Contract. A Change Order may revise, add to, or delete previous requirements of the work, adjust the contract sum, or adjust the time for completion of the Contract.

(f) “Construction Projects” means projects involving the expenditure of City funds for the erection, construction, alteration, repair or improvement of any public structure, building, road, or other public improvement of any kind.

(g) “Contract” is synonymous with “agreement” and, regardless of which term is used, it means an agreement between the City and one or more other parties for the purchase or disposition of Goods, General Services, Professional Services, and/or Construction Projects.

(h) “Contractor” includes vendor and means any business entity/party that has entered into a Contract with the City for the provision or disposition of Goods, General Services, Professional Services, and/or Construction Projects.

(i) “Cooperative Purchasing” is a form of intergovernmental purchasing that piggybacks on the pricing and terms of a contract entered into by another entity. The originating entity will competitively award a contract that will include language allowing other entities to utilize the request for proposals/request for qualifications, bid and/or contract, which may be advantageous in terms of pricing and other terms and conditions, thereby providing the Best Value to the City versus performing its own solicitation of similar Goods and/or Services.

(j) “Department Purchasing Officer” means the Director of each department or division of the City, as appointed by the City Manager, who shall have the authority to make purchases as set forth in this Chapter for the Director's respective department or division. The Director of each department or division, when appropriate, may delegate his or her authority to management staff in their department or division to make purchases.

(k) “Environmentally Preferable Products” means Goods and Services that have a lesser or reduced effect on human health and the environment when compared with competing Goods or Services that serve the same purpose.

(l) “Goods” means articles or items that are moveable at the time of sale, including but not limited to equipment, supplies, and/or materials

(m) “Field Order” means a written or verbal order issued by the Real Property Services Director, Public Works Director, City Engineer, or Fire Chief to the Contractor as a directive to clarify a
specification, resolve a site access difficulty, deal with technical execution problems, or change the Contract documents. A Field Order itself cannot change the Contract price or time but if it resulted in increasing costs or time, a subsequent written Change Order is required.

(n) “Petty Cash” means a small amount of cash on hand to use for making small purchases.

(o) “Petty Cash Custodian” means the person responsible for the Petty Cash.

(p) “Public Project” means (1) construction, reconstruction, erection, alteration, renovation, improvement, demolition, and/or repair work involving any publicly owned, leased, or operated facility; or (2) painting or repainting of any publicly owned, leased, or operated facility. “Public Project” does not include maintenance work, which includes all of the following: (1) routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes; (2) minor repainting; (3) resurfacing of streets and highways at less than one inch; (4) landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

(q) “Purchase Order (PO)” means an authorization for the City to pay the Contractor, supplier or vendor that provides Goods and/or Services.

(r) “Request for Proposals (RFP)” means all documents used for soliciting competitive proposals. The RFP defines, in detail, the terms, conditions, and specifications of Goods and/or Services required by the City.

(s) “Request for Qualifications (RFQ)” means a request seeking a written presentation of the professional qualifications and experience of a proposed Contractor. The RFQ should be used in conjunction with the RFP.

(t) “Responsible Bidder” or “Responsible Proposer” means a bidder or proposer determined by the Awarding Authority to:

1) Have the ability, capacity, experience, and skill to provide the Goods, General Services, Professional Services, and/or Construction Projects in accordance with bid or proposal specifications;

2) Have the ability to provide the Goods, General Services, Professional Services, and/or Construction Projects promptly, or within the time specified, with a minimum of Contract Change Orders;

3) Have equipment, facilities, and resources of such capacity and location to enable the bidder or proposer to provide the required Goods, General Services, Professional Services, and/or Construction Projects;

4) Be able to provide future maintenance, repair, parts, and service for the use of the Goods and/or Construction Projects purchased or completed; and

5) Have a record of satisfactory performance under prior Contracts with the City or other purchasers where such bidder or proposer has previously been awarded the same or similar Contracts.

(u) “Responsive Bid” or “Responsive Proposal” means a bid or proposal determined by the Awarding Authority to be a complete bid or proposal which conforms in all material respects to the requirements of the Bid, RFP, Contract or other proposal documents.
“Services” means work performed, or labor, time, and effort expended, by the Contractor, and for purposes of this definition, may include both General Services and Professional Services.

1) “General Services” means any work performed or Services rendered, with or without the furnishing of materials, including but not limited to:
   a) Repairing, modifying and maintaining City vehicles and equipment;
   b) Licensing software;
   c) Repairing, modifying and maintaining software;
   d) Cleaning, analyzing, testing, moving, removing or disposing of City supplies and equipment (other than by sale);
   e) Providing temporary personnel services which are not professional services;
   f) Providing security guard and related services;
   g) Performing repair, demolition or other work required to abate a nuisance;
   h) Leasing or renting equipment, and related maintenance agreements; or
   i) Maintaining work on City property including: (i) routine, recurring, and usual work for the preservation or protection of any publicly owned or operated facility for its intended purposes; (ii) minor repainting; (iii) resurfacing of streets and highways at less than one inch; or (iv) landscape maintenance. General Service does not include work defined as a Public Project.

2) “Professional Services” means Services involving the provisions of a report, study, plan, design, specification, document, program, advice, recommendation, analysis, review, opinion, inspection, investigation, audit, brokering or representation of the City before or in dealings with another party, or any other Services which require a special skill or expertise of a professional, scientific or technical nature. Professional Services include, but are not limited to:
   a) Private architectural;
   b) Landscape architectural;
   c) Engineering, surveying;
   d) Environmental;
   e) Land surveying;
   f) Auditing;
   g) Construction project management firms; or
   h) Right-of-way.

“Quote” means a verbal or written promise from the vendor or Contractor guaranteeing that the cost of specific Goods or Services will not be exceeded.

2.30.020 Compliance Required - Effect of Noncompliance. No obligation for the payment of Goods, Services, and/or Construction Projects shall be incurred by the City except as prescribed by this Chapter. Any agreement entered into contrary to the provisions of this Chapter shall be void and any claim or demand against the City based thereon shall be invalid.

2.30.030 City Manager Authority. The City Manager shall supervise the purchasing system established by this Chapter. Except as otherwise provided in this Chapter, no purchase shall be made, Contract let, or expenditure made, unless the purchase, Contract, or expenditure has been approved by the City Council or the City Manager or his or her designee(s) within the parameters of this Chapter. The City Manager may adopt uniform written policies for the effective administration of this Chapter and may adopt standard Purchase Orders and agreements for purchases.

(a) Award and Execution of Contracts.

1) Except in emergency situations, pursuant to Section 2.30.120, all Contracts for Goods and Services for which there is an Appropriation shall be awarded by the City Manager or his or her designee(s). Each month, or as necessary, the City Manager shall submit a report to
the City Council of all purchases of Goods and award of Services Contracts with an individual value of over two hundred fifty thousand dollars ($250,000).

2) Public Project Contracts of two hundred fifty thousand dollars ($250,000) or less for which there is an Appropriation shall be awarded by the City Manager. Except in emergency situations, Public Project Contracts over two hundred fifty thousand dollars ($250,000) shall be awarded by the City Council unless the City Council delegates the authority to the City Manager, on a case-by-case basis due to urgency considerations. If the authority is delegated by the City Council, the City Manager is authorized to rule on any bid challenges or protests, and his or her ruling shall be final with no appeal rights.

3) The City Manager may determine that it is in the best interest of the City to accomplish a Public Project for which there is an Appropriation by the use of the employees of the City by force account or by private Contractors via negotiated Contract or Purchase Order. The City Manager shall have authority to act for the City in all aspects of such projects within the limits of 2.30.030(a)(2).

4) The City Manager is authorized to acquire all rights-of-way, and execute the agreements associated therewith, as may be accomplished by negotiated Contracts, necessary for the completion of capital improvement projects for which there is an Appropriation. All other real property purchases, and any and all eminent domain actions, shall be authorized by the City Council.

(b) Award and Execution of Change Orders

1) With the exception of Contract changes necessitated by emergency situations, this Section shall apply to all Contracts entered into by the City, including Public Project Contracts. Contractors shall make no change in a Contract without the issuance of a written Change Order (or Field Order in advance of a written Change Order.) Contractors shall not be entitled to be paid for any such change unless and until a written Change Order has first been approved and executed in accordance with this Section, designating in advance the work to be done and the amount of additional compensation to be paid. In an emergency situation, the designated City representative may direct the Contractor to perform emergency changes and reimburse the Contractor on a time and materials basis.

2) The City Manager shall have the authority to issue and execute individual Contract Change Orders as follows:

   a) To a maximum of two hundred fifty thousand dollars ($250,000) for Contracts having an initial value of two million five hundred thousand dollars ($2,500,000) or less.

   b) To a maximum of ten percent (10%) of the initial Contract value for Contracts having an initial value of more than two million five hundred thousand dollars ($2,500,000).

3) In no event shall the cumulative value of all Change Orders issued by the City Manager for any one Contract exceed the initial value of such Contract.

4) The City Manager may delegate to the Real Property Services Director, Public Works Director, City Engineer, or Fire Chief the ability to issue Field Orders in advance of a written Change Order for work costing, cumulatively, up to twenty five thousand dollars ($25,000) provided that cumulatively the project’s budget is not exceeded.
2.30.040 Director Duties and Authority. The Department Purchasing Officer shall have the duty and authority to:

(a) **Goods and General Services**

1. Purchase or Contract for Goods and General Services required by the department of $10,000 (ten thousand dollars) or less, for which there is an Appropriation, in accordance with purchasing procedures prescribed by this Chapter and such administrative regulations as the City Manager may adopt for the internal management and operation of the purchasing system;

2. Negotiate Contracts and make recommendations to the City Manager for the purchase of Goods and Services costing more than ten thousand dollars ($10,000);

3. Act to procure for the City the Best Value in Goods and General Services;

4. Endeavor to obtain as full and open a competition as possible on all purchases;

5. Prepare and recommend to the City Manager rules, and revisions or amendments to such rules, governing the purchase of Goods and General Services for the City;

6. Keep informed of current developments in the field of purchasing, prices, market conditions, and new products affecting the officer's department;

7. Prescribe and maintain such forms as are reasonably necessary to the operation of this Chapter and other rules and regulations;

8. Require chemical and physical tests of samples submitted with the bids and samples of deliveries which are necessary to determine quality and conformance with specifications.

9. Recommend to the City Manager the transfer of surplus or unused Goods between departments and divisions and/or to others as needed;

10. Approve specifications for Goods and General Services for the department or division;

11. Supervise the inspection of all Goods and General Services purchased to ensure conformance with specifications; and

12. Conduct all bidding, negotiations, or other procedures established by Sections 2.30.060, 2.30.070, and 2.30.090 at the direction of the City Manager.

(b) **Cooperative Purchasing**

Procure Goods and Services where the total cost of such Goods and Services is ten thousand dollars ($10,000) or less in accordance with the purchasing procedures prescribed by this Chapter and such administrative regulations as the City Manager may adopt for the internal management and operation of the purchasing system.

(c) **Professional Services**

Procure Professional Services where the total cost of such Professional Services is thirty thousand dollars ($30,000) or less for which there is an Appropriation, in accordance with the purchasing procedures prescribed by Section 2.30.080 of this Chapter and such administrative regulations as the City Manager may adopt for the internal management and operation of the purchasing system.
2.30.050 Purchasing Procedures. Unless exempted from this Chapter, pursuant to Sections 2.30.110, 2.30.120, or 2.30.130, purchases of Goods and Services shall be by one of the methods established in Sections 2.30.060, 2.30.070, 2.30.080, 2.30.090, 2.30.170 or 2.30.180 of this Chapter. All Contracts shall be in writing.

(a) Use of Purchase Orders or Contract Required. Purchases of Goods and Services shall be made by Purchase Orders and/or Contract with the exception of those items purchased utilizing Petty Cash or credit cards, as outlined in Sections 2.30.170 and 2.30.180, respectively. Except as otherwise provided in this Chapter, no Purchase Order shall be issued or Contract entered into without the prior approval of the City Manager or a designated representative. Department Purchasing Officers may issue Purchase Orders for purchases of Goods and Services for which there is an Appropriation, within the limits of Section 2.30.040. For purchases of ten thousand dollars ($10,000) or less, the Purchase Order may serve as the written Contract for the purchase; however, the Department Purchasing Officer should consider the Goods or Services being purchased and whether or not there would be value in entering into a written Contract for the purchase. The City Manager shall establish a standard form Purchase Order. The Department Purchasing Officers may establish annual (blanket) Purchase Orders with vendors of Goods or Services purchased by the City on a routine and continuing basis.

(b) Encumbrance of Funds. Except in cases of emergency or in cases where specific authority has been first obtained from the City Council by a budget amendment, a Purchase Order shall not be issued or a Contract entered into unless there exists an unencumbered Appropriation in the fund account against which the purchase is to be charged in an amount equal to or greater than the cost of the purchase. The Department Purchasing Officer shall monitor all Purchase Orders and Contracts to assure compliance with this Subsection.

2.30.060 Procurement of Goods.

(a) Small Procurements (≤ $10,000)

Procurements of Goods, where the total cost of Goods is ten thousand dollars ($10,000) or less in any one transaction, shall be made using simplified and cost effective operational procedures and forms approved by the City Manager. The use of formal or informal bids is not required but is considered the best management practice. Procurement requirements shall not be divided so as to constitute several small procurements under this Subsection.

(b) Informal Bidding (> $10,000 and ≤ $30,000)

1) Informal bidding procedures shall be utilized when:

   a) The anticipated cost of the Goods to be purchased is greater than ten thousand dollars ($10,000) and up to thirty thousand dollars ($30,000); or

   b) No bids are received pursuant to the formal Bid procedures established; or

   c) All bids received substantially exceed the City's estimated costs, as determined by the Department Purchasing Officer through the formal bidding procedure.

2) The City Manager may designate types or classes of procurements costing more than thirty thousand dollars ($30,000) which may be purchased through the use of informal bidding procedures whenever the City Manager finds that the use of the informal bidding procedure is advantageous to the City consistent with applicable law.

3) Informal bidding procedures shall be as follows:
a) Bids shall be obtained by written or oral request.

b) When possible, a minimum of three (3) bidders should be solicited.

c) Responses shall be in writing, and may be transmitted by facsimile, by mail, electronically over the internet, or by any other means of delivery as described in the bid documents.

d) All Contracts shall be awarded based on the Best Value to the City or the lowest Responsive Bid submitted by a Responsible Bidder, as determined by the Department Purchasing Officer, and shall be awarded by the Department Purchasing Officer or City Manager within the parameters of Section 2.30.040.

(c) Formal Bidding (> $30,000)

1) Except when the provisions of Sections 2.30.090, 2.30.110, and/or 2.30.120 are applicable, formal bidding procedures shall be utilized when the anticipated cost of the Goods is greater than thirty thousand dollars ($30,000). Procurement requirements shall not be divided so as to avoid the formal bidding requirements.

2) Formal bidding procedures shall be as follows:

a) The Department Purchasing Officer shall issue a notice inviting Bids using one or more methods designed to provide reasonable public notice in a manner which will permit current information to be disseminated widely. The notice shall include:

   i. Instructions to bidders;
   ii. Specifications describing the required Goods;
   iii. Bid forms and schedules;
   iv. Any required bond forms;
   v. General Contract provisions;
   vi. The time on or before which bids will be received;
   vii. Where and with whom bids shall be filed;
   viii. The date, time, and place where and when bids will be publicly opened;
   ix. Statement of bidders’ exceptions.

b) Sealed formal bids shall be received by the Department Purchasing Officer at a time, date, and place designated in the Bid documents. Formal bids, timely received, will be publicly opened by the Department Purchasing Officer and the aggregate bid pricing shall be read aloud.

c) Any person or entity with whom the City has contracted to prepare or assist in the preparation of Bid or RFP documents is ineligible to submit a bid or proposal for the provision of the Goods so specified in the notice inviting Bids or RFP.

d) Formal bids received after the deadline for receipt of bids shall not be accepted by the City and shall be returned to the bidder unopened, unless opening is necessary for identification purposes. The Department Purchasing Officer shall submit written notification to the bidder whose bid was received after the deadline stating what the deadline was, when the bid was actually received and that the bid is being returned because it was received after the deadline.

3) If no bids are received or if no bids meet the requirements as specified in the solicitation documents, the Department Purchasing Officer may reissue the solicitation using
the informal bidding procedures, negotiate a Contract based upon the solicitation without further complying with this Section, or the City may terminate the procurement.

4) If two or more bids are received with the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the City Manager may exercise sound discretion and accept the bid he or she chooses.

5) In considering formal bids for Goods, the Awarding Authority may waive minor defects or irregularities, provided that the irregularities do not affect the bid amount or give a particular bidder an advantage over others.

6) All bids shall be deemed rejected if no action is taken on the bids or proposals within ninety (90) days after the bids have been received and opened, unless bidders agree to extend a bid's effective date at the request of the City.

7) The Awarding Authority shall have the authority to reject all bids if doing so is in the best interest of the City.

(d) Additional Responsibilities and Authorities

1) The City shall have the authority to require a performance bond in such amount as it finds reasonably necessary to protect the best interests of the City consistent with applicable law. If the City requires a performance bond, the amount of the bond shall be described in the notice inviting Bids and RFP documents.

2) All Contracts shall be awarded based on the Best Value to the City or the lowest Responsive Bid submitted by a Responsible Bidder. Best Value criteria, if used, must be determined before bids/quotes are published or distributed to potential bidders/suppliers.

2.30.070  Procurement of General Services.

(a) Small Procurements (≤ $10,000)

Procurements of General Services where the total cost is ten thousand dollars ($10,000) or less in any one transaction shall be made using simplified and cost effective operational procedures approved by the City Manager and forms approved by the City Manager. The use of formal or informal Bids is not required, but is considered the best management practice. Procurement of General Services requirements shall not be divided so as to constitute several small procurements under this Subsection.

(b) Informal Bidding (> $10,000 and ≤ $30,000)

Informal bidding procedures, as set forth in Section 2.30.060(b) 3) may be utilized:

1) When the anticipated cost of the General Services is greater than ten thousand dollars ($10,000) and up to thirty thousand dollars ($30,000);

2) When no bids are received pursuant to the formal Bid procedures established;

3) When all bids received substantially exceed the City's estimated costs, as determined by the Department Purchasing Officer through the formal bidding procedure.

(c) Formal Bidding (> $30,000)
1) Formal bidding procedures shall be utilized when the anticipated cost of the General Services is greater than thirty thousand dollars ($30,000). Procurement requirements shall not be divided so as to avoid the formal bidding requirements.

2) The formal bidding procedures and requirements shall be as set forth in Section 2.30.060(c) and (d).

3) The City Manager may designate types or classes of General Services costing more than thirty thousand dollars ($30,000) which may be purchased through the use of other purchasing procedures if the City Manager finds such procedures to be advantageous to the City and consistent with applicable law.

2.30.080 Procurement of Professional Services.

The selection of Professional Services should be based on the professional qualifications necessary for the satisfactory performance of the Professional Services required, on demonstrated competence, and on a fair and reasonable price consistent with Government Code Section 4526.

(a) Informal Proposal (≤ $30,000)

1) Procurements of Professional Services where the total cost is expected to be thirty thousand dollars ($30,000) or less shall be made using informal proposal procedures, as set forth herein.

2) Informal proposal procedures shall be as follows:
   a) Proposals shall be obtained by written or oral request.
   b) When possible, a minimum of three (3) proposers should be solicited.
   c) Responses shall be in writing, and may be transmitted by facsimile, mail, electronically over the internet, or any other means of delivery as described in the proposal documents.

(b) Formal Proposal (> $30,000)

1) Procurements of Professional Services where the total cost is expected to exceed thirty thousand dollars ($30,000) shall be made using formal proposal procedures, as set forth herein. Procurement requirements shall not be divided so as to avoid the formal proposal requirements.

2) Formal proposal procedures shall be as follows:
   a) The Department Purchasing Officer shall use the RFP and/or RFQ process to solicit proposers. The RFP should include:
      i. Instructions to proposer;
      ii. Specifications describing the required Professional Services;
      iii. Any required licenses, insurance and/or bond forms;
      iv. General contract provisions;
      v. The time on or before which proposals will be received;
      vi. Where and with whom proposals shall be filed;
   b) When possible, a minimum of three (3) proposers should be solicited. The City Manager may waive the requirements for solicitation of multiple proposals if only one
individual or firm can reasonably provide the Professional Services, and it is in the best interest of the City to waive the requirement.

c) Formal proposals received after the deadline for receipt of proposals shall not be accepted by the City. The Department Purchasing Officer shall submit written notification to the proposer whose proposal was received after the deadline stating what the deadline was, when the proposal was actually received and that the proposal is being rejected because it was received after the deadline.

3) If no proposals are received or if no proposals meet the requirements as specified in the RFP or RFQ documents, the Department Purchasing Officer may reissue the solicitation using the informal proposal procedures, negotiate a Contract based upon the solicitation without further complying with this Section, or the City may terminate the procurement.

4) If two or more proposals are received with the same total amount, quality and service being equal, and if the public interest will not permit the delay of re-advertising for the RFP or RFQ, the City Manager may exercise sound discretion and accept the proposal he or she chooses.

5) All proposals shall be deemed rejected if no action is taken on the proposals within ninety (90) days after the proposals have been received and opened, unless proposers agree to extend an RFP’s or RFQ’s effective date at the request of the City.

6) The Awarding Authority shall have the authority to reject all proposals if doing so is in the best interest of the City.

(c) Additional Responsibilities and Authorities

1) The City shall have the authority to require a performance bond in such amount as it finds reasonably necessary to protect the best interests of the City consistent with applicable law. If the City requires a performance bond, the amount of the bond shall be described in the RFP or RFQ.

2) All Contracts shall be awarded based on the Best Value to the City as determined by the City Manager or Department Purchasing Officer and shall be awarded by the City Manager or Department Purchasing Officer within the parameters of Section 2.30.030 or 2.30.040. Best Value criteria, if used, must be determined before an RFP or RFQ is published or distributed to potential proposers.


(a) The City Manager may authorize the solicitation of General Services and/or Professional Services other than those listed in Section 2.30.070 and 2.30.080, and the purchase of highly specialized Goods by competitive negotiations when:

1) The cost of the Goods, General Services, and/or Professional Services is greater than thirty thousand dollars ($30,000); and

2) The Goods and/or Services are such that suitable technical or performance specifications are not readily available; or

3) The City is not able to develop descriptive specifications; or

4) Requesting proposals for the particular Service or Goods to be procured would be more advantageous to the City.
(b) Whenever possible, at least three (3) proposals shall be received and the award will be based on the proposal that is determined to be most advantageous to the City, taking into consideration price and the evaluation criteria set forth in the RFP. Competitive negotiations are not intended to be used for the purpose of avoiding the bidding procedure set forth in this Chapter.

2.30.100 Public Projects.

(a) Purpose and Intent. The Charter of the City of San Marcos, adopted on June 7, 1994, provides at Section 200 as follows:

Section 200. Public Works Contracts. The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works Contract, including, but not limited to, the compensation rates to be paid for the performance of such work.

The Subsections that follow are enacted for the purpose of implementing Section 200 of the Charter. This Section is intended to supersede the provisions of the Public Contract Code and the Labor Code and, except as expressly set forth in this Section, the provisions of the Public Contract Code and the Labor Code shall have no application to Public Projects of the City of San Marcos or its agencies.

(b) Methods of Contracting. The City shall have the right to determine the method of contracting and procedures and rules applicable to contracting for Public Projects, including any “public project” as defined in Public Contract Code Section 20161 or 22002, or any “public works” as defined in Labor Code Sections 1720, 1720.2, or 1720.3. In contracting for any Public Project Contract, the City shall have the right to determine the method, procedures and rules which will provide the City with the Best Value, in compliance with other City ordinances, rules, or regulations. Without limiting the right of the City to use any other method of contracting, any of the methods listed in Sections 2.30.060, 2.30.070, 2.30.080, and 2.30.090 may be used for Public Project Contracts.

(c) Construction Project Procurement. The City shall follow the informal and formal bidding procedures and requirements as set forth in Section 2.30.060(b), and Section 2.30.60(c) and (d), respectively

(d) Payment and Performance Bonds. The City shall have the right to require a payment bond, a performance bond, or both a payment bond and a performance bond, each in amounts determined by the City to be necessary to protect the best interest of the City, to be filed with the City by the Contractor as a condition to any Contract for a Public Project.

(e) Payment of Prevailing Wages. Payment of prevailing wages pursuant to Labor Code Section 1770 and compliance with the prevailing wage requirements in Labor Code Sections 1770-et seq. shall not be required for any Public Project Contract entered into by the City or any of its agencies except when required as a condition of any Federal or State grants and on other jobs considered to be of statewide concern.

(f) The City may employ additional procedures with respect to any Public Project upon the approval of the City Manager, and the City may alter the procedures set forth in this Section for any Public Project provided that the alterations are first approved by the City Manager (for Contracts which the City Manager may approve without City Council approval pursuant to Section 2.30.030) or by the City Council (with respect to all other Contracts). Any such additional procedures or altered procedures shall be set forth in the instructions to bidders.

2.30.110 Cooperative Purchasing (Piggyback Procurement). Purchase of Goods and Services by Contract, arrangement, and agreement for Cooperative Purchasing programs with the State, the County, or any other municipality, public corporation, agency or jurisdiction within the State or any
other state may be made by the City Manager or the Department Purchasing Officer in accordance with Section 2.30.040 (b), when the administering or lead agency has made their purchases in a competitive manner.

Prior to making the decision to use a Cooperative Purchasing contract, the City Manager or Department Purchasing Officer shall conduct extensive due diligence by:

(a) Comparing the Cooperative Purchasing contracts available for the required Goods or Services, conducting market research, and evaluating whether the use of a Cooperative Purchasing contract is appropriate.

(b) Analyzing all costs associated with conducting a competitive solicitation.

(c) Ensuring that the use of the Cooperative Purchasing contract meets competitive purchasing requirements.

(d) Reviewing the Cooperative Purchasing contract for conformance with all applicable laws and best practices.

(e) Analyzing the specifications of Goods and/or Services, price, terms, and conditions and other factors such as: cost to utilize the Cooperative Purchasing contract, shipping, minimum spend requirements, and availability of contract documentation, to ensure that the Cooperative Purchasing contract produces the Best Value to the City.

(f) Ensuring that the City’s required terms and conditions are incorporated into the contract.

(g) Incorporating or removing additional terms and conditions by developing a Contract or Purchase Order that is signed by both the City Manager or the Department Purchasing Officer and the supplier.

(h) Contacting the cooperative lead agency to verify contract application and eligibility, and obtain documentation to verify the contract and bid process.

(i) Goods or Services purchased through Cooperative Purchasing should comply with the pricing terms and specifications of the underlying Cooperative Purchasing bid and contract documents. Any deviation from the terms and conditions contained in the underlying Cooperative Purchasing bid and contract documents should be evaluated by the City, but may be authorized under the City’s purchasing authority pursuant to this Chapter.

2.30.120  Emergency Purchases.

(a) Public Health and Safety Emergencies. In cases of emergency, as determined by the City Council, including, but not limited to, states of emergency defined in Government Code Section 8558, as may be amended from time to time, when repair or replacements are necessary to permit the continued conduct of the operation or services of a public agency or to avoid danger to life or property, the City Manager may then proceed at once to replace or repair any public facility or infrastructure and/or procure the necessary Goods and/or Services adopting the plans, specifications, or working details giving notice of bids to let Contracts. Emergency work may be completed by day labor under the direction of the City Manager, or by Contractor, or a combination of the two. The City Manager is delegated the power to declare a public emergency subject to confirmation by the City Council, by a four-fifths vote within forty eight (48) hours following the City Manager’s declaration of a public emergency.

(b) City Employee and Tenant Health and Safety Emergencies. In cases of emergency relating to City facilities, equipment, machinery and/or property, including, but not limited to, interior
flooding, fire, damage and failure or imminent failure of critical equipment, machinery or infrastructure, where business interruptions may occur and/or the City employee or tenant health and safety is a concern, the City Manager may then proceed at once to replace, repair and/or procure Goods and/or Services necessary to mitigate the emergency relating to the City facility, equipment, machinery or property. In exercising this provision, the Department Purchasing Officer shall report to the City Manager within twenty four (24) hours, in a manner as the City Manager may prescribe, the total estimated or actual cost of the Goods and/or Services, selected Contractor, if necessary, and scope of the work to be performed.

2.30.130 Goods and Services Not Governed by This Chapter. Goods and Services not subject to the provisions of this Chapter are as follows:

(a) Utility Services and related charges, such as the monthly recurring water, sewer, natural gas, electricity, cable, telephone, or communication usage and/or other Service charges;

(b) Work or Services performed by another public or quasi-public entity;

(c) Real property purchases and related title and escrow fees;

(d) Credit card purchases of gasoline, oil, or emergency automotive needs;

(e) Transportation and freight charges when not specifically indicated on a Purchase Order.

(f) Insurance and bond premiums;

(g) Advertising;

(h) Works of art;

(i) Transportation and travel expenses of City Officers; and

(j) Payroll related activities or transactions.

2.30.140 Local Preference Purchasing. The City Council shall, by resolution, establish policies and procedures which define a preference for making certain purchases within the City of San Marcos. Any purchase shall be made in accordance with the policies and procedures set forth in said resolution.

2.30.150 Conflicts of Interest. In the purchasing of Goods or Services, unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration is prohibited. No City employee shall participate in the selection process if that employee has a relationship with a person or business entity seeking a Contract with the City that would subject that employee to the prohibition of Government Code Section 87100 et seq. (Conflicts of Interest).

2.30.160 Environmentally Preferable Purchasing. It is the intent of the City Council that the City of San Marcos takes a leadership role in recycling its waste products and in the purchase of Environmentally Preferable Products for use in the delivery of City Services. The City Manager shall establish policies and procedures which define a preference for purchasing Environmentally Preferable Products. Purchases shall be made in accordance with such policies and procedures.

2.30.170 Petty Cash. Petty Cash shall be used to pay for small purchases and for the immediate need of Goods or Services that cannot be obtained or purchased from a vendor with a Purchase Order or credit card.

Prior to obtaining the Petty Cash, the following must occur:
(a) All City Manager’s Petty Cash reimbursements and advances must be approved by the Finance Director.

(b) All the Department Purchasing Officer’s Petty Cash reimbursements and advances must be approved by the City Manager, or his or her designee.

(c) All other City employee’s Petty Cash reimbursement requests and advances must be approved by the Department Purchasing Officer.

All Petty Cash advances must be cleared within twenty four (24) hours or by the next business day by returning the purchase receipt(s) and remaining money, if any, to the Petty Cash Custodian.

2.30.180 Credit Card. The use of credit cards allows for a more efficient, cost-effective method of purchasing and paying for small-dollar transactions, which reduces the use of blanket Purchase Orders, Petty Cash and small dollar Purchase Orders. Credit cards are to be used for official City business only. Use of a credit card is not intended to avoid or bypass appropriate purchase procedures or replace effective procurement planning which enables volume discounts. The purchase of capital or Contract items or the splitting of purchases in order to circumvent the dollar limits set by this Purchasing Ordinance is prohibited. All credit card purchases must be approved by the Department Purchasing Officer.

(Ord 2015-1413, 09/22/15)
CHAPTER 2.32
SURPLUS PROPERTY

SECTIONS:
2.32.010 Duty to Report Surplus Supplies and Equipment
2.32.020 Disposal required
2.32.030 Authority
2.32.040 Property Designated as Having No Value
2.32.050 Records
2.32.060 Donations
2.32.070 Proceeds of Sale
2.32.080 Purchase or Receipt of Surplus Property by City Personnel
Prohibited

2.32.010 Duty to Report Surplus Supplies and Equipment. All departments shall supply to the City Manager, at such times and in such forms as prescribed by him, reports listing supplies, equipment and/or other personal property which are no longer used, have become obsolete or worn out and/or have otherwise become surplus to the needs of the city. Such supplies, equipment and/or other property, exclusive of real property, are defined as and shall be referred to in this Chapter as “surplus personal property.” The City Manager shall have authority to exchange for or trade in such surplus personal property on new supplies, equipment and/or personal property in accordance with this Chapter.

2.32.020 Disposal required. The City Manager shall determine if any surplus personal property can be used by any other agency in the City. If such surplus personal property cannot be used or are unsuitable for City use, the City Manager shall, in the manner provided in this chapter, dispose of such surplus personal property that cannot be exchanged for or traded in on new and/or other personal property.

2.32.030 Authority. The City Manager is authorized to sell or dispose of surplus personal property having a salvage value in the open market by any means legally available including, but not limited to, the following: public auction; electronic auctions or sales, including internet based market places’ consignment; competitive sealed bids; negotiated sale to other public or quasi-public agencies; or exchange or trade in for new goods or other personal property for use by the City.

If the property designated as surplus personal property has an estimated value greater than one hundred thousand dollars ($100,000.00), the City Manager shall dispose of such property as directed and provided by resolution of the City Council.

2.32.040 Property Designated as Having No Value. Surplus personal property that is determined by the City Manager to be unsalable or to have little or no estimated, salvage or appraisal value, such that disposal by such means would result in unnecessary cost, effort or expense to the City, may be disposed of by the City Manager in any manner he deems appropriate. In the event of such disposal, the City Manager or his designee shall retain records of such disposition as provided in Section 2.30.240, below.

2.32.050 Records. The City Manager or his designee shall keep detailed records of all surplus personal property that has been disposed of, including amounts received for the sale of surplus personal property, for the period of at least two (2) years; and shall provide the City Council with an annual report of said dispositions, if any.
2.32.060 Donations. In addition to the methods of disposal listed in this Chapter, the City Manager may authorize the disposal of surplus personal property through donation of such property to a governmental, public or quasi-public agency, or to a charitable or other non-profit organization.

2.32.070 Proceeds of Sale. Proceeds from the sale of surplus personal property shall be deposited into the appropriate fund as determined by the Finance Director.

2.32.080 Purchase or Receipt of Surplus Personal Property by City Personnel Prohibited. No City officer or employee shall purchase surplus City personal property sold in accordance with this Chapter. No City officer or employee shall receive or accept surplus City personal property that has been designated as having little or no value and/or which is intended for donation by the City in accordance with this Chapter.

(Ord. No. 2009-1319, 06/23/09)
CHAPTER 3.04

GENERAL

SECTIONS:

3.04.010 Transfer of Duties.

(a) Pursuant to the authority granted by section 51501 of the Government Code of the state, the assessment and tax collection duties performed by the city assessor and tax collector are hereby transferred to the assessor and tax collector of the county.

(b) The offices of city assessor and tax collector are hereby abolished.

(c) Pursuant to the authority granted by section 51507 of the Government Code of the state, the duties of the city assessor, other than the assessing of city property, and the duties of the tax collector, other than the collection of taxes, hereby are transferred to and shall be performed by the city clerk or such officer of the county as may be contract with the city be designated and authorized to perform such duties.
CHAPTER 3.08

OCCUPATIONAL LICENSE TAXES

SECTIONS:

3.08.010 Definitions
3.08.020 Purpose of this Chapter
3.08.030 Persons exempt from the application of this chapter
3.08.040 License required
3.08.050 Separate license necessary for separate locations
3.08.060 License required for ownership transfer or relocation of business
3.08.070 Application
3.08.080 Issuance generally
3.08.090 Issuance of licenses where possible
3.08.100 Scope of privilege conferred by license
3.08.110 Renewal
3.08.120 Reserved
3.08.130 Enforcement of this chapter generally
3.08.140 Tax and penalty to constitute a debt; action on debt
3.08.150 Penalty
3.08.160 Remedies declared to be cumulative
3.08.170 Adjustment of tax - interstate commerce
3.08.180 Flat rate
3.08.190 Delivery by vehicle
3.08.200 Contractors
3.08.210 Other outside businesses
3.08.220 Penalty for late payment of tax
3.08.230 Vehicle Decals

3.08.010 Definitions. As used in this chapter, the following terms shall have the meaning ascribed to them in this section:

Business shall mean and include professions, trades, occupations and all and every kind of calling, whether or not carried on for profit.

Person shall mean and include all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts trust, business or common law trusts, societies and individuals transacting and carrying on any business in the city, other than as an employee.

3.08.020 Purpose of this article. This chapter is for the purpose of raising revenue for city purposes and use and not for the purpose of regulation.

3.08.030 Persons exempt from the application of this article.

(a) Nothing in this chapter shall be deemed or construed to apply to any utility, public or private, which pays a franchise fee under a contract with the city.

(b) No license tax shall be payable for any show, entertainment, concert or exhibition operated or carried on under the auspices of any local religious, fraternal, musical or charitable organization or public school, the receipts of which are used for the furtherance of their respective work.
(c) Any person claiming an exemption pursuant to subsection (a) shall file a verified statement with the city clerk stating the facts upon which exemption is claimed. The city clerk shall, upon a proper showing contained in the verified statement, issue an exemption certificate to the person claiming exemption under this section.

(d) The City Clerk, after giving notice and a reasonable opportunity for hearing to a person granted an exemption under subsection (c), may revoke any exemption certificate granted, upon information that the person is not entitled to the exemption as provided in this section.

3.08.040 License required. An annual license tax is hereby imposed upon each person doing business within the city, except as specifically excepted in this chapter, which license tax shall be due and payable in such amount and at such time as are prescribed in this chapter. It shall be unlawful for any person to do business within the city without first having procured a license issued under the provisions of this chapter and, upon payment of the license tax, the City Clerk shall issue a license to the person applying therefore for the privilege of doing business within the city as provided in this chapter. Doing business within the city without complying with any and all regulations of this chapter shall constitute a separate violation of this Code for each day that business is done.

3.08.050 Separate licenses necessary for separate locations. A separate license shall be obtained for each branch establishment or location of the business transacted and carried on.

3.08.060 License required for ownership transfer or relocation of business. Any person having a fixed place of business within the City of San Marcos who transfers ownership of a business or moves a business to another location shall obtain a new license in the same manner as the original license and same fee shall apply.

3.08.070 Application.

(a) On or before May 15, 1963, and each year thereafter each person then doing business in the city and required to have a license under the provisions of this chapter, shall make application therefore to the City Clerk, on forms obtainable from the City Clerk and signed under penalty of perjury, containing the following information:

1. The name of the person to whom the license shall be issued;
2. A description of the business to be licensed;
3. The location or locations of the business and the zoning thereof;
4. Such other information as the City Clerk may deem necessary for the enforcement of this chapter.

(b) At such time after July 1, 1963, as a person establishes a new business within the city he shall, prior to commencement thereof, file an application for a license required by this chapter, on forms obtainable from the city clerk and signed under penalty of perjury, containing the same information as set forth in subsection (a).

3.08.080 Issuance generally. On the basis of the information contained in the application for a license filed pursuant to this chapter, the City Clerk shall assess the amount of the license tax to be paid by the applicant for the privilege of doing business within the city under the provisions of this chapter for the period of time expiring on the last day of June of the
calendar year next succeeding the date of the application for the license. Upon payment of the license tax, the City Clerk shall issue a license to the applicant, signed by the City Clerk in such form as he shall determine, but clearly setting forth the following:

(a) The name of the person to whom the license is issued;
(b) The type of business for which it is issued;
(c) The location or locations of the place of business and the zoning thereof;
(d) The date of issuance and expiration date of the license.

(Editor's note: this section will coincide with the changes in Section 3.08.110)

3.08.090 Issuance of licenses where possible violation of zoning ordinance exists.

(a) The City Clerk shall not accept applications for business licenses until the forms for the application have been completely filled out by the applicant.

(b) After the City Clerk has examined the application for a business license, including the zoning thereof, if the City Clerk determines there is a possible zoning violation in the use of the premises for which the license is issued, then the City Clerk shall call this to the attention of the applicant by furnishing the applicant the notice in writing of the prospective violation; if the applicant insists that the City Clerk issue the business license after receipt of the notice, then the City Clerk shall issue the license to the applicant, but shall stamp on the license the following:

"The licensee hereunder has previously been advised that the use of the premises for which the license is sought, is in possible violation of the City of San Marcos Zoning Ordinance, and the issuance of this license in no way is a waiver of the terms of the zoning ordinance or any other ordinances of the City of San Marcos which might be violated by the applicant hereunder.” (Res. No. 68-393, Secs. 1, 2, 11-26-68)

3.08.100 Scope of privilege conferred by license.

(a) Each license issued pursuant to this chapter shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in the license; however, warehouses, distributing plants and vending machines used in connection with and incidental to a business licensed under the provisions of this chapter shall not be deemed to be separate places of business or branch establishments.

(b) No license issued pursuant to this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business.

3.08.110 Renewal. A business license shall be valid for one year from the last day of the month in which the license is first issued. A licensee may renew a license by filing an application for renewal and paying the appropriate tax on or before the day of expiration as determined according to this section. The application for renewal shall contain the same information as an application for an original license and shall be executed under penalty of perjury. The City Clerk shall determine the amount of tax to be paid, and, upon receipt of payment, shall issue a renewal license in the same manner as an original license. The expiration day of the renewal license shall be determined based on the expiration day of the original license regardless of whether the license is delinquent when renewed. (Ord. 89-829, 11-14-89)
3.08.120 Reserved. (Ord. 89-829, 11-14-89)

3.08.130 Enforcement of this Chapter generally.

(a) It shall be the duty of the City Clerk to enforce each and all of the provisions of this chapter, and the chief of police shall render such assistance in the enforcement of this chapter as may from time to time be required by the City Clerk or the City Council.

(b) The City Clerk, in the exercise of the duties imposed upon him by this chapter, and acting through his deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this chapter have been met.

(c) The City Clerk and each and all of his assistants and any police officer shall have the authority to enter, free of charge, at any reasonable time, any place of business required to be licensed by this chapter, and to demand an exhibition of its license certificate. Any person having a license certificate issued pursuant to this chapter or under his control, who willfully fails to exhibit the certificate on demand, shall be guilty of a misdemeanor and subject to the penalties provided for by the provisions of this chapter. It shall be the duty of the City Clerk and each of his assistants to cause a complaint to be filed against any person found to be violating this chapter.

3.08.140 Tax and penalty to constitute a debt; action or debt. The amount of any license tax and penalty imposed by the provisions of this chapter shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent license tax and penalties.

3.08.150 Penalty. Any person violating any of the provisions of this Chapter or knowingly or intentionally misrepresenting to any officer or employee of this City any material fact in procuring a license required by this Article shall be deemed guilty of an infraction of this Chapter and shall be punished in accordance with section 1.12.010. (Ord. No. 99-1053, 2/1/99)

3.08.160 Remedies declared to be cumulative. All remedies prescribed by this chapter shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

3.08.170 Adjustment of tax on persons engaged in interstate commerce. None of the license taxes provided for in this chapter shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a license tax is believed by a licensee or an applicant for a license under this chapter to place an undue burden upon interstate commerce, he may apply to the City Clerk for an adjustment of the tax so that it shall not be discriminatory or unreasonable as to interstate commerce. The application may be made before, at or within six (6) months after payment of the license tax prescribed by this chapter. The application shall, by affidavit and supporting testimony, show his method of business and such other information as the City Clerk may deem necessary in order to determine the extent, if any, of the alleged undue burden on interstate commerce. The City Clerk shall then conduct an investigation and make full report thereof to the City Council which shall fix as the license tax for the applicant, an amount that is reasonable and nondiscriminatory or, if the license tax has already been paid, shall order a refund of the amount over and above the license tax so fixed.

Supplement No. 4 – 1994 Code
3.08.180 Flat rate. Each person transacting and carrying on a business having a fixed place of business within the city shall pay an annual license tax based upon the number of employees, workers and owner who work in the business as follows:

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<th>Employees</th>
<th>Tax</th>
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<td>6 - 10</td>
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<td>$750.00</td>
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<tr>
<td>3001 - 5000</td>
<td>$1,000.00</td>
</tr>
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</table>

3.08.190 Delivery by vehicle. Each person not having a fixed place of business within the city, who delivers goods, wares or merchandise of any kind by vehicle or who provides any service by the use of vehicles in the city, shall pay a license tax of forty dollars ($40.00) per year.

3.08.200 Contractors. Each person who engages in the business of contracting within the city, whether or not the business is located in the city or outside the city, shall pay a license tax as follows:

(a) All A and B general contractors, as defined in the Business and Professional Code of the state, one hundred ($100.00) per year.

(b) All C subcontractors, as defined in the Business and Professional Code of the state, and other contractors, fifty dollars ($50.00) per year.

3.08.210 Other outside businesses. Each person not having a fixed place of business within the city who engages in business within the city and is not subject to the provisions of sections 3.08.190 and 3.08.200 shall pay a license tax of sixty dollars ($60.00) per year.

3.08.220 Penalty for late payment of tax. For failure to pay a license tax required by this chapter when it is due, the City Clerk shall add a penalty of twenty-five (25) per cent of the license tax on the last day of each month after the due date thereof; however, the amount of the penalty shall in no event exceed one hundred (100) per cent of the amount of the license tax due.

3.08.230 Vehicle Decals.

(a) Every licensee to whom a business license has been issued to conduct business within the City by use of a vehicle shall affix to the rear bumper of each vehicle to be used within the City a pre-numbered decal sticker issued by the City for identifying such business. Such decal sticker shall not be removed from the vehicle kept in use during the period for which the
decal sticker is issued. In the event said licensee uses a substitute vehicle or replaces the vehicle normally used, said licensee shall obtain an additional decal sticker for such substitute or replacement vehicle by paying fees of three (3) dollars.

(b) It shall be a misdemeanor for any licensee to fail to affix as required herein any decal sticker to the vehicle for which it has been issued, or to give away, sell, or transfer such decal sticker to another person, or to permit its use by another person.

(c) Failing to comply with this section may result in the City Council revoking or suspending the business license of the licensee as set forth in Section 3.08.230.
CHAPTER 3.12

DOCUMENTARY TRANSFER TAX

SECTIONS:

3.12.010 Short title; authority
3.12.020 Administration of this chapter
3.12.030 Tax imposed; rate
3.12.040 Persons liable for tax
3.12.050 Persons exempt from tax
3.12.060 Transfers exempt from tax
3.12.070 Partnership transfers
3.12.080 Claims for refunds

3.12.010  Short title; authority. This chapter shall be known as the "Real Property Transfer Tax Ordinance of the City of San Marcos." It is adopted pursuant to the authority contained in Part 6.7, commencing with section 11901 of Division 2 of the Revenue and Taxation Code of the state.

3.12.020  Administration of this article. The county recorder shall administer this chapter in conformity with the provisions of Part 6.7 of Division 2 of the state Revenue and Taxation Code and the provisions of any county ordinance adopted pursuant thereto.

The recorder shall not record any deed, instrument or writing subject to the tax imposed by this chapter unless the tax is paid at the time of recording. A declaration of the amount of tax due, signed by the party determining the tax or his agent, shall appear on the face of the document or on a separate paper, and the recorder may rely thereon; provided he has no reason to believe that the full amount of the tax due has not been paid. The declaration shall include a statement that the consideration or value on which the tax due was computed was, or that it was not, exclusive of the value of a lien or encumbrance remaining on the interest or property conveyed at the time of sale. If the party submitting the document so requests, the amount of tax due shall be shown on a separate paper which shall be affixed to the document by the recorder after the permanent record is made and before the original is returned as specified in section 27321 of the Government Code.

Every document subject to the tax hereunder which is submitted for recordation shall show on the face of the document, or in a separate document, the location of the lands, tenements, or other realty are located within a city in the county, the name of the city shall be set forth. If said lands, tenements or other realty are located in the unincorporated area of the county, that fact shall be set forth.

3.12.030  Tax imposed; rate. There is hereby imposed on each deed, instrument or writing, by which any lands, tenements or other realty sold within the city shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or any other person, by his direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds one hundred dollars ($100.00), a tax at the rate of twenty-seven and one-half cents ($0.275) for each five hundred dollars ($500.00) or fractional part thereof.

3.12.040  Persons liable for tax. The tax imposed by this chapter shall be paid by any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the document is made, signed or issued.
3.12.050 Persons exempt from tax. The United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, or the District of Columbia shall not be liable for the tax imposed by this chapter with respect to any deed, instrument or writing to which it is a party, but the tax may be collected by assessment from any other party liable therefore.

3.12.060 Transfers exempt from tax.

(a) The tax imposed by this chapter shall not apply to any instrument in writing given to secure a debt. The tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost of foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument or writing or state in an affidavit or declaration under penalty of perjury for tax purposes.

(b) The tax imposed by this chapter shall not apply to the making, delivering or filing of conveyances to make effective any plan or reorganization or adjustment:

   (1) Confirmed under the Federal Bankruptcy Act, as amended,

   (2) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;

   (3) Approved in any equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 506 of Title 11 of the United States Code, as amended;

   (4) Whereby a mere change in identity, form or place of organization is effected.

Paragraphs (1) to (4), inclusive, of this subsection shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five (5) years from the date of such confirmation, approval or change.

(c) The tax imposed by this chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

   (1) The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

   (2) The order specifies the property which is ordered to be conveyed;

   (3) The conveyance is made in obedience to such order.
3.12.070 Partnership transfers.

(a) In the case of any realty held by a partnership, no levy shall be imposed by this chapter by reasons of any transfer of an interest in a partnership or otherwise, if:

(1) The partnership, or another partnership is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and

(2) The continuing partnership continues to hold the realty concerned.

(b) If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for the purposes of this chapter, the partnership shall be treated as having executed an instrument whereby there was conveyed for fair market value, exclusive of the value of any lien or encumbrance remaining thereon, all realty held by the partnership at the time of the termination.

(c) Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subsection (b) and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of the termination.

3.12.080 Claims for refunds. Claims for a refund of taxes paid pursuant to this chapter shall be governed by the provisions of Chapter 5, commencing with section 5096 of Part 9 of Division 1 of the Revenue and Taxation Code of the state.
CHAPTER 3.16

TRANSIENT OCCUPANCY TAX

SECTIONS:

3.16.010 Short title
3.16.020 Definitions
3.16.030 Tax imposed; manner of payment
3.16.040 Persons exempt from tax; establishment of exemption
3.16.050 Operator not to absorb tax
3.16.060 Registration of hotel
3.16.070 Manner of collection by the operator
3.16.080 Tax collected to be held in trust pending making of return
3.16.090 Required records
3.16.100 Reports and Returns
3.16.110 Civil penalties and interest for non-compliance
3.16.120 Assessment of tax upon failure of operator to collect and report tax; hearing before tax administrator
3.16.130 Appeal from the determination of the tax administrator
3.16.140 Refunds
3.16.150 Action to recover unpaid tax
3.16.160 Violations of this chapter
3.16.170 Reserved

3.16.010 Short title. This chapter shall be known as the "Uniform Transient Occupancy Tax Ordinance of the City of San Marcos"

3.16.020 Definitions. As used in this chapter, the following terms shall have the meaning ascribed to them in this section:

Hotel shall mean any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or portion thereof.

Occupancy shall mean the use or possession, or the right to the use or possession, of any room, rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

Operator shall mean the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

Rent shall mean the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature without any deduction therefrom whatsoever.
Tax administrator shall mean the city treasurer.

Transient shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to July 28, 1964, may be considered.

3.16.030 Tax imposed; manner of payment. For the privilege of occupancy in any hotel, each transient is subject to, and shall pay a tax in the amount of ten (10) per cent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax be paid directly to the tax administrator. (Ord. 88-789, 7-12-88)

3.16.040 Persons exempt from tax; establishment of exemption.

(a) No tax shall be imposed pursuant to this chapter upon:

(1) Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax provided for in this chapter;

(2) Any federal or State of California officer or employee when on official business;

(3) Any officer or employee of a foreign government who is exempt by reason of an express provision of federal law or international treaty.

(b) No exemption permitted by subsection (a) shall be granted except upon a claim therefore made at the time the rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

3.16.050 Operator not to absorb tax. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax imposed by this chapter, or any part thereof, will be assumed or absorbed by the operator or that it will not be added to the rent or that, if added, any part will be refunded except in the manner provided in this chapter.

3.16.060 Registration of hotel. Within thirty (30) days after July 28, 1964, or within thirty (30) days after commencing business, whichever is later each operator of any hotel renting occupancy to transients shall register the hotel with the tax administrator and obtain from him a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

(a) The name of the operator;

(b) The address of the hotel;
3.16.060 - 3.16.110

(c) The date upon which the certificate was issued;

(d) The following statement: "This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance of the City of San Marcos by registering with the tax administrator for the purpose of collecting from transients the transient occupancy tax and remitting the tax to the tax administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the city. This certificate does not constitute a permit."

3.16.070 Manner of collection by the operator. Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from each transient. The amount of tax shall be separately stated from the amount of the rent charged and each transient shall receive a receipt for payment from the operator.

3.16.080 Tax collected to be held in trust pending making of return. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator.

3.16.090 Required records. It shall be the duty of each operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection and payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times.

3.16.100 Reports and returns.

(a) Each operator shall, on or before the last day of the month following the close of each calendar quarter or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator.

(b) The tax administrator may establish shorter reporting periods for any registered hotel if he deems it necessary in order to insure collection of the tax and he may require further information in the return.

(c) Returns and payments are due immediately upon cessation of business for any reason.

3.16.110 Civil penalties and interest for noncompliance.

(a) Original delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten (10) per cent of the amount of the tax, in addition to the amount of the tax.
(b) Continued delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten (10) per cent of the amount of the tax in addition to the amount of the tax and the ten (10) per cent penalty first imposed.

(c) Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five (25) per cent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.

(d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one (1/2 of 1) per cent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(e) Penalties merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required by this chapter to be paid.

3.16.120 Assessment of tax upon failure of operator to collect and report tax; hearing before tax administrator.

(a) If any operator shall fail or refuse to collect the tax imposed by this chapter and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the tax and to make such report and remittance, the tax administrator shall proceed to determine and assess against the operator the tax, interest and penalties provided for by this chapter.

(b) In case an assessment determination is made pursuant to subsection (a), the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. The operator may, within ten (10) days after serving or mailing of the notice, make application in writing to the tax administrator for a hearing on the amount assessed. If an application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If a hearing application is made, the tax administrator shall give not less than five (5) days written notice in the manner prescribed in this subsection to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for the tax, interest and penalties should not be so fixed.

(c) After the hearing held pursuant to subsection (b), the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in subsection (b) of the determination and the amount of the tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in this chapter.
3.16.130 **Appeal from the determination of the tax administrator.** Any operator aggrieved by any decision of the tax administrator with respect to the amount of the tax, interest and penalties assessed pursuant to this chapter, if any, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The City Council shall fix a time and place for hearing the appeal and the City Clerk shall give notice in writing to the operator at his last known place of address. The findings of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed in this section for service of notice of findings. Any amount found to be due shall be immediately due and payable upon the service of notice of findings.

3.16.140 **Refunds.**

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections (b) and (c) of this section if a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the tax administrator.

(b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a transient; however, neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the transient directly to the tax administrator or when the transient, having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid under provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

3.16.150 **Action to recover unpaid tax.** Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

3.16.160 **Violations of this article.** Any person violating any of the provisions of this Chapter, or who fails to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the tax administrator, or who renders a false or fraudulent return or claim, is punishable as provided in section 1.12.010.

3.16.170 **Reserved.** (Section repealed - Ord. 88-780, 4-12-88)
CHAPTER 3.20

SALES AND USE TAX

SECTIONS:

3.20.010 Short title
3.20.020 Purposes of this chapter
3.20.030 "Operative Date" defined
3.20.040 Exclusions from tax
3.20.050 Contract with State Board of Equalization
3.20.060 Determination of situs of sale
3.20.070 Sales tax imposed
3.20.080 Use tax imposed
3.20.090 Rate of tax
3.20.100 Adoption of provisions of state law
3.20.110 Limitations on adoption of state law
3.20.120 Amendments of the state law
3.20.130 Permit not required
3.20.140 Exclusions and exemptions
3.20.150 Same - application of provisions
3.20.160 Operative date
3.20.170 Same - operative date
3.20.180 Taxes for usual and current expenses
3.20.190 Remedies not available to prohibit collection
3.20.200 Reserved

3.20.010 Short title. This chapter shall be known as the "Uniform Local Sales and Use Tax Ordinance."

3.20.020 Purpose of this article. The City Council hereby declares that this chapter is adopted to achieve the following, among other, purposes and directs that the provisions hereof be interpreted in order to accomplish the following purposes:

(a) To adopt a sales and use tax ordinance which complies with the requirements and limitations contained in Part 1.5 of Division 2 of the State Revenue and Taxation Code;

(b) To adopt a sales and use tax ordinance which incorporates provisions identical to those of the sales and use tax law of the state insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.5 of Division 2 of the state Revenue and Taxation Code;

(c) To adopt a sales and use tax ordinance which imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the state sales and use taxes;

(d) To adopt a sales and use tax ordinance which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.5 of Division 2 of the state Revenue and Taxation Code minimize the cost of collecting city sales and use taxes and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.
3.20.030 "Operative date" defined. As used in this chapter, "operative date" shall mean the first day of the first calendar quarter following February 13, 1963.

3.20.040 Exclusions from tax. There shall be excluded from the measure of tax imposed by this chapter:

(a) The amount of any sales or use tax imposed by the state upon a retailer or consumer.

(b) The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which has been subject to sales tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the state Revenue and Taxation Code by any city and county, or city in the state.

(c) The gross receipts from sales to, and the storage, use or other consumption of property purchased by, operators of common carriers and waterborne vessels to be used or consumed in the operation of such common carriers or waterborne vessels principally outside the city.

(d) The storage or use of tangible personal property in the transportation or transmission of persons, property or communications, or in the generation, transmission or distribution of electricity, or in the manufacture, transmission or distribution of gas in intrastate, interstate or foreign commerce by public utilities which are regulated by the Public Utilities Commission of the state.

3.20.050 Contract with the State Board of Equalization. Prior to the operative date, the city shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this chapter; however, if the city shall not have contracted with the state board of equalization prior to the operative date, it shall nevertheless so contract and, in such a case, the operative date shall be the first day of the first calendar quarter following the execution of such a contract rather than the first day of the first calendar quarter following February 13, 1963.

3.20.060 Determination of situs of sale. For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when the charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3.20.070 Sales tax imposed. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the city at the rate established in this chapter of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the city on and after the operative date.

3.20.080 Use tax imposed. An excise tax is hereby imposed on the storage, use or other consumption in the city of tangible personal property purchased from any retailer on and after the operative date for storage, use or other consumption in the city at the rate established therefore in this chapter of the sales price of the property. The sales price shall include delivery
charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

3.20.090  Rate of tax. The rate of sales tax and use tax imposed by this chapter shall be one per cent.

3.20.100  Adoption of provisions of state law. Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the State Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of the State Revenue and Taxation Code are hereby adopted and made a part of this chapter as though fully set forth in this chapter.

3.20.110  Limitations on adoption of state law. In adopting the provisions of Part 1 of Division 2 of the state Revenue and Taxation Code in this chapter, wherever the state is named or referred to as the taxing agency, the name of the city shall be substituted therefore. The substitution, however, shall not be made when the word "state" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, the State Treasurer or the Constitution of the State of California, nor shall the substitution be made when the result of that substitution would require action to be taken by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter; nor shall the substitution be made in those sections including but not necessarily limited to, sections referring to the exterior boundaries of the state, where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remains subject to tax by the state under the provisions of Part 1 of Division 2 of the state Revenue and Taxation Code or to impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the provisions of the state Revenue and Taxation Code; nor shall the substitution be made in section 6701, 6702, except in the last sentence thereof, 6711, 6715, 6737, 6797 or 6828 of the state Revenue and Taxation Code; and the substitution shall not be made for the word "state" in the phrase "retailer engaged in business in this state" in section 6203 or in the definition of that phrase in section 6203.

3.20.120  Amendments of the state law. All amendments of the state Revenue and Taxation Code after February 13, 1963, which relate to the sales and use tax and which are not inconsistent with Part 1.5 of Division 2 of the state Revenue and Taxation Code shall automatically become a part of this chapter.

3.20.130  Permit not required. If a seller's permit has been issued to a retailer under section 6067 of the state Revenue and Taxation Code, an additional seller's permit shall not be required by this chapter.

3.20.140  Exclusions and Exemptions.

(a) The amount subject to tax shall not include any sales or use tax imposed by the State of California upon a retailer or consumer.

(b) The storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city or, county, in this state shall be exempt from the tax due under this ordinance.
(c) There are exempted from the computation of the amount of the sales tax and the gross receipts from the sale of tangible personal property to operators of waterborne vessels to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

(d) The storage, use, or other consumption of tangible personal property purchased by operators of waterborne vessels and used or consumed by such operators directly and exclusively in the carriage of persons or property of such vessels for commercial purposes is exempted from the use tax.

(e) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

(f) In addition to the exemptions provided in sections 6366 and 6366.1 of the Revenue and Taxation Code, the storage, use, or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government is exempted from the use tax.

3.20.150 Same - Application of provisions.

(a) Section 3.20.140 of this ordinance shall become operative on January first of the year following the year in which the State Board of Equalization adopts an assessment ratio for state-assessed property which is identical to the ratio which is required for local assessments by section 401 of the Revenue and Taxation Code, at which time section 3.20.030 of this chapter shall become inoperative.

(b) In the event that section 3.20.140 becomes operative and the State Board of Equalization subsequently adopts an assessment ratio for the state-assessed property which is higher than the ratio which is required for local assessment by Section 401 of the Revenue and Taxation Code, section 3.20.130 shall become operative on the first day of the month next following the month in which such higher ratio is adopted, at which the board again adopts an assessment ratio for state-assessed property which is identical to the ratio required for local assessments by section 401 of the Revenue and Taxation Code, at which time section 3.20.140 shall again become operative and section 3.20.130 shall become inoperative.

3.20.160 Operative date. Section 3.20.140 shall be operative January 1, 1984.

3.20.170 Same - operative date. Sec. 3.20.140 shall be operative on the operative date of any act of the Legislature of the State of California which amends Section 7202 of the Revenue and Taxation Code or which repeals and reenacts Section 7202 of the Revenue and Taxation Code to provide exemption from city sales and use taxes for operators of waterborne vessels in the same, or substantially the same, language as that existing in subdivisions (i) (7) and (i) (8) of Section 7202 of the Revenue and Taxation Code as those subdivisions read on October 1, 1983.

3.20.180 Taxes for usual and current expenses. This chapter relates to taxes for the usual and current expenses of the City and shall take effect immediately.
3.20.190 Remedies not available to prohibit collection. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the state or the city, or against any officer of the state or the city, to prevent or enjoin the collection under this chapter or Part 1.5 of Division 2 of the state Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.20.200 Reserved. (Ord. No. 90-853, 6-26-90)
CHAPTER 3.24

GAS TAX IMPROVEMENT FUND

SECTIONS:

3.24.010  Special gas tax street improvement fund; created; deposits; expenditures

3.24.010  Street sidewalks, underground utility facilities and franchises; special gas tax street improvement fund: created, deposits; expenditures.

(a) **Fund created.** To comply with the provisions of section 2113 of the state Streets and Highways Code, there is hereby created in the city treasury a special fund to be known as the "Special Gas Tax Street Improvement Fund."

(b) **Deposit of revenues.** All monies received by the city from the state under the provisions of the Streets and Highways Code for the acquisition of real property or interests therein, for engineering or for the construction, maintenance or improvement of streets or highways by the city shall be paid into the special gas tax street improvement fund.

(c) **Expenditure of revenues.** All monies in the special gas tax street improvement fund created by subsection (a) shall be expended exclusively for the purposes authorized by, and subject to the provisions of, section 2100 et seq. of the state Streets and Highways Code.
CHAPTER 5.04
UNIFORM LICENSING PROCEDURES

SECTIONS:

5.04.010 License--Required
5.04.020 Issuing Officer
5.04.030 Licensing procedure--Application
5.04.040 License--Not transferable
5.04.050 License--Fee
5.04.060 License--Renewal
5.04.070 License--Posting
5.04.080 Application--Investigation
5.04.090 Application--Denial
5.04.100 License suspension or revocation
5.04.110 Hearings--Issuing Officer
5.04.120 Stay of suspension or revocation
5.04.130 Exception to hearing procedure
5.04.140 Appeal
5.04.010 License—Required. It is unlawful for any person, firm, or corporation to engage in, conduct, manage or carry on any of the following businesses, practices, professions, or occupations within the City without first having obtained a license therefore in accordance with the uniform licensing procedure:

(a) Amusement devices and establishments
(b) Aircraft ticket brokers
(c) Bingo
(d) Carnivals and go-cart centers
(e) Coupon books, distribution of
(f) Dances and dance halls
(g) Dances, teenage
(h) Entertainment
(i) Junk, automotive wrecking, nonoperating vehicle storage yards
(j) Kennels
(k) Massage establishments
(l) Massage technician
(m) Massage technician trainee
(n) Secondhand dealers
(o) Solicitors
   (1) License
   (2) Identification card
(p) Tobacco retail (Ord. No. 2016-1428, 7-26-16)

5.04.020 Issuing Officer. All licenses issued shall be issued by the Issuing Officer, who, in the case of licenses issued pursuant to Chapter 6.20 shall be the Department of Animal Control of San Diego County, and in all other cases shall be the City Manager or his designee.

5.04.030 Licensing procedure—Application. Application for a license shall be made to the Issuing Officer on forms provided by the Issuing Officer. Said application shall contain a provision by which the applicant consents to having all required notices, unless otherwise specified, sent by mail to applicant's address on the application by depositing the same in the United States mail postage prepaid.

5.04.040 License—not transferable. Such license shall not be transferable from person to person nor place to place.
5.04.050  License--Fee. The fee established for any license shall defray the cost of investigation and issuance of the license. In the event said license is for any reason whatsoever denied or in the event not obtained by the applicant, the fee paid shall not be refunded to the applicant. Fees shall be reviewed annually so as not to be excessive.

5.04.060  License--Renewal. Unless otherwise specified any license issued shall expire a year from the date of issue and may be renewed by filing a renewal application not less than thirty days prior to expiration date.

5.04.070  License--Posting. All licenses issued for business establishments must be posted in a conspicuous place on the licensed premises.

5.04.080  Application--Investigation.

(a) Upon the receipt of an application for a license the Issuing Officer may send copies of such application to any office or department which the Issuing Officer may deem appropriate in order to carry out a proper investigation of the applicant or his proposed business.

(b) Every officer or department to which an application for a license is referred may request from the Issuing Officer that additional information be obtained from the applicant relating to the proposed license as such officer or department deems necessary.

(c) The Issuing Officer and every officer or department to which an application is referred shall investigate the truth of the matters set forth in the application, the character of the applicant as it relates to doing business under said license and may examine the premises proposed to be used for said business.

(d) Upon receipt of an application the Issuing Officer shall post for a period of ten days the name and business address of the applicant, the type of license applied for, whether the application is for a new license or for the renewal of an existing license, and the fact that any interested member of the general public can submit information regarding the issuance of the license. Such information shall be delivered to the office of the Issuing Officer within five days of the last day of posting. The names and business addresses of applicants shall be posted in the office of the issuing officer.

5.04.090  Application--Denial.

(a) The Issuing Officer may deny an application for a license, if he finds the applicant or any agent or representative thereof has:

(1) Knowingly made any false, misleading or fraudulent statement of a material fact in the application or in any record or report required to be filed under this chapter; or

(2) Violated any of the provisions of this chapter or any provisions of any other ordinance or law relating to or regulating said business or occupation; or

(3) Been convicted of a crime, the nature of which indicates the appellant's unfitness to operate the proposed business. A plea or verdict of guilty, a finding of guilty by a court in a trial without a jury, a plea of nolo contendere, or a forfeiture of bail is deemed a conviction.

(4) Provided information or documentation that indicates or discloses that the conduct of the business or activity will be contrary to federal, state or other law.
(b) If after investigation the Issuing Officer determines that the application should be denied he shall prepare a notice of denial of application setting forth the reasons for such denial of application. Such notice shall be either sent by mail to the applicant's last address provided in the application or be personally delivered. Any person who has had an application for a license denied may request a hearing from the Issuing Officer. Such request must be made in writing and filed with the Issuing Officer within ten days of personal delivery of the notice of denial. If the notice of denial is mailed, the applicant shall also be entitled to the appeal provisions of this chapter following the hearing before the Issuing Officer.

(c) If the license is granted the name and business address of the licensee shall be made available to any interested member of the general public for the duration of the license.

5.04.100 License suspension or revocation

(a) In the event that any person holding a license issued pursuant to this chapter violates or causes or permits to be violated any of the provisions of this chapter, or any provisions of any other ordinance or law relating to or regulating said business or occupation, or shall conduct or carry on such business or occupation in an unlawful manner, or for any reason for which the license application could have been denied, the Issuing Officer may, in addition to other penalties provided by ordinance, suspend or revoke the license after the licensee has been given the opportunity for a hearing as provided for in this chapter.

(b) The Issuing Officer shall post for a period of ten days the name and business address of any person receiving a notice of suspension or revocation along with the fact that any interested member of the general public can submit information regarding the proposed suspension or revocation. Such information shall be submitted in writing and shall be delivered to the office of the Issuing Officer within five days of the last day of posting. The names and business addresses shall be posted in the office of the Issuing Officer.

5.04.110 Hearings--Issuing Officer

(a) In any case where the Issuing Officer determines that a license issued pursuant to this chapter should be suspended or revoked, the Issuing Officer shall prepare a written notice of suspension or revocation, which includes a statement of the proposed action, a concise explanation of the reasons for the proposed action, the statutory basis relied upon for such proposed action, and an explanation of the licensee’s right to request a hearing from the Issuing Officer. Such notice shall be sent by certified mail to the licensee’s last address provided in the application or be personally delivered, at least ten days prior to the effective date of such action. If within five days after receipt of such mailing or delivery to the licensee or an authorized representative requests in writing a hearing from the Issuing Officer, the Issuing Officer shall immediately set a hearing and shall set forth in writing and send to the licensee by means of mail or hand delivery, notice of the time, date and place of such hearing. The hearing shall be held not more than thirty days from the date of receipt of said request for hearing. The hearing shall be conducted by a hearing officer designated by the Issuing Officer. The person designated as hearing officer shall not have been connected in any manner in the decision to take the proposed action which is the subject of such hearing. No hearings shall be continued except upon showing of good cause.

(b) The hearing shall be conducted to determine the existence of any facts which constitute grounds for the suspension or revocation of the license. The licensee may have the assistance of counsel or may appear by counsel and shall have the right to present evidence. In the event that the licensee, or counsel representing the licensee fails to appear at the hearing, the evidence of
the existence of facts which constitute grounds for the suspension or revocation of the license shall be considered unrebutted. The decision of the hearing officer shall be based solely on the evidence presented at the hearing. Upon conclusion of the hearing, the hearing officer will give a verbal decision; provided, however, that in the discretion of the hearing officer, the decision may be delayed and given in writing within two days. In any case where a verbal decision is given at the close of the sharing, the hearing officer shall confirm that decision in writing within two days. The written decision shall set forth the findings of fact and the reasons for the decision and a copy mailed to the licensee or an authorized representative. The decision of the hearing officer shall be posted in the office of the Issuing Officer for a period of five days along with the available procedures for appeal. A hearing held under this section or the failure of the licensee to request such a hearing or to appear at the scheduled time for such hearing in no way deprives the licensee of the right to appeal as provided for in this chapter.

5.04.120 Stay of suspension or revocation. The effect of a decision of the hearing officer to suspend or revoke a license shall be stayed while an appeal to the City Council is pending or until the time for filing such appeal has expired. There shall be no stay of the effect of the decision of the hearing officer upholding the denial of any license.

5.04.130 Exception to hearing procedure.

(a) When, in the opinion of the Issuing Officer, there is an immediate threat to the public health, welfare or safety, the officer may suspend a license without a hearing. The Issuing Officer shall prepare a written notice of suspension, which includes a statement of the action, a concise explanation of the reasons for the action, that statutory basis relied upon for such action, and an explanation of the licensee's right to request a hearing from the Issuing Officer. Such notice shall be either sent by certified mail to the licensee's last address provided in the application or be personally delivered. The licensee may request a hearing from the Issuing Officer within five days of receipt of notification that the license has been suspended. The Issuing Officer shall notify the licensee of the time and place of such hearing and the hearing shall be conducted in the manner prescribed in this chapter.

(b) The hearing shall be held not more than thirty days from the date of receipt of said request for hearing. Following the hearing the person affected may appeal the decision in the manner prescribed in this chapter. The decision shall not be stayed during pendency of such hearing or appeal.

5.04.140 Appeal.

(a) Within ten days after receipt of the decision of the hearing officer, any party affected by the decision may appeal such decision by filing with the City Clerk a written appeal briefly setting forth the reasons why such denial, suspension, revocation or other decision is not proper.

(b) Upon receipt of such written appeal, the City Clerk shall set for public hearing by the City Council.

5.04.150 Evidence.

(a) Oral evidence shall be taken only on oath or affirmation.
(b) Each party shall have these rights:

(1) To call and examine witnesses;

(2) To introduce exhibits;

(3) To cross examine opposing witnesses on any matter relevant to these issues even though that matter was not covered in the direct examination;

(4) To impeach any witness regardless of which party first called the witness to testify; and

(5) To rebut the evidence against the party. If respondent does not testify in his own behalf, the respondent may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions; hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

(d) The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not proficiently speak the English language shall provide an interpreter, approved by the hearing officer conducting the proceeding as proficient in the English language and the language in which the witness will testify, to serve as interpreter during the hearing. The cost of the interpreter shall be paid by the party providing the interpreter. The City Council may compile and publish a list of interpreters known to be proficient in various languages. Any person whose name appears on such list shall be deemed to be approved by the hearing officer hearing the case.
CHAPTER 5.08

AMUSEMENT DEVICES AND ESTABLISHMENTS

SECTIONS:

5.08.010 Definitions
5.08.020 License--Requirements--Denial, suspension and revocation
5.08.030 Alcoholic beverages restricted
5.08.040 Persons intoxicated or under the influence of drugs prohibited
5.08.050 Gambling prohibited
5.08.060 Operation of establishment
5.08.070 License fee

5.08.010 Definitions. For the purpose of this chapter, the following words are defined:

(a) **Amusement device** includes any machine, device or apparatus, allowed or made possible by the deposit or placing of any coin, plate, disk, slug or key into any slot, crevice or other opening or by the payment of any fee or fees, for the use as a game, contest or amusement of any description, or which may be used for such game, contest or amusement, and the use or possession of which is not prohibited by any law of the State.

(b) **Amusement establishment** means any commercially operated establishment having five or more amusement devices.

5.08.020 License--Requirements--Denial, suspension and revocation.

(a) The procedure to follow, except as otherwise provided in this chapter, in obtaining a license is that set forth in the uniform licensing procedure, set out in Chapter 5.04. In addition to the reasons for denial listed in the uniform licensing procedure, the Issuing Officer may deny an application or suspend or revoke a license for the following reasons:

1. If the applicant is not a fit or proper person to conduct an amusement establishment;

2. If the premises is not a suitable or proper place therefore;

3. If the health, welfare or public morals of the community warrant such denial.

(b) The Issuing Officer may issue the license upon such conditions as he determines would eliminate the situations which would otherwise result in denial of such license.

5.08.030 Alcoholic beverages prohibited. It is unlawful for the proprietor, manager, or employee of any amusement establishment which is not a bona-fide eating place as defined in Section 23038 of the Business and Professionals Code as follows: "Bona Fide Eating Place" means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking and assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulation of the local department of health to permit the consumption of any alcoholic beverage within the
Amusement establishments that are also a bona-fide restaurant shall prohibit the consumption of alcoholic beverages within the area of the establishment in which amusement devices are operated. Said amusement device area shall be delineated by at least three walls of not less than 42 inches in height. Appropriate signage shall be posted within the amusement establishment stating that it is unlawful to operate amusement devices while consuming alcoholic beverages.  

(Ord. No. 93-956, 8-31-93)

5.08.040 Persons intoxicated or under the influence of drugs prohibited. It is unlawful for any person who is intoxicated or under the influence of any drug to be in any establishment licensed pursuant to this chapter. A person who conducts or assists in conducting any such establishment shall not permit any intoxicated persons or persons under the influence of any drug to be or remain at such place.

5.08.050 Gambling prohibited. It is unlawful for the proprietor, manager or employer of any amusement establishment to permit any gambling of any kind, or permit any betting or wagering with money or anything of value upon the result of any game.

5.08.060 Operation of establishment. The proprietor, manager or employee of any licensed amusement establishment shall insure that the operation of amusement devices is orderly and quiet and shall not permit any boisterous, offensive, indecent, vulgar, abusive or obscene language within the premises.

5.08.070 License fee. The license fee shall be $138.00 plus $60.00 per amusement device per year. The renewal fee shall be $103.00 plus $60.00 per amusement device per year.
CHAPTER 5.10
ENTERTAINMENT LICENSE

SECTIONS:

5.10.010 Entertainment
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5.10.030 Informal Entertainment
5.10.040 Entertainment Licenses - Licenses Required
5.10.050 Class I Entertainment License Fee
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5.10.345 Registration Fee
5.10.350 Registration of Entertainers
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5.10.380 Granting or Denial of Registration of Entertainers
5.10.390 Multiple License Waiver
5.10.400 Going Business - Extension of Time
5.10.410 Violation – Infraction (Ord. No. 99-1053, 2/1/99)

5.10.010 Entertainment. Entertainment as used in this chapter is defined to mean any act, play, review, pantomime, scene, song, dance act, song and dance act, or poetry recitation,
conducted or participated in by a professional entertainer in or upon any premises to which the public is admitted. **Entertainment** also includes a fashion or style show, except when conducted by a bona fide nonprofit club or organization, and when conducted solely as a fund raising activity for charitable purposes. The term **professional entertainer** as used herein means a person or persons who engage for livelihood or gain in the presentation of entertainment.

**Entertainment** as used herein does not include:

(a) Mechanical music alone.

(b) Instrumental music alone, except between the hours of 2:00 a.m. and 6:30 a.m. when the provisions of Section 21.282.4 shall apply; or

(c) Dancing participated in only by customers; however, this subsection does not exempt exhibition dancing by a person receiving compensation for such exhibition dancing.

5.10.020 Entertainment continued. **Entertainment** also includes the act of any person, while visible to any customer, exposing any portion of specified anatomical areas which are defined as follows: (1) Less than completely and opaquely covered (a) human genitals or pubic region; (b) buttock and (c) female breast below a point immediately above the top of the areola; or (2) human male genitals in a discernible turgid state, even if completely and opaquely covered.

5.10.030 Informal Entertainment. **Informal entertainment** as used in this chapter is defined to mean any act, play, review, pantomime, scene, song, dance act, song and dance act, or poetry recitation, conducted or participated in by any non-professional person or persons in or upon any premises to which the public is admitted.

5.10.040 Entertainment Licenses -- Licenses Required.

(a) No person shall conduct, permit, or assist in the conducting or the permitting of any entertainment as defined in Section 5.10.010 to be shown, staged, exhibited, or produced in any premises to which the public is admitted unless and until a written Class I Entertainment License has been obtained from the City Clerk.

(b) No person shall conduct, permit, or assist in conducting or permitting any entertainment as defined in Section 5.10.020 to be shown, staged, exhibited, or produced in or upon any premises to which the public is admitted unless and until a written Class II Entertainment License has been obtained from the City Clerk.

(c) No person shall conduct, permit, or assist in conducting or permitting any entertainment as defined in Section 5.10.030 to be shown, staged, exhibited, or produced in or upon any premises to which the public is admitted unless and until a written Class III Entertainment License has been obtained from the City Clerk.

5.10.050 Class I Entertainment License Fee. The annual fee for a Class I Entertainment License shall be Ninety-eight Dollars ($98.00) for the first year, and Sixty-four Dollars ($64.00) for each annual renewal. (Ord. No. 88-785, 5-24-88)

5.10.060 Class II Entertainment License Fee. The annual fee for a Class II Entertainment License shall be $123.00 for the first year and $80.00 for each annual renewal. When the fees for a Class II Entertainment License have been paid by an applicant, no additional fee is required for
the same applicant for a Class I or Class III Entertainment License for the same location covered by the Class II Entertainment License. (Ord. No. 88-783, 5-24-88)

**5.10.070 Class III and Class IV Entertainment License Fee.** The annual fee for a Class III Entertainment License shall be Ninety-eight Dollars ($98.00) for the first year, and Eighty-eight Dollars ($88.00) for each annual renewal. The annual fee for a Class IV Entertainment License shall be $365.00 plus $350.00 per day of operation.

**5.10.080 Exemption from Fee.** No fee is required for a license for:

(a) An entertainment at which no alcoholic beverage is sold or consumed where such entertainment is conducted by a bona fide charitable, religious, benevolent, patriotic, or educational organization, or by the United Service Organization. Any determination as to the exempt status of any applicant shall be made by the Sheriff.

**5.10.090 Procedures.** The procedure to follow, except as otherwise herein provided, in obtaining a license is that set forth in the Uniform Licensing Procedure set forth in Chapter 5.04.

**5.10.100 Granting or Denial of Application.** Recognizing the potential for First Amendment considerations in the entertainment area, the Issuing Officer shall grant an application for a new license within thirty (30) days after filing of a complete application unless one or more of the following findings are made:

(a) The building, structure, equipment or location of such business or activity does not comply with or fails to meet all of the health, zoning, fire, building or safety requirements or standards of all the laws of the State of California or Ordinances of the City of San Marcos applicable to the building, structure, equipment or location of such business operation or activity; or

(b) The applicant or an agent, employee, or manager of the applicant has knowingly or deliberately made any false, misleading or fraudulent statement of a material fact in the application or in any report or record required to be filed or kept under the provisions of the San Marcos Code of Ordinances.

**5.10.110 Noise Abatement.** Whenever, after a hearing notice of which must be given ten (10) days prior thereto, it shall be determined that noise from any establishment licensed under this chapter interferes with the right of persons dwelling in the vicinity of such establishment to the peaceful and quiet use and enjoyment of their property, the City Council may require that the premises be soundproofed in a manner that in the judgment of the City Council will be effective to eliminate the noise or reduce it to a reasonable level. In taking any action under this section, the City Council must balance all of the interests of the respective parties, as well as the hardship which will result from any order. If the City Council finds that the noise complained of is of a minimum or inconsequential degree, no action shall be taken under this section. If a licensee fails, within a reasonable time and after having been ordered to do so pursuant to this section, to take such steps as were ordered to abate any noise, his license shall be suspended after a second hearing, ten (10) days notice of which must be given, until such time as he complies with the order.

**5.10.120 Hours.** No entertainment other than mechanical music of any sort may be conducted in an establishment licensed pursuant to this chapter between the hours of 2:00 a.m. and 6:30 a.m.
5.10.130 \textbf{Private Club.} No establishment licensed pursuant to this chapter may allow the premises to be used for the purpose of conducting a private club between the hours of 2:00 a.m. and 6:30 a.m.

5.10.140 \textbf{Minors.} No person under twenty-one (21) years of age shall enter, be, or remain in or on any premises on or in which any "topless" entertainment, as defined in Section 5.10.020 is presented. A licensee shall not permit such a person to enter, be or remain in or on any such premises.

5.10.150 \textbf{Persons Intoxicated or Under the Influence of Drugs.} It shall be unlawful for any person who is intoxicated or under the influence of any drug to appear in or be in any establishment licensed pursuant to this chapter. A person who conducts or assists in conducting any such establishment shall not permit any intoxicated person or person who is under the influence of any drug to appear, be, or remain at such place.

5.10.160 \textbf{Exits.} No entertainment shall be permitted in any establishment where a license is required which does not provide unlocked doors with free and easy egress while patrons are in the establishment.

5.10.170 \textbf{Visibility from the Street.} There shall be no entertainment of any kind where an entertainment license is required which is visible at any time from the street, sidewalk, or highway.

5.10.180 \textbf{Solicitation of Drinks.} No entertainment may be conducted in establishments where a license is required where employees solicit or accept drinks of alcoholic beverages from customers.

5.10.190 \textbf{Gambling.} No entertainment may be conducted in any establishment where a license is required in which gambling in any form is permitted or tolerated, or in which there is kept any machine or machines or other device designed or commonly used for the purpose of gambling in any form.

5.10.200 \textbf{Solicitation of Trade.} No entertainment may be conducted in any establishment where a license is required at which solicitation of trade is made at or near the entrance, either by personal solicitation or otherwise, by means of any device whereby the voice of the person soliciting can be heard at or near such entrance.

5.10.210 \textbf{Lighting.} Every establishment licensed pursuant to this chapter shall be lighted throughout to an intensity of not less than three (3) foot-candles during all hours of operation except while the floor show is in progress.

5.10.220 \textbf{Parking Lot.} Every person operating an establishment licensed pursuant to this chapter, who owns, operates, or controls any parking lot adjacent to such establishment and used in connection therewith, shall adequately and uniformly light such parking lot to an intensity of not less than two (2) foot-candles.

5.10.230 \textbf{Number of Employees.} At every establishment licensed pursuant to this chapter having a capacity of not less than two hundred (200) persons, not less than one (1) employee for the first two hundred (200) persons, and one (1) additional employee for each additional one hundred (100) persons who could be accommodated, whether actually present or not, shall be constantly in attendance during the entire time that any entertainment is in progress, and shall devote their entire time and attention to the keeping of order, the checking of the admission of
of the admission of minors, and seeing to it that all provisions of this chapter are complied with.
The sheriff may require such additional employees or guards on an individual basis as the Sheriff
deems in the public interest.

5.10.240 **Miscellaneous Rules.** No professional entertainer or employee may dance,
unnecessarily converse, or associate with any customer during any entertainment period, and not
at all except in a formal manner, provided, however, that a regularly scheduled audience
participation type of entertainment may be presented during the time stated and in the manner
described in an advertisement posted at the premises and appearing in a regularly printed
program. Provided, further, that a copy of said advertisement shall be received by the Sheriff
twenty-four (24) hours prior to the conducting of said audience participation entertainment. This
section shall not apply to establishments having a Class III Entertainment License.

5.10.250 **Sheriff--Inspection.** The Deputy Sheriffs of the County of San Diego, in addition to
their several other duties, shall inspect any and all establishments licensed pursuant to this
chapter.

5.10.260 **Sheriff--Admission.** The Sheriff and/or his deputies, shall be permitted by every
licensee to enter free of charge any establishment licensed pursuant to this chapter for the
purpose of inspection.

5.10.270 **Applicability.** The provisions of Sections 5.10.280 through 5.10.310, inclusive, shall
apply only to those establishments required to have a Class II Entertainment License.

5.10.280 **Additional Grounds for Suspension or Revocation.** In addition to the grounds for the
suspension or revocation of a license set forth elsewhere in this chapter, the provisions of Section
24200 of the Business and Professions Code of California are hereby made applicable to licenses
under this chapter.

5.10.290 **Regulation of Signs.** No sign or signs which in whole or in part advertise any "topless"
entertainment, and exceed in area seven hundred twenty (720) square inches shall be maintained,
erected, used, or placed upon, on, or adjacent to the outside of any building and in connection with
any premises therein licensed pursuant to this chapter.

5.10.300 **Signs Continued.** No sign or signs which in whole or in part depict the human form or
any portion or portions thereof, whether clothed or unclothed, shall be maintained erected, used,
or placed upon or adjacent to the outside of any building or in connection with any premises
therein licensed pursuant to this chapter.

5.10.310 **Signs Continued.** No sign or signs which in whole or in part advertise any "topless"
entertainment, using the word "girls" or words of like or similar import, except the words "topless
entertainment" shall be maintained, erected, used, or placed upon or adjacent to the outside of
any building or in connection with any premises therein licensed pursuant to this chapter.

5.10.320 **Entrance Sign.** Every establishment licensed pursuant to Section 5.10.020 of this
chapter shall place at or near the entrance to the licensed establishment a sign of not more than
two hundred twenty-five (225) square inches and less than one hundred forty-four (144) square
inches upon which is written: "Warning. This establishment offers "topless entertainment. If you
would be offended, do not enter." Such sign shall be illuminated to an intensity of not less than ten
(10) foot-candles, and shall be clearly visible to any person entering the licensed establishment
before such person enters the area where entertainment is conducted.
5.10.330 Attire. No person shall enter, be, or remain in any establishment licensed pursuant to this chapter or required to be licensed pursuant to this chapter, except when attired in such a manner that the pubic area, private parts and the crease of the buttocks are completely covered and are not visible to the human eye.

5.10.340 Manager. All establishments licensed or required to be licensed under this chapter shall have an adult manager on the premises at all times when entertainment is being conducted. Such manager shall be registered with and approved by the Sheriff.

No person shall be employed as a manager of an entertainment establishment unless and until such person has appeared in person with the Sheriff and completed the registration form provided by the Sheriff. Any person applying for registration under this section shall specify:

(a) Name and residence address;

(b) Social Security number and driver's license number, if any;

(c) Whether such person has been convicted within the past five years of any crime except misdemeanor traffic violations. If an applicant has been so convicted, the applicant must state the name of the person so convicted, the date of said conviction, the specific charge under which the conviction was obtained, and the sentence imposed as a result of such conviction.

Any person applying for registration as a manager shall, in addition to the information required herein, provide the Sheriff with a recent photograph, which photograph may be taken by the Sheriff and forwarded to the Federal Bureau of Investigation, Identification Division, for search.

No person shall employ any person as a manager of an entertainment establishment until such person has applied for and received a license as provided herein and until written notification has been received from the Sheriff that such manager applicant has been duly licensed. The Sheriff's notice of licensing registration shall be maintained by the employer at the place of business and shall be available for inspection at all times.

5.10.345 Registration Fee. The annual registration fee for an entertainment manager shall be $30.00. (Ord. No. 88-783, 5-24-88)

5.10.350 Registration of Entertainers. No person shall conduct or participate in any entertainment as defined in Section 5.10.020 unless and until such person has registered in person with the Sheriff and completed the registration form provided by said Sheriff. Any applicant registering under this section shall specify:

(a) Name and residence address;

(b) Social Security number and Driver's License number, if any;

(c) Whether such applicant has been convicted within the past five years of any crime except misdemeanor traffic violations. If an applicant has been so convicted, the applicant must state the name of the person so convicted, the place and court in which the conviction was obtained, the date of said conviction, the specific charge under which the conviction was obtained and the sentence imposed as a result of such conviction.
5.10.360 Additional Data. Any person registering under Section 5.10.350 shall, in addition to the information required thereby, provide the Sheriff with a recent photograph, which photograph may be taken by the Sheriff, and a complete set of such person's fingerprints. The fingerprints required under this section will be taken by the Sheriff and forwarded to the Federal Bureau of Investigation, Identification Division, for search.

5.10.370 Registration Required Before Employment. No person shall employ any person to participate in or conduct any entertainment as defined in Section 5.10.020 unless and until such person has registered with the Sheriff as provided in Sections 5.10.350 and 5.10.360, and until written notification has been received from the Sheriff that such person has been duly registered. The Sheriff's notices of registration shall be maintained by the employer at the place of business, and shall be available for inspection at all times.

5.10.380 Granting or Denial of Registration of Entertainers. The procedure to follow, except as otherwise herein provided, in obtaining registration is that set forth in the Uniform Licensing Procedure, as set forth in Chapter 5.04. The Issuing Officer shall grant an application within thirty (30) days after filing unless a finding is made that the applicant has knowingly or deliberately made any false, misleading or fraudulent statement of a material fact in the application or in any report or record required to be filed or kept under the San Marcos Code of Ordinance.

5.10.390 Multiple License Waiver. In any case where a licensee is required to have both a Class II Entertainment License and a Class I or Class III Entertainment License, the City Clerk may waive the requirements of Section 5.10.320. Any such waiver must be endorsed upon the license affected thereby.

5.10.400 Going Business--Extension of Time. Any person who on the effective date of this ordinance is conducting, permitting or assisting in conducting or permitting any entertainment as defined in Sections 5.10.010, 5.10.020 and 5.10.030 to be shown, staged, exhibited or produced in any premises to which the public is admitted may continue operation but shall within 60 days from said date make application pursuant to the provisions of this chapter.

5.10.410 Violation - Infraction. Any person violating the provisions of this Chapter and of the Uniform Licensing Procedure shall be deemed guilty of an infraction and upon conviction shall be punishable in accordance with the provisions of section 1.12.010.
CHAPTER 5.12
DANCES AND DANCE HALLS

SECTIONS:

5.12.010 Definitions
5.12.020 Exception to application of chapter
5.12.030 License--Procedure
5.12.040 License--Required for each location
5.12.050 License--Classifications
5.12.060 License--Denial--Additional reasons
5.12.070 License--Expiration
5.12.080 License--Fees
5.12.090 Size of dance floor
5.12.095 Manager
5.12.098 Manager's Registration Fee
5.12.100 Management change reported
5.12.110 Minors prohibited if liquor present
5.12.120 Minors under eighteen
5.12.130 Misrepresenting minor's age unlawful
5.12.140 Persons to be excluded from premises
5.12.150 Obscenity prohibited
5.12.160 Restricted hours for music and dancing
5.12.170 Sanitation requirements
5.12.180 Enforcing agent required on premises
5.12.190 Admittance of peace officers
5.12.200 Revocation of license

5.12.010 Definitions. For the purpose of this chapter, the following definitions shall apply:

(a) Alcoholic beverage means an alcoholic beverage, or beverages, as that term is defined in the Alcoholic Beverage Control Act, California Statutes of 1935, page 1123, as amended.

(b) Public dance means any such dance held or given in any place not a private residence or home.

(c) Public dance hall means any room, place, or space, except a private residence or home, where dancing is carried on or permitted.

5.12.020 Exception to application of chapter. The requirements of this chapter are not applicable to any City park which closes at or before nine p.m.

5.12.030 License--Procedure. The procedure to follow, except as otherwise provided in this chapter, in obtaining a license is that set forth in the uniform licensing procedure, set out in Chapter 5.04.

5.12.040 License--Required for each location. No license issued pursuant to the terms of this chapter shall authorize the conducting, operating or carrying on of the licensed business save at a single location and upon individual premises in described in said license.

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5.12.050 License--Classifications. For the licensing purposes of this chapter, premises or establishments whereon or wherein any public dance hall or public dance is maintained, conducted, carried on or permitted, are classified and required to be licensed as follows:

(a) A class "A" license shall be required where there is daily or nightly dancing.

(b) A class "B" license shall be required where there is dancing not to exceed three days or nights in any calendar week.

(c) A class "C" license shall be required when dancing is conducted one night or one day only.

(d) A class "D" license shall be required where dancing is conducted in a bona fide club; the term "club" as used in this subsection means and includes only corporations or associations created by competent authority, which are the owner, lessees or occupants of premises operated solely for objects of national, social, fraternal, patriotic, political, or athletic nature, membership in which is by application, and for which regular dues are charged, and the advantages of which said club belong to all members, and the operation of which is not primarily for pecuniary gain.

5.12.060 License--Denial--Additional reasons. In addition to the reasons stated in the uniform licensing procedure, set out in Chapter 5.04, the Issuing Officer shall have the power to deny any application if it appears that the applicant, or the person to have direct management of the premises, is not a suitable or proper person to carry on the business for which the license is sought, or if the premises proposed to be used in the conduct of the business to be licensed shall be deemed not to be a suitable or proper place therefore, or if the protests and objections of private residents in the immediate vicinity of the premises proposed to be licensed, or if the health, welfare or public morals of the community, warrant such denial. The Issuing Officer may allow the license upon such conditions as he determines would cure the situations which would otherwise result in denial of the license.

5.12.070 License--Expiration. All class "C" licenses shall expire at two o'clock a.m. of the calendar day following the date of issue. Applicants may state in their applications the date on which they desire to have the license issued. Such license shall not be renewed, but a new application must be filed with the Issuing Officer to obtain a new license. (Ord. No. 88-783, 5-24-88)

5.12.080 License--Fees. The fees for licenses issued pursuant to the provisions of this Chapter, shall be payable in advance; and for the several types or classes of licenses provided by this Chapter, the fee for each license shall be $93.00 per year.

5.12.090 Size of dance floor. It is unlawful for any person to carry on, or conduct, or assist in carrying on, maintaining or conducting any public dance hall or dance in connection with any business or place where alcoholic beverages are sold or served, in any room, place or space which does not contain a floor space allocated to dancing.

5.12.095 Manager. All establishments licensed or required to be licensed under this chapter shall have an adult manager on the premises at all times when dancing is being conducted. Such manager, if other than the licensee, shall be registered with and approved by the City Clerk, subject to the recommendation of the Sheriff.

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No person shall be employed as a manager of a public dance establishment unless and until such person has appeared in person with the City Clerk and completed the registration form provided by the City Clerk. Any person applying for registration under this section shall specify:

(a) Name and residence address;

(b) Social Security number and driver's license number, if any;

(c) Whether such person has been convicted within the past five years of any crime except misdemeanor traffic violations. If an applicant has been so convicted, the application must state the name of the person so convicted, the date of said conviction, the specific charge under which the conviction was obtained, and the sentence imposed as a result of such conviction.

A person applying for registration as a manager shall in addition to the information required herein, provide the Sheriff with two recent 2" x 2" passport-quality photographs, one of which will be affixed to the registration; the remaining one will be placed in the City Clerk's file.

No person shall employ any person as a manager of a public dance establishment until such person has applied for and received a license as provided herein and until written notification has been received from the City Clerk that such manager applicant has been duly licensed. The City Clerk's notice of licensing shall be maintained by the employer at the place of business and shall be available for inspection at all times. (Ord. No. 96-999, 7/23/96)

5.12.098 Manager's Registration Fee. The annual registration fee for a Public Dance Manager shall be $78.00 and renewal fee shall be $78.00. (Ord. No. 96-999, 7/23/96)

5.12.100 Management change reported. In the event that any licensee desires to change the individual designated in the license as the person to have direct management of the licensed premises he shall forthwith notify the Licensing Officer, proposing the name of the person to be substituted in the management and control of the licensed premises. The person so proposed shall be investigated by the Licensing Officer. If such a person is of satisfactory character, the Licensing Officer may consent to such changes. In the event that such person is not of satisfactory character, the license may be suspended by the Licensing Officer, in his discretion, pending the proposal of some other person of satisfactory character.

5.12.110 Minors prohibited if liquor present. It is unlawful for any owner, proprietor, manager, or the person in charge of any place licensed under the provisions of this chapter, or for any employee of such place at any time when alcoholic beverages are actually on sale or are being offered free in said place, to harbor, admit, receive or permit to be in, or remain in or about such place during the time when dancing is actually being carried on or conducted or permitted, any person under the age of twenty-one years unless such person is accompanied by his or her parent, spouse, or legal guardian; provided, however, that the foregoing provisions shall not prohibit the entry of such persons into any dining room located in or upon premises occupied by an inn or hotel of twenty or more rooms and actually maintained and operated as a bona fide part of such hotel business; provided, however, that nothing in this chapter shall be construed so as to prevent minors from attending any public dance or being in any public dance hall or place where alcoholic beverages are not sold or given away, and; provided further, that nothing in this chapter shall be construed to prevent the holder of any license issued under this chapter from closing his bar and permitting minors to dance in such hall or place during such time as no alcoholic beverages are on sale or offered without charge therein. In the event that any place
or hall licensed under this chapter is used for a public dance at which minors are allowed to
attend, all alcoholic beverages must be under lock and key so that no person except the owner or
his agent shall have access thereto.

5.12.120 Minors under eighteen. Notwithstanding the provisions of Section 5.12.110 or any
other provisions of this code, no person under the age of eighteen years shall attend any place or
hall licensed under this chapter to be used for a public dance unless said person is accompanied
by his or her parent, spouse, or legal guardian.

5.12.130 Misrepresenting minor’s age unlawful. It is unlawful for any person under the age of
twenty-one years falsely to represent himself or herself as being of the age of twenty-one years or
more for the purpose of obtaining admission to any premises licensed under the provisions of this
chapter.

5.12.140 Persons to be excluded from premises.

(a) It is unlawful for the owner, proprietor, manager or person in charge of any place licensed
under the provisions of this chapter, or for any employee of such place, to harbor, admit, receive,
or permit to be on or remain in or about such place, any intoxicated or boisterous person, or any
person whose presence or conduct tends to corrupt the morals of any other persons present, or
whose conduct or presence tends to create a violation of any of the provisions of this chapter.

(b) It is unlawful for any of the following persons to be or remain in or about any place
licensed under the provisions of this chapter:

(1) Any lewd or dissolute person of either sex;

(2) Any drunken or boisterous person or any person whose conduct while present in
said place tends to create a violation of any of the provisions of this code, or of any law
of the State, or which tends in any way to corrupt the morals of any person or
persons attending said dance hall, or in any way interferes with the proper management
and control of said dance hall.

5.12.150 Obscenity prohibited. Boisterous conduct and profanity is unlawful in dance halls, in
the hallways leading thereto, and in the immediate vicinity of the premises licensed under the
provisions of this chapter. It is unlawful for any person in such dance halls to engage in any dance
of an immoral, obscene or vulgar character or to conduct himself or herself in an immoral, obscene
or vulgar manner in such dance halls.

5.12.160 Restricted hours for music and dancing. It is unlawful to provide or permit any
music, dancing, or entertainment in or about any premises licensed under the provisions of this
chapter between the hours of two a.m. and eleven a.m.

5.12.170 Sanitation requirements. No license shall be granted under the provisions of this
chapter unless the hall or place in which said dance is to be held shall comply with this code and
regulations of the City. The holder of such license shall keep such dance hall, hallways leading
thereto, and the immediate vicinity in a clean and sanitary condition at all times, and have all
stairways, hallways, other passages, and rooms connected with such dance hall at all times open,
adequately lighted and properly ventilated.

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5.12.180 - 5.12.200

5.12.180 Enforcing agent required on premises. It shall be the duty of every owner, leasee,
proprietor, manager or occupant of any hall, room, building or place licensed under the provisions of this chapter to have present at all times, when dancing is carrying on in such hall, room, building or place, the qualified person or persons approved by the Sheriff whose duty it shall be to see that the provisions of this chapter are lawfully carried out. Provided that the foregoing shall not apply where dancing is carried on or permitted under a class "D" license as defined in this chapter, and where no alcoholic beverage is sold, served or consumed on the premises so licensed. (Ord. No. 88-783, 5-24-88)

5.12.190 Admittance of peace officers. Any peace officer of the City or State, or any officer of the United States Government charged with the duty of enforcing the public laws of the United States Government, shall have free access at all times to any dance hall licensed under the provisions of this chapter.

5.12.200 Revocation of license. For any violations of the provisions of this chapter or for any cause by it deemed sufficient, the Licensing Officer may at any time, by resolution, suspend or revoke any license under the terms of this chapter.
CHAPTER 5.16

TEENAGE DANCES

SECTIONS:

5.16.010 Legislative intent
5.16.020 Definitions
5.16.030 Permit
5.16.040 Permit--Classifications
5.16.050 Permit--Fees
5.16.060 Exception
5.16.070 Investigation of application; Issuance or denial of permit
5.16.080 Expiration and renewal
5.16.090 Appeals from the denial, suspension or revocation of a permit
5.16.100 Supervision and lighting of premises
5.16.110 Participant re-entering dance after leaving the premises
5.16.120 Alcoholic beverages
5.16.130 Closing hour
5.16.140 Improper conduct and language
5.16.150 Loitering
5.16.160 Inspection
5.16.170 Police Supervision
5.16.180 Advertising
5.16.190 Promulgation of rules and regulations

5.16.010 Legislative intent. It is the intent of the City Council in enacting this chapter to prescribe the exclusive procedure for the licensing of public dances attended by persons of fourteen or more years of age but under twenty (20) years of age.

5.16.020 Definitions. Unless the context otherwise requires, the definitions set forth in this section shall govern the construction of this chapter:

(a) Adult means any person twenty-one years of age or over.

(b) Adult sponsoring group means a nonprofit organization, one of whose objectives is to sponsor, regulate and control youth activities and child welfare, and which assume full and complete responsibility for the direction of a teenage dance.

(c) Department shall mean the San Diego County Sheriff's Department, unless otherwise specifically designated. (Ord. No. 88-783, 5-24-88)

(d) Private teenage dance means a closed dance for members of an organization and their invited guests.

(e) Police or policeman includes any private police officer, any peace officer, whether on-duty or off-duty, reserve deputy or special deputy, employed by any public agency or political subdivision.

(f) Teenage means any person fourteen or more years of age but under twenty (20) years of age.
(g) **Teenage dance** means a dance attended by a teenage person unaccompanied by his parent or guardian.

(h) **Youth service organization** includes any bona fide organization whose primary purpose is to provide moral or spiritual development, education, or recreation for teenagers.

**5.16.030 Permit.** The procedure to follow, except as otherwise provided in this chapter, in obtaining a permit is that set forth in the uniform licensing procedure set out in Chapter 5.04.

**5.16.040 Permit—Classifications.** The Issuing Officer may issue the following classes of teenage dance permits:

(a) A class "A" permit which shall be issued for a period of one calendar year.

(b) A class "B" permit which shall be issued for Friday and Saturday nights only for a period of one year.

(c) A class "C" permit which shall be issued for one day or one night only.

**5.16.050 Permit—Fees.** The fees for permits issued under this chapter shall be payable to the Department in advance in the amounts established as follows:

(a) For a Class "A" permits, the fee shall be ninety-three dollars ($93.00); for renewal of Class A Permits, $93.00;

(b) For a Class "B" permits, the fee shall be ninety-three dollars ($93.00); for renewal of Class B Permits $93.00;

(c) For a Class "C" permits the fee shall be fifteen dollars ($15.00). *(Ord. No. 88-783, 5-24-88)*

**5.16.060 Exception.** The provisions of this chapter shall not apply to any teenage dance conducted or sponsored:

(a) By any agency or department of any City, political subdivision, school district, or other governmental agency;

(b) In a private home;

(c) By any recognized youth service organization for its members and guests only.

**5.16.070 Investigation of application; issuance or denial of permit.** The Issuing Officer shall issue a permit required by this chapter if it finds that the applicant is qualified and has not had a similar permit revoked by the police department within one year prior to the date of application and that the place or premises where the proposed dance is to be held do not violate this chapter or other provisions of this code and other ordinances of the City or the laws of the State and that the dance will not be contrary to the public health, morals, peace, welfare or safety. The Issuing Officer may issue the permit subject to any conditions which it deems reasonably necessary for the protection of the public health, welfare, morals or safety.

5.16.080 – 5.16.130
5.16.080  Expiration and renewal.

(a) A class "A" permit issued pursuant to this chapter shall expire at midnight on the last day of December in the calendar year of its issuance. The permit may be renewed upon the application of the permittee. The renewal fee shall be the same as the fee prescribed for an original permit and shall accompany the application for renewal.

(b) A class "B" permit issued pursuant to this chapter shall expire at midnight of the last day of December of the year for which it was issued. A class "B" permit shall not be renewed, but a new application shall be filed with the license department to obtain a new permit.

(c) A class "C" permit issued pursuant to this chapter shall expire at midnight of the date for which it was issued. A class "C" permit shall not be renewed, but a new application shall be filed with the license department to obtain a new permit.

5.16.090  Appeals from the denial, suspension or revocation of a permit. Within five (5) days after receiving written notification from the Issuing Officer that an application for a permit required by this chapter has been denied or that the permit has been revoked or the renewal thereof denied, any applicant or permittee may file a written request for a public hearing before the City Council. Upon filing of such a request, the City Clerk shall fix a time and place for the hearing and shall notify the applicant thereof. At the hearing, the applicant or permittee may present evidence in support of his application or position. Any interested person may, at the discretion of the City Council, be allowed to participate in the hearing and present evidence. Within ten (10) days after the conclusion of the hearing, the City Council shall render a written report either granting or denying the application for the permit, or sustaining, modifying or voiding the suspension or revocation. In the report, the city council shall state the facts upon which its decision is based. The report shall be filed in the office of the City Clerk for public inspection and a copy shall be mailed to the applicant or permittee. The decision of the City Council shall be final.

5.16.100  Supervision and lighting of premises.

(a) All places where teenage dances are held shall be adequately chaperoned and supervised and adequately lighted at all times when open for dancing.

(b) Two (2) chaperones, at least twenty-five (25) years of age, one of whom shall be a woman, shall be present at each teenage dance.

(c) All off-street parking facilities made available for participants in a teenage dance shall be adequately lighted and supervised.

5.16.110  Participant re-entering dance after leaving the premises. No minor admitted to a teenage dance shall be permitted to leave and thereafter re-enter the dancing premises during the course of the dance.

5.16.120  Alcoholic beverages. No alcoholic beverages shall be sold, consumed or be available on the premises, in or about which any teenage dance is held. Admission to a teenage dance shall be denied to any person who is or has been drinking any alcoholic beverages or who has any alcoholic beverages on his person.

5.16.130  Closing hour. All teenage dances shall be closed and the premises cleared of participants on or before the hour of 12:00 midnight.

5.16.140 - 5.16.190
5.16.140 Improper conduct and language. Boisterous conduct and profanity shall be unlawful in the premises where the teenage dance is held, in the hallways leading thereto and in the immediate vicinity of the premises. It shall be unlawful for any person at a teenage dance to engage in any dance of an immoral, obscene or vulgar character or to conduct himself or herself in an immoral, obscene or vulgar manner.

5.16.150 Loitering. No person, other than a participant at a teenage dance or a member or employee of the sponsoring group, shall loiter around or about the premises at which a teenage dance is being conducted.

5.16.160 Inspections. Any law enforcement officer of the city or any member of a fire department charged with the duty of law enforcement shall have free access at all times to any teenage dance issued a permit under the provisions of this chapter.

5.16.170 Police supervision.

(a) Except as provided in subsection (b), a permittee under this chapter shall employ, and there shall be on duty at all times during any teenage dance, at least one policeman for every one hundred (100) participants, with a minimum of one (1) policeman for every exit and entrance.

(b) Adult sponsoring groups may, at the discretion of the police department, dispense with the employment of police otherwise required by subsection (a), where it can furnish proof of having present a sufficient number of adult persons to maintain order.

5.16.180 Advertising. No teenage dance shall be advertised by the use of any media of public advertising prior to the issuance of the teenage dance permit authorizing the dance.

5.16.190 Promulgation of rules and regulations. The police department is authorized and empowered to adopt such rules and regulations as it may deem reasonably necessary to carry out the purposes of this chapter; however, such rules and regulations shall not become effective until approved by the City Council and a copy of the rules and regulations has been filed with the City Clerk.
CHAPTER 5.20
SOLICITATIONS

SECTIONS:

ARTICLE I. SOLICITATIONS GENERALLY

5.20.010 Definitions
5.20.020 Employing or engaging solicitors
5.20.030 Terms of license and fees
5.20.040 Contents of license or identification card application
5.20.050 Additional reasons for application denial, suspension or revocation
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ARTICLE I. SOLICITATIONS GENERALLY

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

(a) Established place of business means a fixed place, location or building, owned or leased or rented on a yearly or monthly basis, by the person who uses such place, location or building as his permanent place of business. Established place of business does not include a residence unless such person possesses a State retail sales tax license indicating the residence as the business address.

(b) Goods means goods, wares, merchandise, products, chattels of any description, magazines, periodicals or other publications or subscriptions therefore; regularly published newspapers as defined in this chapter excepted.

(c) House means any structure, building or dwelling which has walls on all sides and is covered by a roof. House includes the land area surrounding it.

(d) Identification card means a solicitor's identification card issued to a person who possesses a valid solicitor's license or who is employed or engaged to solicit by a person licensed to do business as a solicitor within the City.
(e) **Interviewer** means any person who goes to a house or upon any public place for interviewing persons or soliciting answers to questions for marketing research, opinion, research, attitude surveys or for any other pool or information gathering service for compensation or other business enterprise. Interviewer does not include persons representing governmental entities, political parties, newspapers, radio or television stations, or persons circulating petitions for initiative, referendum or other political purpose.

(f) **License** means a license which is issued to a person who is doing business as a solicitor in the City.

(g) **Newspaper** means a publication appearing at regular intervals at short periods of time, as daily, weekly, biweekly, usually in sheet form and containing news that is reports of recent occurrences, political, social, moral, sporting events and items of varied character, both local and foreign, intended for the information of the general reader and has reference to the natural, plain and ordinary significance of the word newspaper and does not refer to or comprehend magazines or periodicals. Newspaper does not include regular or periodic advertising circulars, certificates, papers, coupons, books, or pamphlets.

(h) **Public place** means any place to which anyone may have access without trespassing.

(i) **Retail business** means sales of goods for any purpose other than resale in the regular course of business. Retail business includes a retailer.

(j) **Services** means any act performed for the benefit of another under some arrangement or agreement whereby such act was to have been performed.

(k) **Solicitor** includes peddlers, hawkers, transient dealers, salespersons or other itinerant vendors, or an interviewer as defined in this chapter or any person who sets up a temporary stand or goes to a house or dwelling or upon any public place for the purpose of selling services, or offers to sell, or selling by sample, or take orders for, give away or otherwise dispose of any goods, or anything of value, or who offers to distribute or delivers any coupon, certificate, handbill, ticket, token card, paper, circulars, chance coupon, magazine, or other items which in turn are redeemable for goods.

(l) **Temporary stand** means any stand, table, handcart, motor vehicle or other portable or mobile device whereby goods are displayed or dispensed.

(m) **Wholesale business** means the selling of goods in gross to retail businesses and not by the small quantity or parcels to consumers thereof. Wholesale business includes wholesaler.

**5.20.020 Employing or engaging solicitors.** An individual licensed to do business as a solicitor within the City and who employs or engages others to function or perform as solicitors shall furnish the Issuing Officer with the name and address, temporary and permanent, of all such persons employed or engaged in solicitations.

**5.20.030 Terms of license and fees.**

(a) The term of a solicitor's license or identification card shall be one year. However, at the discretion of the Issuing Officer or at the request of the applicant the term may be for a lesser period. Thereafter, the license, or identification card may be renewed for a period of one year. Any time within thirty days prior to the expiration date of the license or identification card upon application for a renewal.
(b) The fee for a new solicitor's license shall be eighty dollars ($80.00) for a period of one year or less. The fee for a license renewal shall be seventy dollars ($70.00).

(c) The fee for a new solicitor's card shall be fifty-five dollars ($55.00). The fee for an identification card renewal shall be thirty-four ($34.00). The identification card shall be issued without charge to the applicant who has paid the fee for a solicitor's license.

(d) The appropriate fee shall accompany each application and is nonrefundable. The fees stated in this section are not for revenue purposes but shall be used to defray, in part, the cost of investigation and enforcement of this chapter. (Ord. No. 88-783, 5-24-88)

5.20.040 Contents of license or identification card application.

(a) The applicant for a license and/or identification card shall apply to the Issuing Officer on forms prescribed by the Issuing Officer and may be required to furnish the following information about himself and his proposed activity:

(1) Name;

(2) Physical description and three photographs;

(3) Fingerprints;

(4) Local address;

(5) Permanent address;

(6) Description of the nature of his business;

(7) Description of the nature of his goods or services to be offered;

(8) Name and address of employer and a description of the relationship between the applicant and such employer;

(9) The length of time for which such license is desired;

(10) A statement of all convictions for all misdemeanors and felonies;

(11) Such other information as the Issuing Officer shall deem necessary and relevant to a determination of whether a license should be issued pursuant to this chapter.

(b) Upon receipt of an application for a license and/or identification card, the Issuing Officer may send copies of such application to any officer or department which the Issuing Officer deems essential in order to carry out a proper investigation of the applicant. The Issuing Officer may forward fingerprints to the California Bureau of Identification for research.

5.20.050 Additional reasons for application denial, suspension or revocation.

(a) The procedure to follow, except as otherwise provided in this chapter, in obtaining a license or identification card is that set forth in the uniform licensing procedure, set out in Chapter 5.04. In addition to the reasons stated the Issuing Officer may deny, suspend or revoke any application if he finds that the applicant, his agent, representative or employee:
(1) Is convicted of any misdemeanor involving violation of any statute or ordinance regulating or taxing a business; or

(2) Is convicted of any crime involving any of the offenses described under California Penal Code Section 290; or

(3) Is convicted of any crime, the nature of which indicated the applicant’s unfitness to act as a solicitor; or

(4) Who has violated any of the provisions of this chapter; or

(5) Who makes any false statement or misrepresentations in his application for such license and/or identification card.

(b) For purposes of this section a plea of nolo contendere, or a plea or verdict of guilty, or a finding of guilt by a court, or a forfeiture of bail is deemed to be a conviction whether probation is granted or not.

5.20.060 Issuance of solicitor's license or identification card.

(a) After completing his investigation of the applicant and application, and within thirty days from receipt of such application, the Issuing Officer shall approve or deny the issuance of the license and/or identification card pursuant to the provisions of the uniform licensing procedure.

(b) Upon approval by the Issuing Officer, the license and/or identification card issued to the applicant shall show the physical description of the licensee, his name and address, both temporary and permanent, and with the name of his principal if other than the licensee, and the nature of the business for which the license shall have been issued. The identification card shall show the expiration date of the license and shall contain a photograph of the licensee.

(c) The license shall also contain a statement that the license does not constitute an endorsement by the City or any of its employees, of the purpose of persons conducting the solicitations.

5.20.070 Exemptions. This chapter shall not apply to:

(a) Students from an elementary school or a junior high school, or a high school, or public junior or community college, or public college or public university or any private educational institution listed in Education Code Section 29003, but only while such students are engaged in activity associated with academic or scholastic functions sponsored by and authorized by such schools;

(b) Wholesalers, their representatives, agent or employees calling upon retail businesses, nor to retail businesses when such sales are made in the regular course of business and at the established place of business;

(c) Sales by a farmer or rancher for products produced within the City by such farmer or rancher.

(d) A newspaper as defined in this chapter and its employees.

5.20.080 Exemptions from fees. Applicants for a solicitor's license or solicitor's identification card as described in this section shall be exempt from the appropriate fees.
(a) Veterans of the army, navy, marines or air force as defined in Section 16102 of the Business and Professions Code of the State. Before any such veteran is licensed under this chapter, such veteran shall submit to the Issuing Officer proof of release from active duty under honorable conditions or his honorable discharge from the United States Service or a certified copy thereof.

(b) Solicitors who are engaged exclusively in soliciting orders as an agent or representative of any person or persons engaged in interstate commerce which have their place or places of business outside of the State. Before any such agent or representative is licensed under this chapter, he shall submit to the Issuing Officer satisfactory identification and interstate commerce credentials from the person represented, and also comply with the requirements of Section 5.20.040.

5.20.090 Identification card exhibited at all times. Every person licensed under this chapter while engaged in the business for which licensed shall display on the front of his person his identification card in a manner and at a location allowing such identification card to be easily seen and read by any other person and upon demand by any peace officer shall exhibit such identification card.

5.20.100 Hours of business. No person shall do business as a solicitor from eight p.m. until eight a.m. local time except by appointment.

5.20.110 Prohibited vending.

(a) No solicitor shall contact or attempt to contact any occupant of any house or dwelling where the owner or occupant of the house or dwelling has posted at the front of the house or dwelling, printed with letters not less than one inch in height, and at a location which is unobstructed and clearly visible from the normal entrance way to such house or dwelling, a sign or placard prohibiting such soliciting.

(b) No solicitor shall contact or attempt to contact any member of the public on any private commercial property which is normally open to the public where the owner or legal occupant thereof has posted at all entrances thereto, and printed with letters not less than one inch in height, and at a location which is unobstructed and clearly visible by all persons entering such property, a sign or placard prohibiting such soliciting.

ARTICLE II. CHARITABLE SOLICITATIONS

5.20.120 Purpose. The City Council declares that the purpose of this chapter is to safeguard the public against fraud, deceit and imposition, and to foster and encourage fair solicitations or sales solicitation for charitable purposes, wherein the person being solicited will know what portion of the money will actually be utilized for charitable purposes.

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

(a) Charity includes any nonprofit community organization, fraternal, benevolent, educational, philanthropic, or service organization, governmental employee organization, any person who solicits or obtains contributions solicited from the public for charitable purposes, and any person who holds any assets for charitable purposes.

(b) Sale includes a gift made with the hope or expectation of monetary compensation.

(c) Sales solicitation for charitable purposes means the sale of, offer to sell, or attempt to
sell any advertisement, advertising space, book, card, chance, coupon device, magazine subscription, membership, merchandise, ticket of admission or any other thing or service in connection with which:

(1) Any appeal is made for charitable purposes; or

(2) The name of any charity, philanthropic or charitable organization is used or referred to in any such appeal as an inducement for making any such sale; or

(3) Any statement is made to the effect that such gift or any part thereof will go to or be used for any charitable purposes or organization.

(d) Solicitation for charitable purposes means any request, plea, entreaty, demand, or invitation, or attempt thereof, to give money or property, in connection with which:

(1) Any appeal is made for charitable purposes; or

(2) The name of any charity, philanthropic or charitable organization is used or referred to in any such appeal as an inducement for making any such gift; or

(3) Any statement is made to the effect that such gift or any part thereof will go to or be used for any charitable purpose or organization.

A solicitation for charitable purposes, or a sale, offer or attempt to sell for charitable purposes, includes the making or disseminating or causing to be made or disseminated before the public in this State, in any newspaper or other publication, or in any determining device, or by public outcry or proclamation or in any other manner or means whatsoever any such solicitation.

5.20.140 Completed solicitation. A solicitation is completed whether or not the person making or receiving the solicitation receives or makes any contribution or makes any sale or purchase referenced to in this chapter.

5.20.150 Solicitation requirements.

(a) Prior to any solicitation or sales solicitation for charitable purposes, the solicitor or seller shall exhibit to the prospective donor or purchaser a card entitled "Solicitation or Sale for Charitable Purposes Card." The card shall be signed and dated under penalty of perjury by an individual who is a principal, staff member, or officer of the soliciting organization. The card shall give the name and address of the soliciting organization or the person who signed the card and the name and business address of the paid individual who is doing the actual soliciting.

(b) In lieu of exhibiting a card, the solicitor or seller may distribute during the course of the solicitation any printed material, such as a solicitation brochure, provided such material complies with the standards set forth below, and; provided, that the solicitor or seller informs the prospective donor or purchaser that such information as required below is contained in the printed material.

(c) Information on the card or printed material shall be presented in at least ten-point type and shall include the following:

(1) The name and address of the combined campaign, each organization, or fund on behalf of which all or any part of the money collected will be utilized for charitable purposes;
If there is no organization or fund, the manner in which the money collected will be utilized for charitable purposes;

The amount, stated as a percentage of the total gift or purchase price, that will be used for direct fund raising expenses. If paid fund raisers are paid a set fee rather than a percentage of the total amount raised, the card shall show the total cost that is estimated will be used for direct fund raising expenses. If the solicitation is not a sale solicitation, the card may state, in place of the amount of fund raising expenses, that an audited financial statement of such expenses may be obtained by contacting the organization at the address disclosed;

The non-tax-exempt status of the organization or fund, if the organization or fund for which the money or funds are being solicited does not have a charitable tax exemption under both federal and State law;

The percentage of the total gift or purchase price which may be deducted as a charitable contribution under both federal and State law. If no portion is so deductible, the card shall state that "This contribution is not tax deductible."

Knowing and willful noncompliance by any individual volunteer who receives no compensation of any type from, or in connection with, a solicitation by any charitable organization shall subject the solicitor or seller to the penalties of this chapter.

When the solicitation is not a sales solicitation, any individual volunteer who receives no compensation of any type from, or in connection with, a solicitation by any charitable organization, may comply with the disclosure provisions by providing the name and address of the charitable organization on behalf of which all or any part of the money collected will be utilized for charitable purposes for which the solicitation is made, and by stating to the person solicited that information about revenues and expenses of such organization, including its administration and fund raising costs, may be obtained by contacting the organization's office at the address disclosed. Such organization shall provide such information to the person solicited within seven days after receipt of the request. If the volunteer is ten years of age or younger, he is not required to make any disclosures.

If the initial solicitation or sales solicitation is made by radio, television, letter, telephone or any other means not involving direct personal contact with the person solicited, this solicitation shall clearly disclose the information required by Section 5.20.150. This disclosure requirement shall not apply to any radio or television solicitation of sixty seconds or less. If the gift is subsequently made or the sale is subsequently consummated, the solicitation or sale for charitable purposes card shall be mailed to or otherwise delivered to the donor, or to the buyer with the item or items purchased.

Any person or organization engaging in any regulated activity set forth in Sections 5.20.150 and 5.20.160 shall register with the Issuing Officer. Registration shall be done on a form prescribed by the Issuing Officer and shall be deemed completed once the following information is provided:

The full name, mailing address and telephone number of the person or organization sponsoring, promoting or conducting the proposed solicitations;

The full name, mailing address and telephone number of the individual person or persons who will have supervision of and responsibility for the proposed solicitations;
(c) The subject matter of the proposed solicitations, and the purpose thereof;

(d) A description of the proposed solicitation indicating the type of communication to be involved; and

(e) The dates and hours which the solicitations are proposed to begin, and the expected duration of the solicitations.

5.20.180 Financial records. The financial records of a soliciting organization shall be maintained on the basis of generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board.

5.20.190 Inapplicability of article. The provisions of this chapter shall not apply to solicitations, sales, offers, or attempts to sell within the membership of a charitable organization or upon its regular occupied premises, nor shall it apply to funds raised as authorized by Section 326.5 of the Penal Code.
CHAPTER 5.23

TOWING SERVICES

SECTIONS:

5.23.010 Local Vehicle Impound Yard Required
5.23.020 Exception to Local Impound Yard Requirement

5.23.10 Local Vehicle Impound Yard Required. All vehicle towing operators under contract to, or otherwise employed by, the City of San Marcos and/or San Diego County Sheriff’s Department to perform towing services within the City of San Marcos shall continuously maintain, within the City limits, a legally permitted vehicle impound yard ("yard") conforming to all applicable state, local and contract requirements. Notwithstanding such requirements, all yards shall, at a minimum, be available for the operator’s exclusive use and shall be sufficiently sized to hold all vehicles stored as a result of the operator’s public contract within a securely fenced, completely screened perimeter.

5.23.20 Exception to Local Impound Yard Requirement. For purposes of ensuring an adequate pool of qualified bidders on public towing services contracts, the provisions of Section 5.23.10 shall not apply during periods in which no more than one (1) towing firm maintains a legally permitted vehicle storage yard within the City limits. In such event, companies having a legal yard within a five (5) mile radius of the City limits shall be authorized to bid on City and/or Sheriff’s Department towing contracts. This radius may be increased by the City Manager or his/her designee, as necessary, to ensure a minimum qualified bidders pool of at least two (2) towing firms at all times. (Ord. No. 99-1065, 8/22/99)
CHAPTER 5.24
JUNK, AUTOMOBILE WRECKING AND NONOPERATING
VEHICLE STORAGE YARDS

SECTION 5.24.010 Definitions
Words used in this chapter that are defined in the zoning ordinance but not specifically defined in this chapter shall have the same meaning as is given to them in the zoning ordinance. Whenever the following words are used in this chapter they shall have the meaning ascribed to them in this section:

(a) Dealer means any person who engages in the business of automobile wrecking, storing nonoperating vehicles, or operating a junkyard.

(b) Nonoperating vehicle storage yard means any lot or parcel of land on which are kept five or more vehicles which for a period exceeding thirty days have not been capable of operating under their own power, and from which no parts have been or are to be removed for reuse or sale.

SECTION 5.24.020 License--Application
Application for junk, automobile wrecking, or nonoperating vehicle storage yard license shall be made to the Issuing Officer on forms provided by the Issuing Officer.

SECTION 5.24.030 License--Procedure
The procedure to follow, except as otherwise provided in this chapter, in obtaining a license is that set forth in uniform licensing procedure, set out in Chapter 5.04. The fee for a license shall be four hundred twenty dollars ($420.00). (Ord. 88-783, 5-24-88)

SECTION 5.24.040 Regulations
It is unlawful for any person to carry on, maintain or conduct a junkyard, motor vehicle wrecking yard for the storage of nonoperating motor vehicles in the City, unless such establishment is carried on, maintained or conducted in compliance with the following regulations:

(a) Such establishment shall be carried on, maintained or conducted entirely inside an enclosed building or buildings, or on premises entirely enclosed by a solid fence or wall at least six feet in height and constructed according to the requirements of this code.

(b) Such fence or wall shall be placed, or be maintained in a neat, substantial, safe condition and shall be painted, unless of masonry or rustproof metals.
(c) No sign, picture, transparency, advertisement or mechanical device which is used for the purpose of, or which does advertise or bring to notice any person or persons, or article or articles of merchandise, or any business or profession, or anything that is to be or has been sold, bartered or given away, shall be placed or be maintained, or caused to be maintained, upon the outward face of such fence or wall; except that a business carried on, maintained or conducted within such fenced or walled enclosure and in accordance with applicable zoning regulations may be advertised by use of a space not exceeding six feet in height and fifteen feet in length on each side of such enclosure.

(d) Gates for access to the premises shall swing inwardly, and such gates shall be kept closed when the premises are not open for business.

(e) No junk or secondhand article shall be piled, or permitted to be piled, in excess of the height of the enclosing fence or wall or nearer than two feet thereto.

(f) All gasoline, oil or other inflammable liquid and all gas shall be drained and removed from any unregistered motor vehicle or other junk or secondhand article located in said building, buildings or premises.

(g) The material located in or on the premises shall be so arranged that reasonable inspection or access to all parts of the premises can be had at any time by the proper fire, health, police and building authorities.

(h) The Director of Planning Services shall at least annually inspect all licensed establishments for compliance with the provisions of this section.

5.24.050 Exception to fence requirement. An exception to the fence requirement of Section 5.24.040 may be granted to authorize the fencing of less than all sides of the premises for which a license is sought, upon a finding that the fencing of all sides thereof is not necessary to prevent ingress to or egress from the premises other than through the gate or door designed to provide access to the premises. The procedures for application, consideration, and granting or denial of an exception shall be those established by the zoning ordinance for a special use permit. The application for an exception shall be forty dollars, except that if the application for an exception is made in conjunction with an application for the permit mentioned above only the application fee applicable to such permit shall be charged.

5.24.060 Records of dealer. At the end of each week every dealer shall file with the Chief of Police properly completed "buy form" records for all property received during each week by such dealer. Such "buy form" records shall be on forms furnished by the Chief of Police. The "buy form" records shall be made in triplicate, written, printed or typed in a legible manner. The "buy form" shall contain the following:

(a) The name of the person from whom the goods were purchased, together with the address and description of the person from whom such goods were purchased and the license number and description of the vehicle in which the goods were delivered to the dealer;

(b) A description of the thing or things purchased by the name of the article, the name of the manufacturer, if known, and serial number or numbers and initials or identifying marks or inscriptions if the article is one which is identified by such numbers, initials, marks or inscriptions;

(c) Such other information required by the Chief of Police which may assist in the detection of stolen property;
(d) A copy of each "buy form" record shall be kept on file at the place of business of the
licensee for a period of two years, and shall be available for inspection by the Chief of Police or
any of his deputies, or any peace officer of this State at all reasonable times;

(e) This section shall not apply to secondhand motor vehicles the transfer of ownership of
which is required to be made a matter of record with the California Motor Vehicle Department
pursuant to the Vehicle Code, except that the records of dealers of purchases and sales of such
articles made within the City shall be open to the inspection of the Chief of Police.

5.24.070 Records of Chief of Police. The Chief of Police shall maintain a file of all records
received pursuant to the terms of this chapter for a period of two years and such records shall be
open to inspection by any peace officer of this state.

5.24.80 Retention of goods period. Except as otherwise provided in this chapter:

(a) Every dealer shall retain in his possession for a period of ten days after acquisition by him
all merchandise except that defined in subsection (e) of Section 5.24.060 prior to any sale or
disposal.

(b) The ten-day holding period shall commence with the date that the "buy form" report of its
acquisition is filed with the Chief of Police by the dealer. Under such conditions as he may
require, the Chief of Police may for good cause authorize prior disposition of any such property in
lieu of holding the property for the prescribed ten days.

5.24.090 Goods not to be altered. A junk, automobile wrecking, or nonoperating vehicle storage
yard dealer shall not allow any property pledged to or purchased by him to be cleaned, altered,
repaired, painted or otherwise changed in appearance until such property has been held for the
time required by this chapter or unless released by the Chief of Police, except property reported
under subsection (e) of Section 5.24.060. Such property shall be exposed to public view during
business hours for the duration of the holding period or until released by the Chief of Police.

5.24.100 Goods released by Chief of Police. The Chief of Police may release any property
required to be held by this chapter, if after an inspection he is satisfied that such property is in the
lawful possession of the junk, automobile wrecking, or nonoperating vehicle storage yard dealer.

5.24.110 Hold-order by Chief of Police. The Chief of Police may place a hold-order for a period
of thirty days upon any property acquired by the junk, automobile wrecking, or nonoperating vehicle storage yard dealer in the course of his business and upon release of such property, the
Chief of Police may require the junk, automobile wrecking, or nonoperating vehicle storage yard
dealer to keep a true record of such property and include therewith the true name and address of
the person to whom such property was sold, or a record of any other method of disposition. The
junk automobile wrecking, or nonoperating vehicle storage yard dealer shall keep for two years
any record required under this section.

5.24.120 Application denial--License suspension and/or revocation. The Issuing
Officer may deny the application for license or suspend for thirty days or less or revoke the license
of any junk, automobile wrecking, or nonoperating vehicle storage yard dealer if the health, welfare
or public morals of the community warrant such denial, suspension or revocation or if the applicant
or licensee or any employee, agent or representative thereof has:

(a) Knowingly made any false, misleading or fraudulent statement of a material fact in the
application or in any record or report required to be filed under this chapter; or any statute related
to the doing of business regulated by this chapter; or
(b) Violated any of the provisions of this chapter or any statute related to the doing of business regulated by this chapter; or

(c) A bad moral character, or a bad reputation for truth, honesty or integrity; or

(d) Committed any unlawful fraudulent deception or dangerous act in the course of doing business regulated by this chapter; or

(e) Demonstrated that he is unfit to be trusted with the privileges granted by a license for doing business as a junk, automobile wrecking, or nonoperating vehicle storage yard dealer.
5.28.010  Findings.  The City Council finds that secondhand/pawnbroker businesses provide a means of disposing of stolen goods. Investigations by law enforcement agencies reveal that new, used and stolen property is acquired and sold by secondhand/pawnbroker businesses. Because secondhand/pawnbroker businesses can be vehicles for the disposal of stolen goods, such businesses should be subject to controls to minimize the potential traffic of stolen goods. (Ord. No. 2013-1378, 4/23/13)

5.28.020  Intent. The California Business and Professions Code, and California Financial Code contain provisions enacted by the State of California for the uniform regulation of secondhand goods, to curtail the dissemination of stolen property and to facilitate the recovery of stolen property. It is the intent of this Chapter to preclude secondhand/pawnbroker businesses from being depositories for stolen goods by providing regulations consistent with state law. (Ord. No. 2013-1378, 4/23/13)

5.28.030  State Requirements. The provisions of Article 4 (Tangible Personal Property), Sections 21625–21647 of the California Business and Professions Code, and Division 8 (Pawnbrokers), Sections 21000-21307 of the California Financial Code, are applicable within the jurisdictional boundaries of the City of San Marcos as may be amended from time to time. (Ord. No. 2013-1378, 4/23/13)

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

(a)  Issuing Authority means the San Diego County Sheriff’s Department.

(b)  Issuing Officer of the City of San Marcos means the City Manager of the City of San Marcos or his designee.

(c)  Pawnbroker has the same definition as the term “pawnbroker” in Financial Code Section 21000.

(d)  Secondhand dealer has the same definition as the term “secondhand dealer” in Business and Professions Code Sections 21626 and 21626.5.

(e)  State Secondhand Dealer/Pawnbroker Regulations means California Business and Professions Code, Article 4 (Tangible Personal Property), Sections 21625-21647, and California Financial Code, Division 8 (Pawnbrokers), Sections 21000-21307.

(f)  Tangible personal property has the same definition as the term “tangible personal property” in Business and Professions Code Section 21627. (Ord. No. 2013-1378, 4/23/13)
5.28.050 Licenses Required. No person shall conduct business as a pawnbroker or secondhand dealer within the City of San Marcos without first obtaining a state secondhand dealer or pawnbroker license from the Issuing Authority, pursuant to the requirements and procedures set forth in the State Secondhand Dealer/Pawnbroker Regulations.

No person shall conduct business as a pawnbroker or secondhand dealer within the City of San Marcos without first obtaining a business license. A copy of the state secondhand dealer or pawnbroker license must be provided, together with any other documentation that the Issuing Officer of the City of San Marcos may require, prior to issuance of a City business license. (Ord. No. 2013-1378, 4/23/13)

5.28.060 Goods not to be altered. A secondhand dealer or pawnbroker shall not allow any second-hand property pledge to or purchased by him to be cleaned, altered, repaired, painted or otherwise changed in appearance until such secondhand property has been held for the time required by this chapter or unless released by the Sheriff’s Department. Such secondhand property shall be available for public view during business hours for the duration of the holding period or until released by the Sheriff’s Department. (Ord. No. 2013-1378, 4/23/13)

5.28.070 Compliance with zoning ordinance. No secondhand or pawnbroker businesses may be carried on where prohibited by the zoning ordinance or within a structure which does not comply with applicable building code regulations. (Ord. No. 2013-1378; 4/23/13)

5.28.080-5.28.140 (Repealed by Ord. No. 2013-1378, 4/23/13)
CHAPTER 5.32

AIRCRAFT TICKET BROKERS

SECTIONS:

5.32.010 Definitions
5.32.020 Bond required
5.32.030 License
5.32.040 Privilege of license holder
5.32.050 Representations prohibited
5.32.060 Reserve surplus

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

(a) Aircraft means all vehicles of flight which are licensed to carry four or more passengers whether takeoff is from land or water.

(b) Aircraft transportation broker and/or aircraft transportation brokerage business means any person engaged in the sale, solicitation or procurement of air transportation or the issuance or promise to issue any ticket, reservation, script, receipt or any other token for passenger space on any aircraft other than by the owner or operator of one or more aircraft or his authorized agent.

5.32.020 Bond required. The applicant, with his application, shall file a surety bond executed by such applicant as principal, with a surety company authorized to do business in this State in the sum of five thousand dollars conditioned for the faithful and honest conduct of business by the applicant and/or his employees or agent. Such bond as to form, execution and sufficiency shall be approved by the City Attorney. The bond required by this section shall be taken in the name of the people of this State and every person injured by the willful, malicious or wrongful act of the principal acting in the course and scope of his occupation or business or by any official, agent or employee of said principal acting in the course or scope of his employment or agency, may bring an action on the bond in his own name to recover damages suffered by reason of said willful, malicious or wrongful act.

5.32.030 License. The procedure to follow, except as otherwise provided in this chapter, in obtaining a license is that set forth in the uniform licensing procedure, set out in Chapter 5.04. The fee for a license shall be ten dollars.

5.32.040 Privilege of license holder. Such license, if issued, shall entitle the applicant and/or his officers, employees and agents to engage in the business of air transportation brokers subject to the further restrictions of this chapter.

5.32.050 Representations prohibited. No person, whether licensed under this chapter or not, who is not the owner or operator of one or more aircraft or the salaried employee or authorized agent of the owner or operator of one or more aircraft shall in the course or scope of his business or occupation make any statement or representations or advertise, either in writing or by word of mouth, that he can provide or arrange or sell any ticket, reservation, script, receipt, or any other token for passenger space on any aircraft leaving or arriving at any specified place and/or at any specified or approximate time unless he has at the time he makes such statement, representation or advertisement, a legally enforceable contract with the owner or operator of the aircraft for such passenger space.
5.32.060 Reserve surplus. Any person, whether licensed or not, who engages in the aircraft transportation brokerage business shall keep as reserve surplus an amount equal to five percent of the previous month's gross returns in the operation of such business either at his place of business, on his person, or in a depository licensed under the laws of this State. Said reserve shall be used only for the purpose of making refunds to clients or customers for the inability of such person to perform its contract of furnishing such transportation to any client or customer or for any damages arising out of such failure of performance. Failure to disclose information necessary to evidence compliance with this section to the County Auditory or his authorized deputy shall render the license null and void.
CHAPTER 5.36

CIRCUSES, CARNIVALS AND AMUSEMENT CENTERS

SECTIONS:

5.36.010  Permit--Generally
5.36.020  Permit--Operation on City property
5.36.030  Permit--Operation on private property
5.36.040  Fee
5.36.050  Renewal Fee
5.36.060  Insurance

5.36.010  Permit--Generally.  The procedure to follow, except as otherwise provided in this chapter, in obtaining a permit is that set forth in the uniform licensing procedure set out in Chapter 5.04.

5.36.020  Permit--Operation on City property.  Upon receipt of an application to operate or exhibit such carnival or go-cart center on City property with no paid admissions, the Issuing Officer shall issue a permit for the entire term thereof upon determination that such use will not be in violation of any zoning ordinance of the City, that the location and type of equipment are approved by the Department of Planning Services, that a current certificate of inspection has been issued by the State for each amusement ride to be operated within the carnival or go-cart center and that the applicant has the insurance required by Section 5.36.060.

5.36.030  Permit--Operation on private property.  Upon receipt of an application to operate or exhibit such carnival or go-cart center on private property the Issuing Officer shall determine if said carnival or go-cart center complies with the requirements of the zoning ordinance and the insurance requirements of Section 5.36.060 and that a current certificate of inspection has been issued by the State for each amusement ride to be operated within the carnival or go-cart center.  If it is found to so comply, the Issuing Officer shall issue a permit for the entire term thereof or for one year, whichever is the lesser period of time.

5.36.040  Fee.  A fee of two hundred dollars shall be paid to the City through the Issuing Officer upon the filing of each application for a permit to operate a carnival or go-cart center for a period of in excess of five days.  A fee of one hundred fifty dollars plus fifty dollars per day shall be paid to the city through the Issuing Officer upon the filing of each application for a permit to operate a carnival or go-cart center for a period not exceeding five days.

5.36.050  Renewal fee.  The fee for renewal shall be seventy dollars.

5.36.060  Insurance.  Every operator of such carnival or go-cart center shall obtain and maintain in full force and effect public liability insurance in the sum of five hundred thousand dollars for the death or injury to more than one person in the same accident or occurrence.
CHAPTER 5.40

DISTRIBUTION OF COUPON BOOKS

SECTIONS:

5.40.010 Merchandise coupon defined
5.40.020 Permit required
5.40.030 Permit fee
5.40.040 Form of bond
5.40.050 Permittee regulations

5.40.010 Merchandise coupon defined. For the purpose of this chapter, "merchandise coupon" means any coupon, certificate, ticket, book, card or passbook for which the holder thereof can obtain goods, wares, merchandise or services.

5.40.020 Permit required. No person shall sell, offer to sell, solicit the sale of, take orders for, give away, offer to give away, distribute or deliver, for the payment of a fee or charge which is less than seventy-five percent of the retail value of like goods, wares, merchandise or services in the City, a merchandise coupon without first obtaining a permit therefore.

5.40.030 Permit fee. The fee for a permit shall be one hundred sixty-one dollars ($161.00). The fee shall be accompanied by a bond in the sum of one thousand dollars. The procedure to follow, except as otherwise provided in this chapter, in obtaining a permit is that set forth in the Uniform Licensing Procedure set out in Chapter 5.04. (Ord. No. 88-783, 5-24-88)

5.40.040 Form of bond. The bond required by Section 5.40.030 shall be in a form approved by the City Attorney; shall be executed by the applicant as principal and by a corporation authorized to do business as a surety in the State, as surety; and shall be conditioned that any person injured by any misrepresentation, fraud, breach of contract or failure or refusal to deliver as represented any goods, or render any services, in whole or in part, may recover from the principal and surety, jointly or severally any damages suffered thereby, together with reasonable attorney's fees.

5.40.050 Permittee regulations. Every person who engages in any of the activities for which a permit if required by Section 5.40.020 shall:

(a) Make no statement or representation or advertise in the scope of such activity, either in writing or orally;

   (1) That the intended recipient is the winner of any drawing or contest, unless such drawing or contest has been knowingly entered prior thereto by such recipient,

   (2) That the City or any department or officer thereof has approved of such activity.

(b) Announce to the intended recipient his name and the name of the individual or organization, whom he represents.
CHAPTER 5.42
VENDING OF PRINTED MATTER FROM PUBLIC STREETS

SECTIONS:

5.42.010 Definitions
5.42.020 Supervisorial finding
5.42.030 Prohibition

5.42.010 Definitions. Whenever in this chapter the following terms are used, they shall have the meanings respectively ascribed to them as follows:

(a) **Street** shall mean and includes any and every public thoroughfare, way, street, alley and highway, freeway, the curbing, sidewalk, parkway and structures, whether such right of way is owned or maintained by a public district, the city, the County of San Diego or the State of California, and all public property bordering upon such thoroughfare, way, street, alley or highway in the City of San Marcos. **Street** shall mean and include any real property in the incorporated territory of the County of San Diego situated immediately adjacent or contiguous to any public thoroughfare, way, street, alley, sidewalk, or parkway in the City.

(b) **To sell** means and includes to print, prepare, publish, vend, distribute, disseminate or throw away or to attempt to print, prepare, publish, vend, distribute, disseminate or throw away. **To sell** further means and includes to hold out or offer in return for remuneration or to hold out, suggest, advertise or offer without charge, and includes active as well as passive holding out, suggesting or advertising by any means or manner whatsoever.

(c) **Person** means and includes, in addition to the meaning set forth in Section 12.115 of the San Diego County Code, all agents and employees, apparent or actual, who are acting on their own or on their principal's behalf and their principal or employer.

5.42.020 Council Finding. The City Council hereby finds and determines as follows:

That the use of the streets within the City by persons for the purpose of selling or giving away written, printed or duplicated forms, charts, tables, lists, sheets, posters, papers, dodgers, handbills, circulars, letters, booklets and other matter giving or purporting to give the entry or entries or probable entry or entries of contestants in any horse race or other contests concurrently taking place, thereafter to take place or which have taken place in the County of San Diego, or the selling or giving away of such matter which gives or purports to give tips, information, predictions, selections of or advice as to the winners or probable winners or losers or of the standing or probable standing of any horse or other contestant, or the selling or giving away of such matter which contains or purports to contain the actual, probable or possible state, past, present or future, of the betting, wagering or odds upon or against any horse or other contestant in any such horse race or other contest, has created and will continue to create, unless prohibited, serious, difficult and dangerous traffic conditions upon the streets within the City; that serious congestion of vehicular traffic has resulted and will result to the extent that the health, safety and welfare of persons using aid streets has been and will be put in immediate and grave peril. The Council further finds and determines that no other remedy is adequate to control and effectually solve said traffic congestion and peril except to prohibit entirely the activity of persons as herein above described upon the streets within the City.
5.42.030 **Prohibition.** No person shall sell or give away, whether from a fixed location or transiently, upon, over or across any street within the City any written, printed or duplicated form, chart, table, list, sheet, poster, paper dodger, handbill, circular, letter, booklet or any other printed, typewritten, mimeographed or written matter giving or purporting to give the entries or probably entries of contestants in any horse race or other contest concurrently taking place or thereafter to take place or which has taken place anywhere within the County of San Diego or any such writing which gives or purports to give any tip, information, prediction or selection of, or advice as to the selection of, or advice as to the winner or probable winner or a loser or probable loser or of the standing or probable standing of any horse or other contestant herein or any writing which contains the actual, probable or possible state, past, present or future of the betting, wagering or odds upon or against any horse or other contestant in any such horse race or contest.
5.44.010 Citation of Chapter. This Chapter may be cited as the San Marcos Massage Establishment and Technician Ordinance.

5.44.020 Purpose and intent. It is the purpose and intent of this chapter to provide for the orderly regulation of the massage business in the City of San Marcos.

5.44.030 Rules of construction. This chapter shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this chapter the following provisions shall govern its interpretation and construction:

(a) When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

(b) The masculine form as used in this chapter applies equally to a female person or a corporation.

(c) Time is of the essence in this chapter. No license or permit holder shall be relieved of his obligation to comply promptly with any provision of this chapter by any failure of the City to enforce
prompt compliance with any of its provisions except as provided in Section 5.44.150.

(d) Any right or power conferred or duty imposed upon any officer, employee, department or board of the City is subject to transfer by operation of law to any other officer, employee, department or board of the City.

(e) No license or permit holder shall have any recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or the enforcement thereof.

(f) This chapter does not relieve any license or permit holder of any requirement of the City Charter or of any ordinance, rule, regulation or specification of the City.

5.44.040 Definitions. Whenever in this chapter the following words or phrases are used, they shall mean:

(a) City shall mean the City of San Marcos.

(b) Sheriff shall mean the Sheriff of the County of San Diego.

(c) Person shall mean a natural person, firm, partnership, association or corporation.

(d) Health Department means the Department of Health Services of the County of San Diego.

(e) Massage shall mean any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the body with the hands or other parts of the body with or without the aid of any mechanical or electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice.

(f) Massage establishment shall mean any establishment having a fixed place of business where any person, firm, association or corporation engages in or carries on or permits to be engaged in or carried on any of the activities mentioned in subsection (e) of Section 5.44.040 of this chapter. Any establishments engaged in or carrying on, or permitting any combination of massage and bathhouse shall be deemed a massage establishment.

(g) Off-Premises Massage shall mean the activity of providing massage services at a location other than premises licensed as a massage establishment.

(h) Massage Technician shall mean any person, including a trainee, male or female, who gives or administers to another person, for any form of consideration, a massage or bath as those words are defined in this chapter.

(i) Specified Anatomical Area shall mean pubic region, human genitals, perineum, anal region and the area of the female breast that includes the areola and the nipple.

(j) License shall mean the business license to operate a Massage Establishment required by this Chapter.

(k) Permit shall mean the permit to engage in the activities of a massage technician required by this chapter.
(l) **Recognized school** means any school or institution of learning, which has for its purpose the teaching of the theory, method, profession, or work of massage, and which has been approved pursuant to Section 29007.5 of the California Education Code or pursuant to a similar code provision of another state.

(m) **Bathhouse** shall mean an establishment having a fixed place of business where any person engages in, conducts, or carries on any business of giving any kind or character of bath(s).

(n) **Building Inspection** shall mean the Planning and Land Use Department of the City of San Marcos.

(o) **Holistic Health Practitioners** shall mean non-medical health care therapists who use a massage specialty and therapeutic approach in caring for clients and who present to the Sheriff proof of satisfactory completion of one thousand hours of instruction in such specialty or proof of membership in a State or Nationally chartered organization devoted to the specialty of therapeutic approach. The practice of such health care therapists may include other services such as nutritional assistance or counseling as long as all activities are directed toward health care.

5.44.050 **Massage Establishment License.** The procedure to follow, except as otherwise provided in this chapter, in obtaining a license is that set forth in the Uniform Licensing Procedure, set out in Chapter 5.04 of this code. In addition to the reasons stated in the Uniform Licensing Procedure, the Issuing Officer may deny the application for a license if it is found that:

(a) The applicant, or in the case of an applicant/corporation or partnership, any of its officers, directors, holders of five percent or more of the ownership (stock or partnership), within five years immediately preceding the date of the filing of the application, has been adjudged to be a mentally disordered sex offender and has a duty to register with the Sheriff or Chief of Police under Section 290 of the Penal Code; or has been convicted of a violation of Sections 314 (indecent exposure), 315 (keeping or residing in a house of ill-fame), 316 (keeping a disorderly house, disturbing the peace), 647 (a) (soliciting or engaging in lewd or dissolute conduct in a public place), or 647 (b) (soliciting or engaging in prostitution) of the Penal Code, or convicted in another State of any offense which, if committed or attempted in this state, would have been punishable as one or more of the aforementioned offenses. No massage establishment license shall be issued by the Issuing Officer until he has been notified in writing by the Health Department and the City's Building Inspector that the applicant has fulfilled the requirements of this chapter.

5.44.060 **Application for Massage Establishment--Massage Service License.** The application for a license to operate a massage establishment shall set forth the exact nature of the massage to be administered, the proposed place of business and facilities therefore, and the name and address of each applicant.

In addition to the foregoing, any applicant for a license shall furnish the following information:

(a) The two previous addresses immediately prior to the present address of the applicant.

(b) Written proof satisfactory to the Sheriff that the applicant is over the age of eighteen years.

(c) The applicant's height, weight, color of eyes and hair.

(d) Two portrait photographs, at least two inches by two inches. One photograph shall be retained by the Sheriff and one photograph shall be affixed to the license.
(e) Business, occupation, or employment history of the applicant for the three years immediately preceding the date of application.

(f) The business license or permit history of the applicant, whether such person, in previously operating in this or another City, County, or State, under license or permit, has had such license or permit suspended or revoked, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation.

(g) Whether such person has ever been convicted of any crime, except misdemeanor traffic violations. If any person mentioned in this subsection has been so convicted, a statement must be made giving the place and court in which such conviction was had, the specific charge under which the conviction was obtained, the sentence imposed as a result of such conviction and the circumstances surrounding the crime for which he was convicted.

(h) Such other identification and information necessary to discover the truth of the matter specified in this chapter as required to be set forth in this section.

(i) Nothing contained herein shall be construed to deny to the Sheriff the right to take the fingerprints and additional photographs of the applicant, nor shall anything contained herein be construed to deny the right of the Sheriff to confirm the height and weight of the applicant.

(j) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its Articles of Incorporation, together with the names and residence addresses of each of its officers, directors, and each stockholder holding more than five percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant apply.

5.44.070 Massage Establishment License Application Fee. The annual nonrefundable fee for a massage establishment license shall be three hundred and thirty-four dollars ($334.00). The appropriate fee shall accompany the submission of each application to defray in part the cost of inspection, investigation and enforcement of this chapter. The renewal fee shall be three hundred and twenty-four dollars ($324.00).

5.44.080 Off-Premises Massage Business - License Required. It shall be unlawful for any person, association, partnership or corporation to engage in, conduct, carry on, or advertise, or to permit to be engaged in, conducted, or carried on, any off-premises massage business within the City without a license issued pursuant to the provisions of this Chapter for each and every such massage business.

5.44.090 Off-Premises Massage Business License.

(a) Any person, association, partnership, or corporation desiring to obtain a license to conduct an off-premises massage business shall make an application to the Sheriff or his designated representative. An annual nonrefundable fee shall accompany the submission of each application to defray the cost of investigation, inspection and enforcement of this Section. An annual nonrefundable renewal fee shall also be charged to defray associated costs of investigation and enforcement.

(b) Each applicant for a license to conduct an off-premises massage business shall furnish to the Sheriff or his designated representative all of the information required by Sections 5.44.010 through 5.44.270 of this Chapter.
(c) The procedure to follow in obtaining an Off-Premises Massage Business License is that set forth in the Uniform Licensing Procedure of Chapter 5.04 of this Title.

(d) Off-premises massage operations shall be carried on only between the hours of 7:00 a.m. and 12:00 a.m.

(e) In the event application is made to establish a Massage Establishment and an Off-Premises Massage Business to be conducted on and from the same location, the fee for the Off-Premises Massage License shall be one-half that of the Massage Establishment Fee.

### 5.44.100 Massage Technician's Permit

(a) The procedure to follow, except as otherwise herein provided, in obtaining a permit is that set forth in the Uniform Licensing Procedure of Chapter 5.04 of this Title. In addition to the reasons stated in the uniform licensing procedure the Issuing Officer may deny the application for a permit where it is found that the applicant has, within five years immediately preceding the date of filing of the application, been adjudged to be a mentally disordered sex offender and has a duty to register with the Sheriff or Chief of Police under Section 290 of the Penal Code; or has been convicted of a violation of Section 314 (indecent exposure), 315 (keeping or residing in a house of ill-fame), 316 (keeping a disorderly house, disturbing the peace), 647 (a) (soliciting or engaging in lewd or dissolute conduct in a public place), or 647 (b) (soliciting or engaging in prostitution) of the Penal Code, or convicted in another State of any offense which, if committed or attempted in this State would have been punishable as one or more of the heretofore mentioned offenses.

(b) No massage technician permit shall be issued by the Issuing Officer until he has been notified in writing by the Health Department that the applicant has fulfilled the requirements of paragraph (m) of Section 5.44.120.

### 5.44.110 Massage Technician Application Fee

The annual nonrefundable fee for a massage technician permit shall be $158.00. The annual nonrefundable renewal fee shall be $55.00, provided, however, the provisions of Paragraphs (l) and (m) of Section 5.44.120 shall not apply to such annual renewal. The appropriate fee shall accompany the submission of each application to defray the cost of investigation and examination.

A permit to act as a massage technician does not authorize the operation of a massage establishment and/or Off-Premises Massage business. Any person obtaining a permit to act as a massage technician who desires to operate a massage establishment and/or Off-Premises Massage business must separately apply for a license therefore.

A person who applies for a license to operate a massage establishment and/or Off-Premises massage business and who desires to act as a massage technician within said establishment who pays the fee required by Section 5.44.070 of this Chapter shall not be required to pay the fee required by this Section.

### 5.44.120 Application Form for Massage Technician

The application for a massage technician permit shall contain the following:

(a) The name, residence address and telephone number.

(b) The previous addresses of the applicant, if any, for a period of three years immediately prior to the date of the application and the dates of residence at each.
(c) Social security number and driver's license number, if any.

(d) The applicant's sex, weight, height, color of hair and eyes.

(e) Written evidence, satisfactory to the Sheriff, that the applicant is at least eighteen years of age.

(f) Business, occupation or employment of the applicant for the three years immediately preceding the date of the application.

(g) Whether such person has ever been convicted of any crime, except misdemeanor traffic violations. If any person mentioned in this subsection has been so convicted, a statement must be made giving the place and court in which such conviction was had, the specific charge under which the conviction was obtained, the sentence imposed as a result of such conviction, and the circumstances surrounding the crime for which convicted.

(h) The business license or permit history of the applicant; whether such person, in previously operating in this or another County, City or State under license or permit, has had such license or permit suspended or revoked, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation.

(i) A certificate from a medical doctor licensed to practice in the State of California stating that the applicant has been examined and found free of any contagious or communicable disease. The certificate must be submitted prior to the issuance of the permit or license and the examination must be given within thirty days immediately preceding the issuance of the permit or license.

(j) Two portrait photographs, at least two inches by two inches, taken within the 6 month period immediately preceding the date of the application. One photograph shall be retained by the Sheriff for his files and one photograph shall be affixed to the permit.

(k) Such other identification and information as the Sheriff may require in order to discover the truth of the matters herein specified as required to be set forth in this section.

(l) Pass a qualifying written examination prepared by the Health Department and administered by the Sheriff establishing competency and ability of the applicant to engage in the practice of massage. In lieu of taking such written examination, applicant may furnish a diploma or certificate of graduation from a "recognized school" wherein the method, profession and work of massage is taught or may furnish evidence of employment as a massage technician for one thousand two hundred hours (1200).

(m) Pass an examination prepared and conducted by the Health Department wherein the applicant shall be required to demonstrate a basic knowledge of anatomy, physiology, hygiene and manual and mechanical massage. These examinations shall be conducted at regular intervals. The Health Director shall advise the Sheriff of the results of such examinations.

(n) The name and address of the massage establishment, if any, at which the applicant expects to be employed.

(o) The Sheriff shall fingerprint the applicant for search by the Federal Bureau of Investigation and the California State Division of Criminal Identification and Investigation.
5.44.130  **Massage Technician - Operating Requirements.**

(a) No massage technician or trainee, while performing any task or service associated with the massage business, shall be present in any room with another person unless the person's specified anatomical area is fully covered.

(b) No massage technician shall be on the premises of a massage establishment during its hours of operation while performing or available to perform any task or service associated with the operation of a massage business, unless the massage technician is fully covered from a point not to exceed four (4) inches above the center of the kneecap to the base of the neck excluding the arms, with the following exception: shorts may be worn so long as they extend down the leg a minimum of 3 inches from the crotch and the body above that point is fully covered to the base of the neck, excluding the arms. The covering, which includes trousers, pants or shorts, will be of an opaque material and will be maintained in a clean and sanitary condition.

(c) No massage technician, while performing any task or service associated with the business of massage, shall massage or intentionally touch the specified anatomical areas of another person.

5.44.140  **Massage technician trainee.** A massage technician trainee permit shall be issued to any person who:

(a) Is currently enrolled and has completed at least 25 hours of instruction in a "Recognized School" as defined in Paragraph (l) of Section 5.44.040;

(b) submits a letter signed by the owner or manager of a license massage establishment stating the immediate intent to employ the applicant to do massage as a trainee working under the direct supervision and control of a licensed massage technician; and

(c) has fulfilled all the requirements of Section 5.44.120, except Paragraphs (l) or (m), shall be issued a Massage Technician Trainee Permit.

(d) The procedure to follow is that set forth in the Uniform Licensing Procedure of Chapter 5.04 of this Title. In addition to the reasons stated in the Uniform Licensing Procedure, the Issuing Officer may deny an application for a permit if it is found that: The applicant has, within 5 years immediately preceding the date of the filing of the application, been adjudged to be a mentally disordered sex offender and has a duty to register with the Sheriff or Chief of Police under Section 290 of the Penal Code; or has been convicted of a violation of Section 314 (Indecent Exposure), 315 (Keeping or Residing in a House of Ill-Fame), 316 (Keeping a Disorderly House, Disturbing the Peace), 647 (a) (Soliciting or Engaging in Lewd or Dissolute Conduct in a Public Place), or 647 (b) (Soliciting or Engaging in Prostitution) of the Penal Code, or convicted in another state of any offense which, if committed or attempted in this state would have been punishable as one or more of the heretofore mentioned offenses.

(e) The trainee permit shall allow the student to work in a massage establishment under the supervision and direction of a massage technician who has received a permit issued under the provisions of this Chapter, provided, however, no licensed massage technician shall be permitted to supervise more than two persons issued a trainee permit at any one time. The trainee permit shall expire nine months from the date of issuance and shall not be renewed unless good cause is shown by the applicant for such renewal. Any person desiring to obtain a permit to act as a massage technician trainee shall make an application to the Issuing Officer.
The non-refundable fee for a massage technician trainee permit shall be $158.00, provided, however, that the annual non-refundable renewal fee shall be $55.00. The appropriate fee shall accompany the submission of each application. The trainee must at all times comply with the laws relating to massage establishments and the failure to comply may render the trainee ineligible to obtain a massage technician permit.

An applicant who is denied a trainee permit may request a hearing from the Sheriff in the manner prescribed by Section 16.111 of the Uniform Licensing Procedure.

5.44.150 Qualification Period. All those persons employed as massage technicians in massage establishments at the time this chapter goes into effect or so employed within the twelve months immediately preceding such effective date, who cannot qualify for a massage technician permit by reason of Paragraphs (l) and (m) of Section 5.44.120, will have one hundred twenty days (120) to qualify either as a massage technician or a massage technician trainee and obtain the required permit under this chapter. All other information required under Section 5.44.120 shall be submitted immediately.

5.44.160 Massage Establishment Facilities. No license to conduct a massage establishment shall be granted unless an inspection by the Building Inspector of the City and the County Health Department reveals that the proposed establishment complies with each of the following minimum requirements:

(a) A recognizable and legible sign complying with the sign regulations of this code shall be posted at the main entrance identifying the premises as a massage establishment.

(b) A light level of no less than five foot candles at any point within the room shall be maintained in each room or enclosure where massage services are performed on patrons.

(c) Adequate dressing, locker and toilet facilities shall be provided for patrons:

(1) In steam rooms and rooms containing tubs or showers, a waterproof floor covering shall be provided which extends up the walls at least six inches and shall be covered at the floor-wall juncture with at least a three-eighths inch (3/8) radius. Toilet room shall be of similar construction.

(2) Walls of toilet and bathing facilities shall be smooth, waterproof and kept in good repair.

(d) Cabinets shall be provided for the storage of clean linen. Approved containers shall be provided for the storage of all soiled linen.

(e) Minimum ventilation shall be provided in accordance with the building code of the City of San Marcos. To allow for adequate ventilation in cubicles, rooms and areas provided for patrons' use, which are not serviced directly by required window or mechanical systems of ventilation, partitions shall be constructed so that the height of partitions do not exceed seventy-five percent (75%) of the floor-to-ceiling height of the area in which they are located.

(f) A minimum of one separate wash basin provided with hot and cold running water, soap and individual towels in a dispenser shall be provided in each massage establishment for the use by employees. This wash basin shall be separate from wash basins located in toilet rooms.

(g) All plumbing and electrical installations shall be installed under permit and inspection of the Building Inspection Department and such installations shall be installed in accordance with the Uniform Building Code and Uniform Plumbing Code.
All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, shall be thoroughly cleaned and disinfected with a disinfectant approved by the Health Department each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected with a disinfectant approved by the Health Department after each use.

Towels, sheets, and linens of all types and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, clothes, and sheets shall not be used for more than one person. Reuse of such linen is prohibited unless the same has been first laundered. Common use of towels or linens is prohibited. Heavy white paper may be substituted for sheets, provided, that such paper is used once for each person and then discarded into a sanitary receptacle.

All lavatories or washbasins shall be provided with hot and cold running water, soap and single service towels in wall-mounted dispensers.

Security deposit facilities for the protection of the valuables of the patrons shall also be available.

Disinfecting agents and sterilizing equipment approved by the Health Department shall be provided for any instruments used in performing acts of massage.

Pads used on massage tables shall be covered in a workmanlike manner with durable washable plastic or other acceptable waterproof material.

No exterior entrance to the massage establishment which is regularly used by the public for ingress or egress to such establishment shall be locked during business hours.

All unoccupied rooms and areas of massage establishment shall be subject to reasonable inspection during hours of the business operation.

A minimum of one tub or shower, and one toilet and wash basin shall be provided by every massage establishment; provided, however, that if male and female persons are employed by any massage establishment or if male and female patrons are to be served simultaneously at said establishment, or any combination thereof, a separate massage room, or rooms, separate dressing facilities and separate toilet facilities shall be provided for male and female patrons and employees. Further, in those establishments where steam room or sauna baths are provided, if male and female patrons are to be served simultaneously, separate steam rooms or sauna rooms shall be provided for male and female patrons.

A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises. The services shall be described in readily understandable language. No owner, operator, responsible managing employee, manager, or permittee in charge of, or in control of the massage establishment, shall permit and no massage technician shall offer to perform any services other than those posted.

With the exception of bathrooms, showers and dressing rooms, no owner, operator, responsible managing employee, manager, or permittee in charge of or in control of any massage establishment which is used by the patrons or which can be viewed by patrons from such an area, unless the person's specified anatomical areas are fully covered.

No owner, operator, responsible managing employee, manager or permittee in charge of or in control of a massage establishment shall during the course of any service or task associated
with the operation of a massage operation permit any person to massage, or intentionally touch the specified anatomical areas of another person.

(1) No owner, operator, responsible managing employee, manager or permittee in charge of or in control of a massage establishment shall permit any massage technician to be on the premises of a massage establishment during its hours of operation while performing or available to perform any task or service associated with the operation of a massage business, unless the massage technician is fully covered from a point not to exceed four (4) inches above the center of the kneecap to the base of the neck excluding the arms, with the following exception: shorts may be worn so long as they extend down the leg a minimum of three (3) inches from the crotch and the body above that point is fully covered to the base of the neck, excluding the arms. The covering, which includes trousers, pants or shorts, will be of an opaque material and will be maintained in a clean and sanitary condition.

5.44.170 Off-Premises Massage Business - Operating Requirements.

(a) No owner, operator, responsible managing employee, manager or permittee in charge of or in control of any off-premises massage business shall knowingly permit a massage technician to give a massage to or be in any room with a patron unless the patron's specified anatomical areas are fully covered.

(b) No owner, operator, responsible managing employee, manager or permittee in charge of or in control of any off-premises massage business shall permit any massage technician to be on the premises of a massage establishment during its hours of operation while performing or available to perform any task or service associated with the operation of a massage business, unless the massage technician is fully covered from a point not to exceed four (4) inches above the center of the kneecap to the base of the neck excluding the arms, with the following exception: shorts may be worn so long as they extend down the leg a minimum of three (3) inches from the crotch, and the body above that point is fully covered to the base of the neck, excluding the arms. The covering, which includes trousers, pants or shorts, will be of an opaque material and will be maintained in a clean and sanitary condition.

(c) No owner, operator, responsible managing employee, manager or permittee in charge of or in control of any off-premises massage business shall knowingly allow any employee or massage technician associated with the off-premises massage business to massage or intentionally touch the specified anatomical areas of another person.

(d) The possession of a valid off-premises business license does not authorize the possessor to perform work for which a massage technician permit is required.

(e) The off-premises massage business license and a copy of the permit of each and every massage technician employed or working for the off-premises massage business will be available for inspection by a law enforcement officer on demand.

(f) No common use of towels or linens shall be permitted and reuse is prohibited unless they have first been relaundered.

(g) Disinfecting agents and sterilizing equipment sufficient to assure the cleanliness and safe condition thereof shall be provided for any instruments used in performing any massage.

(h) This Section shall be construed to require minimum standards only. The applicant shall be required to comply with all applicable provisions of this Title.
5.44.180 **Effective Date.** Any Off-Premises Massage Business coming within this Section must comply with the requirements of this Chapter no later than 90 days after the effective date of this Chapter.

5.44.190 **Name of business.** No person licensed to do business as herein provided shall operate under any name or conduct his business under any designation not specified in his permit.

5.44.200 **Change of location.** A change of location of a licensed massage establishment shall be approved by the Sheriff provided all applicable provisions of this chapter are complied with.

5.44.210 **Inspection.** The Sheriff, the Building Inspector of the City and the Health Department shall make, at least two times each calendar year, an inspection of each massage establishment in the City for the purpose of determining that the provisions of this chapter are met.

5.44.220 **Records of treatments.** Every person, association, firm, or corporation operating a massage establishment under a license as herein provided shall keep for a period of ninety days (90) a record of the date and hour of each treatment, and the name of the technician administering such treatment. Said record shall be open to inspection by officials charged with the enforcement of these provisions for the purposes of law enforcement and for no other purpose. The information furnished or secured as a result of any such inspection shall be confidential. Any willfully unauthorized disclosure or use of such information by any officer or employee of the City shall constitute a misdemeanor and such officer or employee shall be subject to the penalty provisions of this Title, in addition to any other penalties provided by law. Records shall be kept for a period of ninety days of treatments rendered off the business site.

5.44.230 **Applicability of regulations to existing business.** The provisions of this chapter shall be applicable to all persons and business described herein whether the herein described activities were established before or after the effective date of this Chapter.

5.44.240 **Exemptions.** This chapter shall not apply to the following classes of individuals, and no permit shall be required of such persons while engaged in the performance of the duties of their respective professions, nor shall a license be required for the establishment at which a massage is administered by or under the control and direction of such persons:

(a) Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly licensed to practice their respective professions in the State of California.

(b) Registered Nurses, Practical Nurses and Licensed Vocational Nurses who are licensed to practice under the laws of this State.

(c) Trainers of any amateur, semiprofessional or professional athlete or athletic team.

(d) Barbers and beauticians who are duly licensed under the laws of the State.

(e) Holistic Health Practitioners.

5.44.250 **Violation and Penalty.**

(a) Every person, except those persons who are specifically exempted by this Chapter, whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper for the owner, employee, or operator, or acting as a participant or worker in any way, who gives "massages" or conducts "a massage
“establishment” or practices the giving or administering of any of the services defined in Chapter 5.44 without first obtaining the necessary permit or license shall be guilty of a misdemeanor. Upon a conviction under this subsection, the Court shall, in addition to any other punishment it imposes, impose a fine of $100.00, no part of which shall be suspended.

(b) Any owner, operator, manager, or permittee in charge or in control of a massage establishment and/or Off-Premises Massage business who knowingly employees a person performing as a massage technician, as defined in this Chapter, who is not in possession of a valid, unrevoked permit or who allows such massage technician to perform, operate or practice within such place of business is guilty of a misdemeanor, and upon conviction, such person shall be punished by a fine not to exceed $1,000 or by imprisonment in the County Jail for a period not to exceed 6 months or both such fine and imprisonment. Upon a conviction under this Subsection, the Court shall, in addition to other punishment it imposed, impose a fine of $200 no part of which shall be suspended.

5.44.260 Severability. If any Section, Subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have adopted the Chapter and each Section, Subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more Sections, Subsections, sentence, clause or phrases be declared invalid.

5.44.270 Fee modification and allocation.

(a) All fees established by this chapter shall be reviewed annually by the City Clerk to determine whether such fees are adequate to cover the cost of implementing the provisions of this chapter. If the City Clerk determines that such fees should be modified he shall submit his proposal to the City Council, who, after the effective date of this chapter, may establish any schedule of fees.

(b) All fees established by this chapter shall be collected by the Sheriff and transferred to the City Treasurer of the City of San Marcos for deposit in general fund revenue to be allocated as determined by the City to defray the cost in enforcing the provisions of this Chapter. (Ord. No. 88-784, 5-24-88)
Chapter 5.46

BATHHOUSES

SECTIONS:

5.46.010 Definitions
5.46.020 Permit Required
5.46.030 Application for Permit or Renewal
5.46.040 Application for a Bathhouse Permit
5.46.050 Annual Permit Application Fee
5.46.060 Facilities Necessary
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5.46.090 Register to be Maintained
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5.46.210 Health and Sanitation Requirements and Regulations
5.46.220 Violations
5.46.230 Denial, Suspension or Revocation of Permit
5.46.240 Severability

5.46.010 Definitions: Whenever in this Chapter the following words or phrases are used, they shall have the meaning established in this Section:

(a) "Bathhouse" shall mean any establishment having a fixed place of business where any person engages in, conducts, or carries on any business of providing Turkish, Russian, Swedish, Finnish, hot air, vapor, electric cabinet, steam sweat, mineral, salt, sauna, fomentation, alcohol, shower, tub or sponge baths, soaking facilities such as a spa, or baths of any kind whatsoever. Any establishment carrying on or permitting any combination of massage and bathhouse shall be deemed a massage establishment and not a bathhouse. "Bathhouse" shall not include hospitals, nursing homes, sanitariums, or establishments where a person provides baths pursuant to his or her unrevoked certificate to practice the healing arts under the laws of the State of California. "Bathhouse" shall not include hotels, motels, and similar lodging establishments. "Bathhouse" shall not include establishments primarily providing physical fitness services, except where cubicles, rooms, or booths are provided for use by individual patrons of such establishments.

(b) "Person" shall mean any natural person, firm, association, club, organization, partnership, business trust, corporation, company, or other entity whatsoever which is recognized by law as the subject of rights or duties.

5.46.020 Permit Required. It shall be unlawful for any person to operate, maintain or keep in the unincorporated territory of the City, any bathhouse without an annual permit therefore issued by
the Sheriff. The permit, or any renewal thereof, may be denied if the bathhouse operation, as
proposed, does not comply with the provisions of this Chapter, regulations adopted pursuant to
this Chapter, and all building permits and fire codes.

5.46.030 Application for Permit or Renewal. Any person desiring a permit or renewal thereof
required by this Chapter, shall make application to the Sheriff by filing the application with the City
Clerk. The City Clerk shall verify that the application containing the information specified by
Section 5.46.040 and shall forward the completed application to the Sheriff.

5.46.040 Application for a Bathhouse Permit. The application for a permit to operate a
bathhouse shall set forth the exact nature of the baths to be administered, the proposed place of
business and facilities therefore, and the name and address of each applicant. In addition to the
foregoing, any applicant for a bathhouse permit shall furnish the following information:

(a) The two previous addresses immediately prior to the present address of applicant.

(b) Written proof that the applicant is over the age of 18 years.

(c) Applicant's height, weight, color of eyes and hair.

(d) Two portrait photographs at least 2" x 2".

(e) Business, occupation or employment of the applicant for the three years immediately
preceding the date of the application.

(f) The bathhouse or similar business license history of the applicant; whether such person, in
previously operating in this or another county or state under license, has had such license revoked
or suspended, the reason therefore, and the business activity or occupation subsequent to such
action of suspension or revocation.

(g) All criminal convictions except minor traffic violations.

(h) Such other identification and information necessary to discover the truth of the matters
hereinbefore specified as required to be set forth in the application.

(i) Nothing contained herein shall be construed to deny to the Sheriff the right to take
fingerprints and additional photographs of the applicant, nor shall anything contained herein be
construed to deny the right of said Sheriff to confirm the height and weight of the applicant.

(j) If the applicant is a corporation, the name of the corporation shall be set forth exactly as
shown in its articles of incorporation; the names and residence address of each of the officers,
directors and each stockholder owning more than ten percent of the stock of the corporation. If
the applicant is a partnership, the application shall set forth the name and residence address of
each of the partners, including limited partners.

5.46.050 Annual Permit Application Fee. The annual nonrefundable application fee for the
permit required by this Chapter shall be $100.00 The fee shall be paid at the time of filing the
application for period issuance or renewal.

5.46.060 Facilities Necessary. No permit to conduct a bathhouse shall be issued unless an
inspection by the Sheriff and the County Director of Health Services reveals that the establishment
complies with each of the following minimum requirements:
(a) Construction of rooms used for toilets, tubs, steam baths and showers, shall be made waterproof with approved waterproof materials.

(1) For toilet rooms, toilet room vestibules and rooms containing bathtubs, there shall be a waterproof floor covering, which will be carried up all walls to a height of at least six inches. Floor shall be covered up on base with at least 3/4 inch cover. The walls of all toilet rooms and rooms containing bathtubs shall be finished to a height of six feet from a smooth, nonabsorbent finish surface of Keene cement, tile, or similar material.

(2) Steam room and shower compartments shall have approved waterproof floors, walls and ceilings.

(3) Floors of wet and dry heat rooms will be adequately pitched to one or more floor drains properly connected to the sewer. (Exception: dry heat rooms with wooden floors need not be provided with pitched floors and floor drains.)

(4) A source of hot water shall be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

(b) Toilet facilities shall be provided in convenient locations, and every bathhouse shall provide at least one water closet. When five or more employees and patrons of each sex are on the premises at the same time, separate toilet facilities shall be provided. A single water closet per sex shall be provided for each 20 employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets in the toilet facility for males after one water closet has been provided; however, that there shall be at least one water closet for each 60 employees or patrons of the male sex. All toilet rooms shall be equipped with self-closing doors opening in the direction of ingress to the toilet rooms. Toilets shall be designated as to the sex accommodated therein.

(c) Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or the vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

(d) All portions of bathhouse establishments and baths shall be provided with adequate light and ventilation by means of windows or skylights with an area of not less than 1/8 of the total floor area, or shall be provided with approved artificial light and a mechanical operating ventilating system. Areas of the bathhouse, other than those areas provided only to individual patrons, shall, at all times during bathhouse operation, have a direct illumination level of at least 15 foot candles of light measured 30 inches above the floor. When windows or skylights are used for ventilation, at least 1/2 of the total required window area shall be operable.

To allow for adequate ventilation, cubicles, rooms, and areas provided for patrons' use not served directly by a required window, skylight, or mechanical system of ventilation shall be constructed so that the height of partitions does not exceed 75 percent of the floor-to-ceiling height of the area in which they are located.

5.46.070 Operating Requirements. All bathhouse permittees shall comply with the following operating requirements:

(a) Every portion of a public bathhouse including appliances, apparatus and personnel, shall be kept clean and operated in a sanitary condition.
(b) All employees shall be clean and wear clean outer garments, whose use is restricted to the bathhouse. Provision for separate dressing rooms for each sex must be available on the premises, with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

(c) All bathhouses shall be provided with clean laundered sheets and towels in sufficient quantities and shall be laundered between consecutive uses thereof and stored in an approved sanitary manner. No towels or sheets shall be laundered or dried in any public bathhouse unless such establishment is provided with approved laundry facilities for such laundering and drying. Approved receptacles shall be provided for the storage of soiled linens and paper towels.

(d) Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

(e) Provide educational programs for patrons in accordance with standards promulgated by the Department of Health Services in consultation with the San Diego County Regional Task Force on AIDS.

5.46.080  Issuance of Permit for Bathhouse.

(a) The Sheriff shall issue a Bathhouse Permit if all the requirements for a bathhouse described in this Chapter are met and shall issue a permit to any person who has applied for a permit to operate a bathhouse unless the Sheriff finds:

(1) That the operation proposed by the applicant, if permitted, would not comply with all applicable laws.

(2) That the applicant or any other person who will be directly engaged in the management and operation of a public bathhouse has been convicted of:

   a) An offense involving conduct which requires registration pursuant to Section 290 of the Penal Code.

   b) An offense involving the use of force and violence upon the person of another that amounts to a felony.

   c) An offense involving sexual misconduct with children.

   d) An offense as defined under Sections 311, 647(a), 647a, 315, 316 or 318 of the Penal Code of the State of California.

   e) The Sheriff shall disregard any conviction mentioned in subsections a, b, c or d of this Section, if he finds that the applicant has fully completed any sentence imposed because of such conviction and has fully complied with any conditions imposed because of such convictions, which convictions has occurred at least three years prior to the date of applications, and the applicant has not subsequently been convicted of any of the crimes herein mentioned, nor has suffered any subsequent felony convictions involving the use of force of violence on the person of another.

(b) After issuance of a permit, the Sheriff shall transmit a copy of the issued permit to the City Clerk for filing.
5.46.090 **Register to be Maintained.** The operator of a bathhouse must maintain a register of all persons employed as an employee of a bathhouse, which register shall be available for inspection at all times during regular business hours. The register shall contain the following information for each employee:

(a) Name and residence address;

(b) Social Security number and driver's license number, if any;

(c) Employee's height, weight, color of eyes and hair;

(d) Written evidence that the employee is over the age of 18 years;

(e) Business, occupation or employment of the employee for the three years immediately preceding the date of beginning employment with the bathhouse;

(f) The Sheriff shall have the right to take fingerprints and photographs of an employee and the right to confirm the information contained in the register.

5.46.100 **Employment of Persons Under the Age of Eighteen Years Prohibited.** It shall be unlawful for the owner, proprietor, manager or any other person in charge of any bathhouse to employ any person under the age of 18 years.

5.46.110 **Sale or Transfer.** Upon sale, transfer or relocation of a bathhouse, the permit therefore shall be null and void.

5.46.120 **Name and Place of Business-Change of Location.** No person granted a permit pursuant to this Chapter shall operate under any name or conduct his business under any designation or in any location not specified in his permit.

5.46.130 **Daily Register.** Every person who engages in or conducts a public bathhouse as herein defined shall keep a daily register, approved in form by the Sheriff, of the number of patrons admitted, their hour of arrival and their hour of departure. Said daily register shall, at all times during business hours, be subject to inspection by the County Department of Health Services and by the Sheriff and shall be kept on file for one year.

5.46.140 **Locked Cubicle, Room, Booth, Etc.** No service enumerated in Section 5.46.010 (a) of this Chapter may be carried on within any cubicle, room or booth, or in any area within a bathhouse by whatever designation whatsoever which is fixed with a door capable of being locked.

5.46.150 **Private Rooms.** No private room, as hereinafter defined, shall be maintained within any bathhouse. "Private Room" shall mean any enclosed space large enough for more than one person to enter with a door capable of being locked from the inside, unless one or more of the following applies:

(a) There is an opening no less than five feet nor more than six feet above the floor through which the full exterior of the enclosure is viewable from the exterior; or

(b) The enclosure is not made available for use by patrons of the establishment; or

(c) No more than one person at a time is allowed to enter the enclosure, the occupancy restriction is conspicuously posted on the entrance to the enclosure, and there are no openings.
between any adjoining enclosures through which physical contact between persons in adjoining enclosures is possible.

5.46.160 Monitoring and Expulsion of Customers.

(a) No person shall operate a bathhouse unless employee monitors are provided for the exclusive and sole purposes of observation of activity on the bathhouse premises. Two monitors shall be provided for any floor or portion of a floor open to patrons; provided, however, that the bathhouse operator may, in the alternative, provide one monitor for each twenty patrons based on the average hourly patronage for the bathhouse during the preceding calendar month, calculated for the hours that the bathhouse is open, provided that at least one monitor shall be on duty at all times the bathhouse is open. The average number of patrons during each hour shall be calculated from the daily register required by the provisions of Section 5.46.130. Such monitors shall survey the entire portion of the bathhouse open to patrons every fifteen minutes.

(b) The bathhouse operator shall immediately expel from the premises any and all persons observed causing the maximum occupancy requirements of this Chapter to be violated, any and all persons committing any crime on the premises, or any and all persons engaged in high risk sexual activity on the premises. For the purposes of this Chapter, "high risk sexual activity" shall mean:

(1) The placing of the male penis on or into the anus, vagina or mouth of another person;

(2) The placing of the mouth of one person on the anus, vagina or penis of another person; or

(3) The contact of feces or urine of one person with any part of the body of another person; or

(4) The entry of any part of the body of one person into the anus or vagina of another person.

5.46.170 Display of Permit. Every person to whom or for whom a permit shall have been granted, pursuant to the provisions of this Chapter, shall display said permit in a conspicuous place in a bathhouse so that the same may be readily seen by persons entering the premises.

5.46.180 Inspections. The Sheriff and the County Department of Health Services shall, from time to time and at least once a month, make an inspection of each bathhouse for the purpose of determining that the provisions of this Chapter are complied with.

5.46.190 Permit Not Transferable. No bathhouse permit shall be transferred from person to person or from one location to another.

5.46.200 Unlawful Activities. It shall be unlawful for any person to give or administer any bath or baths as defined herein, or to give or administer any of the other things mentioned in this Chapter, which violate the provisions of this Chapter or the regulations adopted pursuant to this Chapter or which violate any state or local laws or ordinances. Any violation of this provision shall be deemed grounds for revocation of the permit granted hereunder.

5.46.210 Health and Sanitation Requirements and Regulations. Every bathhouse shall be maintained and operated in a clean and sanitary manner. All bathhouses shall comply with all applicable building, health, zoning and fire laws of the City. In addition, the Sheriff and the County Director of the Department of Health Services may, after a noticed public hearing, adopt and
enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this Chapter. All bathhouse operators holding a valid permit shall be given written notice of the public hearing, including a copy of the proposed regulations, at least ten days prior to the date of the hearing. In addition, notice of the public hearing and a summary of the proposed regulations shall be published in an appropriate newspaper of general circulation one time at least ten days prior to the date of the hearing. In addition, notice of the public hearing and a summary of the proposed regulations shall be published in an appropriate newspaper of general circulation one time at least ten days prior to the public hearing. The rules and regulations shall include reasonable requirements to protect the health and safety of bathhouse patrons, including reasonable necessary requirements for educational programs and other measures for the prevention and control of the spread of Acquired Immune Deficiency Syndrome (AIDS) and other infectious or communicable diseases.

5.46.220 Violations. Every person who violates any provision of this Chapter is guilty of a misdemeanor. Further, any violation of the provisions of Sections 5.46.020, 5.46.140, 5.46.150, or 5.46.160, shall constitute a public nuisance.

5.46.230 Denial, Suspension or Revocation of Permit. Any permit issued pursuant to this Chapter may be suspended or revoked by the Sheriff on proof of violation by the permittee of any provisions of state law, this Chapter, County ordinances or any rule or regulation adopted and approved pursuant to Section 5.46.210, or in any case where the Sheriff, on the advice of the County Director of Health Services, determines the bathhouse is being managed, conducted or maintained without regard for the public health, or the health of patrons or customers, or without due regard to proper sanitation or hygiene. Where a permit is denied or revoked by the Sheriff, such denial, suspension, or revocation may be appealed by the permit applicant or permittee in accordance with the provisions of the Uniform Licensing Procedures of this Code.

5.46.240 Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this Chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. (Ord. No. 88-779, 4-12-88)
CHAPTER 5.48

TAXICABS AND TAXICAB OPERATORS

SECTIONS:

5.48.010 Definitions
5.48.020 Certificates of Public Convenience and Necessity; Taxicab Permit
5.48.030 Restrictions as to Color Scheme
5.48.040 Insurance Required; Terms, Conditions, Amounts
5.48.050 Fare Rate Schedule
5.48.060 Refusal to Pay Fare Unlawful
5.48.070 Rules and Regulations for Operation
5.48.080 Stands; Parking
5.48.090 Appeal Procedure
5.48.100 Violations

5.48.010 Definitions. In this chapter, unless otherwise expressly stated:

(a) **Certificate of Public Convenience and Necessity** means the certificate issued to a taxicab operator pursuant to this chapter.

(b) **Issuing Authority** means the City of San Marcos City Manager or designee.

(c) **Medallion** means the pre-numbered decal placed on a taxicab by the San Diego County Sheriff's Department annually, signifying that the “taxicab operator” is authorized to operate the vehicle as a taxicab in the city limits of San Marcos.

(d) **Posted Rate** means the rate the operator has registered with the Issuing Officer for transporting passengers and which is posted in the taxicab. The posted rate includes flat rate fares and the fares at which the taximeter has been calibrated and inspected by the Sealer of Weights and Measures.

(e) **Sealer of Weights and Measures** means the County of San Diego Department of Weights and Measures.

(f) **Taxicab** means a motor vehicle as the term is defined by the California Vehicle Code, used for transportation of passengers for hire, equipped with a taximeter. A taxicab shall be a vehicle designed to transport no more than eight passengers, excluding the driver.

(g) **Taxicab Driver** means any person who drives or controls the movements of a taxicab as herein defined, either as agent, employee or otherwise, of the taxicab operator/owner as herein defined.

(h) **Taxicab Operator/Owner** means any individual, partnership, firm, association, corporation or other organization owning or operating a taxicab business.

(i) **Taxicab Permit** means the annual permit issued to a taxicab operator pursuant to this chapter.

(j) **Taximeter** means any device on the inside of a taxicab that is calibrated to calculate the fare earned by the taxicab operator for transporting passengers.  

(Ord. No. 2013-1377, 4/23/13)
5.48.020 Certificate of Public Convenience and Necessity; Taxicab Permit

(a) Required: No person shall engage in the business of providing taxicab services or operating a taxicab upon any public street within the City without having first obtained a Certificate of Public Convenience. The Certificate of Public Convenience and Necessity shall be valid for the life of the business.

No person shall engage in the business of providing taxicab services or operating a taxicab within the boundaries of the City of San Marcos unless that person holds a currently valid taxicab permit. Taxicab permits shall be valid for a period of one (1) year and must be renewed annually during the life of the business.

(b) Application: All persons desiring to obtain a Certificate of Public Convenience and a taxicab permit shall file an application on forms provided by the City accompanied by a sworn statement setting forth the following:

(1) The name and address of the owner(s) or person(s) applying. If corporation, the names of its principal officers. If partnership, association or fictitious company, the names of the partners or persons comprising the association or company with address of each.

(2) A description of every motor vehicle which applicant proposes to use.

(3) The name of the legal and registered owner of each such vehicle.

(4) A description of the proposed color scheme, insignia, trade, style and/or any other distinguishing characteristics of the proposed taxicab design.

(5) A taximeter/fare rate schedule.

(6) Such other information as deemed necessary by the issuing authority.

(c) Fees: The fees to obtain a Certificate of Public Convenience and/or a taxicab permit are set forth as follows:

(1) Any person desiring to obtain a Certificate of Public Convenience shall pay a non-refundable fee of twenty-five dollars ($25) at time of submittal of an application.

(2) Any person desiring to obtain an annual taxicab permit shall pay a non-refundable fee at the time of submittal of an application in the amount of fifty dollars ($50) for the first vehicle and twenty-five dollars ($25) for each additional vehicle thereafter.

(d) Investigation; Certificate Issuance: Upon receipt of an application for a Certificate of Public Convenience, an investigation shall be conducted of the applicant and all persons associated with the proposed taxicab business as set forth in the application. The issuing authority shall have the authority to approve the certificate. The issuing authority may consider, but is not limited to, the following in determining whether to approve or deny the certificate:

(1) Whether or not the public interest, convenience and necessity would be served by the issuance of the permit'

(2) The adequacy of existing transportation services and public demand for additional services;
(3) The financial responsibility and experience of the applicant;

(4) The number, kind and type of equipment and the color scheme to be used;

(5) What effect the proposed service may have upon traffic congestion and parking;

(6) Recommendations submitted by Sheriff’s Department and/or other reviewing departments of the City;

(7) Such other relevant facts as the issuing officer may deem advisable or necessary.

(e) Taxicab Permit - Issuance: Upon issuance of a Certificate of Public Convenience and Necessity, the issuing authority shall process the taxicab permit and make a determination as to issuance of said permit. If approved, the permit shall be issued to the applicant subject to any conditions deemed necessary by the issuing authority and provided the applicant has paid the appropriate business license fee as required by Chapter 5.04, Uniform Licensing Procedures. Taxicab permits shall be valid for a period of one (1) year unless earlier suspended, revoked, terminated. Permits may be renewed for successive one (1) year periods pursuant to the provisions of this chapter.

(f) Authority to Deny Issuance to Unqualified Applicant: The issuing authority may deny issuance of a taxicab permit to any applicant whose responsibilities or methods of operating its business do not comply with the standards and requirements as determined by the City.

The issuing authority shall notify an applicant in writing of a denial within sixty (60) days of the receipt of the application. Such notice shall be either sent by mail to the applicant’s last address provided in the application or be personally delivered, and shall set forth the reasons for such denial of application. The applicant shall also be entitled to appeal provisions pursuant to Section 5.48.090 of this chapter.

(g) Non-Transferability of Permit: Permits issued in accordance with the provisions of this article shall be restricted to the applicant to whom such permit is issued and shall not be subject to transfer to any other person, firm, entity, or corporation.

(h) Changes in Mode of Operation: In the event that any permittee desires to change their color scheme, name, monogram or insignia used on such taxicab, or to substitute any vehicle for and in place of the vehicle described in the application or to increase or decrease the number of vehicles used in the operation of the business, an application must first be submitted for consideration by the issuing authority along with payment of any applicable fees. All changes are subject to the provisions of this chapter and shall not be effective until approved by the issuing authority in writing.

(i) Suspension or Revocation: The issuing authority shall have the right to revoke or suspend a taxicab permit upon any of the following grounds:

(1) A permit was procured by a false or fraudulent statement of a material fact in the application for a certificate or the application for a taxicab permit when such fact, if it had been disclosed, would have constituted a just cause to deny issuance.

(2) The permittee fails to operate the vehicles in accordance with the conditions of approval of their permit or any provisions of this chapter.
(3) The vehicles are operated at a rate of fare in excess of those on file with the Issuing Officer.

(4) The permittee fails to keep in force and effect the policies of insurance required by the provisions of this chapter.

(5) The permittee violates or causes or permits to be violated any of the provisions of this chapter, or any other ordinance or law pertaining to the regulation of taxicabs.

(6) Facts are determined to exist which would provide just cause to deny issuance of a permit or renewal thereof.

(7) Driving or controlling the movements of a taxicab without a valid driver's identification card issued by the San Diego County Sheriff's Department pursuant to the requirements of Chapter 3 (Taxicabs and Taxicab Operators) of the San Diego County Code of Regulatory Ordinances.

(8) Operating or allowing another person to operate a taxicab that has not been issued a valid taxicab permit or a valid medallion by the Issuing Officer.

(9) Operating a taxicab without a current taximeter registration certificate issued by the Sealer of Weights and Measures or without the registration certificate in the vehicle. (Ord. No. 2013-1377, 4/23/13)

5.48.030 Restrictions as to Color Scheme. All vehicle(s) must be and conform to a color scheme approved by the issuing authority. The issuing authority may refuse a certificate to any applicant whose color scheme, trade name or insignia imitates that of any permittee in such manner as to deceive the public.

5.48.040 Insurance Required; Terms, Conditions, Amounts.

(a) A permittee shall, at all times during the duration of the permit, provide and maintain, at its own cost, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the licensee's operation and use of a taxicab. The following types and levels of insurance coverage are required, and endorsements reflecting such coverage and associated requirements must be submitted to the City and processed to approval prior to use of the permit:

(1) General Liability Insurance. Occurrence basis with minimum limits of one million dollars ($1,000,000) each occurrence and two million dollars ($2,000,000) general aggregate; and

(2) Automobile liability insurance of one million dollars ($1,000,000) combined single-limit per accident for bodily injury and property damage; and

(3) Workers' Compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship.

(b) Each insurance policy required by (a) above, and the certificates of insurance and endorsements thereon, must be acceptable to the city attorney.
(c) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs with at least ten (10) days’ written notice of cancellation for non-payment. Insurance coverage must be provided by an A.M. Best’s A-rated, Class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers. All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.

(d) Both the general liability and the automobile liability policies must name the City specifically as an additional insured under the policy on a separate endorsement page. The City includes its officials, employees and volunteers. The endorsement must be ISO Form CG 20 10 11 85 edition or its equivalent for general liability endorsements, and CA 20 01 for automobile liability endorsements.

(e) The general liability policy must be as broad as ISO Form CG00001 and protect the City against liability for loss or damages for personal injury, death and property damage arising from or in connection to the licensee’s operation and use of the taxicab.

(f) The auto liability policy must cover all owned, non-owned, and hired auto, and must provide coverage as broad as ISO Form CA00001.

(g) The general liability and auto liability policies must each be primary and noncontributory. Any insurance maintained by the City is excess, and waivers of subrogation must be provided.

5.48.050 Fare Rate Schedule. The maximum fare rates which may be charged by taxicab operators shall be submitted to the Issuing Officer at time of application. Any future rate amendments shall be submitted to the Issuing Officer at least 14 days prior to the new rates going in to effect. No charge shall be made by any taxi cab operator in excess of the rate submitted to the Issuing Officer. (Ord. No. 2013-1377, 4/23/13)

5.48.060 Refusal To Pay Fare Unlawful. It shall be unlawful for any person to refuse to pay the lawful fare of any of the taxicabs regulated by this chapter after employing or hiring the same.

5.48.070 Rules and Regulations for Operation. The following rules and regulations shall be observed by all persons operating taxicabs:

(a) Insurance: No taxicabs shall be operated in the City unless the provisions of Section 5.48.040 of this chapter have been met.

(b) Business License: No person shall operate any taxicab without prepaying any license fee required by the City for the transaction of such business.

(c) License to Operate a Motor Vehicle: No person shall drive a taxicab in the City without first having obtained a Class 3 or better driver license issued by the Motor Vehicle Department of the State.

(d) Driver's Identification Card: No person shall drive or operate any vehicles mentioned in this chapter unless such person has a taxicab driver's identification card issued by the San Diego County Sheriff's Department pursuant to the requirements of Chapter 3 (Taxicabs and Taxicab Operators) of the San Diego County Code of Regulatory Ordinances.

(e) All taxicabs shall be kept in good mechanical condition: No taxicab shall be operated unless the vehicle meets all requirements to pass inspection by the San Diego County Sheriff’s
Department pursuant to Chapter 3 (Taxicab and Taxicab Operators) of the San Diego County Code of Regulatory Ordinances.

(f) It shall be unlawful for any owner or driver to operate any taxicab in this City unless such vehicle is equipped with a taximeter that has been registered, inspected and sealed by the Sealer of Weights and Measures. A taxicab operator shall submit every taximeter in the taxicabs it operates to the Sealer of Weights and Measures for an annual registration and inspection, and shall provide such proof of registration and inspection to the issuing authority.

(g) It shall be unlawful for a taxicab operator to operate a taxicab unless the taxicab has passed an initial inspection by the San Diego County Sheriff's Department.

(h) After passing the initial inspection a taxicab shall pass an annual inspection to satisfy the same conditions required by the initial inspection. It shall be unlawful for a taxicab operator to operate a taxicab that has not passed its annual inspection and been issued an annual permit.

(i) If the San Diego County Sheriff's Department is satisfied that a taxicab has passed an inspection required by this section the Sheriff's Department shall affix a medallion on the vehicle authorizing the operator to place the taxicab in service for one year.

(j) It shall be unlawful for any person other than the San Diego County Sheriff's Department or his designee to place a medallion on or remove a medallion from a taxicab. It shall also be unlawful to tamper with or alter a medallion.

(k) The absence of a medallion on a taxicab that complies with paragraph (i) above shall be prima facie evidence in a proceeding to suspend or revoke a taxicab operator’s license for operating a taxicab without a valid medallion.

(l) Information to be posted in taxicabs: In every taxicab there shall be displayed in full view of the passenger a sign (of a size specified by the issuing authority) which shall have plainly printed thereon, in letters as large as the size of the sign will reasonably allow, all of the following information:

   (1) the name, address, telephone number of the firm licensed under this chapter;
   (2) the taxicab number;
   (3) the correct schedule of the rates to be charged;
   (4) the name and photograph of the driver.

(m) Picking Up Passenger of Another Company: No taxicab driver may knowingly pick up any person who has summoned a taxicab of a competitive taxicab company, and which person is unaware that the driver offering services is not representing the taxicab company which said person summoned.

(n) Consent to Carrying Additional Passenger: No taxicab driver shall carry in any taxicab which is engaged by a passenger any additional passengers unless the passenger who first engaged the taxicab consents to such carrying of additional persons.

(o) Use for Illegal or Immoral Purpose: No taxicab driver shall use or authorize the use of any taxicab for an illegal or immoral purpose.

(p) Refusing Service to Customer: It shall be unlawful for the driver or operator of any taxicab to refuse a prospective passenger on the basis of race, creed, color, age, sex, handicap, or
national origin.

(q) Direct Route: The driver of any taxicab shall carry passengers engaging the same safely and expeditiously to their destination by the most direct and accessible route.

(r) Illegal Soliciting; Cruising for Fares: No driver of any vehicle, as defined in this chapter, shall seek employment by repeatedly and persistently driving his vehicle to and from in a short space (less than 400 feet) in front of or by otherwise interfering with the proper and orderly access to or egress from any theater, hall, hotel, public resort, street railway or ferry station, or other place of public gathering; or by leaving his vehicle, or otherwise approach and soliciting patronage by pedestrians upon the sidewalk, in any theater, hall, hotel, public resort, railway or ferry station or street railway loading point; but such driver may solicit employment by driving through any public street or place without stops other than those due to obstruction of traffic and at such speed as not to interfere with or impede traffic.

(s) Standing on Streets: No taxicab shall remain standing upon any public street for business purposes except for loading and unloading passengers, and then, not for a period of more than fifteen (15) minutes, excepting at such stand as may be designated under Section 5.48.080 of this chapter. This section shall not apply to any taxicab while the same is engaged by and being paid for by a passenger.

5.48.080 Stands; Parking.

(a) Designation of Stands: The council may by resolution locate and designate taxicab stands, which stands, when so established, shall be appropriately designated "Taxis Only".

(b) Continuous Operation of Stands: Taxicab stands established hereunder shall be in operation twenty-four (24) hours of every day.

(c) Unattended Cab: It shall be unlawful for any taxicab to remain standing in any established taxicab stand, unless said cab is attended by a driver or operator, except when assisting passengers to load or unload, or when answering his telephone.

(d) Parking Generally: No driver of any taxicab as defined by this chapter shall park his taxicab on any of the streets of this City except for the purpose of loading and unloading passengers as herein provided or when parking in a taxi stand as herein provided.

(e) Parking in Business District: It shall be unlawful for the owner, driver or operator of any taxicab to allow said taxicab to remain parked in the business district except in a regular established taxicab stand; provided, that taxicabs may park in any available parking space when actually engaged in loading or unloading passengers; and provided that, between the hours of 6 p.m. and 6 a.m. of the following day, taxicabs may stop, stand or park in any place where the parking of vehicles is otherwise permitted.

5.48.090 Appeal Procedure. Whenever an appeal is provided for in this chapter, such appeal shall be filed and conducted as prescribed under the administrative appeal provisions of Section 1.14.100 of the San Marcos Municipal Code.

5.48.100 Violations. Except as otherwise provided, violations of the provisions of this chapter shall constitute an infraction and shall be punishable in accordance with the provisions of Chapter 1.12 of the San Marcos Municipal Code.
CHAPTER 5.52

AMBULANCES

SECTIONS:

5.52.010 Definitions
5.52.020 Exemptions
5.52.030 Permit to Operate
5.52.040 Application for Permit to Operate
5.52.050 Permit Fees
5.52.060 Application Issuance
5.52.070 Application Denial
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5.52.090 Term
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5.52.140 Inspection of Ambulances
5.52.150 Rates of Charges
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5.52.010 Definitions.

(a) Administrative Authority: The City Manager of the City of San Marcos or his/her designated representative.

(b) Ambulance: As used in this chapter, "Ambulance" means any vehicle designed, equipped and used for the emergency and non emergency transport of the sick or injured persons. Ambulance does not include vehicles "for hire" such as: a gurney van transport, a wheelchair van, or vehicles specifically used to transport the disabled or convalescent from one facility to another.

(c) Ambulance Attendant: "Ambulance Attendant" means a person who is minimally certified as an Emergency Medical Technician I - Ambulance (EMT-IA) whose primary duty is to care for the sick, injured or disabled persons.

(d) Ambulance Driver: "Ambulance Driver" means a person properly licensed by the State of California as an ambulance driver and who is minimally certified as an Emergency Medical Technician I - Ambulance (EMT-IA).

(e) Ambulance Provider: "Ambulance Provider" means a person, firm, partnership, corporation, municipality, government agency or other organization which furnishes or offers to furnish ambulance service to the public, its employees, visitors and/or residents of the City of San Marcos; "Ambulance Provider" includes all organizations that provide or operate an ambulance on their private property whether or not required to do so by local, state or federal law and/or regulation.

(f) Ambulance Provider's Permit: "Ambulance Provider's Permit means written authorization by the City of San Marcos to provide emergency or non-emergency Ambulance
Service within the City of San Marcos.

(g) **Ambulance Service:** "Ambulance Service" means the activity, business or service, for hire, profit, or otherwise, of being prepared for, responding to requests for and/or transporting one or more persons by ambulance on or in any of the streets, roads, highways, alley, or any public way or place in the City of San Marcos.

(h) **Code I, II, or III Calls:**

1. **Code I** - Any non-emergency transportation of patients without the use of red light and siren.

2. **Code II** - An emergency where time is critical, requiring immediate response by the Ambulance Provider, without the use of red light and siren.

3. **Code III** - An emergency where time is critical, requiring immediate response with the use of red light and siren.

(i) **Emergency Call:** "Emergency Call" means a request for an ambulance to transport or assist persons in apparent sudden need of medical attention; or, an ambulance transport that is initially classified as a Non-emergency call that becomes an Emergency call due to a change in the patient's medical condition; or, in a medical emergency, as determined by a physician to transport blood or any therapeutic device, accessory to such device, or tissue or organ for transplant.

(j) **Emergency Medical Technician I Ambulance (EMT-IA):** "EMT-IA" means an individual trained and certified in basic life support care in accordance with the provisions contained in Title 22, California Code of Regulations, Division 9, Chapter 2, et seq.

(k) **Emergency Medical Technician-Paramedic (EMT-P):** "EMT-P" means an individual trained and certified in advanced life support care in accordance with the provision contained in Title 22, California Code of Regulations, Division 9, Chapter 4, et seq. and accredited by the Medical Director of the San Diego County Division of Emergency Medical Services.

(l) **Emergency Service:** "Emergency Service" means the service performed in response to an Emergency Call. Emergency Service also includes transportation of a patient, regardless of a presumption of death of the patient, or transportation of a body for the purpose of making an anatomical gift, as provided in Section 12811 of the California Vehicle Code, and the California Uniform Anatomical Gift Act.

(m) **Non-emergency Call:** "Non-emergency Call" means an ambulance call for a purpose other than an emergency.

(n) **Private Call:** "Private Call" means any call for services that is received by an Ambulance Provider directly from a private party.

(o) **Special Event:** "Special Event" is any situation where a previously announced event, including, but not limited to, concerts, sporting events or contest, and other events that place a grouping or gathering of people in one general locale sufficient in number, or subject to activity that creates the need to have one or more ambulances prepositioned at the event.
5.52.020 Exemptions.

(a) This ordinance shall not apply to vehicles operated as ambulances and to persons engaged in providing service where ambulance services are rendered at the request of any City of San Marcos communications center or at the request of any City of San Marcos law enforcement or fire protection agency during any "state of war emergency", "state of emergency", or "local emergency" as defined in California Government Code Section 8558 or during any period (not over thirty (30) days, but renewable every thirty (30) days) when the City Council or the City Manager or his/her designee has determined that adequate emergency ambulance service will not be available from existing permitees.

(b) This ordinance shall not apply to vehicles operated as ambulances and to persons engaged in the transport of patients where the transport is initiated outside the San Marcos City limits for transport into the City.

(c) Agencies of the United States Government operating ambulances are exempted from all portions of this ordinance.

(d) Government agencies operating ambulances twenty-four (24) hours per day staffed with full-time paid employees shall be exempted from the application process identified in Sections 5.52.030 through 5.52.080.

5.52.030 Permit to Operate. No person (either as owner, agent or otherwise) shall furnish, operate, conduct, maintain or otherwise engage in, or offer or profess to engage in Ambulance Service within the boundaries of the City of San Marcos, unless the person holds a currently valid Ambulance Provider's Permit.

5.52.040 Application for Permit to Operate. Each applicant who desires an Ambulance Provider's Permit for the City of San Marcos shall file with the City Clerk an Ambulance Provider's application form accompanied by a sworn statement setting out the following:

(a) The names and addresses of the applicant, registered owner(s), partner(s), officer(s), director(s) and all shareholders who hold or control 10% or more of the stock of the applicant;

(b) The applicant's training and experience in the transportation and care of patients;

(c) The name(s) under which the applicant has engaged, does, or proposes to engage in Ambulance Service;

(d) A description of each ambulance including: the make, model, year of manufacture, vehicle identification number; current state license number; the current odometer reading of the vehicle (including miles that have "turned over" on the odometer); and the color scheme, insignia, name monogram and other distinguishing characteristics of the vehicle;

(e) A statement that the applicant owns or has under his control, in good mechanical condition, required equipment to consistently provide quality Ambulance Service, and that the applicant owns or has access to suitable facilities for maintaining its equipment in a clean and sanitary condition;

(f) A description of the applicant's program for maintenance of the vehicles;
(g) A description of the number and type, frequency and private line codes of the vehicles' radios, and telephone numbers of the vehicles' cellular telephones;

(h) A description of the locations and housing facilities from which Ambulance Services will be offered, noting the hours of operation and the number of ambulances staffed at each location and available for dispatch to the City of San Marcos;

(i) A list of all ambulance drivers and attendants which identifies each persons' EMT certification number and issuing county, CPR certification, California Driver's License, and Ambulance Driver's Certificate, with expiration date of each;

(j) A description of the applicant's training and orientation programs for Ambulance Attendants, dispatchers, and Ambulance Drivers;

(k) A statement of the legal history of the applicant, registered owner(s), partner(s), officer(s), director(s) and controlling shareholder, including criminal convictions and civil judgment and that the County Sheriff's Department, acting as the City's law enforcement agency, has approved the applicant;

(l) Certification that the applicant possesses and shall maintain in full force and effect, liability insurance including, but not limited to, comprehensive auto liability, each with a combined single limit of not less than $1,000,000.00 per occurrence, and professional liability, with a limit of not less than $1,000,000.00 per claim. Such insurance shall be primary to and not contributing with any other insurance covering or maintained by the City. The general liability and auto insurance policies shall name the City of San Marcos as an additional insured. Such insurance shall be provided by insurer(s) satisfactory to the City of San Marcos. Evidence of such insurance shall be attached to the application and shall provide that the Administrative Authority is to be given written notice at least thirty (30) days in advance of any modification or termination of any such insurance. The insurance must meet the approval of the City Attorney;

(m) Acknowledgement that the applicant shall not be granted any Ambulance Provider's Permit unless the applicant obtains and files with the Administrative Authority, a policy of Workers' Compensation insurance or a certificate of consent to self-insure issued by the California State Director of Industrial Relations, applicable to all employees of the applicant. The permittee shall thereafter maintain in full force and effect such coverage during the term of the Permit. Certificates or copies evidencing such coverage shall be provided to and maintained by the Clerk of the City of San Marcos;

(n) An affirmation that the applicant possesses and maintains currently valid California Highway Patrol Inspection Reports for each vehicle listed in the application, and a copy of the license issued by the Commissioner of the California Highway Patrol (in accordance with Section 2501 of the California Vehicle Code);

(o) Verification that the permit fees specified by section 5.52.050 of this chapter have been deposited with the City Clerk.

(p) The applicant may be required to submit such other information as the Administrative Authority deems necessary for the determination of compliance with this ordinance.

5.52.050 Permit Fees.

(a) Upon filing an application for an ambulance operator permit as provided by section
5.52.040, the applicant shall deposit with the City Clerk the amount of the permit fee provided to be paid in subsection (b), which shall be held by the City Clerk until the City Council shall have authorized the granting of the permit.

(b) If the City Council determines that the public convenience and necessity warrant the granting of a permit, it shall authorize such permit and the City Clerk shall issue to the applicant such permit, provided the applicant has paid the appropriate business license fee as required by Chapter 5.04, Uniform Licensing Procedures.

(c) The application for each Ambulance Provider's Permit shall be made upon forms prescribed by the City of San Marcos. The permit or a legible copy thereof shall be carried in the ambulance at all times.

5.52.060 Application Issuance. Within thirty (30) days of receipt of a completed application, the Administrative Authority shall make a determination regarding the issuance of the applied for permit.

5.52.070 Application Denial. The Administrative Authority may order the denial of an application for a permit or a renewal thereof if it is determined that:

(a) The applicant does not meet all the requirements within this ordinance;

(b) The applicant, or any partner, officer, director, representative or agent thereof has knowingly made a false, misleading or fraudulent statement of a material fact in the application or in any reports or other documents required to be filed with the Administrative Authority pursuant to this ordinance;

(c) The applicant is not the real owner or operator of the ambulance service;

(d) The applicant was previously the holder of a permit issued under this ordinance, which permit has been suspended or revoked and the terms and conditions of the suspension or revocation have not been fulfilled;

(e) The applicant has acted in the capacity of a permitted person or firm under this ordinance without having a valid permit therefore;

(f) The applicant has entered a plea of guilty to, or been found guilty of, or has been convicted of a felony or a crime involving moral turpitude, including an offense relating to the use of, sale, possession or transportation of narcotics, habit forming drugs or any other controlled substances, and the time for appeal, irrespective of an order granting probation following such conviction suspending the imposition of sentence, or of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea or verdict of guilty, or dismissing the accusation of information; or

(g) The applicant has violated any provision of this ordinance or any provisions of any other ordinance or law relating to ambulance services.

The Administrative Authority shall notify the applicant in writing of the denial within thirty (30) days of the receipt of the application. Such notice shall be either sent by mail to the applicant's last address provided in the application or be personally delivered, and shall set forth the reasons for such denial of application. The applicant shall also be entitled to the appeal provisions of Section 5.52.170.
5.52.080  Application change of data. Each applicant and Permit owner shall report to the Administrative Authority any change in the data required in Section 5.52.040 within thirty (30) days of the effective date of the change, except that any changes in the data required in 5.52.040 (i) need only be reported annually as required by Section 5.52.100 hereof.

5.52.090  Term. Permits issued under this ordinance shall be valid for a period of one (1) year unless earlier suspended, revoked, terminated. Permits may be renewed for successive one (1) year periods pursuant to the terms of Section 5.52.100 hereof.

5.52.100  Renewal of Permit. Applicants for renewal of an Ambulance Provider's Permit under this ordinance shall annually file with the Administrative Authority an application in writing, on a form furnished by the Administrative Authority, which shall include any changes in the information required in Section 5.52.040 hereof from the current application on file. The application for renewal shall be filed with the Administrative Authority at least thirty (30) days prior to the expiration date of the current permit, and be accompanied by a renewal fee (Business License). Renewal of an Ambulance Provider's Permit shall require conformance with all requirements of this ordinance as upon issuance of an initial permit. Nothing in this ordinance shall be construed as requiring the automatic renewal of a Permit upon its expiration and the burden of proof respecting compliance with all the requirements of this ordinance and of entitlement to a Permit shall be with the applicant for renewal.

5.52.110  Temporary Permit. The Administrative Authority may authorize a temporary permit to an ambulance provider based outside the City that has received a permit from the County and is properly licensed by the California Highway Patrol up to thirty (30) event days for special events. Temporary Permittees shall meet all requirements of this ordinance.

5.52.120  Suspension or Revocation of Permit. The Administrative Authority shall have the right to revoke or suspend an Ambulance Provider permit upon any of the following grounds:

(a) A permit was procured by a false or fraudulent statement of a material fact when such fact, if it had been disclosed, would have constituted a just cause to deny issuance of a permit.

(b) The permittee fails to keep in force and effect the policy of insurance required by this ordinance.

(c) The permittee charges rates in excess of those established by the City Council.

(d) The ambulance service is not furnished on the full hourly schedule set forth in the application for permit.

(e) The permittee violates or causes or permits to be violated any of the provisions of this Chapter, or any other ordinance or law pertaining to the regulation of ambulance services.

(f) Facts are determined to exist which would provide just cause to deny issuance of a permit in the event the permittee were an original applicant for a permit or renewal thereof.

5.52.130  Operational Standards and Requirements.

(a) Any Ambulance Attendant or Ambulance Driver utilized by a Permittee shall be at least eighteen (18) years of age; shall be trained and competent in the proper use of all emergency ambulance equipment; shall hold current certification as an Emergency Medical Technician I-Ambulance (EMT-IA) or EMT-Paramedic (EMT-P); or be licensed as a physician or
registered nurse in the State of California, and shall demonstrate compliance with all applicable County of San Diego and State laws and regulations.

(b) Each person providing ambulance service under this ordinance shall staff each ambulance with appropriate personnel who shall wear clean uniforms that identify employer or sponsoring agency, have visible identification of name and certification level, and comply with the requirements of this ordinance.

(c) Except for those ambulances operated by a government agency, every ambulance shall carry a valid California Highway Patrol Inspection Permit authorizing the use of the vehicle as an ambulance.

(d) Each Ambulance Provider shall provide ambulance service on a continuous twenty-four (24) hours per day basis, excluding circumstances beyond the control of the provider.

(e) If for any reason an ambulance provider ceases to provide ambulance service on a continuous twenty-four (24) hours per day basis, any advertisement of emergency services which have been discontinued shall be promptly terminated and said provider shall furnish immediate notification of such discontinuance to the Administrative Authority. Special event permittees shall be exempt from the requirement of twenty-four (24) hours per day provision of service.

(f) Ambulance Providers shall cooperate with the Administrative Authority, or his/her designee, in any investigations of possible violations of this ordinance and shall make all dispatch logs and similar dispatch records, including tape recordings, available for inspection and copying at reasonable times at the permittee's regular place of business. All tape recordings will remain available for a minimum of ninety (90) days from the date the recordings are made.

(g) The Administrative Authority shall formulate as necessary and reasonable, policies/procedures/protocols covering Ambulance Service operations, equipment, personnel, and standards of response and dispatch for the effective and reasonable administration of this ordinance.

(h) In the event that more than one Ambulance Provider is issued an Ambulance Operator Permit, the Providers may be required by the Administrative Authority to enter into a separate "Basic Life Support Performance Agreement" to be placed on a "rotational list" of available Providers.

(i) Ambulance providers on a rotational list shall:

(1) Refer any Private Call of a life threatening nature or a Private Call requiring Advanced Life Support ("ALS") level care where ALS care is timely, appropriate and available, to the 9-1-1 emergency operator;

(2) Dispatch an ambulance within a reasonable time in response to an emergency call from a person, unless such person is immediately advised of a delay in responding to a call;

(3) Disclose to any person requesting service that an ambulance is not available for an emergency call;

(4) Provide prompt transportation of the patient to the most appropriate medical facility, licensed, equipped, and staffed to meet the needs of the patient in accordance with
applicable laws, rules, regulations and policies;

(5) Record all telephone and radio calls for ambulance

(j) Ambulance Providers on a rotational list shall be prohibited from engaging in the following activities:

(1) Using a scanner or radio monitoring device for the purposes of responding to a call when not requested to respond to that call by an individual requesting that service or the appropriate public safety dispatch center;

(2) Permitting the operation of an ambulance in any manner contrary to the provisions of this ordinance or contrary to any applicable statute, rule or regulation;

(3) Performing ambulance services unless possessing a current, valid Ambulance Provider's Permit;

(4) Providing advanced life support services to any persons or institution without a contract or subcontract with the County for the provision of such services;

(5) Announcing, advertising, or offering ambulance service or advanced life support services without being authorized by the City of San Marcos to provide such service;

(6) Causing or allowing any ambulance to respond to a location without first receiving a specific request for ambulance service at that location.

5.52.140 Inspection of Ambulances. The inspection of ambulances is delegated by the City to the California Highway Patrol and the City will accept the list of requirements for ambulances and certificates of inspection issued by the Highway Patrol. The permittee shall provide copies of these certificates to the City's Administrative Authority after each inspection and issuance by the Highway Patrol.

5.52.150 Rates of Charges. The City Council shall be, and it is hereby authorized and empowered to establish and keep on file with the City Clerk a maximum rate schedule which may be charged by ambulance providers issued a permit under this chapter. Such rates shall be established by resolution and may be changed from time to time. Permitted Ambulance Providers shall make available upon request the rates for services as provided in this chapter.

5.52.160 Appeal procedures. Any appeal shall be filed and conducted as prescribed in this section:

(a) Within fifteen (15) calendar days after the date of any denial, suspension, revocation or other notice by the Administrative Authority, an aggrieved party may appeal such action by filing with the City Clerk of the City of San Marcos, a written appeal briefly setting forth the reasons why such denial, suspension, revocation or other decision is not proper.

(b) Within thirty (30) days after the date of receipt of said appeal the City Clerk shall schedule a hearing before the City Council. At least one week prior to the date of the hearing on the appeal, the clerk shall notify the appellant and the Administrative Authority of the date and place of the hearing. The City Council is authorized to conduct the hearing on the appeal. At such hearing the Administrative Authority and the appellant may present evidence relevant to the denial, suspension, revocation, or other decision of the Administrative Authority. The City Council shall
receive evidence and shall rule on the admissibility of evidence and on questions of law. The formal rules of evidence applicable in a court of law shall not apply to such hearing.

(c) At the conclusion of the hearing, the City Council may uphold the denial, suspension, revocation, or other decision of the Administrative Authority, or the City Council may allow that which has been denied, reinstate that which has been suspended or revoked, or modify or reverse any other Administrative Authority's decision which is the subject of the appeal. The City Clerk shall within ten (10) days of said hearing forward the decision of the City Council to the appellant, and other interested parties. The decision of the City Council is final.

5.52.170 Penalty. Any person guilty of violating this ordinance shall be deemed guilty of a misdemeanor and shall be punishable in accordance with section 1.12.020. (Ord. No. 93-955, 9-14-93)
CHAPTER 5.54

MARIJUANA

SECTIONS:

5.54.010 Definitions
5.54.020 Medical Marijuana Dispensaries as a Prohibited Use and/or Activity
5.54.030 Cultivation of Marijuana as a Prohibited Use and/or Activity
5.54.040 Delivery of Marijuana as a Prohibited Use and/or Activity
5.54.050 Processing of Marijuana as a Prohibited Use and/or Activity

5.54.010 Definitions.

(a)  “Medical Marijuana Dispensary” or “Dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one (1) or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5 et. seq. A “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law, a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health and Safety Code Section 11362.5 et seq., and the San Marcos Municipal Code, including but not limited to, the City’s Zoning Code. (Ord. No. 2006-1265, 2/28/06)

(b)  “Marijuana Cultivation” or “Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof, and any and all associated business and/or operational activities. (Ord. No. 2015-1415, 1/12/2016)

(c)  “Marijuana Delivery” or “Delivery” means the commercial delivery, transfer or transport, or arranging for the delivery, transfer or transport, or the use of any technology platform to arrange for or facilities the commercial delivery, transfer or transport of marijuana, marijuana edibles, and/or any marijuana products to or from any location within the jurisdictional limits of the City of San Marcos, and any and all associated business and/or operational activities. (Ord. No. 2015-1415, 1/12/2016)

(d)  “Marijuana Processing” or “Processing” means any method used to prepare marijuana, marijuana edibles and/or marijuana byproducts for commercial retail and/or wholesale sales, including, but not limited to: cleaning, curing, preparation, laboratory testing, manufacturing, packaging, and extraction of active ingredients to create marijuana related products and concentrates. (Ord. No. 2015-1415, 1/12/2016)
5.54.020 Medical Marijuana Dispensaries as a Prohibited Use and/or Activity. A medical marijuana dispensary as defined in Section 5.54.010 is prohibited in all zones within the city’s jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such use. (Ord. No. 2006-1265, 2/28/06)

5.54.030 Cultivation of Marijuana as a Prohibited Use and/or Activity. Marijuana Cultivation by any person or entity, including, but not limited to, clinics, collectives, cooperatives and dispensaries, is prohibited in all zones within the City’s jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. Any Cultivation that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared a public nuisance. Nothing in this Chapter is intended to, nor shall it be construed to, make legal any Cultivation activity that is otherwise prohibited under California law. Nothing in this Chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting Marijuana Cultivation by its tenants. (Ord. No. 2016-1415, 1/12/2016)

5.54.040 Delivery of Marijuana as a Prohibited Use and/or Activity. Marijuana Delivery by any person or entity, including, but not limited to, clinics, collectives, cooperatives and dispensaries, is prohibited in the City. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. Any Delivery that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared a public nuisance. Nothing in this Chapter is intended to, nor shall it be construed to, make legal any Delivery activity that is otherwise prohibited under California law. (Ord. No. 2016-1415, 1/12/2016)

5.54.050 Processing of Marijuana as a Prohibited Use and/or Activity. Marijuana Processing by any person or entity, including, but not limited to, clinics, collectives, cooperatives and dispensaries, is prohibited in all zones within the City’s jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. Any Processing that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared a public nuisance. Nothing in this Chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting Marijuana Processing by its tenants. (Ord. No. 2016-1415, 1/12/2016)
CHAPTER 5.55

TOBACCO RETAIL LICENSE

SECTIONS:

5.55.010  Purpose
5.55.020  Definitions
5.55.030  Requirement for Tobacco Retail License
5.55.040  Applications Procedure
5.55.050  Issuance and Renewal of License
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5.55.010  Purpose

The purpose of this chapter is to encourage responsible tobacco retailing and
discourage violations of tobacco related laws that prohibit the sale or distribution of tobacco
products, including all smoking materials as defined in section 5.55.020, to minors and
tobacco related laws that prohibit the display of tobacco products within reach of the public,
but not to expand or reduce the degree to which the acts regulated by federal or state law
are criminally proscribed or to alter the penalty provided therefore.

5.55.020  Definitions

When used in this chapter, the following definitions shall have the meanings given by
this section, whether or not these words or phrases are capitalized:

“Drug Paraphernalia” shall have the meaning set forth in Health & Safety Code section
11014.5, as that section may be amended from time to time.

“Electronic Smoking Device” means an electronic and/or battery operated device, the
use of which may resemble smoking, which can be used to deliver an inhaled dose of
nicotine or other substances by delivering a vaporized solution. Electronic smoking device
includes any such device, whether manufactured, distributed marketed or sold as an
electronic cigarette, an e-cigarette, an electronic cigar, electronic cigarillo, an electronic pipe,
an electronic hookah, or any product name or descriptor, including any component, part or
accessory of such a device, whether or not sold separately.

“Electronic Smoking Device Paraphernalia” means cartridges, cartomizers, e-liquid,
smoke juices, tips, atomizers, electronic smoking device batteries, electronic smoking
chargers and any other item specifically designed for the preparations, charging or use of
electronic devices.

“Hearing Officer” means the impartial hearing officer designated to serve in this
capacity.

“Itinerant Tobacco Retailing” means engaging in tobacco retailing at other than a fixed
location.
“License” means a Tobacco Retail License issued by the City pursuant to this Chapter and this Municipal Code section 5.04.010.

“Licensee” means a Person to whom a License has been issued.

“Person” means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or can have, sole or shared control over the day-to-day operations of a business.

“Smoking Materials” means Tobacco Products, Electronic Smoking Device, Electronic Smoking Device Paraphernalia, and any other product containing tobacco or nicotine that releases gases, particles or vapors into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose is human inhalation of the byproducts.

“Tobacco Product” means: (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and (2) any Electronic Smoking Device. (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

“Tobacco Paraphernalia” includes cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.

“Tobacco Retailer” means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

“Tobacco Retailing” shall mean selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

### 5.55.030 Requirement for Tobacco Retail License

A. It shall be unlawful for any person to act as a Tobacco Retailer in the City without first obtaining and maintaining a valid Tobacco Retail License pursuant to this Municipal Code Chapter 5.04.010 for each location at which Tobacco Retailing is to occur. No Tobacco Retail License will be issued to an authorized Tobacco Retailing at other than a fixed location. No License will be issued for itinerant Tobacco Retailing or Tobacco Retailing from vehicles.

B. Nothing in this Chapter shall be construed to grant any person obtaining a Tobacco Retail License any status or right other than the right to act as a Tobacco Retailer at the location in the City identified on the face of the License, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by Labor Code Section 6404.5.
C. No person who is younger than the minimum age established by California law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.

**5.55.040 Applications Procedure**

A. Application for a Tobacco Retail License shall be submitted to the City in the name of each Proprietor proposing to conduct Tobacco Retailing and shall be signed by each Proprietor or an authorized agent thereof. A Proprietor proposing to conduct Tobacco Retailing at more than one location shall submit a separate application for each location.

B. All applications shall be submitted on a form supplied by the City and shall contain the following information:
1. The name, address, and telephone number of each Proprietor.
2. The business name, address and telephone number of the fixed location for which a Tobacco Retail License is sought.
3. The name and mailing address authorized by each applicant to receive all License-related communications and notices (the "authorized address"). Failure to supply an authorized address shall be understood to consent to the provision of notice at the business address specified in paragraph 2, above.
4. Whether or not any applicant has previously been issued a License pursuant to this Chapter that is or was at any time suspended or revoked and, if so, the dates of the suspension period or the date of revocation.
5. Such other information as the City Manager deems necessary for the administration or enforcement of this Chapter.
6. Any and all additional requirements contained in a Tobacco Retail License application pursuant to this Municipal Code Section 5.04.030.

**5.55.050 Issuance and Renewal License**

A. Upon the receipt of an application for a Tobacco Retail License and the payment of a Tobacco Retail License fee, the City shall issue a License unless:
1. The application is incomplete or inaccurate.
2. The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this chapter. Notwithstanding the foregoing, this subparagraph shall not constitute a basis for denial of a license if either or both of the following apply:
   a) The applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For the purposes of this subparagraph, an "arm's length transaction" is defined as sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this chapter that occurred at the location, is presumed not to be an "arm's length transaction."
   b) It has been more than three years since the most recent License for that location was revoked.
3. The application seeks authorization for Tobacco Retailing by a Proprietor for which or whom a suspension is in effect or by a Proprietor which or who has had a license revoked, pursuant to this chapter.
4. The application seeks an authorization for Tobacco Retailing that is unlawful pursuant to this Chapter, or that is unlawful pursuant to any other local, state, or federal law.

5. The City has information that the applicant or his or her agents or employees have violated any local, state, or federal tobacco control law at the location for which the License or renewal of the License is sought within the preceding 30 day period.

6. The City has information that the applicant or his or her agent or employee has violated any local, State or Federal tobacco control law, including this Chapter, within the preceding (12) months.

7. The issuance of a Tobacco Retail License would be in conflict with any other City ordinance.

B. Beginning from the effective date of this Chapter, all Tobacco Retailers have until December 31, 2016 to obtain a License. Any License issued prior to December 31, 2016, shall remain effective until December 31, 2017. An application to renew such License shall be made no later than 30 days prior, but no earlier than 60 days prior to the expiration of the License. The City has no obligation to issue notification of impending expiration of any License. The applicant shall follow all of the procedures and provide all of the information required by Section 5.55.040 above. The City shall process the application according to the provisions of this section. A License may be renewed annually by submitting a Tobacco Retail License application to the City along with payment of a Tobacco Retail Licensing fee; provided, however, a Tobacco Retail License that is suspended, has been revoked, or is subject to suspension or revocation proceedings shall not be renewed.

C. If the information required in the License application pursuant to any subsection of Chapter 5.55 changes, a new Tobacco Retail License is required before the business may continue to act as a Tobacco Retailer. For example, if a Proprietor to whom a License has been issued changes business location, that Proprietor must apply for a new License prior to acting as a Tobacco Retailer at the new location. If the business is sold, the new owner must apply for a License for that location before acting as a Tobacco Retailer.

D. A Tobacco Retail License that is not timely renewed pursuant to this chapter shall be automatically suspended by operation of law. If not renewed, a license shall be automatically revoked six months after the renewal date. Additionally, civil, criminal and/or administrative citations may be issued during this interim period for failure to maintain the appropriate License. To reinstate the paid status of a License that has been suspended due to the failure to timely pay the renewal fee, the Tobacco Retailer must:

1. Submit the License renewal fee plus a reinstatement fee of ten percent of the License renewal fee; and

2. Submit a signed affidavit affirming that he or she has not sold any Tobacco Product or Tobacco Paraphernalia during the period the license was suspended for failure to pay the License renewal fee.

5.55.060 Display of License

Each license shall be prominently displayed in a publicly visible location at the licensed premises. Failure to properly display the license will result in the issuance of a citation.

5.55.070 – 5.55.090
The fee for issuance or renewal of a Tobacco Retail License shall be established by resolution of the City Council and shall be in addition to the City’s business license fee and any other license or permit fee imposed by this code upon the applicant. The Tobacco Retail License fee shall be paid to the City at the time the license application is submitted. The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a License, administering the License program, Tobacco Retailer education, Tobacco Retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

5.55.080 Licenses Nontransferable & Convey a Limited, Conditional Privilege

A Tobacco Retail License is nontransferable and subject to the provisions of this Municipal Code Section 5.04.040. Nothing in this Chapter shall be construed to grant any person obtaining and maintaining a Tobacco Retailer License any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location within the City’s jurisdictional boundaries identified on the face of the License, subject to compliance with the terms and conditions of this Chapter.

5.55.090 License Violation – Compliance Monitoring

A. It shall be a violation of a Tobacco Retail License for a Tobacco Retail Licensee or his or her agents or employees to violate any local, state or federal tobacco-related law.

B. It shall be a violation of this Chapter for any Tobacco Retail Licensee or any of the Licensee’s agents or employees to violate any local, state, or federal law regulating controlled substances or Drug Paraphernalia including, but not limited to, California Health and Safety Code section 11364.7, as that section may be amended from time to time.

C. In addition to the provisions of Section 5.04.080 of this Municipal Code, compliance with this Chapter shall be monitored by the San Diego Sheriff’s Department. Any peace officer or Municipal Code compliance official also may enforce this Chapter. The San Diego Sheriff’s Department shall check compliance of each Tobacco Retailer at least one time per twelve (12) month period and shall conduct additional compliance checks as warranted. The compliance checks shall be conducted to determine, at a minimum, if the Tobacco Retailer is complying with tobacco laws regulating underage sales. The San Diego Sheriff’s Department shall use youth decoys and comply with protocols for the compliance checks developed in consultation with the San Diego County Department of Health and Human Services and the San Diego District Attorney. When appropriate, the compliance checks shall determine compliance with other tobacco-related laws.

D. The City shall not enforce any tobacco related minimum age law against a person who otherwise might be in violation of such law because of a person’s age (hereinafter “youth decoy”) if the potential violation occurs when:
   1. The youth decoy is participating in a compliance check supervised by a peace officer or a Code compliance official; or
   2. The youth decoy is participating in a compliance check funded in part by the San Diego County Department of Health and Human Services or funded in part, either
directly or indirectly through sub-contracting, by the California Department of Health Services.

3. The youth decoy has a letter of permission for such compliance check activity from the District Attorney’s Office.

5.55.100 Suspension or Revocation of License

A. In addition to any other penalty authorized by law, and including the provisions of this Municipal Code Section 5.04.100, a Tobacco Retail License may be suspended or revoked if the City finds, after notice to the Tobacco Retail Licensee and opportunity to be heard, that the Tobacco Retail Licensee or his or her agents or employees has or have violated any of the provisions of this Chapter; provided, however, violations by a Licensee at one location may not be accumulated against other locations of that same Tobacco Retail Licensee, nor may violations accumulated against a prior tobacco retail licensee at a licensed location be accumulated against a new tobacco retail licensee at the same licensed location.

1. Upon a finding by the City of a first License violation within any three-year period, the City shall:
   a) Issue a written warning to the Licensee.
   b) Advise the Licensee of the penalties for further violations of this Chapter.
   c) Require the Licensee to provide documentation to the City that all employees engaged in the Retail Sale of tobacco have received training in a City approved program within sixty (60) days after the warning, or such other time as shall be set by the City.

2. Upon a finding by the City of a second License violation within any three year period, the License may be suspended up to thirty (30) days.

3. Upon the finding by the City of a third License violation within any three year period, the license may be suspended for up to ninety (90) days.

4. Upon the finding by the City of a fourth License violation within any three year period, the License may be suspended for up to one (1) year.

5. Upon a finding by the City of a fifth License violation within any three year period, the License may be revoked.

B. A Tobacco Retail License shall be revoked if the City finds, after notice and opportunity to be heard, that any one of the conditions listed below exist. The revocation shall be without prejudice to the filing of a new application for a Tobacco Retail License.

1. One or more of the bases for denial of a Tobacco Retail License under Section 5.55.050 existed at the time the Tobacco Retail License application was made or at any time before the Tobacco Retail License was issued.

2. The application is incomplete for failure to provide the information required by Section 5.55.040.

3. The information contained in the application, including supplemental information, if any, is found to be false in any material respect.

4. The application seeks authorization for Tobacco Retailing that is unlawful pursuant to this Code, or that is unlawful pursuant to any other local, state, or federal law.

C. In the event the City suspends or revokes a Tobacco Retail License, written notice of the suspension or revocation shall be served upon the Tobacco Retail Licensee within five (5) days of the suspension or revocation in a manner prescribed in Section 5.55.040. The notice shall contain:

5.55.100 – 5.55.100
1. A brief statement of the specific grounds for such suspension or revocation;
2. A statement that the Tobacco Retail Licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of Section 5.55.110, to the City, within ten (10) calendar days of the date of the service of the notice; and
3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all rights to an administrative appeal hearing, and the suspension or revocation will be final.

5.55.110 Denial, Suspension and Revocation - Appeals

A. Notwithstanding any provisions in this Municipal Code Sections 5.04.110; 5.04.130; 5.04.140 and 5.04.150, any Tobacco Retail License applicant or licensee aggrieved by the decision of the City in denying, suspending, or revoking a Tobacco Retail License, may appeal the decision, by submitting a written appeal to the City Clerk within ten (10) calendar days from the date of service of the notice of denial, suspension, or revocation. The written appeal shall contain:
   1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;
   2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;
   3. The signatures of all parties named as appellants and their official mailing addresses; and
   4. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

B. The appeal hearing shall be conducted by a hearing officer.

C. Upon receipt of any appeal filed pursuant to this section, the City Clerk shall transmit said appeal to the hearing officer who shall calendar it for a hearing. The hearing officer shall give the parties at least fifteen (15) calendar days written notice of the time and place of the hearing either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal. Upon good cause, the hearing officer may grant one extension for the date of the hearing not to exceed fifteen (15) days from the original date set for the hearing.

D. Only those matters or issues specifically raised by the appellant in the notice of appeal shall be considered in the hearing of the appeal.

E. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.

F. Following the hearing on the appeal by the hearing officer, the decision of the hearing officer may be appealed to the City Manager or his or her designee. A decision of the City Manager or his or her designee shall be the final decision of the City.

G. During a period of License suspension, the Tobacco Retail Licensee must remove from public view all Tobacco Products and Tobacco Paraphernalia at the address that appears on the suspended or revoked Tobacco Retail License.

5.55.120 – 5.55.140
5.55.120 **Hearings – Generally**

A. At the time set for hearing, the hearing officer shall proceed to hear the testimony of material witnesses, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.

B. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

C. The hearing officer may, upon the request of the appellant or upon the request of the City, grant continuances from time to time for good cause shown, or upon his or her own motion.

5.55.130 **Conduct of Hearing**

A. Hearings need not be conducted in accordance to the technical rules relating to evidence and witnesses. Government Code section 11513, subsections (a), (b) and (c), or as such section may be amended from time to time, shall apply to hearings under this Chapter.

B. Oral evidence shall be taken only upon oath or affirmation.

C. Irrelevant and unduly repetitious evidence shall be excluded.

D. Each party shall have these rights, among others:
   1. To call and examine witnesses on any matter relevant to the issues of the hearing.
   2. To introduce documentary and physical evidence.
   3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing.
   4. To impeach any witness regardless of which party first called the witness to testify.
   5. To rebut evidence presented against the party.
   6. To represent himself, herself, or itself, or to be represented by anyone of his, her, or its choice who is lawfully permitted do so.

E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the City of any of its departments.

5.55.140 **Form and Contents of Decision of Hearing Officer - Appeal to City Manager - Finality of Decision**

A. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, or revoke the Tobacco Retail License, the hearing officer shall affirm the City's decision to deny, suspend, or revoke the Tobacco Retail License. The decision of the hearing officer shall be in writing and shall contain findings of fact and a determination of the issues presented.

B. The decision of the hearing officer shall inform the appellant that the decision may be appealed to the City Manager by filing a written appeal with the hearing officer within ten days of receipt of the decision of the hearing officer. The written appeal shall be forwarded to the City Manager upon receipt.
C. Within fifteen (15) days of receipt of the written appeal, the City Manager shall review the record of the hearing and issue a written decision to grant or deny the appeal. A decision of the City Manager shall be final. The City Manager shall provide appellant with a copy of his or her decision and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6, or as such section may be amended from time to time. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by City Manager and served as provided in this section.

5.55.150 Enforcement

A. In addition to any other remedy, any person violating any provision of this chapter shall be guilty of a misdemeanor for each day a violation continues.

B. Any violation of this chapter may be remedied by a civil action brought by the City Attorney. The City may recover attorneys’ fees and costs of suit, including witness fees, in any civil action brought by the City Attorney to remedy any violation of this chapter.

C. Violations of this chapter are hereby declared to be public nuisances subject to abatement by the City.

D. In addition to criminal sanctions and other remedies set forth in this chapter, civil and administrative penalties may be imposed pursuant to Section 1.14.30 of this Municipal Code against any person violating any provision of this chapter. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to this Municipal Code Chapter 1.14.

5.55.160 Severability

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, that decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

(Ord No. 2016-1428, 7-26-2016)
CHAPTER 5.56

SWAP MEETS

SECTIONS:

5.56.010 Definitions
5.56.020 Legislative Findings
5.56.030 Prohibited
5.56.040 Remedies for violations of this chapter

5.56.010 Definitions. As used in this chapter, the following terms shall have the meanings ascribed to them in this section:

(a) Owner or operator shall mean the person who controls the admissions, directly or through agents, of persons and merchandise into the trading area.

(b) Swap lot shall mean a building, structure, enclosure, lot or other area into which persons are admitted to display, exchange, barter, buy, sell or bargain for new or used merchandise.

(c) Swap meet shall mean the activity carried on in a swap lot.

5.56.020 Legislative findings. Swap meets have developed into a large commercial enterprise in various cities and the unincorporated area in the county, involving many citizens and attracting out-of-state participants. At the present time, there are no regulations controlling the operation of swap meets. Swap meets have both new and used items, for sale or trade, including stolen merchandise. A law enforcement problem has arisen in most areas where swap meets are held and, due to the small size of the city, the necessity for swap meets has not been demonstrated.

5.56.030 Prohibited. After June 1, 1970, it shall be unlawful for any person to operate a swap meet in the city.

5.56.040 Remedies for violations of this Chapter.

(a) Any person guilty of violating this chapter shall be deemed guilty of an infraction and shall be punishable in accordance with section 1.12.010.

(b) In addition to the penalties provided in section 1.12.010 any conditions caused or permitted to exist in violation of the provisions of this chapter shall be deemed a public nuisance and may be summarily abated as such by the city, and each day such condition continues shall be regarded as a new and separate offense.
5.60.010 Discharge of firearms  No person shall shoot, fire or discharge any pistol, revolver, gun, rifle or other firearm or device fired or discharged by explosives within the city except in defense of a person or property or on a city approved range.

5.60.020 Throwing or discharging of missiles  No person shall discharge any air gun, slingshot or bean shooter, or throw, hurl, heave or propel any sharp pointed missile, dart or arrow upon any public street, sidewalk or public gathering place within the city.

5.60.030 Selling weapons to persons under eighteen  No person shall sell to any person under eighteen (18) years of age, any dart, arrow or sharp pointed missile.

5.60.040 City Business License required  It shall be unlawful for any person to sell at retail, pistols, revolvers and other firearms without first obtaining a business license issued by the City of San Marcos. Prior to issuance of said business license, the applicant shall submit to the City of the following licenses and approvals: (i) Federal Firearms License issued by the U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives, (ii) Certificate of Eligibility issued by the State of California Department of Justice for each owner or manager of the firearms business – pursuant to California Penal Code Section 26700, (iii) Employee Certificate of Eligibility for each employee who handles, sells, or delivers firearms pursuant to California Penal Code Sections 26915 (a) and (c), (iv) any other documentation or information that may be required by the Issuing Officer of the City of San Marcos. Existing firearms dealers operating in the City that have a current Firearms License issued by the City must submit a copy of each of the above requirements to the City on or before July 1, 2014. Any and all persons employed by an existing firearms dealer operating in the City who will handle, sell or deliver firearms in the course and scope of their duties shall obtain and submit to the City a copy of a current Employee Certificate of Eligibility issued by the State of California Department of Justice prior to any such activities.

5.60.050 Records - Secondhand weapons  If a dealer, shall have offered to him for purchase or for acceptance in trade a used or second hand firearm, he shall first obtain the applicable licenses and approvals required by San Marcos Municipal Code Section 5.28 and Article 4 (Tangible Personal Property), Sections 21625 – 21647 of the California Business and Professions Code, and Division 8 (Pawnbrokers), Sections 21000 – 21307 of the California Financial Code, as may be amended from time to time.
5.60.060 Reserved.

5.60.070 Advertising or display. No firearm, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

5.60.080 Dangerous weapons - Possession in public - Prohibited. No person shall appear in any street, alley, sidewalk, parkway, or any other public place or place open to public view while carrying upon his or her person, or having in his or her immediate possession, any dangerous or deadly weapon.

5.60.090 Dangerous weapons - Possession in public - Exceptions. The restrictions contained in the preceding section shall not be deemed to prohibit the bearing of, or having possession of, ordinary tools or equipment carried by any person in connection with his or her trade, employment, business or profession, or for the purpose of legitimate sport or recreation.

5.60.100 Compliance with zoning ordinance. No firearm business may be carried on where prohibited by the zoning ordinance or within a structure which does not comply with applicable building code requirements.

5.60.110 State Requirements. The provisions of Part 6 (Control of Deadly Weapons), Sections 16000 – 34370 of the California Penal Code, are applicable within the jurisdictional boundaries of the City of San Marcos, as may be amended from time to time.
CHAPTER 5.64

INSPECTION OF AVOCADOS BEING TRANSPORTED

SECTIONS:

5.64.010 Purpose and intent
5.64.020 Definitions
5.64.030 Statement of ownership
5.64.040 Obtaining and retaining the statement of ownership
5.64.050 Presentation of statement of ownership
5.64.060 Seizure and impoundment
5.64.070 Investigation and release to rightful owner
5.64.080 Disposition by sale
5.64.090 Exemption
5.64.100 Violation--Penalty

5.64.010 Purpose and intent. It is the purpose and intent of this chapter to establish a means of identifying the owner of each commercial quantity of avocados so as to provide a means of controlling the alarming incidence of thefts of avocados within the city.

5.64.020 Definitions. Whenever in this chapter the following words or phrases are used, they shall mean:

(a) Sheriff shall mean the Sheriff of the County of San Diego or any of his duly appointed deputies.

(b) Commercial quantity of avocados means any quantity of avocados in excess of forty pounds exclusive of the container.

(c) Handler means any person, or authorized agent thereof, who grows, distributes or retails avocados, including but not limited to the following: grower, packer, and wholesale or retail fruitstand.

(d) To transport means the movement or conveyance by any means whatsoever of a commercial quantity of avocados over any road, street or highway within the City.

5.64.030 Statement of ownership. Every person who transports a commercial quantity of avocados shall:

(a) Cause a statement of ownership to be prepared and retained in his personal possession at all times while transporting said avocados; and

(b) Deliver a copy of such statement to each handler of the avocados being transported.

Such statement of ownership shall contain the following information:

(a) The name, address, and telephone number of each person who transports the avocados;

(b) The name, address, and telephone number of each handler of the avocados;

(c) The date transportation of the avocados begins an estimated time of delivery;
(d) The kind and quantity of avocados being transported;

(e) Points of origin and destination.

5.64.040 Obtaining and retaining the statement of ownership. Every handler who delivers or receives a commercial quantity of avocados shall obtain a copy of the statement of ownership from the person transporting said avocados. The person transporting said avocados and each handler shall retain a copy of each statement of ownership for one year following the date of the transportation of said avocados begins and shall maintain the same for inspection and review at any reasonable time by the Sheriff upon his request.

5.64.050 Presentation of statement of ownership. Any peace officer, upon probable cause to believe a person is transporting a commercial quantity of avocados, may stop such person and inspect such avocados, whereupon, the statement of ownership described in Section 5.64.030 shall be presented to said peace officer upon request.

5.64.060 Seizure and impoundment. Any peace officer, upon reasonable belief that a person is not in legal possession of a commercial quantity of avocados, may seize such avocados without warrant. Upon seizure the peace officer shall take custody of the avocados and turn the same over to the custody of the Sheriff. The Sheriff shall receive and provide for the care and safekeeping of such avocados in a refrigerated storage facility at a temperature range of approximately forty degrees Fahrenheit.

5.64.070 Investigation and release to rightful owner. The Sheriff shall make reasonable investigation to ascertain ownership of all commercial quantities of avocados seized pursuant to this chapter. The Sheriff shall release custody of said avocados to the rightful owner upon submission to the Sheriff of satisfactory proof of ownership and after payment of a reasonable charge sufficient to reimburse the Sheriff for costs incurred in storing said avocados.

5.64.080 Disposition by sale.

(a) If for any reason a commercial quantity of avocados is not released to its rightful owner after being in the custody of the Sheriff for five days, the Sheriff may sell said avocados by public auction, in the manner and upon the notice of sale as prescribed by law for the sale of perishable property under execution.

(b) All of said avocados remaining unsold after being offered at such public auction may be destroyed or otherwise disposed of by the Sheriff.

(c) All proceeds derived from the sale of said avocados shall be held by the Sheriff for a period of at least six months, during which time the rightful owner of said avocados may submit satisfactory proof of ownership and obtain possession of the proceeds after payment of a reasonable charge sufficient to reimburse the Sheriff for costs incurred in storage and sale of said avocados.

(d) After retention of the proceeds for a period of at least six months, the Sheriff shall deposit such proceeds in the general fund of the City.

5.64.090 Exemption. This chapter shall not apply to the transportation of a commercial quantity of avocados which has been certified pursuant to Article 2, commencing with Section 44971, Chapter 9, Division 17 of the Food and Agricultural Code.


5.64.100 Violation - Penalty. Any person who knowingly provides false information for a statement of ownership, includes false information in a statement of ownership, or alters information contained in a statement of ownership or any copy thereof, shall be guilty of an infraction and shall be punishable in accordance with the provisions of section 1.12.010.
CHAPTER 5.68
BINGO GAMES

SECTIONS:

5.68.010 Bingo authorized
5.68.015 Remote Caller Bingo Prohibited
5.68.020 Definitions
5.68.030 License required
5.68.040 Application
5.68.050 Terms of license and fees
5.68.060 Application investigation
5.68.070 License not transferable
5.68.080 Limitations
5.68.090 Inspection
5.68.100 Application denial, license suspension and/or revocation
5.68.110 Appeal procedure
5.68.120 Violations

5.68.010 Bingo authorized. This chapter is adopted pursuant to section 19 of Article IV of the California Constitution in order to regulate the game of bingo lawfully under the terms and conditions set forth in the following sections of this chapter.

5.68.015 Remote Caller Bingo Prohibited. Remote caller bingo is hereby affirmatively prohibited in the City of San Marcos. "Remote caller bingo" shall refer to any game of bingo, as defined in subdivision (o) of Penal Code Section 326.5, in which the numbers or symbols on randomly drawn plastic balls are announced by a natural person present at the site at which time the live game is conducted, and the organization conducting the bingo game uses audio and video technology to link any of its in-state facilities for the purpose of transmitting the remote calling of a live bingo game from a single location to multiple locations owned, leased or rented by that organization. (Ord. No. 2013-1384, 9/24/2013)

5.68.020 Definitions. Whenever in this chapter the following terms are used they shall have the meanings respectively ascribed to them in this section.

(a) Bingo is a game of chance in which prizes are awarded on the basis of designated numbers or symbols that are marked or covered by the player on a tangible card in the player's possession which conforms to numbers or symbols selected at random and announced by a live caller. The game of bingo shall also include having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes. The winning cards shall not be known prior to the game by any persons participating in the playing or operation of the bingo game. All such preprinted cards shall bear the legend: "For sale or use only in a bingo game authorized under California law and pursuant to local ordinance."

(b) Nonprofit, charitable organization is an organization exempted from the payment of the bank and corporation tax by Sections 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g) or 23701(l) of the Revenue and Taxation Code and a contribution or gift to which would be a charitable contribution under Section 170(c)(2) of the Internal Revenue Code of 1954.

(c) An authorized organization is a nonprofit charitable organization as defined herein, a mobile home park organization or a senior citizens organization.
(d) Minor is any person under the age of eighteen (18) years.

(e) "Issuing Officer is the City Manager of the City of San Marcos or his or her designated representative.  (Ord. No. 2013-1384, 9/24/2013)

5.68.030 License required. It shall be unlawful for any person to conduct any bingo game(s) in the City of San Marcos, unless such person is a member of an authorized organization acting on behalf of such authorized organization and has been issued a license as provided by this chapter.

5.68.040 Application. Application for a license shall be made to the Issuing Officer on forms prescribed by the Issuing Officer. Such application form shall require from the applicant at least the following:  (Ord. No. 2013-1384, 9/24/2013)

(a) A list of all members who will operate the bingo game including full names of each member, date of birth, place of birth, physical description and driver's license number.

(b) The date(s) and place(s) of the proposed bingo game(s).

(c) Proof that the organization is an authorized organization as defined by this chapter.

5.68.050 Terms of license and fees.

(a) The term of a bingo license is one year and may be renewed for a period of one year from its date of issuance, upon application therefore. The bingo license shall be issued on a fiscal year basis, beginning with July first, and ending June thirtieth.

(b) The fee for the initial bingo license shall be fifty dollars ($50.00). The fee for renewal shall be twenty-five dollars ($25.00). The appropriate fee shall accompany the submission of each application and is nonrefundable and nonproratable except in the event an application for a license is denied, one-half of said fee shall be refunded to the applicant.  (Ord. No. 2013-1384, 9/24/2013)

5.68.060 Application investigation. Upon receipt of an application for a license the Issuing Officer shall send copies of such application to any office or department which the Issuing Officer deems essential in order to carry out a proper investigation of the applicant. The Sheriff's Department and every officer of the departments to which an application is referred shall investigate the truth of the matters set forth in the application, the character of the applicant, and may examine the premises to be used for the bingo game(s). Upon favorable recommendation of the Sheriff's Department the Issuing Officer shall issue the license.  (Ord. No. 2013-1384, 9/24/2013)

5.68.070 License not transferable. Each license issued hereunder shall be issued to a specific person on behalf of a specific authorized organization to conduct a bingo game at a specific location and shall in no event be transferable from one person to another, nor from one location to another.

5.68.080 Limitations. An authorized organization shall conduct a bingo game only on property owned or leased by it, which property is used by such authorized organization for an office or for the performance of the purposes for which the authorized organization is organized.

(a) No minors shall be allowed to participate in any bingo game.
(b) All bingo games shall be open to the public, not just to members of the authorized organization.

(c) All bingo games shall be operated and staffed only by members of the authorized organization which organized it. Such members shall be approved by the Sheriff’s Department and shall not receive a profit, wage or salary from any bingo game. Only the authorized organization licensed to conduct a bingo game shall operate such game or participate in the promotion, supervision or any other phase of such game.

(d) No individual, corporation, partnership, or other legal entity except the authorized organization licensed to conduct a bingo game shall hold a financial interest in the conduct of such bingo game.

(e) With respect to organizations exempt from payment of the bank and corporation tax by Section 23701(d) of the Revenue and Taxation Code, all profits 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. Such profit shall be used for charitable purposes. With respect to other authorized organizations licensed to conduct bingo games pursuant to this section, 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. Such proceeds shall be used only for charitable purposes, except as follows:

(l) Such proceeds may be used for prizes.

(2) A portion of such proceeds, not to exceed ten (10) percent of the proceeds before the deduction for prizes, or five hundred dollars ($500.00) per month, whichever is less, may be used for the rental of equipment, overhead, including the purchase of bingo equipment, and administrative costs.

(3) Such proceeds may be used to pay license fees.

(4) Within the first ten (10) days of each month, the applicant shall file with the Issuing Officer a full and complete financial statement of all monies collected, disbursed and the amount remaining for the charitable purposes, on forms provided by the Issuing Officer as a result of the previous month’s bingo games. (Ord. No. 2013-1384, 9/24/2013)

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

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

(h) No bingo game shall be conducted between the hours of midnight and 8:00 a.m.

5.68.090 Inspection. Any peace officer of the city shall have free access to any bingo game licensed under this chapter. The licensee shall have the bingo license and lists of approved staff available for inspection at all times during any bingo game.

5.68.100 Application denial, license suspension and/or revocation. The Issuing Officer may deny any application for a bingo license, or suspend or revoke a license if she has received an unfavorable report from the Sheriff’s Department, or if she finds that the applicant or licensee or any agent or representative thereof has:
(a) Knowingly made any false, misleading or fraudulent statement of material fact in the application or in any record or report required to be filed under this chapter, or

(b) Violated any of the provisions of this chapter. If after an investigation by the Sheriff's Department and other departmental officers it is determined that a bingo license should be suspended or revoked or an application for such license denied, a notice of suspension, revocation or denial of application setting forth the reasons for such suspension, revocation or denial of application shall be prepared. Such notice shall be sent by certified mail to the licensee's or applicant's last address provided in the application or be personally delivered. Any person who has had an application for a bingo license denied, suspended or revoked may appeal the decision in the manner provided in this chapter.  (Ord. No. 2013-1384, 9/24/2013)

5.68.110 Appeal Procedure. Any appeal shall be filed and conducted as prescribed in this section:

(a) Within fifteen (15) calendar days after the date of any denial, suspension, revocation or other notice of and by the Issuing Officer, an aggrieved party may appeal such action by filing with the City Clerk of the City of San Marcos a written appeal briefly setting forth the reasons why such denial, suspension, revocation or other decision is not proper.

(b) Within thirty (30) days after the date of receipt of said appeal the City Clerk shall schedule a hearing before the City Council. At least one week prior to the date of the hearing on the appeal, the City Clerk shall notify the appellant, the Issuing Officer and the Sheriff's Department of the date, time and place of the hearing. The City Council is authorized to conduct the hearing on the appeal. At such hearing the Sheriff's Department, Issuing Officer and the appellant may present evidence relevant to the denial, suspension, revocation, or other decision of the Sheriff's Department or Issuing Officer. The City Council shall receive evidence and shall rule on the admissibility of evidence and on questions of law. The formal rules of evidence applicable in a court of law shall not apply to such hearing.

(c) At the conclusion of the hearing, the City Council may uphold the denial, suspension, revocation or other decision of the Sheriff's Department or Issuing Officer, or the City Council may allow that which has been denied, reinstate that which has been suspended or revoked, or modify or reverse any other Sheriff's Department or Issuing Officer decision which is the subject of the appeal. The City Clerk shall within ten (10) days of said hearing forward the decision of the City Council to the appellant, and other interested parties. The decision of the City Council is final.  (Ord. No. 2013-1384, 9/24/2013)

5.68.120 Violations and penalties.

(a) It is unlawful for any person to receive a profit, wage or salary from any bingo game authorized by this chapter.

(b) Any person guilty of violating any of the provisions or failing to comply with any of the requirements of this chapter shall be deemed guilty of a misdemeanor and shall be punishable in accordance with section 1.12.020.  (Ord. No. 99-1053, 2/1/99)
CHAPTER 5.72
COMMUNICATIONS SYSTEMS

SECTIONS:

5.72.010 Title
5.72.020 Definitions
5.72.030 Unauthorized Use of Public Streets, Places or Property Prohibited
5.72.040 Unauthorized Connections
5.72.050 Tampering with Facilities
5.72.060 Grant of Franchise
5.72.070 Rights Reserved to the Grantor
5.72.080 Rights of Subscribers
5.72.090 Franchise Fee
5.72.100 Security Fund
5.72.110 Faithful Performance Bond
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5.72.130 Cable Usage Corporation
5.72.140 Requirements for Provision of Services
5.72.150 Installations generally
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5.72.180 System Design and Construction
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5.72.230 Vacation or Abandonment
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5.72.250 Removal of System Facilities Upon Deactivation of System
5.72.260 Relocation or Movement of Facilities
5.72.270 Extension of Franchise Area
5.72.280 Maintenance and Complaints
5.72.290 Procedures for Handling of Complaints
5.72.300 Remedies for Breach and Payment of Damages
5.72.310 Triennial Audit of Performance
5.72.320 Record of System Technical Data
5.72.330 Emergency Repair Capability
5.72.340 Customer Service Standards, Procedures, and Billing
5.72.350 Quality of Service
5.72.360 Revocation, Termination and Receivership
5.72.370 Franchise Applications
5.72.380 Records
5.72.390 Reports of Financial and Operating Activity
5.72.400 Communications with Regulatory Agencies
5.72.410 Enforcement of Franchise
5.72.420 Interconnection
5.72.430 Non-enforcement by the Grantor
5.72.010  Title. This ordinance shall be known and may be cited as the "Cable Communication Franchise Ordinance."

5.72.020  Definitions. For the purpose of this chapter, the following words, terms, phrases, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(a) **Additional Service** means any service not included in **Basic Service** or **Institutional Service**.

(b) **Agency Subscriber** means a subscriber who receives a service in a government or public agency, school, or nonprofit corporation facility.

(c) **Administrative Officer** means the City Manager or his or her designated representative.

(d) **Attachment Point** means the point at which Grantee's drop attaches to subscriber owned equipment.

(e) **Basic Service** means the lowest service tier which includes the retransmission of local television broadcast signals.

(f) **Broadcast Signal** means a signal transmitted over the air to a wide public geographic audience and received by a cable system.

(g) **Cable Communications System** or **System**, **Cable TV System**, **CATV System**, or **Broadband Communications Network** or **Network**, means a system within the City of San Marcos of antennas, cables, amplifiers, towers, microwave links, cable casting studios, and any other conductors, converters, terminals, equipment or facilities designed and constructed for the primary purpose of distributing television programming to subscribers or users, and for the secondary purpose of producing, receiving, amplifying, storing, processing, or distributing audio, video, digital, or other forms of electronic or electrical signals.

(h) **Cablecast Signal** means a nonbroadcast signal that originates within the facilities of the Cable Communications System, whether from a live or recorded source.

(i) **Closed Circuit** or **Institutional Service** means services provided to institutional users on an individual or collective basis. The information contained in such a service may or may not be simultaneously available to other system subscribers or users.

(j) **Channel** means a frequency band capable of carrying a standard video signal or some combination of video signals, or a frequency band assigned to carry a nonstandard video signal or some combination of such video signals.
(k) **Commercial Subscriber** means a subscriber who receives a residential service in a place of business, or anyone whose service is utilized in a business, trade, or profession, including but not limited to hotels, motels, bars, restaurants and other similar establishments.

(l) **Cable Usage Corporation** or **CUC** means a nonprofit, public corporation, hereinafter further defined, established or authorized by the Grantor, whose duties shall include the review of the management and operation of services designated by Grantor.

(m) **Complaint** means a billing dispute or service call in which a subscriber is notifying Grantee of an outage and/or degradation in picture quality.

(n) **Converter** or **Terminal** means a device which converts signals from one frequency to another.

(o) **Drop** means the cable and related equipment connecting the system's plant to equipment at the subscriber's premises.

(p) **Education Channel** means any channel where nonprofit educational institutions are the primary designated programmers.

(q) **FCC** means the Federal Communications Commission or its designated representative(s).

(r) **Franchise** means a written legal undertaking or action of the Grantor which awards permission to a specific named person or entity to use the streets and public ways for the purpose of installing, operating and maintaining a Cable Communications System.

(s) **Government Channel** means any channel where local government agencies are the primary designated programmers and programming is a noncommercial informational programming regarding government activities and programs.

(t) **Grantee** means the entity to which a franchise is granted for the construction, operation, maintenance, and reconstruction of a Cable Communications System and the lawful successors, transferees, or assignees of said entity.

(u) **Grantor** means the City of San Marcos for territory within its present and future jurisdiction, its elected governing body, and/or such representative person or entity as it may designate to act on cable communication matters in its behalf.

(v) **Gross Annual Receipts or Gross Receipts or Gross Revenues.** Gross revenues shall mean the annual total monies, revenues, or other things of value actually received by Grantee related to, or stemming from any San Marcos cable operations, programming, channel leasing, advertising, interconnection or retransmission of signals to/from other cable systems, except for taxes collected by a system Grantee on behalf of taxing authorities.

Gross revenues shall include, but shall not be limited to (i) Basic Cable Service, Expanded or Tier Cable Service, Premium Service, audio services, commercial service, pay-per-view service and related per-event services, or for the distribution of any cable service over the system; (ii) charges for additional outlets, changes in service and reconnection charges and similar fees, (iii) revenue received from subscribers for converters, remote controls or other equipment leased or rented to subscribers in connection with the delivery of cable service to such subscribers; (iv) revenue received from subscribers for service charges and late fees attributable to delinquent accounts; and (v) revenues received from leasing of any channels, advertising, intraconnections, sales of
subscription preference information and/or any other revenue received by Grantee arising from any San Marcos cable operations which Grantor is not prohibited from sharing or receiving by applicable state or federal regulation.

Gross Revenues shall not include any tax of general applicability imposed upon a Grantee or upon the Grantee’s subscribers by the City, state, federal or any other governmental entity and required to be collected by the Grantee and passed through to the taxing entity (including, but not limited to, user taxes, service taxes and communications taxes), provided such taxes are identified as a separate line item on subscriber statements. Gross revenues shall not include amounts which cannot be collected by Grantee and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in Gross Revenues for the period in which they are collected. (Ord. No. 99-1061, 6/8/99)

(w) **Headend** means that central portion(s) of the system where signals are introduced into and received from the balance of the system.

(x) **Institutional Network** or **Institutional System** means a system or portion of a system intended primarily to service nonresidential subscribers.

(y) **Lease Channel** means any channel where someone other than Grantor or Grantee is sold the rights to air programming.

(z) **Local Origination Channel** means any channel where the Grantee is the primary designated programmer.

(aa) **Monitoring** or **Tapping** means observing or receiving a signal, or the absence of a signal, where the observer is neither the sending nor receiving party and is not authorized by the sending and/or receiving party to observe said signal whether the signal is observed or received by visual, electronic, or any other means whatsoever.

(bb) **Nonbroadcast Signal** means a signal that is not involved in over-the-air broadcast for general public reception.

(cc) **Open Channel** means any channel that can be received by all subscribers, without the use of special equipment not normally possessed by, or available to, anyone who may become a subscriber.

(dd) **Pay Cable** or **Pay Service, Premium Service**, or **Pay Television** means signals for which there is a fee or charge to users over and above the charge for Basic Service including any tiers of service; provided, however, the sale or lease of studio facilities, equipment, and/or tapes to local users shall not be deemed pay or premium services.

(ee) **Plant** means the transmitting medium and related equipment which transmits signals between the headend and subscribers, including drops.

(ff) **PEG Channel** means a Public, Education or Government channel.

(gg) **Person** means any corporation, partnership, proprietorship, individual or organization authorized to do business in the State of California, or any natural person.

(hh) **Private Channel** means any channel carrying material available in intelligible form only to subscribers provided with special equipment to receive such signals and render them intelligible.
(ii) **Program** or **Programming** means the information content of a signal and the act or process of creating such content, whether that content is intended to be pictures and sound, sound only, or any other form of information whatsoever.

(jj) **Programmer** means any person or entity who or which provides program material or information for transmission by means of a system.

(kk) **Property of Grantee** means all property owned or leased within the franchise area by Grantee in the conduct of its system business under a franchise granted hereunder.

(ll) **Public Channel, Community Service Channel** or **Community Channel** means any channel for which members of the public or any community organization may provide nonadvertiser supported programming; provided, however, sponsorship identification fees may be paid and accepted to further community programming.

(mm) **Resident** means any person residing in the franchised area or as otherwise defined by applicable law.

(nn) **Residential Subscriber** means a subscriber who receives a service in a dwelling unit, and whose service is not utilized in a business, trade or profession.

(oo) **Section** means any section, subsection, or provision of this ordinance, or of a franchise hereunder.

(pp) **Service** means any specific kind or type of benefit provided by Grantee, or group of related benefits or abilities, obtained or made available to any person or entity, involving the use of a signal transmitted via a cable communications system, whether the signal and its content are the entire service or comprise only a part of a service which involves other elements of any number or kind.

(qq) **Service Area** means the City of San Marcos

(rr) **Service Outage** means a substantial or complete disruption in cable service.

(ss) **School** means a substantial or complete disruption in cable service.

(tt) **Streets and Public Ways** means the surface and the space above and below any public street, sidewalk, alley, or other public way or right-of-way of any type whatsoever.

(uu) **Subscriber** means any person or other entity electing to subscribe to, for any purpose, a service provided by Grantee by means of or in connection with its cable system.

(vv) **Tier** shall mean a combination of signals and/or channels for which a specific identifiable price is charged.

(ww) **Unit** means a discrete place where system services are used, such as a residence, apartment, office, store, etc.

(xx) **User(s)** means any person or entity who either receives services from a cable system or who accomplishes any purpose by, in part or in whole, transmitting or receiving information via a cable system, or who creates programming for that purpose, or who receives and uses programming.
(yy) **Year** means a specific year or part of a year referred to, or a full calendar year.

Terms Not Defined. Words, terms, or phrases not defined herein shall first mean their special meanings or connotations in any industry, business, trade or profession where they commonly carry such special meanings. In the event such special meanings are not common, they shall mean their standard definitions as set forth in commonly used and accepted dictionaries of the English language.

**5.72.030 Unauthorized use of Public Streets, Places or Property Prohibited.** It is unlawful for any person to construct, install, or maintain in any public place within Grantor's territory, or upon any easement owned or controlled by a public utility, or within any other public property of Grantor, or within any privately-owned area within Grantor's jurisdiction which is not yet, but is designated as, a proposed public place on a tentative subdivision map approved by Grantor, any equipment, facilities, or system for distributing signals or services through a cable television system, unless a franchise has first been obtained hereunder, and is in full force and effect. Violation of this section is a misdemeanor punishable pursuant to the provisions of Chapter 1.12 of this Code.

**5.72.040 Unauthorized Connections.** It is unlawful for any person to make or use any unauthorized connection to, or to monitor, tap, receive or send any signal or service via a franchised system, or to enable anyone to receive or use any service, television or radio signal, picture, program, or sound, or any other signal without payment to the owner of said system. Violation of this section is a misdemeanor punishable pursuant to the provisions of Chapter 1.12 of this Code.

**5.72.050 Tampering with Facilities.** It is unlawful, without the consent of the owner, to willfully attach to, tamper with, modify, remove or injure any physical part of a franchised cable television system. Violation of this section is a misdemeanor punishable pursuant to the provisions of Chapter 1.12 of this Code.

**5.72.060 Grant of Franchise.**

(a) **Authority to Grant Franchises.** The Grantor may grant a franchise to any person who offers to provide a system under and pursuant to this ordinance.

(b) **Form.** A franchise may, at Grantor's sole option, take the form of an ordinance, license, permit, contract, agreement, resolution or any other form elected by Grantor.

(c) **Grants Not Required.** Consistent with applicable state and federal law, no provision of this ordinance shall require the granting of a franchise when, in the opinion of the Grantor, it is in the public interest not to do so.

(d) **Purpose.** The purpose of a franchise shall be to identify and authorize its specific Grantee and to identify and specify those terms, conditions, definitions, itemizations, specifications and other particulars of the agreement between the Grantor and Grantee which it represents. In so doing a franchise may clarify, extend and interpret the provisions of this Chapter. Where a franchise and this Chapter conflict both shall be liberally interpreted to achieve a common meaning or requirement. In the event this is not possible within reasonable limits, the franchise shall prevail.

(e) **Mutual Consideration.** The award of a franchise authorizing the use of public property or public rights for private purposes shall be deemed consideration by the Grantee in the form of...
agreement to provide the system and services offered in accordance with the provisions hereof and of the franchise.

(f) Compliance with Law. Neither this Chapter nor a franchise granted under it relieves Grantee of any requirement of Grantor or of any ordinance, rule, regulation, or specification of Grantor now or hereafter in effect, including, but not limited to, the payment of all normal permit and inspection fees so long as said ordinance, rules, regulations or specifications do not materially conflict with or alter the express terms of this Chapter and the franchise.

(g) Franchise Non-Exclusive. Grantor may, at its option, grant one or more franchises to construct, operate, maintain, and reconstruct a Cable Communications System. Said franchises shall constitute both a privilege and an obligation to provide the system and services required by this Chapter and the Franchise.

(h) Limitation. No privilege shall be granted or conferred by a franchise except those specifically prescribed herein or in the Franchise Agreement.

(i) Duration. The term of any franchise, and all rights, privileges, obligations and restrictions pertaining thereto shall be specified in the franchise agreement. The effective date of any franchise shall be as specified in the Franchise.

(j) Use of Public Streets and Ways. For the purposes of operating and maintaining a Cable Communications System in the franchised area, a Grantee may place and maintain within the public rights of way such property and equipment as are necessary and appurtenant to the operation of the Cable Communications System. Prior to construction or alteration of plant in public rights of way, the Grantee shall apply for and receive all necessary encroachment, construction or other permits required by any City law or regulation.

(k) Use of Other Utilities. Any person or entity who provides a system or services as defined herein shall be deemed a Grantee and shall not do so except in accordance with a franchise granted hereunder. If such Grantee uses distribution channels furnished by a telephone company or other public utility, said Grantee shall be required to comply with all of the provisions hereof as a "Licensee," and the term "Grantee" herein shall include "Licensee" in its meaning.

(l) Non-transferable. Except for transfers between and among wholly-owned subsidiaries of Grantee, or Affiliates of Grantee which are wholly-owned by the same parent, the franchise shall not be sublet or assigned, nor shall any of the rights or privileges therein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld. The granting of such consent shall not render unnecessary any subsequent consent. The Grantor shall approve, disapprove, or conditionally approve said request within a reasonable period of time upon the receipt of all reasonably necessary requested information.

(m) Change in Control.

(1) The Grantee shall promptly notify Grantor of any proposed change in control of the Grantee. Such change in control shall make the franchise null and void unless and until the Grantor shall have consented thereto, which consent shall not be unreasonably withheld. The Grantor may condition said transfer upon reasonable terms and conditions.
(2) Except for transfers between and among wholly-owned subsidiaries of Grantee, or affiliates of Grantee which are wholly-owned by the same parent, for the purpose of this section, a change in control shall mean any acquisition or transaction resulting in control of fifty-one percent (51%) or more of Grantee’s or Grantee’s parent’s voting stock by an entity or group of entities acting in concert. (Ord. No. 99-1061, 6/8/99)

(n) Sales Notice. The Grantee, at least ninety (90) days prior to any franchise transfer or change in control as heretofore described, shall file with the Grantor a Notice of Intent to enter into said transfer and then file a certified statement attesting to said sale within ninety (90) days of approval of said transfer.

(o) Sales Approval. Every such transfer or change in control as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless Grantee shall have filed said certified statement as is required and Grantor has given written approval by resolution of the City Council.

(p) Violation. If the Grantee violates any provision of this Section, the Franchise shall terminate subject to all applicable due process safeguards.

(q) Franchise References. A franchise which cites, refers to, or otherwise incorporates this entire ordinance or portions thereof shall be deemed to be a franchise issued under and subject to this ordinance. Such a franchise may employ, as sufficient for citation, reference, or incorporation the section or subsection number and caption hereof, followed by a statement of the detail specification, or requirement of the franchise pursuant to such reference.

5.72.070 Rights Reserved to the Grantor.

(a) Reservation. There is hereby reserved to Grantor every right it may have in relation to its power of eminent domain over Grantor's franchise and property.

(b) Non-waiver or Bar. Neither the granting of any franchise, nor any provisions hereof, shall constitute a waiver or bar to the exercise of any governmental right or power by Grantor.

(c) Delegation of Powers. Any right or power in, or duty retained by or imposed upon Grantor, or any commission, officer, employee, department, or board of Grantor, may be assigned or transferred by Grantor to any officer, employee, department or board of Grantor.

(d) Right of Inspection of Construction. The Grantor shall have the right to inspect all construction or installation or other physical work performed by Grantee in connection with the franchise, and to make such tests as it shall find necessary to ensure compliance with the terms of the franchise and other pertinent provisions of law, so long as said inspection and testing does not unreasonably interfere with Grantee's operations.

(e) Right to Require Removal of Property. Consistent with applicable law, at the expiration of the term or any renewal term or extension for which the franchise is granted, or upon its lawful revocation, expiration, or termination, the Grantor shall have the right to require the Grantee to remove, at Grantee's expense, all portions of its System and any other property from all streets and public ways within the franchise area within a reasonable period of time.

(f) Right of Intervention. The Grantor shall have the right of intervention in any suit, proceeding or other judicial or administrative proceeding in which the Grantor has any material interest, to which the Grantee is party.
(g) **Place of Inspection.** The Grantor shall have the right to inspect and request copies of all relevant information that is reasonably necessary for the exercise of Grantor's regulatory authority upon reasonable notice on Grantee's local premises at any time during normal business hours, and any Grantee records kept at another place shall, within ten (10) days of Grantor's request, be made available at Grantee's premises within the County of San Diego for Grantor's inspection and copying, so long as said inspection does not unreasonably interfere with Grantee's operations. Grantor shall pay all reasonable costs for copying any relevant information needed.

5.72.080 **Rights of Subscribers.**

(a) **Discriminatory Practices Prohibited.** The Grantee shall not deny cable television service or otherwise discriminate against subscribers, or others on the basis of race, color, religion, national origin, sex, age, disability or sexual preference. The Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state or local governments and shall comply with all applicable laws and executive and administrative orders relating to non-discrimination.

(b) **Tapping and Monitoring.** The Grantee shall not tap or monitor or permit any other person controlled by Grantee to tap or monitor any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever without the express written consent of the subscriber or a court order therefore; provided, however, that the Grantee shall be entitled to monitor customer service calls for quality control purposes and to conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return path transmission, or checking for unauthorized connections to the cable television system or service levels or billing for pay services.

(c) **Data Collection.**

(1) Except to obtain information necessary to render a cable service or other service provided by the Grantee or to detect unauthorized reception of cable communications, the Grantee shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior affirmative written consent of the subscriber concerned.

(2) The Grantee shall not disclose personally identifiable information concerning any subscriber without the prior affirmative written consent of the subscriber concerned unless (i) the disclosure of such information is necessary for the Grantee to render, or conduct a legitimate business activity related to, the provision of cable services or (ii) the disclosure is pursuant to a court order. *(Ord. No. 1061, 6/8/99)*

(d) **Revealing Subscriber Preferences.**

(1) Grantee shall not reveal individual subscriber preferences, viewing habits, beliefs, philosophy, creeds or religious beliefs to any third person, firm, agency, governmental unit or investigating agency without court authority or prior written consent of the subscriber.

(2) Such written consent, if given, shall be limited to a period of time not to exceed one (1) year or a term agreed upon by the Grantee and subscriber.

(3) The Grantee shall not condition the delivery or receipt of cable services to any subscriber on any such consent.
(4) Such a subscriber may revoke without penalty or cost any consent previously made by delivering to the Grantee in writing a substantial indication of his intent to so revoke.

(e) Revealing Subscriber Lists. The Grantee shall not reveal, or sell, or permit the release or sale of its subscriber list without the prior affirmative written consent of each subscriber, provided that Grantee may use its subscriber list as necessary for the construction, marketing, and maintenance of the Grantee's services and facilities authorized by a franchise, and the concomitant billing of subscribers for said services; and further, provided that consistent with applicable law, Grantor may use Grantee's subscribers list for the purpose of communication with subscribers in connection with matters relating to operation, management, and maintenance of the cable system.

(f) Other Persons Affected. The prohibitions contained in subsections (a) through (f) inclusive of this Section shall extend and apply to all of the foregoing as well as to the Grantee:

(1) Officers, directors, employees and agents of the Grantee;

(2) General and Limited Partners of the Grantee;

(3) Any person or combination of persons owning holding or controlling five percent (5%) or more of any corporate stock or other ownership interest of the Grantee;

(4) Any affiliated or subsidiary entity owned or controlled by Grantee, or in which any officer, director, stockholder, general or limited partner or person or group of persons owning, holding or controlling any ownership interest in the Grantee, shall own, hold or control five percent (5%) or more of any corporate stock or other ownership interest; and

(5) Any person, firm or corporation acting or serving in the capacity of holding or controlling company of the Grantee.

(g) Subscriber Bill of Rights. Grantee shall provide, at the time of initial connection and annually thereafter to all subscribers a publication, in a form prior approved by Grantor, delineating and describing, in clear and understandable language, the consumer rights granted herein.

(h) Notice to New Subscribers. Before providing cable television service to any subscriber, grantee shall provide a written notice to the subscriber covering substantially the following information:

Customer understands that Company uses telephone and power company facilities and public rights of way in providing service and that this continued use cannot be guaranteed.

Customer agrees not to make any claim against Company or the telephone company, or power company, or counties and/or incorporated cities of the franchise area or their officers and/or employees in the event that such use is denied for any reason and Company is unable, in its discretion, to provide service over alternate routes.

(i) Complaint Advice. Grantor may require that Grantee advise each subscriber as may be set forth in the franchise that the Grantor's representative is the official to whom complaints of poor service should be made if such complaints of poor service are not resolved by Grantee to the satisfaction of each subscriber. **Supplement No. 4 – 1994 Code**
5.72.090 Franchise Fee.

(a) As compensation for any franchise to be granted, and in consideration of permission to use the streets and public ways of Grantor for the construction, operation, maintenance, and reconstruction of a Cable Communications System, the Grantee shall pay to the Grantor such amounts as specified in the franchise.

(b) Payments due the Grantor under this provision shall be computed quarterly for the succeeding quarter, and shall be paid within thirty (30) days of the close of each calendar quarter. The payment shall be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by the Grantor to determine the accuracy of said payment.

(c) In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, Grantee shall pay as additional compensation the greater of the following:

   (1) An interest charge, computed from such due date, at the annual rate equal to the prevailing commercial prime interest rate in effect upon the due date.

   (2) A sum of money equal to $2,000 for each month or part thereof of delay which sum shall also bear interest from the due date at an annual rate equal to the prevailing commercial prime interest rate in effect upon the due date.

5.72.100 Security Fund

(a) Within thirty (30) days after the effective date of the franchise, the Grantee shall deposit into a bank account established by the Grantor, and maintain on deposit through the term of the franchise, a sum specified in the franchise as security for the faithful performance by it of all of the provisions of the franchise, and compliance with this ordinance, and compliance with all orders, permits and directions of any agency of the Grantor having jurisdiction over its acts or defaults, and the payment by the Grantee of any claims, fees, liens, taxes due the Grantor which arise by reason of the construction, operation or maintenance of the system.

(b) Except as provided in the Franchise Agreement, if the Grantee fails, after twenty (20) days notice to pay to the Grantor any fees due and unpaid, or fails to repay within such twenty (20) days, any damages, costs or expenses which the Grantor shall be compelled to pay by reason of any act or default of the Grantee in connection with its franchise; or fails, without just cause after thirty (30) days notice of such failure, to comply with any provision of the franchise and after full hearing and a determination by the Grantor that such failure was without just cause which the Grantor reasonably determines can be remedied by an expenditure of the security, the Grantor may immediately withdraw the amount thereof, with interest and any liquidated damages, from the security fund. Upon such withdrawal, the Grantor shall notify the Grantee of the amount and the date thereof.

(c) Within thirty (30) days after notice to it that any amount has been withdrawn by Grantor from the security fund, the Grantee shall deposit a sum of money sufficient to restore such security fund to the original amount.

(d) Grantee shall be entitled to the return of such security fund, or portion thereof, with interest, as remains on deposit at the expiration of the franchise, or its termination, once all amounts due to the Grantor have been paid.

5.72.100 - 5.72.130
(e) The rights reserved to the Grantor with respect to the security fund are in addition to all
other rights of the Grantor and no action, proceeding or exercise of a right with respect to such
security fund shall affect any other right the Grantor may have.

5.72.110 Faithful Performance Bond. Within thirty (30) days after the effective date of the
franchise, and in addition to the security fund established pursuant to section 5.72.100, the
Grantee shall furnish proof of the posting of a faithful performance bond in favor of the Grantor,
with surety approved by the Grantor in the sum specified in the franchise conditioned that the
Grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise,
provided, however, that such bond shall not be required upon certification by Grantor of
completion of construction of Grantee's cable system. As defined in the Franchise Agreement,
during the course of construction, the amount of the bond may from time to time be reduced as
provided in the Franchise. Written evidence of payment premiums shall be filed and maintained
with the Grantor. (Ord. No. 99-1061, 6/8/99)

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5.72.120 Letter of Credit.

(a) At the option of the Grantor, it may allow the Grantee to post in lieu of Security Fund and/or
Faithful Performance Bond, an irrevocable letter of credit, issued by a bank approved by the
Grantor, in the amount specified in the franchise. Said letter of credit shall incorporate wording
approved by the Grantor enabling it to draw such sums from time to time as the Grantor may find
necessary to satisfy any defaults of Grantee or to meet any payments due Grantor under or in
connection with Grantee's franchise upon ten (10) days written notice. Said letter of credit shall
further provide for sixty (60) days written notice by certified mail by its issuer to Grantor of any
pending expiration or cancellation, or other language acceptable to the City Attorney, and said
notice shall without further cause constitute reason for the Grantor to draw the full sum to be held
in its own accounts until such letter shall be re-established in good and satisfactory form to
Grantor.

(b) If Grantor shall require such a letter of credit, Grantee shall pay all fees or other charges
required to keep it in force and shall, within thirty (30) days of any draw by Grantor, restore its face
value to the original amount.

(c) All provisions herein applying to bonds or security funds shall also apply to letters of credit.

5.72.130 Cable Usage Corporation.

(a) To the extent specified in the franchise agreement, the Grantor may utilize a portion of the
cable system capacity, and associated facilities and resources, to develop and provide non-
commercial cable services that will be in the public interest. In furtherance of this purpose, the
Grantor may establish a non-profit or cooperative corporation, and adopt by-laws, to receive and
allocate facilities, support funds and other considerations provided by the Grantee, and/or others.
Such a public corporation, if established, may be delegated the following responsibilities:

(1) Receive, and utilize or reallocate for utilization, channel capacity, facilities, funding
and other support provided specifically for public non-commercial usage of the cable
system.

(2) Review the status and progress of each non-commercial service
developed for public benefit.
(3) Report to the Grantor annually on the utilization of resources, the new public services developed and the benefits achieved for the Grantor and its residents.

(4) Reallocate resources on a periodic basis to conform with changing priorities and public needs.

(b) Grantee shall provide to the Grantor or the Cable Usage Corporation, at Grantor's election, equipment, facilities, and channel capacity as provided in the franchise.

5.72.140 Requirements for Provision of Services.

(a) A franchised system shall provide, as a minimum, the services and broad programming categories listed in the franchise.

(b) Grantee shall inform Grantor at least forty-five (45) days and Subscribers at least thirty (30) days in advance of making any change in a programming service or in the reoccurring rates charged.

(c) Grantee shall not discriminate between or among subscribers within one type or class in the availability of services at either standard or differential rates according to published rate schedules. No charges may be made for services except as listed in published schedules which are available to inspection by anyone at Grantee's office, quoted by Grantee on the telephone, and displayed or communicated to all potential subscribers.

(d) Upon completion of system construction and/or system reconstruction, Grantee may, at its option, charge subscribers for services no more than one (1) month in advance unless an individual subscriber requests a longer period. Prior to completion of system reconstruction, Grantee may continue any existing advance billing practices which provide for up to a maximum of two (2) months of advance billing. Bills may be due and payable upon mailing but shall not be delinquent, and no late charge penalties shall be assessed, until the later of: (1) thirty (30) days from postmark; or (2) service has actually been provided for the billed period. All bills and billing statements shall clearly indicate the billing period, the actual due date, and the delinquent or late remedy or assessment.

(e) Grantee may disconnect a subscriber only for cause, which shall include, without limitation, the following:

   (1) Payment delinquency in excess of forty-five (45) days.
   (2) Willful or negligent damage to or misappropriation of Grantee property.
   (3) Monitoring, tapping, or tampering with Grantee's system, signals, or service.
   (4) Threats of violence to Grantee's employees or property.

(f) Grantee shall, upon subscriber's written request, reconnect service which has been disconnected for payment delinquency when payment has removed the delinquency. A published standard charge may be made for reconnection. Grantee shall not be required to make more than three (3) reconnections for the same subscriber if the disconnections involved were caused by payment delinquency within the past twenty-four (24) months. Reconnection for disconnects covered by subsection (d)(2), (3), or (4) shall be at Grantee's sole discretion.
5.72.150 Installations Generally.

(a) Grantee shall promptly provide and maintain service to the residential, commercial, and industrial structures as provided in the Franchise Agreement, in the service area as defined in the Franchise Agreement, upon request of the lawful occupant or owner.

(b) In the case of a new drop, Grantee shall advise each subscriber that he/she has the right to require his/her installation be done over any route on his property, and in any manner he/she may elect which is technically feasible and consistent with proper construction practices. Grantee may, if he/she so elects, require that any such request be made in writing. If the subscriber requests installation other than a standard installation, then the subscriber may be required to pay a reasonable fee for the time and materials occasioned by the installation and to sign an Agreement releasing the Grantee from liability for poor service or damage to person or property resulting from the non-standard installation.

(c) Standard Installation. For purposes of this subsection, a standard installation shall include installation of drop cable with fittings up to one hundred and twenty-five (125) feet from the existing CATV distribution system. Also included as part of a standard installation is the grounding cable, fine tuning of the television set and the provision of the appropriate literature. (Ord. No. 99-1061, 6/8/99)

5.72.160 Converters/Terminals.

(a) At such time as a converter or terminal becomes necessary for subscribers to have access to all services on its system, Grantee shall make them available to subscribers. Grantee may require each subscriber who elects to take a converter or terminal to furnish a security deposit therefore.

(b) Each device shall be and remain the property of the Grantee unless Grantor approves its sale to the subscriber. Grantee shall be responsible for maintenance and repair of all equipment owned by Grantee and may replace it as he/she may from time-to-time elect, except that subscriber shall be responsible for loss of or damage to any such device while in his/her possession.

(c) Upon termination or cancellation of subscriber's service, subscriber shall promptly return Grantee's property to Grantee in the same condition as received, reasonable wear and tear excepted.

(d) Grantee may apply the security deposit against any sum due from subscriber for loss of or damage to such converter exceeding reasonable wear and tear. In the event that no security deposit has been required, the Grantee may charge the subscriber for any such damage exceeding reasonable wear and tear.

(e) If Grantee has no claim against the deposit, Grantee shall return it, or the balance, to the subscriber within forty-five (45) days of return of the converter.

5.72.170 Non-Standard Installations. For each non-standard drop installed, the Grantee may charge the subscriber for the cost of material and labor in excess of that for a standard drop. Grantee shall provide each subscriber a written estimate of all charges prior to installation and obtain subscriber's written authorization in advance for all non-standard drop charges.

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5.72.180 - 5.72.190
5.72.180 System Design and Construction.

(a) The System shall be constructed in accordance with the provisions of the franchise agreement. Construction components and techniques shall be in accordance with the franchise and all applicable law. Consistent with applicable law, system technical and performance standards shall be in accordance with the franchise.

(b) The Grantee shall strictly adhere to all building and zoning codes currently or hereafter in force and obtain all necessary permits. The Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said property by any person. In the event of such interference, the Grantor may require the removal of the Grantee's lines, cables, and appurtenances from the property in question. Grantee shall give at least forty-eight (48) hour advance notice to all property owners and the Grantor prior to installing any above-ground and underground structures upon easements located on private property. Grantor shall not modify its construction requirements subsequent to the completion of construction so as to require reconstruction or retrofit unless the public health and safety so requires.

(c) Cables shall be installed underground at Grantee's cost where all existing utilities are already underground. Previously installed aerial cable shall be installed underground at Grantee's pro rata cost in concert with other utilities when all such other utilities may convert from aerial to underground construction.

(d) No franchise shall relieve Grantee of any obligations involved in obtaining pole or conduit space from any department of Grantor, utility company, or from others maintaining utilities in streets.

(e) Any and all streets and public ways disturbed or damaged by the Grantee or its contractors, during the construction, operation, maintenance, or reconstruction of the System, shall be restored within the time frame and limits specified by Grantor or agent of Grantor, at Grantee's expense, to their original condition unless otherwise authorized in writing by Grantor.

(f) The Grantee shall not erect any pole on or along any street or public way in an existing aerial utility system. If additional poles in an existing aerial route are required, Grantee shall negotiate with public utility for their installation. Any such installation shall require the advance written approval of the Grantor. Subject to applicable federal and state law, the Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions.

(g) Grantee may cut or trim any trees in any street and Grantee may cut or trim trees pursuant to a prior agreement with the owner of property on which they stand, or as otherwise authorized in writing by Grantor.

5.72.190 System Construction Schedule.

(a) The Grantee shall begin to offer cable television service no later than the schedule contained in the franchise.

(b) The Grantee shall provide a detailed construction plan indicating progress schedule, area construction or reconstruction maps, test plan, and projected dates for offering service.
5.72.200 Geographical Coverage. The Grantee shall design and construct the System to have the capability to service every residential structure within the service area of the franchise and any annexations thereto, as defined and provided by the Franchise Agreement, with any exceptions requiring specific Grantor approval. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in the franchise. The route of separate cables serving institutional subscribers shall be as approved by Grantor and specified in the franchise.

5.72.210 Provision of Service. After service has been established for any area, the Grantee shall provide service to any requesting subscriber within that area within times and terms set forth in the franchise.

5.72.220 Construction Default. Upon the failure, refusal or neglect of Grantee to cause any construction, repair, or other necessary work to comply with the terms of the franchise agreement to be properly completed in, on, over, or under any right of way within a time prescribed in the Franchise Agreement or the construction permit, Grantor may (but shall not be required to) cause such work to be completed in whole or in part, and upon so doing shall submit to Grantee itemized statement of costs thereof. Grantee shall be given reasonable notice of Grantor's intent to exercise this power and fifteen (15) days to cure thereafter. Grantee shall, within thirty (30) days of billing, pay to Grantor the actual costs thereof.

5.72.230 Vacation or Abandonment. In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, upon reasonable notice, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted to continue the same, and on the removal thereof restore, repair or reconstruct the area where such removal has occurred, to such condition as may be required by the Grantor not in excess of the original condition. In the event of failure, neglect or refusal of the Grantee, after thirty (30) days' notice by the Grantor to do such work, Grantor may cause it to be done, and the cost thereof shall be paid by the Grantee within thirty (30) days and collection may be made by Grantor.

5.72.240 Abandonment in Place. Grantor may, upon written application by Grantee, approve the abandonment of any property in place by Grantee, under such terms and conditions as Grantor may approve. Upon Grantor-approved abandonment of any property in place, Grantee shall cause to be executed, acknowledged, and delivered to Grantor such instruments as Grantor shall prescribe and approve, transferring and conveying the ownership of such property to Grantor.

5.72.250 Removal of System Facilities upon Deactivation of System. In the event that Grantee's plant is deactivated for a continuous period of thirty (30) days except for reasons outside Grantee's control, without prior written notice to and approval by Grantor then Grantee shall, at Grantor's option, and at the expense of Grantee and at no expense to Grantor, and upon demand of Grantor, promptly remove from any streets or other area all property of Grantee, and Grantee shall promptly restore the street or other area from which such property has been removed to its condition prior to Grantee's use thereof, provided that Grantee shall not be required to remove conduit from underground, where Grantor may determine no damage to the surface of any structures may result from such non-removal.

5.72.260 Relocation or Movement of Facilities.

(a) Upon order by Grantor, Grantee shall relocate facilities at Grantee's sole expense in order to accommodate the widening, relocation, change of grade, or other work or improvement
of a city street or right-of-way. Nothing in a franchise shall prevent the Grantor from constructing, repairing and/or altering any public work. If any such property of Grantee shall interfere with the construction, maintenance or repair of any public improvement, all such property shall be removed or replaced in such manner as directed by Grantor so that the same shall not interfere with the said public work, and such removal or replacement shall be at the expense of the Grantee.

(b) In the event it is necessary to temporarily move or remove any of the Grantee’s property at Grantor’s direction for a public purpose in order lawfully to move a large object, vehicle, building or other structure, Grantee, upon reasonable notice, shall move, at the expense of Grantee, its property as may be required to facilitate such movements. No such movement shall be deemed a taking of Grantee’s property. Nothing herein shall limit the right of Grantee to seek reimbursement from any party other than Grantor.

5.72.270  Extension of Franchise Area. If Grantor elects to grant one or more franchises hereunder, and if thereafter one or more of the franchises expires or is otherwise ended, Grantor may, if it so elects, require a remaining Grantee, or more than one, to extend its system to provide service to the area served by the ended franchise unless Grantee demonstrates to Grantor’s reasonable satisfaction that it is not commercially practicable to do so, provided, however, Grantee shall not be required to overbuild any existing system. The terms and requirements of such extension shall not exceed those contained herein or in Grantee’s franchise.

5.72.280  Maintenance and Complaints.

(a) The Grantee shall maintain an office in the franchise area, or such other location approved by the Grantor in writing, open during all usual business hours, but in no case less than forty eight (48) hours per week including at least one weekend day per week. Grantor shall have a publicly listed non-toll-charge telephone number, and operated as to receive subscriber complaints and requests on a 24-hour basis. Current information shall be maintained of all complaints and their disposition and a summary thereof shall be submitted to Grantor upon request but no more often than monthly.

(b) Maintenance. The Grantee shall maintain a preventative maintenance crew plus a force of technicians capable of promptly responding to requests for repairs relating to a service interruption and in no event shall such response occur later than twenty-four (24) hours after the interruption becomes known. No charge shall be made to the subscriber for such a service or repair except that Grantee may charge for service calls not related to the system. (Ord. No. 99-1061, 6/8/99)

(c) Telephone System. The Grantee shall provide a state-of-the-art telephone system to receive all construction and service complaints, including without limitation those of hearing impaired persons. A sufficient number of customer service representatives will be provided so that callers are not required to wait beyond thirty (30) seconds for live-answered phone service during normal operating conditions. This standard shall be met no less than ninety (90) percent of the time measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time. The telephone number of the local office shall be listed in the Pacific Bell telephone directory serving the City of San Marcos or equivalent directory if placement in the Pacific Bell directory is not possible. The telephone service shall be operable to accept complaints twenty-four (24) hours a day, seven (7) days a week. The Grantee will not be required to measure compliance with the telephone answering standards above unless an historical record of compliance indicates a clear failure to comply. (Ord. No. 99-1061, 6/8/99)

(d) Grantee shall provide and guarantee subscribers with the option of scheduling a four (4)
5.72.290 Procedures for Handling of Complaints. Grantee shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Records of complaints received and how they were handled shall be maintained by Grantee for at least one (1) year. Aggregate data based upon these complaints shall be made available for inspection by Grantor, upon request. Subscribers shall be advised, at least once each calendar year, of the procedures for resolution of complaints by Grantee, including the address of the responsible officer of Grantor. (Ord. No. 99-1061, 6/8/99)

(a) Receipt and acknowledgement of any complaint made in person or by telephone within twelve (12) business hours.

(b) Acknowledgement of any complaint received by mail at Grantee’s office within five (5) business days of the date such complaint is received.

(c) Maintain information available to Grantor upon Grantor's request, of all complaints, including the complainants' name, address and telephone number, the date of its acknowledgement, and information given as to how the complaint would be resolved, and the action taken.

(d) Information on complaints not resolved within forty-eight (48) hours of receipt shall be maintained by Grantee and include the information above and add the detailed reasons for non-resolution within the forty-eight (48) hour period.

(e) Provide complete information to the complainant regarding his ability to take his complaint to the Grantor's representative if it is not resolved by the Grantee.

(f) Grantee shall respond within eight (8) business hours to complaints made or referred by Grantor.

5.72.300 Remedies for Breach and Payment of Damages.

(a) In the event of the material breach by Grantee of its obligations under the franchise, including all disputes regarding franchise payments, construction defaults, technical standards and customer service standards, Grantor, through its City Manager, Council, or a hearing officer, may, in its discretion, assess penalties for the following:

(1) For technical standards violations, if more than ten percent (10%) of the locations tested pursuant to FCC regulations fail to meet the FCC technical standards, the Grantor may impose penalties not to exceed one hundred dollars ($100.00) per day plus the full actual cost of enforcement as measured from the date of the last scheduled FCC test until the standards have been satisfied at each retested location. Penalties for all other violations shall be in accordance with the following Sections 5.72.300(a)(2)-(4).

(2) Up to two hundred dollars ($200.00) for each day of each material breach, not to exceed six hundred dollars ($600.00) for each occurrence of material breach, plus costs of enforcement, including, but not limited to, attorney’s fees and costs.

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(3) For a second material breach of the same nature occurring within 12 months where
a fine or penalty was previously assessed, up to four hundred dollars ($400.00) for each day of each material breach, not to exceed twelve hundred dollars ($1,200.00) for each occurrence of the material breach, plus costs of enforcement, including, but not limited to, attorney’s fees and costs.

(4) For a third or further material breach of the same nature occurring within those same 12 months, where a fine or penalty was previously assessed, up to one thousand dollars ($1,000.00) for each material breach, not to exceed three thousand dollars ($3,000.00) for each occurrence of the material breach, plus costs of enforcement, including, but not limited to, attorney’s fees and costs.

(b) Cure. Prior to assessing any damages against the Grantee, Grantor shall have provided Grantee with notice and thirty (30) days for an opportunity to cure, in those instances where this Chapter 5.72 does not provide for a longer cure period. If Grantee does not correct a material breach within the applicable cure period, Grantor may impose penalties from the date of the original violation.

(c) Appeal and Payment. In the event Grantee fails to respond to said notice of alleged violation, or to cure the alleged violation within the acceptable cure period, or to provide an explanation for failure to cure acceptable to Grantor, Grantor or its designee shall schedule a hearing no sooner than ten (10) days after written notice to Grantee of the expiration of the cure period and the scheduling of said hearing. Grantee shall be provided an opportunity to be heard at such hearing, including the right to present evidence, cross-examine witnesses, and be represented by counsel. Within thirty (30) days after said hearing, the Grantor shall determine whether or not Grantee is in violation and submit written findings of facts supporting such determination. In the event said hearing is not held before the City Council, Grantee shall possess the right to appeal said determination to the City Council within ten (10) days of issuance of the statement of decision and findings of fact. The City Council shall decide said appeal pursuant to a hearing at which Grantee has an opportunity to be heard. Grantee shall have the right to appeal the City’s Council’s decision to a court of competent jurisdiction. All penalties shall be due and owing thirty (30) days after the final decision by either the City Council or the hearing officer in the event of no appeal to the City Council. The aforesaid assessment may be levied directly against the letter of credit and collected by Grantor twenty (20) days from date such damages are due and owing. Any imposition of monetary damages may be collected and retained by Grantor as liquidated damages without any reduction, offset or recoupment, for example, for costs incurred by Grantee to cure its default(s), whatsoever. Such assessment shall not constitute a waiver by the Grantor of any other right or remedy it may have under the Franchise Agreement or under applicable law. (Ord. No. 99-1061, 6/8/99)

5.72.310 Triennial Audit of Performance

(a) In addition to the provisions of sections 5.72.070 (d) and (g), and except as provided in the Franchise Agreement Grantor may require, at its option, that performance audits of the system be conducted as often as every three (3) years by an independent technical consultant, selected and employed by Grantor and at Grantor’s sole expense, to verify compliance of the system to all technical standards and other specifications of the franchise, as provided in the Franchise Agreement. Periodic technical specification testing, if provided for in the Franchise Agreement and actually conducted pursuant thereto, shall eliminate this performance audit.

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(b) Upon completion of a performance audit, the Grantor and Grantee shall meet to review
the performance of the Cable Television System. The reports required herein regarding subscriber complaints, the records of performance tests and the opinion survey report shall be utilized as the basis for review. In addition, any subscriber may submit complaints during the review meetings, either orally or in writing, and these shall be considered.

(c) Within thirty (30) days after the conclusion of the system performance review meetings, Grantor shall issue findings with respect to the adequacy of system performance and quality of service. If inadequacies are found, Grantor may direct Grantee to correct the inadequacies within a reasonable period of time.

(d) Grantor's and Grantee's participation in this process shall not waive any rights they may possess under applicable federal and/or state law.

(e) In addition to the Triennial Audit described above, Grantor may conduct an annual audit of the same magnitude, at its sole expense, when and if determined necessary or appropriate by Grantor.

5.72.320 Record of System Technical Data.

(a) Grantee shall maintain in its office a complete and up-to-date set of as-built system maps and drawings upon completion of construction or reconstruction, equipment specification and maintenance publications, and signal level diagrams for each active electronic piece of equipment in the system. As-built drawings show all lines and installed equipment, and tap values and spigots. The scale of maps and drawings shall be sufficient to show the required details in easily readable form and size. Technical data at the office shall also include approved pole applications, details and documentation of satellite and microwave equipment, mobile radio units, heavy construction vehicles and equipment, and video and audio equipment normally used in the operation of the system. If Grantor requires use of technical data in its own office it may make copies of any items at Grantor's expense.

(b) All technical data shall be available to Grantor's inspection during normal business hours, upon reasonable notice, and, in the event of system failure or other operating emergency, at any time, so long as the provision of said data does not unreasonably interfere with Grantee's operations.

5.72.330 Emergency Repair Capability. It shall be Grantee's responsibility to assure that its personnel qualified to make repairs are available at all reasonable times and that they are supplied with keys, equipment location instructions, and technical information necessary to begin repairs upon notification of need to maintain or restore continuous service to the system.


(a) The Grantee shall, at the time service is initiated provide each new customer written information covering:

   (1) The time allowed to pay outstanding bills.

   (2) Grounds for termination of service.

   (3) The steps the Grantee must take before terminating service.
(4) How the customer can resolve billing disputes.

(5) The steps necessary to have service reconnected after involuntary termination.

(6) The fact that customers shall have the right to speak with a supervisor, and if none is available, supervisor shall return customer call within one (1) working day.

(7) The appropriate regulatory authority with whom to register a complaint and how to contact such authority.

In addition, at least once each calendar year, Grantee shall notify each customer that information is available upon request concerning items (1) through (7) above.

(b) Grantee’s billing procedures shall comply with the following minimum requirements:

(1) Except as provided in Section 5.72.140 (e), bills for service shall be rendered monthly, unless otherwise authorized by the customer and the Grantee or unless service is rendered for a period less than one (1) month. The actual due date of the bill shall be no less than thirty (30) days from the date of the bill. The bill shall be mailed to subscribers on or shortly after its dated date. Bills shall be rendered as promptly as possible. All bills shall contain a telephone number and a mailing address for billing inquiries or disputes.

(2) In the event of a dispute between the customer and the Grantee regarding the bill, the Grantee shall promptly make such investigation as is required by the particular case and report the results to the customer. In the event the dispute is not resolved to the satisfaction of both parties, the Grantee shall inform the customer of the complaint procedures of the Grantee. If the customer wishes to obtain the benefits of paragraphs (b) and (c) of this sub-section, notification of the disputed bill must be given to the Grantee within five (5) days after due date.

(3) The customer shall not be required to pay the disputed portion of the bill until the earlier of the following:

   a) Resolution of the dispute;

   b) Expiration of the forty-five (45) day period beginning on the date of issuance, provided that the procedures established in sub-section (a) above have been followed.

(4) Pending resolution of the bill dispute, Grantee shall attempt to ensure that no termination notices shall be issued for the disputed portions of the bill, nor shall any other collection procedures be initiated for said amount.

(c) When a subscriber voluntarily discontinues service Grantee shall refund the unused portion of any advance payments after deducting any charges currently due through the end of the present billing period within forty-five (45) days of discontinuance of service. Unused payment portions shall be the percentage of time for which subscriber has paid for service and will not receive it because of his discontinuation of service.

(d) Uncollected accounts may be referred to private collection agencies for appropriate action if the bill has not been paid by the earlier of (a) fifteen (15) days following date of involuntary
termination or (b) the forty-five (45) days following the date of issuance of the original uncollected amount, provided no notification of billing dispute has been made, or if procedures for resolution of billing disputes have not been followed as required above. If the account was voluntarily terminated, for any reason, the account may not be referred to a collection agency until at least fifteen (15) days following rendering of the final bill. If notification of a billing dispute is made, all collection procedures shall be delayed as required in paragraph (3) of subsection (b), above. Referral to collection agent shall then occur no sooner than the forty-five (45) days following issuance of the original uncollected amount.

5.72.350 Quality of Service. The quality of Grantee’s service refers to the services associated with day-to-day operations (e.g., response to customer complaints; billing; interruptions of service; disconnection; rebates and credits; signal quality, and the provision to customers or potential customers of information on billing or services). In order to assess the quality of service, Grantee shall survey a representative telephonic sample of no less than two hundred (200) subscribers at least once every third calendar year. The form, content, and methodology of the telephonic survey shall be prior approved in writing by Grantor. The following questions at a minimum shall be asked:

-- Are you satisfied or dissatisfied with the cable television service you are receiving?

-- If you are dissatisfied, why?

The results of said survey, including the raw data and conclusions, shall be provided to Grantor within thirty (30) days of completion.

5.72.360 Revocation, Termination and Receivership.

(a) Revocation. Consistent with applicable law, in addition to any rights set out elsewhere in this document, the Grantor reserves the right to revoke a franchise, subject to notice to Grantee and the provision of a hearing consistent with due process requirements, in the event that:

(1) The Grantee willfully and/or negligently on a continuous basis violates any material provision of its franchise.

(2) The Grantee’s construction schedule is materially delayed as set forth in the franchise and such delays were within the control of Grantee.

(b) Forfeiture. Consistent with applicable law, upon failure of the Grantee to comply with the material terms of its franchise, the Grantor may by resolution after a full hearing affording Grantee due process, declare a forfeiture, and the Grantee may be required to forthwith remove its structures or property from the streets and restore the streets to their prior condition within a reasonable period of time and upon failure to do so the Grantor may perform the work and collect all actual costs, including all direct and indirect costs, thereof from the Grantee. The cost thereof shall be a lien upon all plant, property, or other assets of the Grantee, within the City limits.

5.72.370 Franchise Applications. Applicants for a franchise, or renewal thereof, may submit to the Grantor, or to a designated agency, written application in a format provided by the Grantor, at the time and place designated by the Grantor for accepting applications, and including the designated application fee. This provision is deemed procedural and shall not constitute the grant of any right to the Grantee.

5.72.380 Records.
(a) There shall be kept in the Grantor's offices a separate record for the franchise, which record shall show the things hereafter set forth in Subparagraphs (1) and (2) below. The Grantee shall provide such information in such form as may be required by the Grantor for said records, as well as copies of any records of Grantee upon request for good cause, so long as the provision of said documents does not unreasonably interfere with Grantee's operations and said information is reasonably necessary for Grantor to carry out its regulatory functions.

(1) Any amount collected annually from the Grantor and the character and extent of the service rendered therefore to the Grantor.

(2) The amount collected annually from other users of service and the character and extent of the service rendered therefore to them.

(b) Grantee shall keep true and accurate books and records in conformity with generally accepted accounting principles, consistently applied, showing all income, expenses, and expense transfers, borrowing, payments, investments of capital, and all other transactions relating to the system. Grantor shall, upon reasonable notice, have the right to inspect said records and receive copies thereof to the extent said information is reasonably necessary for Grantor to carry out its regulatory functions.

5.72.390 Reports of Financial and Operating Activity.

(a) No later than ninety (90) days after the close of Grantee's fiscal years, Grantee shall present a written report to the Grantor which shall include:

(1) A financial report verified by the Chief Financial Officer or his/her designee of Grantee for all system activity during the previous fiscal year including gross receipts from all sources, and gross subscriber revenues from each service.

(2) A summary of the previous year's activities, including, but not limited to, subscriber totals and new services.

(3) If requested by Grantor, a summary of complaints received and remedial actions taken.

(b) No later than April 15 of each year, the Grantee shall provide a written report of any FCC or other performance tests required or conducted. In addition, the Grantee shall provide reports of the Test and Compliance procedures established by its franchise agreement, or herein, no later than thirty (30) days after the completion of tests.

(c) The Grantee shall prepare and furnish to the Grantor in writing at the times and in the form prescribed by Grantor, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Grantor, as specified by Grantor, and for good cause so long as the provision of said reports does not unreasonably interfere with Grantee's operations and said information is reasonably necessary for Grantor to carry out its regulatory functions.

5.72.400 Communications with Regulatory Agencies. Upon Grantor's request copies of all communications between the Grantee and the Federal Communications Commission or any other agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to a franchise, shall be submitted promptly to the Grantor upon
5.72.410 Enforcement of Franchise

(a) Notice of Franchise Default. Except as provided in the Franchise Agreement, prior to formal consideration by Grantor of termination of Grantee's franchise because of willful or continuous negligent failure to correct a default attributed to Grantee, Grantor shall make written demand on Grantee to correct the default alleged. Grantor and Grantee shall expeditiously meet to discuss the alleged problem, at which time Grantee shall indicate, in writing, the amount of time necessary to resolve the alleged problem. During this time period, but in no event fewer than ten (10) days before the final date for correction, Grantor may request additional time to correct the problem and Grantor shall grant said request if it determines, in the exercise of its discretion, that such time is necessary due to delays beyond Grantee's control. If the default continues for a period of thirty (30) days following such deadline for corrections, plus any extension thereof, franchise termination may be placed on the next available regular Grantor's meeting agenda. The Grantee shall be served a written notice of such termination at least ten (10) days in advance giving the time and place of the Grantor's meeting. At its meeting Grantor shall hear Grantee and any person interested in the matter and shall determine, at that or subsequent meetings, an appropriate course of action for enforcement or termination of Grantee's franchise.

(b) Delegation of Enforcement Mechanisms. Such liquidated damages as Grantor may assess against Grantee which do not include loss of franchise may, at Grantor's option, be determined by an officer or agency of the Grantor to which it may delegate such administrative considerations and decisions subject to due process and the criteria contained in this Chapter the franchise agreement subject to appeal to the City Council.

5.72.420 Interconnection

(a) Interconnection With Systems Under Grantor's Jurisdiction. Upon direction of Grantor, Grantee shall interconnect the PEG Channels of its cable television system with those other cable television systems under Grantor's jurisdiction within no more than six (6) months from the date of order. If Grantee has not negotiated a mutually agreeable cost allocation formula with those systems with which it is ordered to interconnect within three (3) months of Grantor's interconnection order, Grantor may establish said cost allocation formula and require all Grantees under its jurisdiction to so comply.

(b) Interconnection With Systems Outside of Grantor's Jurisdiction. The Grantee shall interconnect access, local origination, and such other PEG channels as designated by Grantor of the cable system with any or all other CATV systems in contiguous areas as may be reasonably directed by the Grantor and agreed to by the other cable television systems and applicable jurisdiction(s). Interconnection of systems may be done by direct cable connection, microwave link, satellite, or other appropriate method subject to the Grantor's approval and generally accepted industry standards. Such interconnection shall not increase the number of channels Grantee must dedicate to such uses, nor influence any useable formula for triggering additional PEG channels.

(c) Initial Technical Requirements to Assure Future Interconnection Capability. Grantee shall provide local origination equipment that is compatible so that video programming can be shared throughout its area cable television system.

5.72.430 Non-enforcement by the Grantor. A Grantee shall not be relieved of its obligation to comply with any of the provisions of this ordinance, or of its franchise or any law or regulation, by
reason of any failure of the Grantor to force prompt compliance.

**5.72.440 Continuity of Service.**

(a) It shall be the right of all subscribers to receive all available services within the obligations of the franchise insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the system, the Grantee shall use due diligence and reasonable care to ensure that all subscribers receive continuous, uninterrupted service. In the event of purchase by the Grantor, or a change of Grantee, the current Grantee shall cooperate with the Grantor or new Grantee to operate the system for a temporary period, to maintain continuity of service to all subscribers. In the event that Grantee, through its own fault, discontinues system-wide service for seventy-two (72) continuous hours and Grantee is in material default of its Franchise or said Franchise is revoked by Grantor, but not if Grantor fails to renew said Franchise, Grantor may, by resolution when it deems reasonable cause exists, assume operation of a system for the purpose of maintaining continuity of service until any circumstances which may, in the judgment of the Grantor, threaten the continuity of service are resolved to Grantor's satisfaction.

(b) During any period when the system is being operated by Grantor pursuant to subsection (a), Grantor shall attempt to cause as little disruption of operations as is consistent with the maintenance of continuing service to subscribers. Notwithstanding the foregoing, Grantor shall, as it may deem necessary, make any changes in any aspect of operations desirable, in Grantor's sole judgment, for the preservation of quality of service and its continuity. Grantor shall further, during any such period, maintain to the best of its ability the system's records, physical plant, financial integrity and funds, and other details and activities normally involved in operations.

(c) Grantor may, upon assuming operation of a system franchised hereunder, appoint a manager to act for it in the overall as well as detailed direction and conduct of the system's affairs. Such manager shall have the authority delegated to him by Grantor and shall be solely responsible to Grantor for management of the system. Grantee shall reimburse Grantor for all its reasonable costs or damages in excess of system revenues during Grantor operation if the franchise is in full force and effect during the period of Grantor operation.

**5.72.450 Notices.** All notices and other communications to Grantee shall be addressed to it at the address at which Grantee conducts its business. All notices and other communications to Grantor shall be addressed to it at its published address for receipt of public communications.

**5.72.460 Filing.** When not otherwise prescribed herein, all matters herein required to be filed with Grantor shall be filed with the Grantor's City Clerk or with such other official or agency as designated by Grantor.

**5.72.470 Force Majeure; Grantee's Inability to Perform.** In the event Grantee's performance of any of the terms, conditions, obligations, or requirements of this Chapter or any franchise granted hereunder, is prevented or impaired due to any cause beyond its reasonable control and not reasonably foreseeable, such inability to perform shall be deemed to be excused, and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Grantee's reasonable control and not reasonably foreseeable shall include, but not be limited to, any acts of God, civil emergencies, labor unrest, strikes, inability to obtain gratis access to an individual's property, and any inability of the Grantor to secure all necessary permissions or permits to utilize necessary poles or conduits so long as Grantee utilizes due diligence to timely obtain said permissions or permits.

**5.72.480 - 5.72.510**

**5.72.480 Captions.** The section and subsection numbers and captions throughout this ordinance
are intended to facilitate reading and reference. Such numbers and captions shall not affect the meaning or interpretation of any part of this Chapter.

**5.72.490 Application.** Except for sections 5.72.020, 5.72.030 and 5.72.040, the provisions of this Chapter shall be applicable with respect to franchise holders, only to those franchises granted or renewed subsequent to the enactment of ordinance No. 92-941. With respect to prior franchises the provisions of Ordinance No. 83-610 and of Chapter 5.72 of the San Marcos Municipal Code as it existed prior to the enactment of Ordinance No. 92-941 shall apply.

**5.72.500 Severability.** If any provision of this Chapter is determined to be void or invalid by any administrative or judicial tribunal, said provision shall be deemed severable and such invalidation shall not invalidate the entirety of this Chapter or any other provision thereof. (Ord. No. 92-941, 10-27-92)

**5.72.510 Modifications of Ordinance.** Nothing in this Chapter shall be deemed to prevent Grantor from negotiating terms in the Franchise that differ from the requirements of this Chapter to its satisfaction, provided such modifications comply with applicable federal and state statutes and regulations. (Ord. No. 99-1061, 6/8/99)
CHAPTER 5.74
TRANSIENT LODGING FACILITIES

SECTIONS:

5.74.010 Definitions
5.74.020 Register Required – Form of Registration Required
5.74.030 Duty to Require Transient Registration
5.74.040 Access to Register
5.74.050 False Name and Signature
5.74.060 Repeat Registration, Rental or Assignment of Rooms Over Specified Time Period Prohibited.
5.74.070 Non-Registered Occupancy or Subletting Prohibited
5.74.080 Rental of Room to Minor – Notification Requirement
5.74.090 Posting of Rates
5.74.100 Charge in Excess of Posted Rates Prohibited
5.74.110 Posting of Rules and Regulations of Establishments
5.74.120 Violation – Penalty

5.74.010 Definitions. As used in this chapter, the following words and phrases have the meanings set forth in this section:

(a) “Transient Lodging Facility” shall include any hotel, motel, inn, lodging facility and public or private club. Transient lodging facility shall not mean any hospital, convalescent home or rehabilitation facility.

(b) “Hotel” shall have the same meaning as defined in Section 20.16.630.

(c) “Motel” shall have the same meaning as defined in Section 20.16.820.

(d) “Occupancy” shall mean the use or possession of any room or rooms or portion thereof in any transient lodging facility for dwelling, lodging or sleeping purposes.

(e) “Operator” shall mean the person who is the proprietor of a transient lodging facility, whether in the capacity of owner, lessee, sub-lessee, manager, operator, and mortgagees in possession, licensee or any other capacity. Where the operator performs its functions through a managing agent of type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as its principal. Compliance with the provisions of this chapter by either the principal or managing agent shall, however, be considered to be compliance by both.

(f) “Room” shall mean any area within a transient lodging facility intended for use as lodging, a temporary dwelling, or for sleeping purposes.

(g) “Transient” shall mean any person who exercises temporary occupancy or is entitled to temporary occupancy by reason of concession, permit, right or access, license or other agreement for a period of less than one month.

(h) “Transient lodging facility” shall mean any structure, or any portion of any structure, in which there are five (5) or more guest rooms where transient lodging (for a period of less than one month) with or without meals is provided in exchange for compensation for dwelling, lodging or sleeping purposes.
5.74.020  Register Required – Form of Registration Required. Any operator of any transient lodging facility within the city shall keep a register for the registration of transient guests. Such register shall include the following information:

(a) Full name of transient;
(b) Current address of transient;
(c) Month, day, year and hour of arrival of transient;
(d) Room number assigned to transient;
(e) Full name of any and all individuals who will occupy the room registered to the transient;
(f) Legible photocopy of a current picture identification of transient;
(g) Make, type, color, license plate number, issuing state and name of the registered owner of the motor vehicle in the immediate possession of transient;
(h) Signature of transient;
(i) Signature of the operator, manager or employee assigned to transient registration;
(j) Month, day, year and hour of departure of transient, or if the exact time of the departure is unknown, the date and time that the departure was first made known to operator.

Such register shall be adequately maintained and preserved for a minimum of three (3) years.

5.74.030  Duty to Require Transient Registration. No operator of any transient lodging facility within the city shall rent, let or assign any suite, room or bed thereof for temporary occupancy by any transient until such transient has registered their information, in accordance with Section 5.74.020.

5.74.040  Access to Register. Any operator of any transient lodging facility within the city shall make the register available for inspection at all times, upon reasonable request, by any law enforcement officer of the city or any peace officer. No person shall erase or alter, or suffer or permit to be erased or altered any of the entries in such register.

5.74.050  False Name and Signature. No person shall write or cause to be written, sign or cause to be signed, nor shall any operator of any transient lodging facility knowingly permit to be written or signed in any register of any such facility any name other than the name of the transient so registering.

5.74.060  Repeat Registration, Rental or Assignment of Rooms Over Specified Time Period Prohibited. No operator of any transient lodging facility within the city shall register, rent, let or assign any room in such facility more than once within an eight (8) hour period.

5.74.070  Non-Registered Occupancy or Subletting Prohibited. No transient shall allow their room or rooms be occupied by another transient who has not provided his or her information to the operator of such transient lodging facility in accordance with Section 5.74.20 of this Chapter.
5.74.080 Rental of Room to Minor – Notification Requirement. Any person, whether owner, employee, agent, or manager of any transient lodging facility who rents or lets any room or rooms to be occupied by any minor of less than eighteen (18) years of age, unless such minor is accompanied by his or her parent(s) or legal guardian or with permission of the same, shall:

(a) immediately contact law enforcement by telephone; and

(b) submit written notification, signed by the operator and mailed by first class United States mail, to local law enforcement within twenty-four (24) hours of such occurrence.

5.74.090 Posting of Rates. Every operator of any transient lodging facility in the city shall post in a conspicuous place in each room which is for rent or hire a printed statement of the specific charge or rate of charges by the day, week, or month to be charged for said room or rooms.

5.74.100 Charge in Excess of Posted Rates Prohibited. No charge or sum shall be collected or received by any operator of any transient lodging facility in an amount greater than operator is entitled to under the statement of charges or rates posted.

5.74.110 Posting of Rules and Regulations of Establishments. Every operator of any transient lodging facility within the city is hereby required to post in a conspicuous place in each room a printed statement of the general rules and regulations of said facility.

5.74.120 Violation – Penalty. Violation of any provision of the chapter or failure to comply with any requirement thereof shall be a misdemeanor punishable in accordance with the provisions of Section 1.12.010 of the San Marcos Municipal Code.
TITLE 6
ANIMAL CONTROL

CHAPTERS:

6.04  In General
6.08  Rabies Provisions
6.12  Dog Licenses
6.16  Shelters
6.20  Kennels
6.24  Control Provisions
6.28  Animals in Vehicles.
6.32  Retail Sales of Dogs, Cats and Rabbits

CHAPTER 6.04
IN GENERAL

SECTIONS:

6.04.010  Purpose
6.04.020  Definitions
6.04.030  Violation - Infraction - Misdemeanor
6.04.040  Fees
6.04.050  Service of Notices
6.04.060  Severability
6.04.070  Construction of Chapter

6.04.010  Purpose. The purpose of Title 6 of this Code is to regulate the keeping and handling of animals and fowl within the City.

6.04.020  Definitions. Whenever in this Title the following terms are used, they shall have the meaning ascribed to them in this Chapter.

(a)  Altered for a female means having had the ovaries and uterus surgically removed; an ovariohysterectomy. Altered for a male means having had the testicles surgically removed.

(b)  Ambient Temperature means the temperature surrounding the animal.

(c)  Animal shall include but not be limited to birds, fishes, reptiles, and non-human mammals.

(d)  At Large means being on any private property without permission of the person who owns or has a right to possess or use the property; or unrestrained by a leash on either public property, unless expressly permitted by law, or private property open to the public; or in any place or manner which presents substantial risk of imminent interference with animal or public health, safety or welfare.

(e)  Attack means any action by an animal which places a person in reasonable apprehension of immediate bodily harm.

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(f)  **Cat** means a *Felis domesticus* of either sex, altered or unaltered.

(g)  **City Council** means the City Council of the City of San Marcos.

(h)  **Clerk** means the City Clerk or the City Clerk's agents or deputies.

(i)  **County** means the County of San Diego.

(j)  **County Animal Shelter** means a premises selected by the Director of Animal Control as a suitable facility for the requirements of this Title.

(k)  **County Veterinarian** means the County of San Diego, Veterinarian or his/her agents or deputies.  *(Ord. No. 2002-1136, 3-12-02)*

(l)  **Curb** means to so restrain or control an animal that it urinates or defecates only in the street gutters.

(m)  **Dangerous Dog** means a dog which:

   (1) Has twice within a 48-month period attacked, bitten, or otherwise caused injury to a person engaged in lawful activity; or

   (2) Has once attacked, bitten or otherwise caused injury to a person engaged in lawful activity, resulting in death or substantial injury; or

   (3) Has been declared a "Vicious Dog" or "Dangerous Dog" by the Animal Control Authority pursuant to Section 6.24.110 of this Title.  *(Ord. No. 2002-1136, 3-12-02)*

(n)  **Department** means the City of San Marcos.  *(Ord. No. 2002-136, 3-12-02)*

(o)  **Director** means the City of San Marcos, its agents and deputies.  *(Ord. No. 2002-1136, 3-12-02)*

(p)  **Dog** means *Canis familiaris* of either sex, altered or unaltered; or any other member of the Canis genus if owned, kept, or harbored.

(q)  **Dog License** means a properly completed certification issued by the Animal Control Authority or other authorized agency, including the dog owner's name, address, and telephone number; the dog's name and description, including breed, color, sex, day if known, month and year of birth; rabies vaccination date; license tag number and expiration date.  *(Ord. No. 2002-1136, 3-12-02)*

(r)  **Dog License Application Rabies Certificate Form** means the dog license application form issued by County.  To serve as a rabies certificate it must show:

   (1) The dog owner's first and last name, street address and mailing address, if different, and telephone number; and

   (2) The dog's name and description, including breed, color, sex, day, if known, month and year of birth; and
(3) The type, lot number, and manufacturer of the rabies vaccine; and

(4) The date of vaccination; and

(5) The signature, or an authorized signature, of the veterinarian administering the vaccine.  (Ord. No. 2002-1136, 3-12-02)

(s) **Guard Dog** means:

(1) A "sentry dog" as defined in The Dog Act of 1969 (Health and Safety Code Section 121875 et seq.); or  (Ord. No. 2002-1136, 3-12-02)

(2) A “guard dog” or “attack dog” as defined in The Dog Act of 1969 (Health and Safety Code Section 121875 et seq.).  (Ord. No. 2002-1136, 3-12-02)

(t) **Guard Dog Operator** means:

(1) A "sentry dog company" as defined in The Dog Act of 1969 (Health and Safety Code Section 121875 et seq.); or  (Ord. No. 2002-1136, 3-12-02)

(2) Any person, including the owner of the dog, that operates or maintains a business to sell, rent, furnish, or train a “Guard Dog”.  (Ord. No. 2002-1136, 3-12-02)

(u) **Health Officer** means the County of San Diego Health Officer, his/her agents or deputies.

(v) **Impounded Animal** means any animal in the custody or control of the Animal Control Authority as provided in this Title.

(w) **Indoor Housing Facility** means any structure or building, housing or intended to house animals, which has the capability of controlling the environment within the enclosure created by the continuous connection of a roof, floor, and walls with at least one opening for entry and exit that is provided with a door or any movable structure used to close off the opening and typically consisting of a panel of wood, glass, metal, etc., which slides on rollers or swings on hinges; provided, however, that any openings which provide natural light shall be covered with a transparent material, e.g., glass, plastic, etc.

(x) **Kennel** means any lot or adjacent lot(s), or any building(s), structure(s), enclosure(s), or premises on the same or adjacent lot(s), wherein a total of seven or more dogs, four (4) months of age or over, are kept or maintained for any purpose by a person (including without limit, natural persons, corporations, unincorporated associates or one or more persons,) including, but not limited to, any agency organized or operated for the welfare of animals. The term “kennel” shall not include an animal shelter operated or established by the Animal Control Authority or a veterinary hospital operated by a veterinarian licensed by the State of California.

(y) **Kennel Operator** means any person who owns, controls, or operates a kennel or any person who is responsible for or who participates in the control or operation of a kennel.

(z) **Leash** means any rope, leather strap, chain or other material not exceeding six feet in length capable of restraining at least four (4) times the weight of the animal being restrained, being held in the hand of a person capable of controlling and actually controlling the animal to which it is attached.  (Ord. No. 2006-1268, 8-22-06)
(aa) **License Tag** means a piece of metal or other durable material inscribed with a date and number which has been issued by the Animal Control Authority or other authorized agency. *(Ord. No. 2002-1136, 3-12-02)*

(bb) **Licensed Dog** means a dog wearing its current dog license tag as required by this Title.

(cc) **Outdoor Housing Facility** means any structure or building, housing or intended to house animals, which does not meet the definition of “indoor housing facility”.

(dd) **Owner** means any person who is the legal owner, keeper, harborer, possessor or the actual custodian of an animal. Ownership is also established by a person registering as the owner on a license or other legal document or by a person who claims to be the owner or custodian and who takes possession or custody of an animal.

(ee) **Potentially Dangerous Animal** means:

1. Any animal of a species or type likely to cause injury to a person; or

2. Any animal which has once within the prior 48-month period attacked, bitten, or otherwise caused injury to a person engaged in lawful activity, except as otherwise provided by Section 6.04.020 (m) of this Code. *(Ord. No. 2002-1136, 3-12-02)*

(ff) **Primary Enclosure** means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, or compartment, exclusive of any kennel house.

(gg) **Protection Dog** means any dog, other than a “Guard Dog”, available for hire or furnished for hire to be used in guarding, patrolling, or protecting any area, yard, or premises, with or without supervision, to deter or detain unauthorized persons; or guard, protect, patrol, or defend any premises, area, or yard; or to protect, defend, or guard any person or property. The term “hire” shall include, but not be limited to, the renting or leasing of the services of a dog with or without a dog handler, or the sale of a dog with an option to repurchase. *(Ord. No. 2002-1136, 3-12-02)*

(hh) **Protection Dog Operator** means any person who makes available or furnishes a “Protection Dog” for hire. *(Ord. No. 2002-1136, 3-12-02)*

(ii) **Registered Owner** means a person registered as the owner on a dog license or a person claiming ownership of an impounded animal and taking possession of it.

(jj) **Sanitize** means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to animal or human health.

(kk) **Stray** means an animal which is “At Large”.

(ll) **Substantial Injury** means a substantial impairment of the physical condition of a person which requires professional medical treatment, including, but not limited to, loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; muscle tears, disfiguring lacerations, or a wound requiring multiple sutures; or any injury requiring corrective or cosmetic surgery. *(Ord. No. 2002-1136, 3-12-02)*

(mm) **Vaccinated Dog** means a dog inoculated with an approved, currently valid, anti-rabies vaccine, and wearing a current dog license tag indicating proof of such vaccination.
Wild Animal means any animal which is not normally domesticated in the United States including, but not limited to, any lion, tiger, bear, non-human primate (monkey, chimpanzee, etc.) wolf, cougar, ocelot, wild cat, skunk, raccoon, ferret, venomous reptile, boa, python, anaconda, members of the Order Crocodilia, or other such animal (ferae naturae) irrespective of its actual or asserted state of docility, tameness, or domesticity.

Business Days means any days on which Animal Shelter facilities are open to the public. (Ord. No. 2002-1136, 3-12-02)

Guard Dog Premises means any premises, area, or yard where a “Guard Dog” is kept or maintained. (Ord. No. 2002-1136, 3-12-02)

Animal Control Authority used in this Title means the City of San Marcos, organization or organizations approved by the San Marcos City Council to perform animal control service.

Voice Control/Command means as follows:

1. The owner or person having charge or control over the animal has on his person or attached to the animal a chain, strap or cord enabling that person to quickly put the animal on leash; and

2. The animal is not more than 25 feet from the person at any time; and

3. The animal will return to within three feet of the person upon command; and

4. The animal will remain within three feet of the person when other persons or animals are present.

If any of these four criteria are not met, an animal shall not be deemed under voice control/command, and unless on leash shall be deemed to be running At Large. (Ord. No. 2006-1268, 8-22-06)

**6.04.030 Violation - Infraction - Misdemeanor.**

(a) Any person who violates any provision or fails to comply with any of the mandatory requirements of this Title is guilty of an infraction, except as set forth in subsection (b) herein. (Ord. No. 2002-1136, 3-12-02)

(b) Any person who violates any provisions of Chapter 6.20 of this Title, or Sections 6.08.010, 6.08.050, 6.08.060(b), 6.08.070, 6.08.080, 6.08.090, 6.24.040(c), 6.24.080(d), 6.24.080(e), 6.24.090(a), 6.24.100, 6.24.110, 6.24.140, 6.24.150, 6.24.160(d), 6.24.160(e), 6.24.160(f), 6.24.160(g), 6.24.230, 6.24.240, 6.24.250, 6.24.270(c), 6.24.290(b), or who violates any other provision of this Title three or more times within two years from the date of the first conviction is guilty of a misdemeanor. (Ord. No. 2002-1136, 3-12-02)

(c) Notwithstanding the foregoing, in cases alleging a violation of section 6.08.010, 6.24.090(a) or 6.24.140 the prosecutor may charge and prosecute the offense as an infraction. (Ord. No. 2002-1136, 3-12-02)

(d) Each day on which a violation occurs or continues shall constitute a separate offense.
(e) Upon the conviction of a person charged with a violation of any provision of this Code classified as a misdemeanor, the court may order in addition to any other remedy authorized by law, that the convicted person be prohibited from owning, possessing, caring for, or having any contact with, animals of any kind for a period of up to three (3) years, if the court deems such action as reasonably necessary to ensure animal or public health, safety, and welfare. (Ord. No. 2001-1112, 2/13/01)

Furthermore, the court may require the convicted person to immediately deliver all animals in his or her possession, custody or control, to the Animal Control Authority or other designated entity for adoption or other lawful disposition or provide proof to the court that the person no longer has possession, care, or control of any animals. (Ord. No. 2001-1112, 2/13/01)

6.04.040 Fees.

(a) Fees shall be charged and collected by the Animal Control Authority for dog licensing and for other animal control services and enforcement. Such fees shall be collected by the Animal Control Authority and deposited apportioned according to an agreement between the City and the provider of animal control services. Such fees shall be established by resolution of the City Council. (Ord. No. 2002-1136, 3-12-02)

The owner of any animal which is lawfully impounded shall pay all fees and expenses related to such impoundment including, but not limited to, impound, board, vaccination, examination, and any medical treatment fees for the animal, whether or not the animal is claimed.

(b) A list of currently approved fees shall be filed with the City Clerk and the Clerk of the Board of Supervisors of the County of San Diego and shall be available for public inspection. (Ord. No. 2002-1136, 3-12-02)

(c) Fees shall be paid when due unless the Director, in accordance with Animal Control Authority policy, authorizes a payment arrangement or waives such fees in full or in part.

Specified fees may be deferred subject to the conditions of the Animal Control Authority policy, if the owner claims an economic hardship or the lack of ability to pay the fees when due, provides satisfactory evidence of personal identification, and agrees to pay the fees within a thirty (30) day period.

An owner claiming an economic hardship in paying the fees may submit an application for waiver on forms provided by the Animal Control Authority. The forms shall be executed under penalty of perjury and contain a declaration as to the truthfulness and correctness of the information contained therein. Upon submittal of the completed forms, the fees may be waived if no disqualifying conditions, as set forth in the Animal Control Authority policy, exist. The Animal Control Authority may also waive fees if necessary in order to accomplish the protection of animal or public health, safety or welfare or if the owner provides satisfactory evidence that he/she was not at fault for the violation or incident which led to the Animal Control Authority action and that such action was not justified.

6.04.050 Service of Notices. Notices required by this Chapter shall be served as provided herein except as otherwise provided by law. Service of such notice shall be deemed to have been completed upon personal delivery or:

(a) Upon posting such notice at the last known address of the owner or his/her agent; or
(b) Upon deposit of such notice addressed to the owner or his/her agent at the last known address, in the United States mail postage prepaid; or (Ord. No. 2002-1136, 3-12-02)

(c) In the case of notices required by Sections 6.24.160, 6.24.230, 6.24.240, or 6.24.260, upon deposit of such notice addressed to the owner or his/her agent at the last known address, in the United States mail as certified mail postage prepaid. (Ord. No. 2002-1136, 3-12-02)

6.04.060 Severability. If any provision or clause of this Title or application thereof is held invalid, such invalidity shall not offset other provisions or applications of this Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable.

6.04.070 Construction of Title. Nothing in this Title shall be construed as authorizing the keeping or maintaining of any animal that is otherwise prohibited or restricted by any law, regulation, or permit requirement.
CHAPTER 6.08
RABIES PROVISIONS

Sections:

6.08.010 Vaccination Required
6.08.020 Vaccination and Licensing Clinics
6.08.030 Certificate of Vaccination
6.08.040 Exemption from Rabies Vaccination During Illness
6.08.050 Reporting Suspected Case of Rabies
6.08.060 Reporting of Bites
6.08.070 Isolation of Suspected Rabid Animals
6.08.080 Isolation of Biting Animals
6.08.090 Animals Possibly Exposed to Rabies
6.08.100 Payment of Fees and Expenses

6.08.010 Vaccination Required. Any person owning or having custody of a dog, shall ensure that the dog is vaccinated against rabies by a licensed veterinarian, with a rabies vaccine approved by the California Department of Health Services for use in dogs, within thirty (30) days after it becomes four (4) months of age or within thirty (30) days after obtaining or bringing any dog over four (4) months of age into the City. Such vaccination shall be repeated at intervals specified by the California Department of Health Services in order to maintain adequate immunity. Such persons shall retain the rabies certificate for inspection by any person responsible for enforcing the provisions of this Title. Any person who violates any provision of this Section is guilty of a misdemeanor. (Ord. No. 2002-1136, 3-12-02)

6.08.020 Vaccination and Licensing Clinics. The Animal Control Authority shall provide or arrange for rabies vaccination and licensing clinics to be held at various locations where dog owners may obtain the required rabies vaccinations at the applicable fee.

6.08.030 Certificate of Vaccination. Any veterinarian who vaccinates a dog for rabies shall certify such vaccination by properly completing, as provided in Section 6.04.020(r), the license application - rabies certificate form issued pursuant to this Title for that purpose and shall forward monthly to the Animal Control Authority a copy of each form so completed. (Ord. No. 2002-1136, 3-12-02)

6.08.040 Exemption from Rabies Vaccination During Illness. Notwithstanding any other provisions of this Title, a dog need not be vaccinated for rabies during an illness if a licensed veterinarian has examined the dog and certified in writing that such vaccination should be postponed because of a specified illness. Old age, debility, and pregnancy are not considered contraindications to rabies vaccination. Exemption certificates are subject to approval by the Animal Control Authority and shall be valid only for the duration of the illness. Exemption from vaccination does not exempt a dog from the licensing requirement.

6.08.050 Reporting Suspected Case of Rabies. Any person having care or custody of an animal which shows symptoms of rabies or which acts in a manner which would lead to a reasonable suspicion that it may have rabies, shall notify the Animal Control Authority, the County Veterinarian or the Health Officer and comply with appropriate laws and regulations regarding suspected cases of rabies as directed by the Animal Control Authority, the County Veterinarian, or the Health Officer. Any person who violates any provision of this Section is guilty of a misdemeanor. Supplement 7 – 1994 Code
6.08.060 Reporting of Bites.

(a) All persons bitten and the parents or guardians of minor children bitten by a dog, cat, skunk, fox, bat, coyote, bobcat, or other animal of a species subject to rabies shall notify the Animal Control Authority or the Health Officer as soon as possible thereafter. Physicians treating such bites and other persons having the knowledge of such bites shall also be required to make such notification.

(b) Any person owning or having custody or control of a dog or other animal of a species subject to rabies which bites a person, shall notify the Animal Control Authority or the Health Officer as soon as possible thereafter. Any person who violates any provision of this subsection is guilty of a misdemeanor.

6.08.070 Isolation of Suspected Rabid Animals. Upon the order of the Animal Control Authority, the County Veterinarian, or the Health Officer, a suspected rabid animal shall be isolated in strict confinement under proper care and under the observation of a licensed veterinarian in an animal shelter, veterinary hospital, or other adequate facility in a manner approved by the Animal Control Authority, the County Veterinarian, or the Health Officer, and such animal shall not be killed or released for at least ten (10) days after the onset of symptoms suggestive of rabies, unless permission is obtained from the Animal Control Authority, the Health Officer, or the County Veterinarian to sacrifice the animal for the purpose of laboratory examination. Any person who violates any provision of this Section is guilty of a misdemeanor.

6.08.080 Isolation of Biting Animals.

(a) Upon the order of the Animal Control Authority, the County Veterinarian, or the Health Officer, any dog, cat, skunk, fox, bat, coyote, bobcat or other animal of a species subject to rabies which bites or otherwise exposes a person to rabies may be impounded and shall be isolated in strict confinement in a place and manner approved by the Animal Control Authority, the County Veterinarian or the Health Officer and observed for at least fourteen (14) days after the day of infliction of the bite or other exposure, and until examined and released by the Animal Control Authority, the County Veterinarian, or the Health Officer. Dogs and cats shall be so isolated and observed for at least ten (10) days after the day of infliction of the bite or other exposure, and until examined and released by the Animal Control Authority, the County Veterinarian, or the Health Officer.

(b) Notwithstanding the foregoing provisions, the Animal Control Authority, the Health Officer, or the County Veterinarian may authorize, with permission of the owner if known, the euthanasia of a biting animal for the purpose of laboratory examination. Any person who violates any provision of this Section is guilty of a misdemeanor. (Ord. No. 2002-1136, 3-12-02)

6.08.090 Animals Possibly Exposed to Rabies.

(a) Any animal of a species subject to rabies which has been bitten by a known rabid or suspected rabid animal, or which has been in intimate contact with such an animal shall be isolated in strict confinement in a place and manner approved by the Animal Control Authority, the County Veterinarian, or the Health Officer and observed for a period of six (6) months or destroyed.

(b) Notwithstanding the foregoing, the following alternative is permitted in the case of dogs and cats. If the dog or cat has been vaccinated against rabies at least thirty (30) days prior to the suspected exposure with a type of vaccine and within the time period approved by the California Supplement 7 – 1994 Code
Department of Health Services, the dog or cat may be revaccinated immediately (within 48 hours) in a manner prescribed by the Animal Control Authority, the County Veterinarian, or the Health Officer and isolated in strict confinement in a place and manner approved by the Animal Control Authority, the County Veterinarian, or the Health Officer and observed for a period of thirty (30) days following revaccination. Any person who violates any provision of this Section is guilty of a misdemeanor. (Ord. No. 2002-1136, 3-12-02)

6.08.100 Payment of Fees and Expenses. The owner of any animal which is isolated under the provisions of this Chapter, shall pay all fees and expenses related to the isolation including, but not limited to, the impoundment, confinement, quarantine, board, examination, and release of the animal from quarantine, and any altering deposit or fee required by this Chapter. (Ord. No. 2002-1136, 3-12-02)
CHAPTER 6.12

DOG LICENSES

Sections:

6.12.010 Dog License Required
6.12.020 Transfer of License
6.12.030 Change of Address
6.12.040 Change of Ownership

6.12.010 Dog License Required.

(a) Any person owning or having custody of a dog, except tourists or visitors who stay less than thirty (30) days in the City shall apply for and obtain from the Animal Control Authority a separate dog license for each dog they own, possess, keep, or harbor, after it is four (4) months old. Such persons must possess the license at the time the dog is five (5) months old or thirty (30) days after obtaining or bringing any dog over four (4) months of age into the City. Such persons shall renew the dog license before it expires for as long as they own, possess, keep, harbor, or otherwise have custody of the dog. If renewal is not required, such persons shall, within thirty (30) days after the expiration date, advise the Animal Control Authority of the reason therefore. (Ord. No. 2002-1136, 3-12-02)

(b) Any dog which is legally impounded according to the provisions of this Title and does not have a valid dog license at the time of release shall be presumed to be a dog which, prior to impounding, required an Animal Control Authority issued dog license, regardless of such dog's actual age or owner's place of residence. (Ord. No. 2002-1136, 3-12-02)

(c) Upon presentation by the dog owner of a properly completed license application form, including proof that the rabies vaccination will be valid throughout the license period, and payment of the proper license fee, and if applicable, a late fee, the Animal Control Authority shall issue a dog license and license tag. The dog owner shall retain the dog license for inspection by any person responsible for enforcing the provisions of this Title. (Ord. No. 2002-1136, 3-12-02)

(d) Licenses shall be valid for a term not to exceed the maximum immunity duration period specified for the various types of canine rabies vaccines approved by the California Department of Health Services and must be renewed prior to the expiration of the term by the payment of the current effective fee for each renewal.

(e) The dog owner shall securely affix the current license tag to the collar or harness of the dog for which the license tag was issued and shall ensure that the dog wears such license tag at all times except when the dog is being exhibited at a dog show.

(f) A license tag issued for one dog shall not be transferred or attached to any other dog. (Editors' note: This section incorrect in Ord. 92-933, 7-28-92)

(g) No unauthorized persons shall remove a license tag from a collar or harness or remove the collar or harness bearing such tag from a dog.

(h) Whenever a license tag is lost or damaged, the owner shall apply for and obtain a replacement from the Animal Control Authority upon payment of the prescribed fee.

Supplement 7 – 1994 Code
6.12.020 Transfer License. Owners of dogs having a current license issued in their name by another dog licensing agency may be issued an Animal Control Authority dog license upon payment of the applicable transfer fee. Such persons must possess an Animal Control Authority issued dog license within thirty (30) days of bringing the dog into the City. The rabies vaccination for any such dog must be valid for the duration of the license issued. (Ord. No. 2002-1136, 3-12-02)

6.12.030 Change of address. The address of the owner is presumed to be the address where the dog is kept. Any change of address must be reported to the Animal Control Authority within thirty (30) days following such change.

6.12.040 Change of ownership.

(a) Whenever the ownership of a licensed dog changes, the new owner shall apply for and obtain a change of ownership license from the Animal Control Authority and pay the applicable fee. Such persons must possess the license within thirty (30) days of acquiring a dog currently licensed by this Animal Control Authority.

(b) Dog owners or the parent or guardian of minor children who sell or otherwise change the ownership or custody of a dog shall within thirty (30) days thereafter inform the Animal Control Authority of the name, address and telephone number of the new owner and the name and description of the dog.
CHAPTER 6.16

SHELTERS

SECTIONS:

6.16.010 Establishment of Animal Shelters
6.16.020 Establishment of Animal Disposal Facilities

6.16.010 Establishment of Animal Shelters. The City shall, with the approval of the City Council establish as many animal shelters throughout the City as determined to be necessary. Public Animal Shelters may be established by the City or other public control provider within appropriate zone upon issuance of a conditional use permit. (Ord. No. 2002-1136, 3-12-02)

6.16.020 Establishment of Animal Disposal Facilities. The Animal Control Authority shall establish at the County Animal Shelters a humane procedure for euthanasia of animals. The Animal Control Authority may, at its option, upon payment of applicable fees, accept animals for humane disposal. The owner or possessor of such animals shall first complete appropriate forms setting forth the facts constituting such ownership and/or possession, certifying that he/she has the right to request disposal of such animal, and agree to hold the County, its agents and employees harmless from any liability for its acceptance and disposal of such animals. The owner or person requesting the disposal of any animal shall certify in writing that, to the best of his/her knowledge, the animal has not bitten a human being within the period established by this Title for isolation of biting animals and suspected rabid animals. Notwithstanding the foregoing, the Animal Control Authority, the Health Officer, or the County Veterinarian may authorize, with permission of the owner, if known, the euthanasia of a biting animal for the purpose of laboratory examination.
CHAPTER 6.20
KENNELS

SECTIONS:

6.20.010 Kennel Licensing Procedures
6.20.030 Kennel License Standards
6.20.040 Facilities, General
6.20.050 Facilities, Indoor
6.20.060 Facilities, Outdoor
6.20.070 General Requirements for Primary Enclosures
6.20.080 Additional General Requirements for Primary Enclosures Housing Cats
6.20.090 General Space Requirements
6.20.100 Additional Space Requirements for Dogs
6.20.110 Feeding
6.20.120 Watering
6.20.130 Sanitation of Primary Enclosures and Kennel Houses
6.20.140 Records
6.20.150 Classification and Separation
6.20.160 Employees
6.20.170 Vaccination Required for Individual Dogs
6.20.180 Kennel Inspection
6.20.190 Violation

6.20.010 Kennel Licensing Procedures. It shall be unlawful for any person(s) to operate a kennel within the City without first having obtained a kennel license therefore. Procedures for kennel license applications, renewals, denials, suspensions, revocations, hearings, and appeals, except as otherwise herein provided, shall be the same as those set forth in the Uniform Licensing Procedure (Chapter 5.04) of this Code. Kennel licenses shall expire one year from the date of issue unless the Animal Control Authority selects a different expiration. In such case, the kennel license fee shall be prorated. (Ord. No. 2002-1136, 3-12-02)

Any kennel which is found by the Animal Control Authority to be unsanitary or a menace to animal or public health, safety or welfare, is declared to be a public nuisance. The Animal Control Authority is authorized and empowered to take such action as is necessary to abate the nuisance. In the event that immediate action is necessary to preserve or protect animal or public health, safety or welfare, the Animal Control Authority is authorized and empowered to summarily abate such nuisance by any reasonable means including, but not limited to impoundment of the animal(s) and/or immediate closure of the kennel for such time until the nuisance is abated. (Ord. No. 2002-1136, 3-12-02)

In such case, hearings shall be provided in accordance with Section 5.04.130 and/or Section 6.24.200 of this Code. Otherwise, the Animal Control Authority shall inaugurate proceedings in accordance with provisions of the Uniform License Procedure. The Animal Control Authority may also commence proceedings in accordance with the Uniform Public Nuisance Abatement Procedure contained in Title 10, Chapter 10.04 of this Code. (Ord. No. 2002-1136, 3-12-02)

Supplement 7 – 1994 Code
6.20.030 Kennel License Standards.

(a) Acknowledgement of Standards. A copy of the applicable standards will be supplied to the applicant with each request for an application for a kennel license, and the applicant shall acknowledge receipt of such standards and agree to comply with them and to allow inspections at reasonable times by signing the application form.

(b) Demonstration of Compliance with Standards. Each applicant or kennel operator must demonstrate that his/her premises and any facilities or equipment used in his/her kennel comply with the standards set forth in this Chapter. In addition, each applicant or kennel operator shall correct any deficiencies noted within a reasonable time specified by the Animal Control Authority. Plans for new or remodeled kennel facilities may be submitted to the Animal Control Authority for review. Upon request by the Animal Control Authority, the applicant or kennel operator must make his/her premises, facilities, and equipment available for the purpose of ascertaining compliance with said standards.

(c) Conditions and Restrictions. The issuing officer may issue a kennel license under any conditions and restrictions which he/she deems necessary for the protection of animal and/or public health, safety, or welfare, and may specify such conditions and restrictions on the kennel license.

(d) Additional Reasons for Denial of Application. In addition to the reasons stated in the Uniform Licensing Procedure, the Issuing Officer shall not issue a kennel license to:

   (1) Any person applying for an original license who has not received approval for the location from the appropriate planning/zoning Department or who has not obtained any necessary permit(s) for its operation; or (Ord. No. 2002-1136, 3-12-02)

   (2) Any person whose kennel license has been suspended, for the period during which the order of suspension is in effect; or

   (3) Any person who has been or is an officer, agent, or employee of a licensee whose kennel license has been suspended or revoked and who was responsible for or participated in the violation upon which the order of suspension or revocation was based, for the period during which the order of suspension is in effect and for a period of one year from the effective date of a revocation, or if a revocation has been stayed, until one year from the expiration of the stay; or

   (4) Any person whose kennel license has been revoked, or any partnership, firm, corporation, or other legal entity in which any such person has a substantial financial interest for a period of one (1) year from the effective date of such revocation, or if a revocation has been stayed, until one (1) year from the expiration of the stay; or

   (5) Any person who fails to comply with any provision of this Chapter.

6.20.040 Facilities, General.

(a) Structural Strength. Indoor and outdoor housing facilities shall be structurally sound and shall be maintained in good repair, to protect the animals from injury, to contain the animals, and to restrict the entrance of other animals. Crates and boxes, automobile bodies, scrap materials salvaged from plyboards, odd pieces of material such as linoleum, tin, canvas and other such materials are not suitable and shall not be used. **Supplement 7 – 1994 Code**
(b) **Fencing.** Any fencing shall be in conformance with planning/zoning requirements and be of suitable sturdy material anchored solidly to the ground in such a manner to prevent animals from escaping by digging under the fence and of sufficient height to prevent animals from escaping. If necessary, to accomplish the intent of containment, a cover over the fenced area shall be installed. *(Ord. No. 2002-1136, 3-12-02)*

(c) **Water and Electric Power.** Reliable and adequate electric power, if required to comply with other provisions of this Chapter, and adequate potable water shall be available.

(d) **Storage.** Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against infestation or contamination by vermin. Refrigeration shall be provided for supplies of perishable food.

(e) **Waste Disposal.** Provisions shall be made for the removal and disposal of animal and food wastes, bedding, and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards.

(f) **Washrooms and Sinks.** Facilities, such as washrooms, basins or sinks, shall be provided to maintain cleanliness among animal caretakers.

**6.20.050 Facilities, Indoor.**

(a) **Heating.** Indoor housing facilities shall be warm enough to protect the animals from cold. Sufficient clean bedding material or other means of protection shall be provided when the ambient temperature falls below that temperature to which an animal is acclimated.

(b) **Ventilation.** Indoor housing facilities shall be adequately ventilated to provide for the health and comfort of the animals at all times. Such facilities shall be provided with fresh air either by means of windows, doors, vents, or air conditioning and shall be ventilated so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or air conditioning, shall be provided when the ambient temperature is 85 degrees Fahrenheit or higher within the indoor housing facility.

(c) **Lighting.** Indoor housing facilities shall have ample light by natural or artificial means, or both, of good quality and well distributed. Such lighting shall provide uniformly distributed illumination of sufficient light intensity to permit routine inspection and cleaning during the entire working period. Primary enclosures shall be so placed as to protect the animals from excessive illumination.

(d) **Interior Surfaces.** The interior building surfaces of indoor housing facilities shall be constructed and maintained so that they are substantially impervious to moisture and may be readily sanitized.

(e) **Drainage.** A suitable method shall be provided to rapidly eliminate excess liquid from indoor housing facilities. If drains are used, they shall be properly constructed and kept in good repair to avoid foul odors therefrom. If closed drainage systems are used, they shall be equipped with traps and so installed as to prevent any backup of sewage onto the floor of the room.
6.20.060 Facilities, Outdoor.

(a) **Shelter from Sunlight.** When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to allow all animals kept outdoors to protect themselves from the direct rays of the sun.

(b) **Shelter from Rain or Snow.** Animals kept outdoors shall be provided with access to shelter to allow them to remain dry during rain or snow.

(c) **Shelter from Cold Weather.** Shelter shall be provided for all animals kept outdoors when the atmospheric temperature falls below 50 degrees Fahrenheit. Sufficient clean bedding material or other means of protection from the weather elements shall be provided when the ambient temperature falls below that temperature to which an animal is acclimated.

(d) **Drainage.** A suitable method shall be provided to rapidly eliminate excess liquid.

6.20.070 General Requirements for Primary Enclosures. Primary enclosures must be provided for all animals and shall conform to the following requirements:

(a) Primary enclosures shall be structurally sound and maintained in good repair to protect the animals from injury, to contain them, and to keep other animals out. They shall be effectively enclosed.

(b) Primary enclosures shall be constructed and maintained so as to enable the animals to remain dry and clean.

(c) Primary enclosures shall be constructed and maintained so that the animals contained therein have convenient access to clean food and water.

(d) The floors of the primary enclosures shall be constructed so as to protect the animals' feet and legs from injury.

6.20.080 Additional General Requirements for Primary Enclosures Housing Cats.

(a) In all enclosures having a solid floor, a receptacle containing sufficient clean litter shall be provided to contain excreta.

(b) Each primary enclosure shall be provided with a solid resting surface or surfaces which, in the aggregate, shall be of adequate size to comfortably hold all occupants of the primary enclosure at the same time. Such resting surface or surfaces shall be elevated in primary enclosures housing two or more cats.

(c) Not more than twelve (12) adult cats shall be housed in the same primary enclosure.

6.20.090 General Space Requirements. Primary enclosures must be large enough so that the animals in them can obtain adequate exercise. Any separate kennel houses used as sleeping quarters must provide sufficient space to allow each animal to turn about freely, stand easily, sit and lie in a comfortable normal position. It is unlawful to keep any animal in a primary enclosure or kennel house that does not provide adequate space as required by this Chapter.
6.20.100 Additional Space Requirements for Dogs.

(a) A primary enclosure shall never house more than twelve (12) dogs of any size.

(b) Passageways into kennel houses shall allow easy access for all dogs housed in them. Any dog confined to a kennel house which does not meet the space requirements for a primary enclosure shall be provided access to its primary enclosure after no more than twelve (12) hours for sufficient time to allow adequate exercise.

(c) Any primary enclosure(s) and/or kennel house(s) or kennel(s) which were not licensed on the effective date of this Chapter and those completed or installed in any kennel after the effective date of this Chapter shall meet the following space requirements:

<table>
<thead>
<tr>
<th>WEIGHT OF DOG IN POUNDS</th>
<th>PRIMARY ENCLOSURE WIDTH</th>
<th>PRIMARY ENCLOSURE SQ. FOOTAGE</th>
<th>KENNEL HOUSE WIDTH</th>
<th>KENNEL HOUSE SQ. FOOTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 15</td>
<td>2.0'</td>
<td>6.0</td>
<td>1.5'</td>
<td>3.0</td>
</tr>
<tr>
<td>Over 15 to 35</td>
<td>2.5'</td>
<td>10.0</td>
<td>2.0'</td>
<td>5.0</td>
</tr>
<tr>
<td>Over 35 to 65</td>
<td>3.0'</td>
<td>15.0</td>
<td>2.5'</td>
<td>7.5</td>
</tr>
<tr>
<td>Over 65 to 95</td>
<td>3.0'</td>
<td>18.0</td>
<td>2.5'</td>
<td>9.0</td>
</tr>
<tr>
<td>Over 95 to 130</td>
<td>3.5'</td>
<td>24.0</td>
<td>3.0'</td>
<td>12.0</td>
</tr>
<tr>
<td>Over 130</td>
<td>4.0'</td>
<td>32.0</td>
<td>3.5'</td>
<td>14.0</td>
</tr>
</tbody>
</table>

If a primary enclosure or kennel house contains more than one dog, the minimum number of square feet required is the sum of the square feet requirements for each individual dog kept therein.

6.20.110 Feeding.

(a) Animals shall be provided food which shall be free from contamination, wholesome, palatable, and of sufficient quantity and nutritive value to meet the normal daily requirements for the condition and size of the animal.

(b) Food receptacles shall be accessible to all animals and shall be located so as to minimize contamination by excreta. Feeding pans shall be durable and kept clean. The food receptacles shall be sanitized at least once every two weeks. Disposable food receptacles may be used but must be discarded after each feeding. Self feeders may be used for the feeding of dry food, and they shall be sanitized regularly to prevent molding, deterioration or caking of feed.

6.20.120 Watering. Clean potable water shall be available to the animals in conformance with the principles of good animal husbandry unless restricted for veterinary care. Containers shall be designed sufficient to prevent tipping and spilling the water contained therein. If necessary to accomplish this, the containers shall be secured to a solid structure. Watering receptacles shall be kept clean and shall be sanitized at least once every two (2) weeks. (Ord. No. 2002-1136, 3-12-02)

Supplement 2 – 1994 Code
6.20.130 Sanitation of Primary Enclosures and Kennel Houses.

(a) Cleaning. Excreta shall be removed from primary enclosures and kennel houses as often as necessary, at least daily, to prevent contamination of the animals contained therein and to reduce disease hazards and odors. When a hosing or flushing method is used for cleaning, any animal contained in the enclosure shall be protected during the cleaning process, and adequate measures shall be taken to protect the animals in other such enclosures from being contaminated with water and other wastes. Rugs, blankets, or other bedding material shall be kept clean and dry.

(b) Sanitizing. Prior to the introduction of animals into empty primary enclosures previously occupied, such enclosures shall be sanitized in the manner provided herein. Enclosures shall be sanitized often enough to prevent an accumulation of debris or excreta, or a disease hazard: provided, however, that such enclosures shall be sanitized at least once every two (2) weeks in the following manner: Cages, rooms and hard surfaced pens or runs shall be sanitized by washing them with hot water (180 degrees Fahrenheit) and soap or detergent or by washing all soiled surfaces with a detergent solution followed by a safe and effective disinfectant, or by cleaning all soiled surfaces with live steam. Pens or runs using gravel, sand, or dirt shall be sanitized by removing the soiled gravel, sand, or dirt and replacing it as necessary.

(c) Housekeeping. Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animal from injury and to facilitate the prescribed husbandry practices. Premises shall remain free of accumulations of trash.

(d) Pest Control. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained.

6.20.140 Employees. A sufficient number of caretakers shall be utilized to maintain the standards set forth in this section.

6.20.150 Classification and Separation. Animals housed in the same primary enclosure shall be maintained in compatible groups, with the following additional restrictions:

(a) Females in season (estrus) shall not be housed in the same primary enclosures with males, except for breeding purposes.

(b) Any animal exhibiting a vicious disposition shall be housed individually in a primary enclosure.

(c) Puppies or kittens shall not be housed in the same primary enclosures with adult dogs or cats other than their dams, except when the owner specifically requests they be housed together.

(d) Dogs shall not be housed in the same primary enclosures with cats, nor shall dogs or cats be housed in the same primary enclosure with any other species of animals unless the owner specifically requests they be housed together.

(e) Animals under quarantine or treatment for a communicable disease shall be separated from other animals and other susceptible species of animals in such a manner as to minimize dissemination of such disease. Animals with substantial injuries shall also be separated from other animals.

Supplement 7 – 1994 Code
6.20.160  Records. The kennel operator shall keep available for inspection on the premises, a record that shall show the name, current address and telephone number of the owner of each animal kept at the kennel, the description of the animal, including its age (if known) or approximate age, breed, sex and color. As a part of such record, a current valid rabies certificate or other written proof of vaccination verified by telephone number, shall be maintained for each dog required to be vaccinated by this Title, showing the dog owner's name, address and telephone number; the dog's name and description, including breed, color, sex, month and year of birth; the date of vaccination; and the name and telephone number of the veterinarian who vaccinated the dog or telephone number of the licensing agency verifying the vaccination. In addition, each kennel operator shall have someone in attendance at the kennel who can identify each animal in the kennel, except that animals under four (4) months of age may be identified as to litter.  (Ord. No. 2002-1136, 3-12-02)

6.20.170  Vaccination Required for Individual Dogs. A kennel operator shall not be required to obtain the individual dog licenses imposed by this Title for each dog in his/her kennel for which the kennel license is obtained; however, each kennel operator shall ensure that each dog in his/her kennel is vaccinated as required by this Title.  (Ord. No. 2002-1136, 3-12-02)

6.20.180  Kennel Inspection. Because of the need to adequately protect animals within kennels from unhealthy conditions and practices and the interests of society in curbing and preventing inhumane practices, reasonable inspection requirements dictate that Animal Control Authority officers shall have the right to inspect at reasonable times. As a condition of the issuance of a kennel license, each operator shall agree to allow such inspection; such acknowledgement shall be made a part of the application and file. Each kennel for which a kennel license has been issued shall be inspected at intervals determined by the Animal Control Authority.

6.20.190  Violation. Any person who violates any provision of this Chapter or of the Uniform Licensing Procedure (Title 5, Chapter 5.04, Sections 5.04.010 through 5.04.070) of this Code is guilty of a misdemeanor. Any act or omission by a kennel operator in contravention of these requirements, or of any of the conditions and/or restrictions of the issued license, shall be grounds for and shall authorize the suspension and/or revocation of the kennel license independently of any criminal prosecution or the results thereof. The Director may suspend or revoke the kennel license irrespective of the pendency of any criminal proceedings, and prior to the initiation thereof.  (Ord. No. 2002-1136, 3-12-02)
CHAPTER 6.24
CONTROL PROVISIONS

SECTIONS:

6.24.010 Presumption of Responsibility for Violation
6.24.030 Arrest and Citation
6.24.040 Dog License Violations
6.24.050 Agreements - Rules and Regulations
6.24.060 Investigations
6.24.070 Epidemics
6.24.080 Conditions of Animal Ownership
6.24.090 Restraint of Dogs Required
6.24.100 Public Protection from Dogs
6.24.110 Protection Dog, Guard Dog, Dangerous Dog or Potentially Dangerous Animal
6.24.120 Committing Nuisance
6.24.130 Female Dogs in Season (Estrus)
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6.24.260 Hearings
6.24.270 Protection Dogs
6.24.280 Guard Dogs
6.24.290 Guard Dog Operators


(a) In any prosecution involving an animal charging a violation of any provision referred to in Section 6.24.020 of this Code, proof by the People of the State of California that the particular animal described in the complaint was found in violation of any provision of said sections, together with proof that the defendant named in the complaint was at the time of the alleged violation, the owner of the animal, shall constitute prima facie evidence that the owner of the animal was the person responsible for the violation of said provisions involving said animal. However, for the purpose of this section, proof that a person is the owner of said animal is not prima facie evidence that he/she has violated any other provision of law. (Ord. No. 2002-1136, 3-12-02)
6.24.010 - 6.24.030

(b) The presumption created by this section shall be nullified when the person charged has made a bona fide sale or transfer and has complied with the requirements of Section 6.12.040, or Section 6.24.160 for a “Dangerous Dog” prior to the date of the alleged violations and has advised the court of the name and address of the purchaser, and of the date of sale. (Ord. No. 2002-1136, 3-12-02)


(a) The Animal Control Authority, each agent or deputy thereof who is assigned to duties which include the enforcement of animal regulation laws, any City Code Enforcement Officer and any Peace Officer, are responsible for enforcing the provisions of this Title, Section 148 of the California Penal Code and any law relating to or affecting animals of the State of California, the County of San Diego or this City. California Penal Code Section 597.1 shall be operative in and enforced by the Animal Control Authority, and California Penal Code Section 597f shall not be operative. (Ord. No. 2002-1136, 3-12-02)

(b) The Health Officer and each agent or deputy thereof who is assigned to duties which include the enforcement of rabies control and sanitation laws are responsible for enforcing Section 148 of the California Penal Code and the following provisions of this Title:

(1) Chapter 6.08 (commencing with Section 6.08.010). (Ord. No. 2002-1136, 3-12-02)


(c) The County Veterinarian and each agent or deputy thereof who is assigned to duties which include the enforcement of the provisions of the California Food and Agricultural Code relating to the health and sanitary surroundings of livestock, poultry, and rabbits are also responsible for enforcing Section 148 of the California Penal Code and the following provisions of this Code:

(1) Chapter 6, Title 6, (commencing with Section 6.04.010).

(2) Sections 6.08.010, 6.08.050, 6.08.070, 6.08.080, 6.08.090, 6.20.170, 6.24.060, 6.24.070, 6.24.080(c), (d) and (e), 6.24.140, 6.24.230, 6.24.240, 6.24.250 of this Title. (Ord. No. 2002-1136, 3-12-02)

(d) Each of the individuals referred to in subsections (a), (b) and (c) hereof shall cooperate to attain compliance with and shall take appropriate action in the case of any violations of those provisions which they are responsible to enforce.

6.24.030 Arrest and Citation. Each of the individuals referred to in Section 6.24.020 shall have the power to make arrests without warrant in the manner prescribed in Section 836.5 of the California Penal Code, for violations of those provisions of this Title and of state law which he/she has a duty to enforce and to issue citations for such violations. Any person so arrested who does not demand to be taken before a magistrate may instead be cited in the manner prescribed in Chapter 5C (commencing with Sections 853.5) of Title 3, Part 2 of the California Penal Code.
6.24.040 Dog License Violations: Dismissal on Proof of Correction: False or Fictitious Information.

(a) Whenever a person is arrested for a violation of Section 6.12.010 of this Title and the officer issues a Notice to Appear, the officer shall note on the form that the charge shall be dismissed on proof of correction unless a disqualifying condition as set forth in subsection (b) exists. If the arrested person presents, by mail or in person, proof of correction as prescribed herein, on or before the date on which the person promised to appear, the court shall dismiss the violation or violations. Proof of correction shall consist of a certification by the Animal Control Authority or by any clerk or deputy clerk of a court that the alleged violation has been corrected.

(b) A Notice to Appear shall be issued as provided in subsection (a), unless the officer finds any of the following disqualifying conditions:

1. Evidence of fraud.
2. The person has been charged within the past one (1) year period with a violation of Section 6.12.010. (Ord. No. 2002-1136, 3-12-02)
3. The violation involves a dog which has attacked, bitten, or otherwise caused injury to a person; or, which otherwise presents an immediate safety hazard.
4. The person does not agree to, or cannot, promptly correct the violation.

(c) Any person who signs a Certificate of Correction with a false or fictitious name or who presents as evidence of correction false or fictitious information is guilty of a misdemeanor.

6.24.050 Agreements - Rules and Regulations. For the purpose of performing their duties under this Title, the Animal Control Authority or the County Veterinarian may, with approval of the City Council, negotiate agreements, and shall promulgate such rules and regulations as they may deem proper and necessary. (Ord. No. 2002-1136, 3-12-02)

6.24.060 Investigations. The Animal Control Authority, the County Veterinarian, the Health Officer, and any peace officer, may enter private property to investigate reports of dangerous dogs, rabies, or other contagious animal diseases, and to investigate possible violations of and enforce the provisions of this Title, Section 148 of the California Penal Code, and any law relating to or affecting animals of the State of California, the County of San Diego, or the City. (Ord. No. 2002-1136, 3-12-02)

6.24.070 Epidemics. Either the Health Officer or the County Veterinarian may determine and declare that an epidemic or other unusually dangerous health situation exists among the animals in the City. Upon the making of such a declaration, the Health Officer or the County Veterinarian shall prepare and promulgate, with the approval of the City Council, such rules and regulations as are necessary for the conduct of all persons within the area where the dangerous conditions exists. These rules and regulations may include, but are not limited to, quarantine, vaccination, and destruction of diseased, exposed or stray animals by humane methods. It shall be the duty of the Animal Control Authority, the County Veterinarian and the Health Officer to cooperate in the enforcement of such rules and regulations. (Ord. No. 2002-1136, 3-12-02)
6.24.080 Conditions of Animal Ownership. Animal owners or keepers must comply with the following conditions of animal ownership, and the Animal Control Authority or the County Veterinarian may require as a condition of licensing, such owners or keepers to sign permit or license applications agreeing to comply with such conditions:

(a) Animals shall be restrained or confined as required by law.

(b) Animals shall be humanely treated at all times.

(c) Vaccinations, licenses, and permits shall be obtained as required by law.

(d) Animal premises shall be kept sanitary and shall not constitute a fly breeding reservoir, a source of offensive odors or of human or animal disease.

(e) Animals and animal premises shall not be permitted to disturb the peace or constitute a public nuisance or hazard.

Any person who violates any provision of subsections (d) or (e) of this Section is guilty of a misdemeanor.


(a) Any person owning or having custody or control of a dog shall at all times prevent the dog from being At Large as defined in Section 6.04.020(d) of this Title, and from being in violation of other provisions of law. Dogs shall be restrained by a Leash, as defined in Section 6.04.020(z) of this Title 6, at all times in or on public rights-of-way, public property and/or public facilities. Any person owning or having custody or control of a dog shall further ensure that such dog is not able to run, stay or wander onto any portion of any public right-of-way, public property and/or public facility in such a manner as to block, deny access, impede, interfere with or prohibit use of such public right-of-way, public property and/or public facility by the public. This section does not apply to dogs assisting peace officers while performing law enforcement duties. Further, this Section does not apply to the following, provided that the animal in question is effectively restrained by Voice Control/Command as defined in Section 6.04.020(rr) of this Title 6: (i) assistance dogs or guide dogs performing duties for impaired or handicapped persons; (ii) Guard Dogs, as defined in Section 6.04.020(s) of this Title 6, which are assisting security guards with the performance of their duties; (iii) dogs participating in field or obedience trials or exhibitions; (iv) dogs assisting their owner or handler in lawful hunting or herding of livestock; (v) public property that has been posted to permit dogs to be At Large, subject to any conditions or restrictions set forth on such posting. Any person who violates any provision of this subsection is guilty of a misdemeanor. (Ord. No. 2002-1136, 3-12-02 & Ord. No. 2006-1268, 8-22-06)

(b) Any person owning or having custody or control of a dog that is lawfully on any private property shall keep the dog either on a Leash as defined by Section 6.04.020(z) of this Title 6 or tether, under direct and effective Voice Control/Command as defined in Section 6.04.020(rr) of this Title 6, or electronic pet containment system, or in a building or enclosure that is adequate to ensure the physical confinement of the dog and meet humane standards. Nothing in this subsection shall be construed to provide impoundment authority. (Ord. No. 2002-1136, 3-12-02 & 2006-1268, 8-22-06)
6.24.100 Public Protection from Dogs.

(a) Any person owning or having custody or control of a dog shall at all times prevent the dog from attacking, biting or otherwise causing injury to any person engaged in a lawful act; from interfering with the lawful use of public or private property; or from damaging personal property which is lawfully upon public property, or upon private property with the permission of the person who owns or has the right to possess or use the private property. Any person who violates any provision of this section is guilty of a misdemeanor. **(Ord. No. 2002-1136, 3-12-02)**

(b) The owner of any unaltered dog which bites a person engaged in a lawful act shall pay an altering deposit in addition to other applicable fees as established by resolution. Such altering deposit shall be refunded or forfeited in the manner described in section 6.24.210(c) of this Code. Nothing in this subsection shall be construed to prevent the Animal Control Authority from abating or requiring the altering of any “Dangerous Dog” or other public nuisance animal. **(Ord. No. 2002-1136, 3-12-02)**

6.24.110 Protection Dog, Guard Dog, Dangerous Dog or Potentially Dangerous Animal.

(a) Any person owning or having custody or control of a "Protection Dog", "Guard Dog", "Dangerous Dog" or any "Potentially Dangerous Animal" is guilty of a misdemeanor if, as a result of that person's failure to exercise ordinary care, the animal attacks, bites, or otherwise causes injury to a person engaged in lawful activity and the owner or custodian knew or should have known of the animal's vicious or dangerous nature, or the animal's "Protection Dog", "Guard Dog", "Dangerous Dog", or "Potentially Dangerous Animal" status.

(b) This section does not apply to animals used in military or police work while they are actually performing in that capacity.

6.24.120 Committing Nuisance. No person shall allow a dog in his/her custody to defecate or to urinate on any property other than that of the owner or person having control of the dog. It shall be the duty of all persons having control of a dog to curb such dog and to immediately remove any feces to a proper receptacle. Disabled persons, while relying on a seeing eye, hearing, or service dog shall be exempt from this section.

6.24.130 Female Dogs in Season (Estrus). Any person owning or having custody or control of a female dog in season (estrus) shall securely confine such dog within an enclosure in a manner that will prevent the attraction of male dogs to the immediate vicinity.

6.24.140 Disturbing the Peace Prohibited. No person shall own or harbor an animal in such a manner that the peace or quiet of the public is unreasonably disturbed. The keeping or maintenance, or the permitting to be kept or maintained, on any premises owned, occupied or controlled by any person of any animal or fowl which, by any frequent or long continued noise, shall cause unreasonable annoyance or discomfort to any person of normal sensitivity in the vicinity, shall constitute a violation of this section; provided, however, that nothing contained herein shall be construed to apply to reasonable noises emanating from legally operated veterinary hospitals, humane societies, animal shelters, farm and/or agricultural facilities, or areas where keeping of animals or fowls are permitted. Any person who violates any provision of this Section is guilty of a misdemeanor.
Inhumane Treatment and Abandonment. No person shall treat an animal in a cruel or inhumane manner or willingly or negligently cause or permit any animal to suffer unnecessary torture or pain. No person shall abandon any domestic animal without care on any public or private property. Any person who violates any provision of this Section is guilty of a misdemeanor.

Declaration and Possession of Dangerous Dog.

(a) General Provisions.

(1) If the Animal Control Authority has cause to believe that a dog is a "Dangerous Dog" it may commence proceedings as provided herein.

(2) The Animal Control Authority shall first serve, upon the owner and/or custodian, notice of intent to declare the dog a "Dangerous Dog".

(3) The notice shall inform the dog owner and/or custodian of the incident(s) that provide a basis for the Animal Control Authority's action, and specify that he/she may request a hearing within five (5) business days from service of the notice to determine whether grounds exist for such declaration; the potential consequences if such a declaration is issued; and the Animal Control Authority's authority for such action. Such request shall be in writing and must be received by the Animal Control Authority within the specified time period. (Ord. No. 2002-1136, 3-12-02)

(4) Failure of the owner and/or custodian to request a hearing pursuant to subsection (3), or failure to attend or be represented at a scheduled hearing, shall satisfy the hearing requirements and shall result in the issuance of a "Dangerous Dog" declaration.

(5) A finding at the hearing that the dog does fall within subsections (1) or (2) of Section 6.04.020 (m) shall result in the issuance of a "Dangerous Dog" declaration.

(6) The Animal Control Authority is hereby authorized and empowered to impound and/or abate any "Dangerous Dog" independently of any criminal prosecution or the results thereof by any means reasonably necessary to ensure the health, safety and welfare of the public including, but not limited to, the destruction of the dog or by the imposition upon the owner and/or custodian specific reasonable restrictions and conditions for the maintenance of the dog. The restrictions and conditions may include, but are not limited to:

a) Obtaining and maintaining liability insurance in the amount of one hundred thousand dollars ($100,000) and furnishing a certificate or proof of insurance by which the Animal Control Authority shall be notified at least ten (10) days prior to cancellation or nonrenewal; (Ord. No. 2002-1136, 3-12-02)

b) Requirements as to size, construction and design of enclosure;

c) Location of the dog's residence;

d) Requirements as to type and method of restraints and/or muzzling of the dog;
e) Photo identification or permanent marking of the dog for purposes of identification;

f) A requirement to obtain a "Dangerous Dog" registration in addition to the license required under Section 6.12.010 of this Title;

g) A requirement to alter the dog;

h) Requirements to allow inspection of the dog and its enclosures by the Animal Control Authority or any other law enforcement agency, and to produce upon demand, proof of compliance with all requirements of this section; and,

i) Payment of a reasonable fee to recover the costs of the Animal Control Authority in verifying compliance and enforcing the provisions of this section.

The Animal Control Authority may also commence proceedings in accordance with the Uniform Public Nuisance Abatement Procedure contained in Title 10, Chapter 10.04 of this Code. (Ord. No. 2002-1136, 3-12-02)

(b) Notification of Right to Hearing. At least five (5) business days prior to the impoundment and/or abatement, the owner or custodian of record shall be served a notice of their right to a hearing to determine whether grounds exist for such impoundment and/or abatement. If a hearing is requested, the impoundment and/or abatement hearing may be held in conjunction with the hearing provided for in subsection (a) of this section. If the owner or custodian of record requests a hearing prior to impoundment and/or abatement, no impoundment and/or abatement shall take place until the conclusion of the hearing except as noted in subsection (c). Such request shall be in writing and must be received by the Animal Control Authority within the specified time period. (Ord. No. 2002-1136, 3-12-02)

(c) Immediate Impoundment. When, in the opinion of the Animal Control Authority, immediate impoundment is necessary for the preservation of the animal or public health, safety or welfare, or if the dog has been impounded under other provisions of law, the pre-impoundment hearing shall be waived; however, the owner or custodian of record shall be given a notice allowing five (5) business days from service of the notice to request an abatement hearing. Such request shall be in writing and must be received by the Animal Control Authority within the specified time period. If a hearing is requested, the dog shall not be disposed of prior to satisfaction of the hearing requirements. (Ord. No. 2002-1136, 3-12-02)

A finding at an abatement hearing under subsection (b) or (c) that grounds exist for the impoundment and/or abatement of the dog, or the failure of the owner and/or custodian to request a hearing or to attend or be represented at a scheduled hearing, shall satisfy the hearing requirements and the dog shall be impounded and/or abated.

(d) Change of Ownership, Custody and/or Residence. The owner and/or custodian of a "Dangerous Dog" who moves or sells the dog(s) or otherwise transfers the ownership, custody or residence of the dog(s) shall at least ten (10) days prior to the sale or transfer, inform the Animal Control Authority in writing of the name, address and telephone number of the proposed new owner or custodian and/or the proposed new residence, and the name and description of the dog(s). The Animal Control Authority may prohibit the proposed transfer for cause.
The owner and/or custodian shall, in addition, notify any new owner or custodian in writing regarding the details of the dog's record, and the terms and conditions for maintenance of the dog. The owner and/or custodian shall also provide the Animal Control Authority with a copy thereof containing an acknowledgment by the new owner or custodian of his/her receipt of the original and acceptance of the terms or conditions. The Animal Control Authority may impose different or additional restrictions or conditions upon the new owner or custodian.

In the event of the dog's death, the owner and/or custodian shall notify the Animal Control Authority no later than twenty-four (24) hours thereafter and, upon request, produce the dog for verification. If the dog escapes, the owner and/or custodian shall notify the Animal Control Authority and make every reasonable effort to recapture it. Any person who violates any provision of this subsection is guilty of a misdemeanor. (Ord. No. 2001-1112, 2/13/01)

(e) Possession Unlawful. It is unlawful to have custody of, own or possess a “Dangerous Dog” unless it is restrained, confined, or muzzled so that it cannot bite, attack or cause injury to any person. Any person who violates any provision of this subsection is guilty of a misdemeanor. (Ord. No. 2002-1136, 3-12-02)

(f) Declared Dangerous Dog. It shall be unlawful for the owner and/or custodian of a dog, declared to be a “Dangerous Dog” to fail to comply with any requirements or conditions imposed pursuant to subsection (a)(6). Any person who violates any provision of this subsection is guilty of a misdemeanor. (Ord. No. 2002-1136, 3-12-02)

(g) Surrender of Dog Upon Demand. The owner and/or custodian of a “Dangerous Dog” shall surrender such dog to the Animal Control Authority upon demand.

Any person who violates any provision of subsections (d), (e), (f) or (g) of this section is guilty of a misdemeanor.

6.24.170 Complaints. Upon receiving a complaint from a person alleging a violation of this Chapter or any other law relating to or affecting animals, an investigation to determine whether a violation exists may be made. If the investigation discloses a violation of this chapter, prosecution may be initiated against the owner. Complainants' identities shall be kept confidential to the extent permitted by law.

6.24.180 Capture of Animals at Large.

(a) The Animal Control Authority, peace officers and persons employed for animal control purposes by the local governing body may attempt to capture any animal found “At Large” in violation of law and may destroy an animal “At Large”, if, in their judgment, such action is required for public health and safety.

The Animal Control Authority shall not seize or impound any dog, however, for being “At Large” that has strayed from, but then returned to the private property of its owner or the person who has a right to control the dog, but in such case a citation may be issued; provided, however, that if in such a situation, the owner or person who has a right to control the dog is not home, the dog may be impounded, but the Animal Control Authority shall post a notice of such impounding on the front door of the living unit of the owner or person who has a right to control the dog.
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Such notice shall state the following: That the dog has been impounded, where the dog is being held, the name, address, and telephone number of the agency or person to be contacted regarding release of the dog and an indication of the ultimate disposition of the dog if no action to regain it is taken within a specified period of time by its owner or by the person who has a right to control the dog.

(b) Any person who finds an animal “At Large” may take it into his/her possession and must, as soon as possible, but no later than twenty-four (24) hours thereafter, notify the Animal Control Authority. The Animal Control Authority may accept such animal for impoundment and the person who finds the animal shall surrender the animal to the Animal Control Authority upon demand. No such action shall result in a charge against the Animal Control Authority. The finder of the animal “At Large” shall use reasonable care to preserve it from injury; however, he/she shall not be held liable if the animal dies, escapes or injures itself while he/she is carrying out the provisions of this section. (Ord. No. 2002-1136, 3-12-02)

6.24.190 Relinquishing an Animal. Any person who relinquishes an animal to the Animal Control Authority shall give his/her name, address and, if he/she is not the owner, the location where the animal was found.

6.24.200 Notification of Owner - Right to Hearing. Upon impoundment of an animal wearing a license tag or identification, listing the owner’s name and address, the Animal Control Authority shall immediately post at the owner’s address of record, or mail or personally deliver to the owner of record a notice that the animal is in the custody of the Animal Control Authority. (Ord. No. 2002-1136, 3-12-02)

The notice shall include a statement that the owner may, within five (5) business days, from the date of service, request a hearing as to the legality of the impoundment. Such request shall be in writing and must be received by the Animal Control Authority within the specified time period. (Ord. No. 2002-1136, 3-12-02)

The time during which the animal shall not be disposed of other than by return to the owner, shall be extended until the conclusion of the hearing. If, at the conclusion of the hearing, the impoundment is found to be unjustified, the animal shall be returned to the owner without charge. If the animal is returned to the owner prior to the hearing, any fees other than vaccination or licensing fees paid by the owner to the Animal Control Authority as a result of an unjustified impoundment shall be refunded to the owner. (Ord. No. 2002-1136, 3-12-02)

6.24.210 Return of Animals to Their Owners; Altering Deposit, Microchip Fee Required.

(a) The owner of an impounded animal not subject to abatement action may claim it prior to other legal disposition by providing proper identification, meeting all requirements, and paying the applicable redemption fees. (Ord. No. 2001-1112, 2/13/01)

(b) Upon redemption of any lawfully impounded unaltered dog or cat found “At Large”, the owner shall pay an altering deposit in addition to other redemption fees as established by resolution.

(c) Such altering deposit shall be refundable upon proof that the animal has been altered by a licensed veterinarian within thirty (30) days of the redemption or deposit payment date unless the animal is under four (4) months of age at the time of redemption or deposit payment. In such cases, the deposit shall be refundable upon proof that the animal has been altered by a licensed veterinarian.
veterinarian by the time the animal is five (5) months of age. Such altering deposit shall also be refundable if the owner submits, within the specified period, a written certification from a licensed veterinarian stating that, due to health considerations, the animal should not be altered, or that, in the professional judgement of the veterinarian, the animal has previously been altered.

The deposit shall be forfeited to the County if such proof of altering or written certification has not been presented to the Animal Control Authority within the specified period. All such forfeited deposits shall be used to offset the costs of animal control services. (Ord. No. 2002-1136, 3-12-02)

(d) Upon redemption of any lawfully impounded dog or cat found “At Large” and without identification, the Animal Control Authority may require the owner to pay for the implantation of microchip identification in addition to other redemption fees as established by resolution, unless the owner objects to the implantation of microchip identification. (Ord. No. 2002-1136, 3-12-02)

6.24.220 Holding Periods and Availability for Redemption, Adoption, or Release of Impounded Stray or Relinquished Animals.

(a) The holding period and availability for redemption, adoption, or release of an impounded stray or relinquished animal shall conform with applicable provisions of this Title, Sections 17006, 31108, 31752, 31752.5, 31753, and 31754 of the California Food and Agricultural Code, and Section 597.1 of the California Penal Code. (Ord. No. 2002-1136, 3-12-02)

(b) The Animal Control Authority may determine the animal holding period and disposition not specified in subsection (a) or other provisions of law. (Ord. No. 2002-1136, 3-12-02)

(c) The adoption or transfer to a new owner of any impounded dog or cat shall conform with applicable provisions of Sections 30503, 30504, 31751, and 31751.3 of the California Food and Agricultural Code. (Ord. No. 2002-1136, 3-12-02)

(d) The County of San Diego may create by policy a SENIOR CITIZEN/DISABLED PERSONS PET ADOPTION PROGRAM for San Diego County residents who are sixty (60) years or older or recipients of either Supplemental Security Income or Social Security Disability payments and who are qualified to adopt a dog or cat. The County of San Diego may also develop policies for the administration of other special redemption, adoption, or release programs. The Director may waive or adjust applicable fees established by the Board of Supervisors in conjunction with such programs, provided that the animals involved shall be vaccinated for rabies and shall be altered as required by law. (Ord. No. 2002-1136, 3-12-02)


(a) Venomous Reptiles. It shall be unlawful for any person to own, possess, or maintain any venomous reptile.

(b) General Provisions. It shall be unlawful for any person to own, possess or maintain any other wild animal unless he/she complies with all federal, state and local laws, regulations, and permit requirements affecting such animals. The owner shall also:

(1) Keep the animals at all times in cages or enclosures of such size and construction or confined in such a manner as to preclude the possibility of escape. Such cages,
enclosures, or confinement shall be of such size as to permit the animals reasonable freedom of movement;

(2) Keep the cages or enclosures in a clean and sanitary condition at all times;

(3) Provide the animals with adequate food, water, shelter and veterinary care;

(4) Keep the animal(s) in a manner so as not to threaten or annoy any person of normal sensitivity. **(Ord. No. 2002-1136, 3-12-02)**

(c) **Additional Provisions.** The owner shall, in addition:

(1) Take adequate safeguards to prevent unauthorized access to the animals and to preserve animal and public health, safety, and welfare. In the event of an escape, immediately notify the Animal Control Authority and make every reasonable effort to recapture the animal(s);

(2) Upon request by the Animal Control Authority, make his/her animal(s), premises, facilities, equipment and any necessary permit(s) available for inspection for the purpose of ascertaining compliance with the provisions of this section;

(3) Reimburse the Animal Control Authority for all costs incurred in enforcing the provisions of this Section when a violation is found and shall be responsible for any injury, or any damage to private or public property caused by the animal(s). **(Ord. No. 2002-1136, 3-12-02)**

(d) **Location and Transportation.** Such animals shall be kept upon or transported in escape proof enclosures to private property which the animals’ owner or the person who has a right to control the animal, owns or has a right to possess or use. All other transportation is prohibited unless authorized by the Animal Control Authority. **(Ord. No. 2002-1136, 3-12-02)**

(e) **Exceptions.** Subsections (a), (c) and (d) of this section do not apply to: **(Ord. No. 2002-1136, 3-12-02)**

(1) Small birds that attain an adult weight under fifteen (15) pounds, small rodents that attain an adult weight under ten (10) pounds, fish, invertebrates, amphibians or reptiles, except for the following reptiles: all crocodilians (Order Crocodilia); all boa and python species (Family Boidae) that attain an adult weight over fifteen (15) pounds or an adult length over three and one half (3.5 feet); and all monitor lizard species (Family Varanidae) that attain an adult weight over ten (10) pounds or an adult overall length over three (3) feet.

(2) Legally operated zoos or circuses or to recognized institutions of learning or scientific research unless by reason of inadequate caging or other means of protection of the public from such animals, or by the ineffectiveness of sanitation measures, or by a particular hazard connected with the animal(s) involved, animal or public health, safety or welfare will be endangered.

(f) **Impoundment and/or Abatement.** The Animal Control Authority may impound and/or abate any animal held in violation of this section and relocate or dispose of it in a humane manner
or impose specific reasonable conditions and restrictions for the maintenance of the animal(s). At least five (5) business days prior to the impoundment and/or abatement, the owner shall be served a notice of his/her right to an Animal Control Authority hearing as to whether the animal is being held in violation of this section. If the owner requests a hearing prior to impoundment and/or abatement, no impoundment and/or abatement shall take place until the conclusion of the hearing except as provided herein. Such request shall be in writing and must be received by the Animal Control Authority within the specified time period. (Ord. No. 2002-1136, 3-12-02)

If, in the opinion of the Animal Control Authority, immediate impoundment is necessary for the preservation of animal or public health, safety, or welfare, or if the animal has been impounded under other provisions of law, the pre-impoundment hearing may be dispensed with; however, in such cases, the owner shall be given five (5) business days notice of his right to a hearing as to whether the animal was being held in violation of this section. Such request shall be in writing and must be received by the Animal Control Authority within the specified time period. (Ord. No. 2002-1136, 3-12-02)

If a hearing is requested, the animal shall not be disposed of prior to a satisfaction of the hearing requirements. A finding at a hearing that grounds exist for the impoundment and/or abatement of the animal, or the failure of the owner and/or custodian to request a hearing or the failure to attend or be represented at a scheduled hearing, shall satisfy the hearing requirements and the animal shall be impounded and/or abated. If, at the conclusion of a hearing, the impoundment is found not to be justified, the animal shall be returned to the owner without charge. The Animal Control Authority may also commence proceedings in accordance with the Uniform Public Nuisance Abatement Procedure contained in Title 10, Chapter 10.04. (Ord. No. 2002-1136, 3-12-02)

(g) Violation. Any person who violates any provision of this Section or who fails to comply with any condition or restriction imposed pursuant to subsection (e) is guilty of a misdemeanor.


(a) General Provisions. The introduction, possession or maintenance of any animal, or the allowing of any animal or animal premises to be in contravention of this Title or any other law relating to or affecting animals is in addition to being a violation, hereby declared to be a public nuisance. (Ord. No. 2002-1136, 3-12-02)

The Animal Control Authority, the Health Officer, the County Veterinarian and peace officers, may summarily abate any such public nuisance independently of any criminal prosecution or the results thereof by any means reasonably necessary, including but not limited to, the destruction of the animal or animals involved, or by the imposition of specific reasonable conditions and restrictions for the maintenance of the animal(s) and/or the animal premises. The restrictions and conditions may include, but are not limited to: (Ord. No. 2002-1136, 3-12-02)

(1) Obtaining and maintaining liability insurance in the amount of one hundred thousand dollars ($100,000) and furnishing a certificate or proof of insurance by which the Animal Control Authority shall be notified at least ten (10) days prior to cancellation or non-renewal; (Ord. No. 2002-1136, 3-12-02)

(2) Requirements as to size, construction and design of enclosure;

(3) Location of the animal's residence;
(4) Requirements as to type and method of restraints of the animal;

(5) Photo identification or permanent marking of the animal for purposes of identification;

(6) A requirement to obtain a public nuisance registration in addition to any license required under Section 6.12.010 of this Code;

(7) Requirements to allow inspection of the animal premises, and/or the animal and its enclosure, by the Animal Control Authority or any other law enforcement agency, and to produce upon demand, proof of compliance with all requirements of this section;

(8) A requirement to alter the animal; and,

(9) Payment of a reasonable fee to recover the costs of the Animal Control Authority in verifying compliance and enforcing the provisions of this section.

Failure to comply with such conditions and restrictions is a misdemeanor.

The Animal Control Authority may also commence proceedings in accordance with the Uniform Public Nuisance Abatement Procedure contained in Title 10, Chapter 10.04 of this Code. (Ord. No. 2002-1136, 3-12-02)

(b) Notification of Right to Hearing. At least five (5) business days prior to the impoundment and/or abatement, the owner or custodian of record shall be served a notice of their right to a hearing to determine whether grounds exist for such impoundment and/or abatement. If the owner or custodian of record requests a hearing prior to impoundment and/or abatement, no impoundment and/or abatement shall take place until the conclusion of the hearing except as noted in Subsection (c). Such request shall be in writing and must be received by the Animal Control Authority within the specified time period. (Ord. No. 2001-1112, 2/13/01)

(c) Immediate Impoundment. When, in the opinion of the Animal Control Authority, immediate impoundment is necessary for the preservation of animal or public health, safety or welfare, or if the animal has been impounded under other provisions of law, the pre-impoundment hearing shall be waived. However, the owner or custodian of record shall be served a notice allowing five (5) business days from service of the notice to request an abatement hearing. Such request shall be in writing and must be received by the Animal Control Authority within the specified time period. If a hearing is requested, the animal shall not be disposed of prior to satisfaction of the hearing requirements. (Ord. No. 2002-1136, 3-12-02)

A finding at an abatement hearing under Subsection (b) or (c) that grounds exist for the impoundment and/or abatement of the animal, or the failure of the owner and/or custodian to request a hearing or the failure to attend or be represented at a scheduled hearing, shall satisfy the hearing requirements and the animal shall be impounded and/or abated.

(d) Change of Ownership, Custody and/or Residence. The owner and/or custodian of a public nuisance animal who moves or sells the animal(s), or otherwise transfers the ownership, custody or residence of the animal(s), shall at least ten (10) days prior to the sale or transfer,
inform the Animal Control Authority in writing of the name, address and telephone number of the proposed new owner or custodian, and/or the proposed new residence, and the name and description of the animal(s). The Animal Control Authority may prohibit the proposed transfer for cause. *(Ord. No. 2002-1136, 3-12-02)*

The owner and/or custodian shall, in addition, notify any new owner or custodian in writing regarding the details of the animal's record, and the terms and conditions for maintenance of the animal. The owner and/or custodian shall also provide the Animal Control Authority with a copy thereof containing an acknowledgement by the new owner or custodian of his/her receipt of the original and acceptance of the terms or conditions. The Animal Control Authority may impose different or additional restrictions or conditions upon the new owner or custodian.

If the animal should die, the owner and/or custodian shall notify the Animal Control Authority no later than twenty-four (24) hours thereafter and, upon request, produce the animal(s) for verification. If the animal escapes, the owner and/or custodian shall notify the Animal Control Authority and make every reasonable effort to recapture it. Any person who violates any provision of this subsection is guilty of a misdemeanor.

*(e) Possession Unlawful.* It is unlawful to have custody of, own or possess an animal regulated as a public nuisance unless it is restrained or confined to prevent it from being “At Large” or from causing damage to any property or injury to any person. Any person who violates any provision of this subsection is guilty of a misdemeanor.

*(f) Surrender of Animal Upon Demand.* The owner and/or custodian of an animal regulated as a public nuisance shall surrender such animal to the Animal Control Authority upon demand.

Any person who violates any provision of subsections (a), (d), (e), or (f) of this Section is guilty of a misdemeanor.

**6.24.250 Injuries and Communicable Diseases.** No person shall knowingly harbor or keep any dog or other animal with a serious injury or afflicted with mange, ringworm, distemper or any other contagious disease, unless such dog or other animal is, in the opinion of the Animal Control Authority or the County Veterinarian, being given adequate treatment for such disease. The Animal Control Authority or the County Veterinarian may take immediate possession of any such animal not being so treated or which is not responding to such treatment, and immediately dispose of the animal unless the owner shall forthwith place such animal under the control and treatment of a licensed veterinarian. Any person who violates any provision of this Section is guilty of a misdemeanor.

**6.24.260 Hearings.**

*(a) All hearings required pursuant to this Chapter shall be conducted by an employee designated by the Director who shall not have been directly involved in the subject action. Hearings shall be held not more than thirty (30) days from the date of receipt of the request for the hearing and shall be conducted in an informal manner consistent with due process of law. A hearing may be continued if the hearing officer deems it necessary and proper or if the owner or custodian shows good cause. The designated employee shall render a brief written decision that shall be final except as otherwise provided herein. The failure to conduct a hearing required by this Chapter shall have no bearing on any criminal prosecution for violation of any of the provisions of this Chapter. *(Ord. No. 2002-1136, 3-12-02)*
(b) Each party shall have these rights: To call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; and to rebut the evidence against the party. If the owner/custodian does not testify in his/her own behalf, the owner/custodian may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

(d) In any case where the hearing officer determines that a "Dangerous Dog" declaration shall be issued and/or that an abatement remedy shall be imposed, the owner of the animal(s) in question shall be served a written notice that he/she may, within five (5) business days, from service of the notice, apply for an Animal Control Authority administrative review of the record. Such application for review shall be in writing, shall briefly set forth the reasons why the owner believes that the decision is not proper, and must be received by the Animal Control Authority within the specified time period. (Ord. No. 2002-1136, 3-12-02). Supplement 7 – 1994 Code

The Animal Control Authority review of the record shall be conducted by the Director personally or by a designated employee who shall not have been directly involved in the subject action and who shall not be junior in rank to the hearing officer.

The effect of a hearing decision to abate an animal by destruction shall be stayed while an Animal Control Authority administrative review is pending or until the time period for applying for such review has expired. There shall be no stay of the effect of a decision of a hearing in which a "Dangerous Dog" declaration is issued and/or a condition for the continued ownership of the animal is imposed.

If an Animal Control Authority administrative review is requested, the review of the record shall extend to the questions whether the Animal Control Authority has proceeded without, or in excess of its authority; whether there was a fair hearing; and whether there was any prejudicial abuse of discretion.

Abuse of discretion is established if the Animal Control Authority has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by substantial evidence in light of the whole record.

At the conclusion of the administrative review, the individual reviewing the record may uphold, modify, or rescind the decision of the hearing officer, or may order the reconsideration of the case. The individual reviewing the record shall prepare a brief written report concerning his/her review of the case.

If a decision by the hearing officer to abate an animal by destruction is upheld by the individual reviewing the record, the owner/possessor shall be served a written notice that he/she may apply for a writ of mandate or other order from Superior Court within five (5) business days from service
of the notice to contest the decision. The disposition of the animal shall be stayed while an appeal is pending or until the time for filing such appeal has expired.  (Ord. No. 2002-1136, 3-12-02)

6.24.270 Protection Dogs.

(a) GENERAL PROVISIONS. Any "Protection Dog Operator", shall: (Ord. No. 2002-1136, 3-12-02)

(1) Comply with all applicable federal, state and local laws, regulations, and permit requirements affecting the keeping of a "Protection Dog" and/or the operation of a "Protection Dog" business. Upon demand by the Animal Control Authority or any other law enforcement agency, each "Protection Dog Operator", must demonstrate compliance with all applicable laws, regulations, and permit requirements affecting the keeping of a "Protection Dog" and/or the operation of a "Protection Dog" business.

(2) Notify the local law enforcement agency and fire department which provide police and fire suppression services, and the Director of Animal Control, in writing of the location of the "Protection Dog Operator" office, base facility, and/or kennel, where any dogs are maintained for any period.

(3) Ensure each dog furnished or assigned to any facility in the city is wearing an Animal Control Authority dog license tag before such furnishing or assigning of the dog. This licensing requirement is in addition to the identification tag specified in (4) below. Notwithstanding the provisions of Section 6.20.170 of this Code, a "Protection Dog Operator" shall obtain individual dog licenses for each dog, whether or not it is kept in a "Kennel" as defined by this Code. (Ord. No. 2002-1136, 3-12-02)

(4) Ensure that each dog is wearing a durable identification tag in addition to a County of San Diego dog license tag. The identification tag provided by the "Protection Dog Operator" shall contain the name, address, and telephone number of the "Protection Dog Operator" furnishing the "Protection Dog". The telephone number so provided shall be to a telephone which is answered by a person 24 hours per day every day of the year. In addition, a dog handler shall be available at all times to respond in a timely manner to reports regarding a dog which has escaped, is injured, or presents a risk of harm to animal or public health, safety, or welfare.

(5) Provide positive identification for each dog by implantation of a microchip of a type and in a manner approved by the Animal Control Authority. The "Protection Dog Operator" shall also provide the Director of Animal Control with a written list of dogs to be assigned to any facility within the city. Such list shall include each dog’s name and description, along with the license and identification numbers. (Ord. No. 2002-1136, 3-12-02)

(6) Notify the local law enforcement agency and fire department which provide police and fire suppression services, and the Director of Animal Control, in writing prior to, but not more than, fifteen (15) days before a dog is sent on an assignment of the location and duration of such assignment. In addition, such notification shall be provided, within fifteen (15) days, when the assignment of the dog is terminated.

(7) Ensure that dogs working with supervision in an unfenced area, yard, or premises,
be controlled on a handheld "Leash" as defined in this Code. Dogs working without supervision shall be confined within a fenced or otherwise enclosed facility not open to the public. The fence or other enclosure shall be of sufficient structural strength and height with locked gates and/or doors to ensure the strict confinement of the dog and to prevent unauthorized access. The fence or other enclosure is subject to inspection and approval by the Animal Control Authority. The "Protection Dog Operator" may be required to pay a reasonable fee to recover the costs of such inspection. (Ord. No. 2001-1112, 2/13/01)

In addition, ensure that each dog, whether or not on duty, is visited at least once every twelve (12) hours and that each dog has adequate food, water and shelter. Any dog which is sick or injured shall be provided proper care and attention and, if on duty, shall be removed from the site. Dogs shall not be kept or maintained on a chain or tether. When not on a handheld “Leash”, dogs shall be kept or maintained, at all times, in an enclosure which meets the minimum space requirements as provided by Section 6.20.090 and 6.20.100(b) of this Code. In addition, the minimum space requirements provided by Section 6.20.100(c) of this Code shall also apply unless the dogs are kept in a kennel which was licensed pursuant to Title 6, Division 2, Chapter 6, Section 62.641 of the County Code on September 11, 1986. (Ord. No. 2002-1136, 3-12-02)

Further, ensure that the dog is not knowingly overworked, or tortured, tormented, neglected, abandoned, deprived of necessary sustenance or care, drink or shelter, beaten, mutilated, or unjustifiably killed. The words "torment" and "torture" include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(8) Obtain and maintain liability insurance issued by an insurance company authorized to transact business in this state which provides minimum limits of insurance of five hundred thousand dollars ($500,000) for any one loss due to bodily injury or death and five hundred thousand dollars ($500,000) for any one loss due to injury or destruction of property. The "Protection Dog Operator" shall also furnish the Director of Animal Control with a certificate or photocopy of the insurance policy and notify the Director at least ten (10) days prior to cancellation or non-renewal of the policy.

(9) Ensure that durable signs of sufficient size containing both a clear pictorial depiction of a protection dog and a legible written warning of the presence of a protection dog are conspicuously posted and maintained at every entrance and at reasonable intervals on the fence or other enclosure where the dog is to be assigned so as to be clearly visible. Signs shall also include the name and telephone number of the "Protection Dog Operator" furnishing the "Protection Dog". The telephone number so provided shall be to a telephone which is answered by a person 24 hours per day every day of the year. In addition, a dog handler shall be available at all times to respond in a timely manner to reports regarding a dog which has escaped, is sick, injured, or presents a risk of harm to animal or public health, safety, or welfare.

(10) Provide a written statement to any person who obtains a "Protection Dog" on hire, prior to a dog being sent on assignment, containing the following:

"In addition to other provisions of law, any person or business entity with custody of a protection dog is responsible for preventing the dog from being "At Large", within the meaning of the San Diego County Code, and from attacking or injuring a person engaged
in a lawful act. Any person who obtains a dog on hire shall immediately notify the protection dog operator and the Department of Animal Control at (610) 236-2341 in the event an escaped dog is not immediately recaptured.

"Section 62.615 of the County Code provides in part that any person owning or having custody or control of a dog which bites a person, shall notify the Animal Control Authority as soon as possible thereafter.

"Protection dog operators and the keeping or maintenance of protection dogs are regulated by the County of San Diego Department of Animal Control, 5480 Gaines Street, San Diego, California, 92110-2687."

The "Protection Dog Operator" shall also provide the Director of Animal Control with a copy thereof containing an acknowledgment of receipt, signed and dated by the person who obtained the dog on hire. Such acknowledgement shall also include the printed name, address, and telephone number of the "Protection Dog Operator" and the person who obtained the dog on hire.

(11) Transport the dog in a secure, humane manner that will reasonably prevent its possible escape.

(12) Make every reasonable effort to recapture an escaped dog and, if not immediately recaptured, notify the Animal Control Authority.

(13) Reimburse the Animal Control Authority for all costs incurred in enforcing the provisions of this section.

(b) Any person who obtains a "Protection Dog" on hire shall immediately notify the "Protection Dog Operator" and the Animal Control Authority by telephone in the event an escaped dog is not immediately recaptured.

(c) The sale, transfer, or use as a "Protection Dog" of any "Dangerous Dog" as defined in this Code is prohibited whether or not the dog had been declared a "Dangerous Dog" pursuant to Section 6.24.160.  (Ord. No. 2002-1136, 3-12-02)

6.24.280 Guard Dogs  (Ord. No. 2002-1136, 3-12-02, entire section)

(a) It shall be unlawful for any person to operate or maintain a business to sell, rent, or train, or to furnish for hire a "Guard Dog" without a Guard Dog Operator Permit.

(b) Unless otherwise provided herein, it shall be unlawful for any “Guard Dog Operator” to maintain a “Guard Dog” without a Guard Dog Premises Permit for each premises, area or yard where a “Guard Dog” is kept or maintained for any period of time; including, but not limited to, the office, base facility, training facility, or kennel utilized by the “Guard Dog Operator”, and any premises, area, or yard to which a “Guard Dog” has been furnished for hire.

(c) Guard Dog Operator Permits and Guard Dog Premises Permits shall be administered as follows:
(1) Procedures for Guard Dog Operator Permit and Guard Dog Premises Permit applications, renewals, denials, suspensions, revocations, hearings, and appeals, except as otherwise herein provided, shall be the same as those set forth in the Uniform Licensing Procedure (Sections 16.101-16.115) of this Code.

(2) Application for a Guard Dog Premises Permit shall be granted or denied within five (5) business days after the Animal Control Authority receives a completed application, including applicable fees, from the holder of a Guard Dog Operator Permit.

(1) Failure of a “Guard Dog Operator” to comply with any requirement listed in this Title or The Dog Act of 1969 (Health and Safety Code Section 121875 et seq.) in connection with a “Guard Dog Premises” may result in the denial, suspension, or revocation of a Guard Dog Premises Permit.

(2) The expiration, denial, suspension, or revocation of a Guard Dog Operator Permit shall have the same effect on any and every Guard Dog Premises Permit issued to the “Guard Dog Operator”.

(d) The Animal Control Authority may inspect a “Guard Dog Premises” to verify compliance with this Title and The Dog Act of 1969 (Health and Safety Code Section 121875 et seq.) prior to the issuance of a Guard Dog Premises Permit.

6.24.290  Guard Dog Operators  (Ord. No. 2002-1136, 3-12-02, entire section)  

(a) Any “Guard Dog Operator”, in addition to the requirements of The Dog Act of 1969 (Health and Safety Code 121875 et seq.) shall comply with the following:

(1) Supply each animal with sufficient, good, and wholesome food and water as often as the feeding habits of the animal requires.

(2) Keep each animal and animal quarters in a clean and sanitary condition.

(3) Provide each animal with proper shelter and protection from the weather at all times. An animal shall not be overcrowded or exposed to temperatures detrimental to the welfare of the animal.

(4) Visit to ensure that no animal is allowed to be without care or control in excess of twelve (12) consecutive hours.

(5) Take every reasonable precaution to ensure that no animal is teased, abused, mistreated, annoyed, tormented, or in any manner made to suffer by any person or by any means.

(6) Ensure that no animal is maintained or allowed to exist in any manner that is, or could be, injurious to that animal.

In addition, each dog shall be transported in a secure, humane manner that will reasonably prevent its possible escape.

(7) Ensure that no animal is given any alcoholic beverage, unless prescribed by a veterinarian.
(8) Animals that are natural enemies, temperamentally unsuited, or otherwise incompatible, shall not be quartered together or so near each other as to cause injury, fear, or torment.

(9) Any tack equipment, device, substance, or material that is, or could be, injurious or cause unnecessary cruelty to any animal shall be prohibited.

(10) Keep or maintain animals physically controlled by a hand held “Leash” or confined at all times. Dogs shall not be kept or maintained on a chain or tether. Any fence or other enclosure shall be of sufficient structural strength and height with locked gates and/or doors to ensure the strict confinement of the dog so as to prevent escape or unauthorized access. The “Guard Dog Operator” or “Protection Dog Operator” shall have full responsibility for recapturing any animal that escapes. Furthermore, any escaped animal that is not immediately recaptured shall be promptly reported to the Animal Control Authority.

(11) Give proper rest periods to any working animal. Any confined or restrained animal shall be given exercise proper for the individual animal under the particular conditions.

(12) Ensure that no animal overheated, weakened, exhausted, sick, injured, diseased, lame, or otherwise unfit is worked, used, or rented.

(13) Ensure that any animal the Animal Control Authority has suspended from use, is not worked or used until the animal is released by the Animal Control Authority.

(14) Ensure that no animal bearing evidence of malnutrition, ill health, unhealed injury, or having been kept in an unsanitary condition is displayed.

(15) Keep or maintain each animal in a manner as may be prescribed to protect the public from the animal, and the animal from the public.

In addition, the local law enforcement agency and fire department which provide police and fire suppression services, and the Director of Animal Control, shall be notified in writing, of the office, base facility, training facility, or kennel where any “Guard Dog” is maintained for any period.

Such notification shall also be provided at least five (5) business days before a “Guard Dog” is to be sent on an assignment, and shall include the location and duration of such assignment.

Ensure that each dog furnished or assigned to any facility within the City or the unincorporated area of San Diego County is wearing a County of San Diego dog license tag before such furnishing or assigning of the dog. Notwithstanding the provisions of Section 6.20.170 of this Code, a “Guard Dog Operator” shall obtain individual dog licenses for each dog, whether or not it is kept in a “Kennel” as defined by this Code.

Ensure that each dog is wearing a durable identification tag in addition to a County of San Diego dog license tag. The identification tag provided shall contain the name, address, and telephone number of the “Guard Dog Operator” furnishing the dog.
Provide positive identification, by implantation of a microchip of a type and in a manner approved by the Animal Control Authority, for each dog to be furnished for hire to any premises, area, or yard within the City or the unincorporated area of San Diego County.

Each required notification shall include each dog’s name and description along with the license, microchip, and any other identification numbers.

Ensure that durable signs of sufficient size containing both a clear pictorial depiction of a guard dog and a legible written warning of the presence of a guard dog are conspicuously posted. Such signs shall be maintained at every entrance and at not more than fifty (50) foot intervals so as to be clearly visible on the fence or other enclosure where the dog is to be maintained or assigned. Any such sign that is initially posted or replaced on or after the effective date of this ordinance shall measure a minimum of 11 x 8.5 inches with lettering of a minimum of 1.25 x .5 inch (91 point) and of contrasting color with the background.

Signs shall also include the name and telephone number of the “Guard Dog Operator” furnishing the dog.

The telephone number included on the identification tag and warning sign(s) shall be to a telephone that is answered by a person 24 hours per day, every day of the year. In addition, a dog handler shall be available at all times to immediately respond to reports regarding a dog that has escaped, is sick, injured, or presents a risk of harm to animal or public health, safety, or welfare.

(16) Take any animal to a veterinarian for examination and/or treatment upon the order of the Animal Control Authority.

(17) Display no animal whose appearance is, or may be, offensive or contrary to public decency.

(18) Allow no animal to constitute a nuisance, cause a hazard, or be a menace to the health, peace, or safety of the community.

In addition, obtain and maintain liability insurance issued by an insurance company authorized to transact business in this state which provides minimum limits of insurance of five hundred thousand dollars ($500,000) for any one loss due to bodily injury or death and five hundred thousand dollars ($500,000) for any one loss due to injury or destruction of property. The “Guard Dog Operator” shall also furnish the Director of Animal Control with a certificate or photocopy of the insurance policy and notify the Director at least ten (10) days prior to cancellation or non-renewal of the policy.

Provide a written statement to any person who obtains a “Guard Dog” on hire, prior to a dog being sent on assignment, containing the following:

“In addition to other provisions of law, any person or business entity with custody of a guard dog is responsible for preventing the dog from being “At Large”, within the meaning of the San Diego County Code, and from attacking or injuring a person engaged in a lawful act. Any person who obtains a dog on hire should immediately notify the guard dog in the event a guard dog escapes from its enclosure, and the Department of Animal Control at (619) 236-2341 in the event an escaped dog is not immediately recaptured.”
“Section 62.615 of the San Diego County Code provides in part that any person owning or having custody or control of a dog which bites a person, shall notify the Animal Control Authority as soon as possible thereafter.”

“Guard dog and the keeping or maintenance of guard dogs are regulated by the County of San Diego Department of Animal Control, 5480 Gaines Street, San Diego, California, 92110-2687.”

The “Guard Dog Operator” shall also provide the Director of Animal Control with a copy thereof containing an acknowledgement of receipt, signed and dated by the person who obtained the dog on hire. Such acknowledgement shall also include the printed name, address, and telephone number of the “Guard Dog Operator” and the person who obtained the dog on hire.

(19) Isolate at all times any sick or diseased animal from any healthy animal, and adequately segregate them so that the illness or disease will not be transmitted from one animal to another. Any sick or injured animal shall be isolated and given proper medical treatment.

(20) Immediately notify the owner of any animal held on consignment or boarded if the animal refuses to eat or drink beyond a reasonable period, is injured becomes sick, or dies. In case of death, the body of the dog shall be retained for twelve (12) hours after notification has been sent to the owner.

(b) The sale, transfer, or use as a “Guard Dog” of any “Dangerous Dog” is prohibited whether or not the dog has been declared a “Dangerous Dog” pursuant to Section 6.24.160.

(c) Reimburse the Animal Control Authority for all costs incurred in enforcing the provisions of this section.

**PENALTIES.** Any who violates subsection (b) of this Section is guilty of a misdemeanor. Nothing in this Section limits or authorizes any act or omission that violates any provision of Title 14 of the Penal Code.
CHAPTER 6.28

ANIMALS IN VEHICLES

SECTIONS:

6.28.010 Transportation of Animals
6.28.020 Animals in Unattended Vehicles

6.28.010 Transportation of Animals. No person shall transport or carry, on any public roadway, any animal in a motor vehicle unless the animal is safely enclosed within the vehicle, or protected by a cab or container, secured cage, cross-tether, harness, or other device that will prevent the animal from falling from, being thrown from or jumping from the motor vehicle. (Ord. No. 2002-1136, 3-12-02)

6.28.020 Animals in Unattended Vehicles. No person shall leave an animal in any unattended vehicle without adequate ventilation or in such a manner as to subject the animal to extreme temperatures which adversely affect the animal's health and welfare. (Ord. No. 2002-1136, 3-12-02)
RETAIL SALES OF DOGS, CATS AND RABBITS

SECTIONS:

6.32.010 Purpose
6.32.020 Definitions
6.32.030 Prohibition on the Sale of Certain Dogs, Cats and Rabbits
6.32.040 Exemptions
6.32.050 Adoption of Shelter and Rescue Animals
6.32.060 Certificate of Source

6.32.010 Purpose. It is the purpose and intent of this Chapter to promote animal welfare and encourage best practices in the purchasing of dogs, cats and rabbits offered for retail sale in the City of San Marcos.

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

(a) Animal shelter means a public animal shelter operated by any city, county or other public agency or an entity operating under contract with any city, county or other public agency.

(b) Breeder means any breeder who owns breeding dogs, cats or rabbits, and who sells, provides or supplies the offspring for retail or wholesale.

(c) Cat means a Felis domesticus of either sex, altered or unaltered.

(d) Certificate of source means a document declaring the source of the dog, cat or rabbit sold or transferred by the retail pet store. The certificate of source shall include the name and address of the source of the animal.

(e) Dog means a Canis familiaris of either sex, altered or unaltered.

(f) Dealer means any third party broker, distributor, supplier, animal wholesaler, and/or other source who buys and sells dogs, cats and/or rabbits that were not born and raised at their facility.

(g) Existing retail pet store means any retail pet store or its operator that displays, offers for sale, delivers, barters, auctions, gives away, transfers, leases, or sells dogs, cats or rabbits in the City of San Marcos on the effective date of this Chapter, and that is in compliance with all applicable provisions of the San Marcos Municipal Code on the effective date of this Chapter.

(h) Non-profit rescue organization means any non-profit corporation that is exempt from taxation under Internal Revenue Code Section 501(c)(3), whose mission and
practice is, in whole or in significant part, the rescue, care and adoption of dogs, cats and/or rabbits; or any non-profit organization that is not exempt from taxation under Internal Revenue Code Section 501(c)(3), but is currently an active rescue partner with the City of San Marcos or any County of San Diego animal shelter or humane society, whose mission is, in whole or in significant part, the rescue, care and adoption of dogs, cats and/or rabbits.

(i)  **Operator** means a person who owns or operates a retail pet store, or both, and/or who hires employees at a retail pet store to engage in the retail sale of dogs, cats and/or rabbits.

(j)  **Rabbit** means an *Oryctolagus cuniculus* of either sex, altered or unaltered.

(l)  **Retail pet store** means any for-profit establishment open to the public and located in a commercial zone or shopping center that is engaged in the retail sale of dogs, cats and/or rabbits.

### 6.32.030 Prohibition on the Sale of Certain Dogs, Cats and Rabbits.

(a) It is unlawful for any retail pet store or its operator to display, offer for sale, deliver, barter, auction, give away, transfer, lease, or sell any dog, cat or rabbit in the City of San Marcos that is purchased, supplied or otherwise obtained from any source other than those permitted by Section 6.32.040 of this Chapter, including, but not limited to, from any dealer and/or breeder *(Ord. No. 2016-1418, 2-9-2016).*

(b) No permit or other applicable license or entitlement for use, including but not limited to the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved and/or issued for the establishment of any retail pet store within the jurisdiction of the City of San Marcos that would engage in the retail sale of dogs, cats and/or rabbits purchased, supplied or otherwise obtained from any dealer and/or breeder *(Ord. No. 2016-1418, 2-9-2016).*

(c) An existing retail pet store or its operator that displays, offers for sale, delivers, barters, auctions, gives away, transfers, leases, or sells any dog, cat or rabbit in the City of San Marcos, which was obtained from any source other than those permitted by Section 6.32.040 as of the effective date of the Ordinance codified in this Chapter, and whose operations comply with all applicable provisions of the San Marcos Municipal Code as of the effective date of the Ordinance codified in this Chapter, may continue to display, offer for sale, deliver, barter, auction, give away, transfer, lease, or sell any dog, cat or rabbit from sources other than those permitted by Section 6.32.040 for a period of six (6) months following the effective date of the Ordinance codified in this Chapter. During the six month grace period, the remaining provisions of this Chapter 6.32 shall apply to the existing retail pet store *(Ord. No. 2016-1418, 2-9-2016).*

### 6.32.040 Exceptions – Permitted Sources.

Nothing in this Chapter shall prevent a retail pet store or its operator from providing space and appropriate care for animals owned by or purchased directly from a publicly operated animal shelter or animal control enforcement agency, or a nonprofit humane society or animal rescue organization, and maintained at the
retail pet store for the purpose of adopting and/or selling those animals to the public (Ord. No. 2016-1418, 2-9-2016).

6.32.050 Certificate of Source. All retail pet stores permitted to engage in the sale of dogs, cats and/or rabbits pursuant to this Chapter shall post in a conspicuous place on each dog, cat or rabbit kennel, cage or enclosure, a certificate of source for such animal ensuring the animal was obtained in full compliance with this Chapter. The certificate of source, including the name and location of the source of the animal made under penalty of perjury, shall be retained onsite by the retail pet store for a period of at least three (3) years following the purchase date of any animal, must be made available during business hours upon request to animal control, law enforcement, code enforcement official, or any other City employee charged with enforcing the provisions of this Chapter, and a copy of the certificate shall be provided to the purchaser or transferee of any such dog, cat or rabbit retail pet store for the purpose of adopting and/or selling those animals to the public (Ord. No. 2016-1418, 2-9-2016).

6.32.060 Exemptions. Notwithstanding any other provision of Chapter 6.32, the following shall not be considered a retail pet store and shall be exempt from the provisions of this Chapter retail pet store for the purpose of adopting and/or selling those animals to the public (Ord. No. 2016-1418, 2-9-2016):

(a) Dogs, cats and/or rabbits sold directly from the premises upon which they are born and reared, excluding retail pet stores.

(b) A publicly operated animal shelter or animal control enforcement agency.

(c) A nonprofit humane society or nonprofit animal rescue organization.

(d) A publicly operated animal shelter or animal control enforcement agency, or a nonprofit humane society or animal rescue organization that operates out of or in connection with a retail pet store.
CHAPTER 8

HEALTH AND SANITATION

CHAPTERS:

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8.08 Crops and Plants
8.12 Disease Control
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CHAPTER 8.04

FOOD

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ARTICLE I.  DEFINITIONS AND GENERAL PROVISIONS

8.04.010  City regulations more strict than California Restaurant Act. The City Council enacts the following regulations and standards, under the authority of Section 28693 of the California Restaurant Act, and finds that they are more strict than those of the California Restaurant Act. The health officer shall enforce the provisions of this chapter as well as the California Restaurant Act.

8.04.020  Definitions. Any word or phrase used in this chapter and not defined in this chapter shall be given the meaning established for such word or phrase by the California Restaurant Act or, if not there defined, the common and ordinary meaning required by the context in which it is used. Whenever in this chapter the following terms are used they shall have the meaning ascribed to them in this chapter:

(a) "Approve," "approved," or "approval" means the approval of the health officer, or the State Department of Public Health, as a result of tests or investigations or by reason of accepted principles of public health and sanitation.

(b) "California Restaurant Act" means Chapter 11 of Division 21 of the Health and Safety Code of the State.

(c) "Establishment" means any restaurant; itinerant restaurant; food-vending machine, other than a vending machine which dispenses wrapped nonperishable solid foods or which dispenses bottled or canned liquid foods or beverages other than milk, ice cream, milk products, or other perishable food or beverages, or which exclusively dispenses peanuts, wrapped candy, chewing gum, or ice; grocery; pet shop; food market; meat or fish market; bakery; confectionery; delicatessen; food or portable liquid packing or bottling plant; plant or room used to prepare any food or beverage product whatsoever that is dispensed by machine, whether or not such food or beverage product is perishable and whether or not such dispensing machine is a "vending machine" as defined in the California Restaurant Act; temporary or permanent food or beverage concession; winery; package liquor store; or any other place in the City where food or beverages are prepared for sale, sold, stored, distributed, or displayed for sale. Establishment does not include a wholesale delivery truck used exclusively to transport previously inspected and packaged, canned or bottled foods or beverages, or any combination thereof, and does not include a retail delivery truck used exclusively to transport previously inspected and packaged, canned or bottled milk, water, or groceries, or any combination thereof, nor does it include any wholesale or retail delivery truck transporting any food or beverage product other than or in addition to the aforementioned types of products.

(d) "Food or beverage" means "food," as defined in Section 26450 of the California Health and Safety Code.

(e) "Food-vending vehicle" means any vehicle as defined in Section 670 of the Vehicle Code, or any mobile unit howsoever propelled, upon or from which any food or beverage is vended, displayed, or given away.

(f) "Health officer" means the Director of Public Health and any regularly appointed sanitarian or employee of the Department of Health Services.

(g) "Perishable" means, with respect to food and beverage products, those products which support or are conducive to the growth of pathogenic microorganisms; perishable food and beverage products include, but are not limited to, fresh, cured, prepared, or
packed meat or meat products, seafood or seafood products, custard and/or cream pies and pastries, wrapped or unwrapped sandwiches, salads, and milk or milk products.

(h) "Permit" means the public health permit.

(i) "Provided by law" means authorized or required by this code, the San Diego County Code, the California Restaurant Act and other applicable State laws, and the rules or regulations of the State Department of Public Health.

(j) "Retail delivery truck" means any vehicle used for the transportation of food or beverage products which is not a wholesale delivery truck as defined in subsection K or this section, and includes a vehicle used to service vending machines.

(k) "Wholesale delivery truck" means a vehicle that delivers food or beverage products from a producer or distributor to a consumer, retailer or wholesaler pursuant to orders therefore previously obtained. Wholesale delivery truck does not include a vehicle from which selling is done directly by a driver, salesman, or other person.

8.04.030 Acts prohibited. It is unlawful for any person to do any acts prohibited in this chapter; to maintain any establishment contrary to the provisions of this chapter; or to sell, offer for sale, barter, trade or give away any food or beverage, or permit the same to be done, without complying with the requirements provided by law.

8.04.040 Nuisance--Power of health officer. Any establishment or activity which is found by the health officer to be unsanitary or a menace to the public health or which is in violation of this chapter or of the California Restaurant Act is declared to be a public nuisance. The health officer is authorized and empowered to take such action as is necessary to abate the nuisance. In the event that immediate action is necessary to preserve or protect the public health or safety, the health officer is authorized and empowered to summarily abate such nuisance by any reasonable means. Otherwise, the health officer shall initiate proceedings in accordance with Section 1.12.010 or shall seek a court order abating the nuisance. Nothing contained in this code shall be deemed to limit the right and duty of the health officer to take immediate action in the interests of the public health, safety, and welfare. The remedies authorized by this section are not exclusive, but are cumulative to other remedies provided by law.

8.04.050 Enforcement officer--Authority--Inspection. The health officer is authorized and empowered to enforce the provisions of this chapter and to inspect such activities as are regulated in this chapter for the purpose of determining health conditions of such activities. No person shall obstruct or interfere with the health officer in the performance of these duties. The health officer shall be empowered to make arrests and issue citations pursuant to Penal Code Sections 836.5 and 853.6 for violations of this chapter.

ARTICLE II. PUBLIC HEALTH PERMIT

8.04.060 Permit--Required. No person shall sell, offer for sale, barter, trade or give away any food or beverage and no person shall permit the same to be done, from any establishment unless such establishment has a valid public health permit, which permit has not been revoked or suspended.

8.04.070 Permit--Application. The permit required by this chapter shall be applied for and issued as prescribed in Chapter 8.16. The annual fee for the permit shall be as prescribed in Chapter 8.16.
8.04.080 Establishment plan review. Every applicant for a permit or license required by this chapter shall, prior to obtaining a building permit, opening a new establishment, or upon remodeling of an old establishment, submit to the Health Officer a plan of the proposed establishment detailing all equipment, materials, and facilities necessary to comply with the Uniform Retail Food Facilities Law, and/or all applicable City ordinances or regulations, accompanied by a fee as set forth by section 8.16.080(a) resolution to cover the cost of the review. The Health Officer shall review the plans and specifications and shall determine whether they are in accordance with the requirements of law. In the event that the plans and specifications do not comply with the applicable provisions of law, amended plans and specifications may be submitted to the Health Officer for re-review and approval, and the fee for such re-review, as set forth by resolution, payable to the Health Officer in advance.

8.04.090 Appeal from denial of permit. A person aggrieved by the denial to him of a permit may appeal from such denial to the County Board of Supervisors in the manner set forth in Section 8.04.190.

8.04.100 Granting and revocation of permit—Condition. A permit shall be granted only on the express condition that it is subject to revocation or suspension upon a showing satisfactory to the health officer of the violation by the permittee, his employee, servant or agent, or any other person acting with his consent or under his authority, of any provision of this chapter, the California Restaurant Act, or rule or regulation of the State Board of Health.

8.04.110 Separate permit for each business. A separate permit shall be required for each place of business, concession, or vehicle used by permittee.

8.04.120 Score eighty percent—Alphabetical grade card.

(a) The health officer, by regulation, may adopt a score card for the grading of establishment undergoing inspection. No permit shall be issued to any establishment undergoing inspection. No permit shall be issued to any establishment scoring less than eighty percent on the score card. Each establishment shall maintain standards of sanitation and health sufficient to score eighty percent on the score card at all times. If upon inspection any establishment fails to attain a score of eighty percent, due written notice shall be served on the applicant for the permit. The notice shall list the deficiencies and state that such deficiencies must be corrected within thirty days, at which time a reinspection will be made. An establishment failing to comply with the written notice, or failing to attain a score of eighty percent on the reinspection, shall immediately close and remain closed until a score of at least eighty percent is achieved on a reinspection by the department.

(b) The health officer shall issue an alphabetical grade card to each restaurant inspected, which grade card shall be displayed at all times while the restaurant is open to the public. Restaurants scoring ninety percent or more on the score card shall receive an "A" score card; those scoring below eighty percent shall receive a "C" score card.

8.04.130 Permit and grade card to be posted. Every health permit and/or alphabetical grade card issued shall be kept posted in a conspicuous place in the establishment for which the permit is issued. The health officer shall prescribe the location in or on the establishment where such permit shall be kept posted. Alphabetical grade cards shall be posted in the front window of the establishment, so as to be clearly visible to patrons entering the establishment, or in a display case mounted on the outside front wall of the establishment within five (5) feet of the front door, or in some other location clearly visible to patrons entering the establishment which has been approved by the health officer. The alphabetical grade card shall be protected from damage by
weather conditions and shall not be defaced, marred, or camouflaged or hidden so as to prevent the general public from observing it.

8.04.140 Permit for sale of fruits, vegetables and farm produce by bona fide farmers.

(a) All farmers or ranchers may dispose of fruits, vegetables and farm produce actually produced on their ranches, farms or property. A permit will be issued therefore without charge, provided, that each and every provision of this code is complied with, that the sale or distribution of such produce or food is not made or done within the right-of-way of any public street or highway in the City, and that the produce is sold from the property on which it is grown.

(b) Such fruits, vegetables or farm produce may be displayed on and sold from an open stand located on the property on which they are grown, provided such open stand is located on the property on which such fruits, vegetables and farm produce are grown may be maintained as a part of an establishment for which a permit has been issued pursuant to Section 8.04.070 or as a separate stand for which a permit has been issued pursuant to this section. Cider may be displayed and sold at such open stand provided it is produced on the property on which such stand is located.

8.04.150 Special permit--Isolated rural areas. In the isolated or rural districts where running water, electricity or other modern conveniences are not available, a special permit may be issued if in the opinion of the health officer such is advisable and is consistent with the preservation of the public health and safety. All such special permits shall be revocable for any cause which affects the public health and safety.

8.04.160 Suspension or revocation of permit.

(a) The Director of Public Health shall order that a hearing be held, with himself as hearing officer, to determine whether or not the health permit of an establishment should be suspended or revoked whenever it appears to him, by reason of either citizen complaint or Department of Health Services investigation, that the holder of such permit or his employee, servant or agent, or any person acting with his consent or under his authority, has or may have violated any provision of this chapter or any relevant requirement established or provided by law.

(b) Any hearing pursuant to this section and any order of suspension or revocation resulting therefrom is supplemental to and shall not bar or foreclose subsequent proceedings against such person initiated pursuant to Section 1.12.010.

8.04.170 Notice of hearing. Upon the determination that a hearing be held pursuant to Section 8.04.160, the health officer shall provide notice substantially as follows:

NOTICE OF HEARING

To: (name and address of permittee)

Notice is hereby given that on _____________ the Director of Public Health of San Diego County ordered that a hearing be held on (date and hour) at (place of hearing) to determine whether or not Health Permit No. ____________, issued to you for the establishment known as ________________ should be suspended or revoked.

The actions or inactions complained of are as follows: (set forth actions or inactions and the dates or such, and the code sections, statutes, or regulations violated).
Be prepared to present evidence and witnesses on your behalf at this hearing if you so desire. You may be represented by legal counsel. Your failure to appear will not prevent the issuance of an order of suspension or revocation should such order appear justified by the evidence presented.

8.04.180 Hearing rules and procedure. The following rules and procedures shall govern hearing held pursuant to this chapter:

(a) Hearing Officer--Disqualification of Director of Public Health. The Director of Public Health shall be the hearing officer. Upon the disqualification of the Director of Public Health to act as hearing officer, either on his own motion or that of the permittee acceded in by the director, any member of the Board of Health may act as hearing officer. The sole grounds for disqualification are financial interest, bias or prejudice; prior knowledge of facts alone does not constitute bias or prejudice.

(b) Time. The hearing date shall be no less than ten and no more than thirty days following the date on which notice thereof was sent to the permittee.

(c) Continuance. The hearing officer may order such continuance or continuances as he deems necessary and proper.

(d) Transcript of Hearing. The County is not required to furnish a shorthand reporter or any other method of reporting the hearing; the permittee may furnish such at his sole and nonreimbursable cost and expense if he so desires.

(e) Waiver of Irregularities. Any procedural or evidentiary irregularities in the hearing are deemed to be waived unless objection is taken thereto and a specific ruling requested thereon.

(f) Findings. Specific findings, including a finding that the public health, safety and welfare are subject to a clear and present danger, may be made but are not required. If specific findings are not made the hearing officer shall make a general finding that the actions or inactions complained of, as set forth in the Notice of Hearing, are true or untrue, and that such actions or inactions do or do not constitute a violation of the condition set forth in section 8.04.100.

(g) Decision and Order. If the hearing officer finds that the actions or inactions complained of are untrue he shall order that the proceedings are dismissed. If the hearing officer finds that the actions or inactions complained of are true, and that a violation as aforesaid has occurred, he shall order either that the permit be suspended for a period not to exceed six months or that the permit be revoked. The decision and order of the hearing officer shall be final unless an appeal is taken pursuant to Section 8.04.190.

(h) Modification or Rescission of Order of Suspension. If the hearing officer orders that the permits be suspended for a certain period, the permittee may subsequently petition for the modification or rescission of the order of suspension and the reinstatement of the permit. The hearing officer, in his discretion, may grant or deny the petition; or he may grant the petition subject to the condition of the imposition of a probationary period, during which period any violation by the permittee of the condition set forth in Section 8.04.100 is grounds for summary suspension of the permit for the remainder of the period established by the original order of suspension, and is also grounds for the institution of new proceedings for suspension or revocation of the permit. The order of the hearing officer with respect to such petition is final, and no administrative appeal shall lie therefrom.
(i) Probation.

(1) If the hearing officer orders that the permit be suspended or revoked, he may, in the interest of justice and equity, further order that the order of suspension or revocation be stayed and the permittee be placed on probation for a period not to exceed three years. The hearing officer may grant probation on such conditions as he deems to be fair and reasonable. If the permittee is dissatisfied with the order of probation, or with the conditions thereof, he may reject the offer of probation in which event the order of suspension or revocation shall become final. If the permittee is satisfied with the order of probation he shall indicate such assent, and his agreement to be bound by the terms thereof, by affixing his signature thereto.

(2) Upon the charge by the health officer of the violation by the permittee of a condition of probation, a hearing shall be held pursuant to this section, limited to the issue of whether or not such condition was in fact breached. If it is found that the condition was breached, the original order of suspension or revocation shall be forthwith enforced, and the probation in the same matter shall not be granted again.

(3) Upon the petition of the permittee for termination of probation and release from the conditions thereof, the rules and procedures established by subsection H of this section shall apply except that the hearing officer shall either grant or deny such petition and shall not impose any condition or such grant or denial.

8.04.190 Appeal. Any permittee aggrieved by the decision or the order of the hearing officer or by the denial of an application for a health permit may, within fifteen days of the date of the written announcement of the decision and order of denial, appeal to the Board of Supervisors. Such appeal shall be effected by depositing in the office of the Clerk of the Board of Supervisors within said fifteen days a notice of appeal which sets forth the notice of hearing and the decision and order to the hearing officer. The Clerk of the Board of Supervisors shall present the notice of appeal to the Board of Supervisors at their next regular meeting, at which time the Board shall set the matter for hearing de novo at the earliest date possible in light of its regular business.

8.04.200 Appeal--Rules and procedures. The following rules and regulations shall govern appeals pursuant to this chapter:

(a) Effect of Appeal. Upon the filing of the notice of appeal the order of the hearing officer shall be stayed unless the hearing officer has found that the public health, safety and welfare are threatened, in which case the Director of Public Health shall make order or orders as are necessary to safeguard the public health, safety and welfare. If the permittee agrees in writing to comply with such order or orders pending the outcome of the appeal the order of the hearing officer shall in that case also be stayed, otherwise it shall not be stayed.

(b) Hearing de Novo. The Board of Supervisors shall hold a hearing de novo at which time the health officer and the permittee may offer any and all relevant evidence, whether or not such evidence was before the hearing officer, and may make oral arguments. The Board of Supervisors is not bound or limited in any way by the evidence before the hearing officer, although it may consider such evidence, or by the rulings, findings, decision or order of the hearing officer.
c. Continuance--Transcript--Irregularities--Findings--Decision--Order--Modification of Order--Probation. The provisions of subsections (c), (d), (e), (f), (g), (h) and (i) of Section 8.04.180 apply to hearings conducted pursuant to this section; provided, that in the hearing conducted pursuant to this section the Board of Supervisors shall exercise the powers given to the hearing officer by subsections (c), (d), (e), (f), (g), (h) and (i) of Section 8.04.180 and; provided further, that the decision and order of the Board of Supervisors shall be final for all purposes.

ARTICLE III. GENERAL REGULATIONS

8.04.210 Recognized inspection service. No person shall sell, distribute, offer for sale, vend or give away any manufactured or prepared food or beverage product in the City other than the product of an establishment that is regularly inspected by the health officer or some other Department of Health Services Inspection Service recognized and approved by the Director of Public Health.

8.04.220 Food to be covered. No person shall sell, expose, or offer for sale, or cause or permit to be sold, exposed, or offered for sale in the City any article of food prepared or intended for human consumption, which article of food is smoked, cooked, dried or otherwise prepared and intended for human consumption without further cooking, washing or other preparation, unless such article of food is covered or enclosed by glass or some other approved substance or material in such a manner as to prevent the handling of such article of food by any person other than the person selling, offering or exposing such article of food for sale, and to prevent such article of food from coming in any contact with any deleterious, wholesome or unhealthy substance or material; provided, however, that the provisions of this section do not apply to food uncovered in the process of preparation, or to food uncovered for display for immediate consumption on the premises where steam tables or other approved service tables are in use and are properly protected from unwholesome or unhealthy contamination as provided in this chapter and the California Restaurant Act.

8.04.230 Communicable disease. No person, proprietor, or manager of an establishment shall require or permit any person to work, nor shall any person work, in any establishment, who is affected with any communicable disease. It shall be the duty of all owners, proprietors, or managers to report to the health officer any person afflicted with, or reasonably suspected of being afflicted with, venereal disease, smallpox, diphtheria, scarlet fever, dysentery, measles, mumps, German measles, tuberculosis, typhoid fever, chicken pox or any other infectious or contagious disease, whereupon it shall be the duty of the health officer to examine or cause to be examined any such person afflicted with or reasonably suspected of being afflicted with any of the above mentioned diseases and said person shall no longer be permitted to work in any establishment where food is handled, prepared, or sold or distributed.

8.04.240 List of employees. All owners, proprietors or managers of establishments shall keep an accurate and complete list of all persons employed indicating the physical description of and the duties performed by, each employee. A copy of the list shall be furnished to the health officer and shall be kept constantly up to date, by said owner, proprietor or manager.

8.04.250 Employee clothing. Persons employed in an establishment for serving, preparing or handling food for human consumption, or handling food utensils, shall wear uniforms, clothing or aprons which are made of washable material and kept clean at all times.

8.04.260 Light, ventilation and plumbing. Every establishment shall be properly lighted, drained, ventilated and provided with adequate plumbing and sanitary drainage, as provided by law.
8.04.270 Floors, walls, ceilings and drain boards. The floors of every establishment shall be smooth and cleanable, shall be of good quality nonabsorbent material and shall be kept in good repair and in a clean, sanitary condition at all times. The walls and ceilings shall be smooth, sound and cleanable and shall be kept painted with oil paint or other approved finishing material and maintained in good repair and in a clean and sanitary condition. In the proximity of sinks, mixers, stoves, ranges or other equipment where water, grease or other matter is likely to be splashed, walls shall be constructed of tile or other approved material to a sufficient height thoroughly to protect said walls; provided, the backs of stoves may be flashed with metal. Drain boards shall be made or constructed of metal, tile or approved substitutes. The use of wooden drain boards or wooden drain boards covered with metal is prohibited. Food preparation and utensil washing areas shall be painted with light colored oil paint or enamel.

8.04.280 Toilet and washrooms. Floors of toilet and washrooms shall be of cement, tile laid in cement, or other nonabsorbent material. The interior area of a toilet room shall not be less than eighteen square feet. No door or other opening from a toilet room shall open directly into a kitchen, dining room or other place where food is served. The number of toilet rooms and plumbing fixtures of each toilet room shall be as required in Appendix C of the most recent edition of the Uniform Plumbing Code.

8.04.290 Garbage cans. Every establishment shall be provided with garbage and trash cans with fly tight covers, made of metal or other approved material, for disposal of vegetable trimmings, food scraps and other refuse. A sufficient number of cans shall be available to prevent overloading, and tight fitting covers shall be kept in place at all times. Garbage and trash cans shall be maintained in a sanitary condition and in good repair, and shall be cleaned at such intervals as the Department may direct. Garbage and trash cans placed outside of the establishment shall be located on smooth, washable concrete or some other foundation approved by the health officer. Where there is an excess of vegetable trimmings or other waste material subject to decomposition, a fly tight screened room shall be constructed of screen wire of not less than fourteen meshes to the inch and all such excess waste material shall be kept in said screened room until removal from the premises. Where screened rooms are provided, the lower three feet of wall space shall be constructed of a smooth, washable material in a workmanlike manner, and maintained in good repair.

8.04.300 Use of sawdust prohibited. No person shall use or permit to be used any sawdust or similar material on the floor of any room of an establishment, except that in butcher shops clean sawdust may be used on floors in a cooler or behind the counter.

8.04.310 Sleeping in establishments prohibited. Living and sleeping quarters shall be separated entirely with a solid partition from the establishment. No couch, cot, bed, bedding and/or articles used for living or sleeping purposes shall be maintained or kept in any room of the establishment where food is prepared, stored, served, or displayed.

8.04.320 Locker rooms. There shall be provided in all establishments a room or enclosure, separated from toilets or food storage or preparation area, wherein employees may change and store outer garments. No person shall change or store clothes elsewhere in an establishment.

8.04.330 Rodent or vermin infestation. The owner, operator or manager of every establishment shall take every precaution to keep the premises free and rid of rats, mice, roaches, ants and other vermin and pests. Whenever it shall appear to the health officer that any establishment is infected with rodents, vermin or pests, a written notice shall be given to the person owning, operating or managing the establishment that said infestation shall be abated.
within thirty days from the date of the written notice. Failure to comply with said written notice within thirty days shall constitute a violation of the provisions of this chapter, and the health officer shall suspend the permit summarily and close such establishment until said nuisance has been abated.

8.04.340 Common drinking cups. It is unlawful for any person conducting, having charge or control of any hotel, restaurant, saloon, soda fountain, theater, public hall, public or private school, hospital, church, club, office building, park playground, lavatory or washroom, barbershop, or any public place, building, room or conveyance, to provide or expose for common use, or permit to be so provided or exposed or to allow to be used in common, any cup, glass or other receptacle used for drinking purposes.

8.04.350 Water containers for drinking. No cask, water cooler or other receptacle shall be used for storing or supplying drinking water to the public or to employees unless it is covered and protected so as to prevent persons from dipping the water therefrom or, from otherwise contaminating such water. All such containers shall be provided with a faucet or other approved device from drawing the water.

8.04.360 Displays on sidewalks and streets prohibited. No food or food product, fruit or vegetable shall be displayed outside of any building or property line, or any sidewalk, public street or highway in any fruit stand or market.

8.04.370 Sun damage—Deciduous fruits. Deciduous fruits or other food subject to damage by the rays of the sun shall be kept at all times well inside of the building proper, and elevated not less than eighteen inches above the floor level.

8.04.380 Wrapping paper. No person shall use newspaper for wrapping fruits, vegetables or other food products unless such fruits, vegetables or other food first is wrapped in clean wrapping paper.

8.04.390 Surplus containers. All surplus boxes, crates, lug boxes and similar containers in which fruits, vegetables and products are delivered or received by an establishment shall be kept in a clean and sanitary condition and shall be removed from premises daily unless some other removal interval is established by the health officer.

8.04.400 Wineries and cider mills. All wineries or cider mills where wine or cider is manufactured, processed or bottled shall:

(a) Have properly drained cement floors and a properly installed sink with running water;

(b) Wash and sterilize thoroughly all bottles, jugs or receptacles used for bottling wine or cider;

(c) Use new corks or stoppers in all bottles, jugs or containers;

(d) Dispose of all pulp by a method approved by the health officer;

(e) Be equipped with a conveniently located water flush toilet in accordance with this code.
8.04.410 Pre-prepared sandwiches.

(a) For the purpose of this section, a preprepared sandwich is a sandwich which is intended to be distributed subsequent to the time of preparation or at a location other than at which it is prepared.

(b) No person shall give away, trade or sell any preprepared sandwich unless such sandwich meets all of the following requirements:

1. The sandwich shall be prepared and wrapped at some sanitary location which is regularly inspected by a recognized health department inspection service approved by the Director of Public Health.

2. No sandwich shall be sold more than seventy-two hours after preparation. Each sandwich shall be clearly stamped or marked with the last date the sandwich may be sold and shall bear the name and address of the person or company that prepared it.

3. However, sandwiches that are frozen immediately after preparation may be sold beyond the seventy-two hour interval if kept frozen until loading for delivery to the retailer, and thereafter maintained at a temperature of not more than forty-two degrees Fahrenheit until sale to the consumer; provided, however, that said sandwiches may be heated prior to sale if maintained at a temperature of at least one hundred forty degrees Fahrenheit after heating until sale. Such heated sandwiches may not be sold except on the day on which they are heated. No sandwiches so frozen may be loaded for delivery to the retailer one year after preparation unless a longer period is approved in writing by the Director of Public Health. No sandwiches which have been frozen shall be sold more than fifteen days after unfreezing or more than three days after delivery to a food-vending vehicle. Frozen sandwich cartons shall bear a legend reading "KEEP FROZEN," and shall bear a legend showing the date of preparation of the contents. The frozen sandwich packages upon delivery to the retailer shall be clearly stamped or marked with the last date the sandwich may be sold and shall bear the name and address of the person or company that prepared it.

8.04.420 Honey and beverages. All fruit juices, soft drinks, honey and/or other beverages, or foods, shall be bottled in a regularly inspected plant, and shall not be changed from one container to another except in said plant.

8.04.430 Food handling establishment--Special regulations. No person shall operate or maintain any establishment without complying with the following regulations:

(a) Hoods for Ranges. All stoves, ranges, cooking kettles, doughnut kettles, ovens and hot plates shall be equipped with a metal hood (canopy) of a size at least six inches greater on each side than the cooking surface of such cooking device or devices. The hood shall be ventilated to the outside air by separate ventilating flue not less than twelve inches in diameter for an ordinary stove, or of such larger diameter as the health officer may deem necessary for effective operation. Hoods and mechanical ventilation shall be installed to accomplish air circulation in accordance with standard ventilation tables maintained by the Department.

(b) Water and Sinks. All sinks of establishments shall have an adequate supply of running hot and cold water of a safe, sanitary quality available at all times. All sinks shall be of
metal or approved impervious material. Number and type of sinks shall be regulated by rules of the health officer and as required by the California Bakery Sanitation Law, the California Restaurant Act and the Retail Food Production and Marketing Establishment Law.

(c) Damaged Utensils. Dishes, glasses, drinking glasses or other utensils that are cracked, chipped or damaged shall not be used, and may be confiscated or destroyed at any time when necessary in the opinion of the health officer to protect the public health and safety.

(d) Headdress. Male and female persons engaged in cooking or food preparation shall wear an approved cap, hairnet or headdress to prevent the falling of hair into such foods.

(e) Containers for Storage of Foods. No tin can, lard stand or other such container shall be used for the purpose of cooking, preparing or storing of foodstuffs. The health officer shall condemn and/or destroy all food held in storage contrary to the provisions of this section.

(f) Screens. All establishments where food is prepared, served or kept shall have wire screens at all outside openings for the purpose of excluding flies and other insects. All screen doors must be self-closing and outside doors shall open outward only. All screening used in such places shall be not less than fourteen meshes to the inch. Fly fans may be substituted for screen doors and when used, shall be installed inside the building over the door opening so that the airflow is directed downward and outward. Fly fans shall produce an airflow with a minimum velocity of seven hundred fifty feet per minute over the entire door opening from the top thereof to a point three feet above the floor.

ARTICLE IV. BEVERAGES

8.04.440 Milk. Market milk and goat's milk served by any establishment shall be served in the original bottle, the cap of which shall not be removed except in the presence of the consumer or patron; provided, however, that this section does not apply to market cream and does not prevent the use of milk dispensing devices as authorized by this chapter.

8.04.450 Milk dispensing devices. Milk dispensing devices approved for such use by the Director of Agriculture of the State may be used for dispensing homogenized milk, subject to the following regulations:

(a) The milk dispensing device and its operation shall comply with State laws and regulations, this code and all ordinances applicable thereto.

(b) The milk dispensing device shall be installed and located in a place and manner acceptable to the health officer.

(c) Milk dispensing devices are permitted only in eating establishments and only in those rooms or places in such establishments where food is served and eaten by the consumer, or where food is prepared for service and such preparation is conducted within view of the consumer.

(d) All milk dispensing devices shall be displayed openly to the public.

(e) A milk dispensing device shall be operated only by persons regularly employed by the establishment in which the dispensing device is located. The operation of a self-service milk dispensing device is prohibited unless such operation is specifically approved by the health officer.
(f) The name of the dairy or distributor supplying milk for the milk dispensing device, together with the grade of the milk dispensed, shall be plainly labeled on such device in a location approved by the health officer.

(g) The day of delivery of the milk shall be plainly indicated on the milk container used in the milk dispensing device.

(h) No milk shall be dispensed from such device more than one hundred twenty hours from the date of delivery of such milk to the establishment.

(i) The minimum serving from such milk dispensing device shall be eight ounces.

(j) The milk dispensed from such dispensing device shall, at the time of delivery to the final consumer, meet the bacteriological standards for graded market milk.

(k) The milk dispensing device, including the milk container and all other appliances used in connection with such device, shall be maintained in a sanitary condition at all times.

8.04.460 Malted milk, milk shakes and similar products.

(a) No person shall operate or maintain an establishment serving malted milk, malted skim milk or other milk and flavoring substances, and either ice cream containing not less than ten percent of milk fat or ice milk containing not less than four percent of milk fat. All ice cream or ice milk shall conform to the provisions of the Agricultural Code of the State. It is unlawful to prepare, serve, sell or distribute in an establishment any malted milk unless made of Grade "A" raw or pasteurized whole milk, which milk either has been poured from the original standard container from which the cap has been removed in the presence of the customer or patron, the contents of said container containing no more than the individual requirements of the customer at the time of service, or poured from a standard milk bottle the maximum content of which does not exceed one quart and which has attached a metal top designed to cover the pouring lip, which top must be approved by the health officer and sterilized as soon as said bottle is empty; provided, however, this subsection shall not prohibit the use of a milk dispensing device in accordance with Section 8.04.450.

(b) Milk shakes and other milk drinks served or prepared with the addition of flavoring substances or other ingredients added thereto shall be prepared from whole milk or skim milk which has met the required standards of Grade "A" pasteurized milk.

(c) Malted milk is a mixture of skim milk with malted milk and flavoring substance and ice cream or ice milk containing not less than four percent of milk fat. Skim milk used in an establishment where skim malted milk is prepared, served or distributed shall meet the standards required for Grade "A" pasteurized milk and shall be pasteurized and bottled in standard milk bottles in an approved pasteurizing and bottling plant. The bacterial count of skim milk shall not exceed the minimum standard of Grade "A" pasteurized milk.

(d) The establishment shall display a sign in legible lettering at least four inches high, which shall state that malted milk or malted skim milk is served.

ARTICLE V. MOBILE FOOD FACILITIES

8.04.470 Adoption of County Code by reference. There is hereby adopted by reference Title 6, Division 1, Chapter 1 of the San Diego County Code of Regulatory Ordinances.
regulating retail food facilities and food handlers, together with such secondary references as are
incorporated therein, for which a copy is on file in the Office of the City Clerk.

8.04.480  Enforcement by County.  The provisions of this Article relating to the
enforcement of State and County regulations shall be enforced by the County Department of
Health Services. The County Health Officer is designated as the Health Officer for the City of San
Marcos for purposes of this Article.

8.04.490  Enforcement by City.  The City of San Marcos shall be responsible for
enforcing all zoning and other local restrictions imposed upon mobile food facilities pursuant to
this Code that are consistent with all laws and regulations of the State of California and the
County of San Diego relating to the regulation of mobile food facilities.

8.04.500  Fees. All persons and businesses required to obtain a health-related permit or
related service from the County of San Diego, Department of Environmental Health pursuant to
this Code shall pay to the County the fee established in the San Diego County Code of Regulatory
Ordinances for that permit or service, including, but not limited to, delinquent fees.

8.04.510  No cooking or food preparation while in motion. No cooking or food
preparation shall be done while any mobile food facility is in motion. (Ord No. 2012-1370,
12/11/12)

ARTICLE VI. VENDING MACHINES

8.04.600  Operator defined. "Operator" means the person who furnishes, installs and
services the vending machines.

8.04.610  Vending machine permit--Operator's responsibilities. No operator shall
maintain, conduct, manage or operate any vending machine unless a permit for such machine
has been issued by the health officer and unless such permit is valid and unexpired. The
applicant for a permit shall designate in writing the products to be vended, and permits shall be
valid only for those products listed on the permit. Unless it appears to the health officer that the
vending machine will at all times be maintained in a clean and sanitary condition, and that all
products of the machine will reach the consumer in a clean and wholesome condition, he shall
deny the application for the permit. If the permit is granted, the operator shall be responsible for
the proper operation and maintenance of the vending machine and for complying with the
requirements of this chapter and of State laws and regulations in connection therewith. The name
and address of the operator shall be posted conspicuously on the vending machine.

8.04.620  Vending machine--Location. The operator shall furnish the health officer with
the location of any vending machine installed sufficiently so that, within seventy-two hours
subsequent to such installation, the health officer may inspect the vending machine and the
location. If the location of the machine is not approved by the health officer, the vending machine
shall be removed immediately and not operated until the location thereof is rendered acceptable.
Each vending machine shall be located so that sanitary facilities, fixtures and receptacles for
emptying waste containers and for performing required sanitation are readily accessible. The
area around the vending machine shall be maintained clean and free of accumulated paper cups
and wrappers, spillage and other waste material and trash. Approved trash receptacles shall be
provided by the machine operator, proximate to vending machines whenever required by the
health officer.
8.04.630 **Vehicle permit.** No operator shall use a vehicle to service vending machines or allow such use, unless the health officer has issued a permit for such vehicle.

8.04.640 **Service room.** All operators shall establish within the County a service room or rooms, which shall be used only for cleaning, storing and maintaining vending machines, supplies and sanitized parts. All cleaning and sanitizing of vending machine parts which come in contact with food, food products or liquids dispensed by a vending machine shall be done in the service room previously approved by the health officer. The service room shall meet all the requirements of this chapter relative to food handling establishments.

8.04.650 **Cleaning and sanitizing.** Vending machines dispensing liquids shall be cleaned not less frequently than three times each week, and machines dispensing unwrapped, non-liquid food products shall be cleaned not less frequently than once each month, except as noted in this section, in the manner set forth below:

(a) **General.** The following general regulations apply to all vending machines:

(1) The operator shall clean the outside of the machine, and any vending stage, door, chute, drip plate and waste can.

(2) Used cup and trash containers shall be emptied and cleaned.

(3) Parts shall be wiped with a cleaned moist cloth which has been dipped in a solution containing not less than two hundred parts of active chlorine per million parts, or in some such other approved sanitizing agent or material.

(b) **Cold Carbonated Beverages.** In addition to the servicing required by the general regulations, machines dispensing cold carbonated beverages shall be serviced as follows:

(1) Not less frequently than once each sixty days all contact parts of the machine shall be cleaned by removing, washing and disinfecting all tanks, valves, faucets, pipelines and water filters. Interior water filter and conditioning elements shall be taken to the service room for servicing; properly sanitized replacements may be transported under sanitary conditions from the service room and installed while the other water filter and conditioning elements are being serviced.

(2) Water filters and water conditioning devices shall be of a type which permit periodic cleaning and replacement.

(c) **Milk Products.** In addition to the servicing required by the general regulations, machines dispensing milk and milk products shall be serviced as follows:

(1) Fluid milk or cream shall be removed from the machine and discarded daily, and fresh products added.

(2) Canned evaporated milk may be dispensed for seventy-two hours before discarding; provided, that throughout this period the temperature of such milk is maintained at not more than fifty degrees Fahrenheit.

(3) All parts and appurtenances of vending machines that come in contact with fluid milk or milk products shall be removed daily and cleaned and sanitized.
(4) Vending machines that dispense non-liquid milk or non-liquid cream products shall be sanitized not less frequently than three times each week.

(d) Refilling. Vending machines, location for which the health officer has not issued a food-handling establishments permit, shall be refilled only by substituting for the empty container one which was cleaned, sanitized and filled in the service room. The emptied container shall be transported to the service room for cleaning and sanitizing.

ARTICLE VII. FOOD HANDLERS

8.04.660 Definitions. For the purposes of this article, the words set out in this section shall be defined as follows:

(a) "Department" means the San Diego County Department of Health Services.

(b) "Director" means the health officer of the County Department of Health Services or his duly appointed deputy or representative.

(c) "Food handler" means any person engaged or employed in a business, occupation or establishment for which a permit is required by Sections 8.04.010 through 8.04.650 who handles food in such manner that some portion of his clothing or body or body discharges might come in contact with such food or with the utensils used in connection therewith.

(d) "Food service manager" means the owner, operator, licensee, or any other person who supervises all or part of food service operations within a food service establishment and is responsible for the actions of employees under his or her charge.

8.04.670 Food handler training—Generally. No person shall act as or be engaged as a food handler unless such person:

(a) Possesses a valid food handler training certificate as described in Section 8.04.680; or

(b) Is working in an establishment under the supervision of a food service manager possessing a food service manager training certificate as described in Section 8.04.690, and possesses a food handler card as described in Section 8.04.700; provided, however, that a person may act or be engaged as a food handler under the supervision of such a food service manager for up to ten calendar days without a food handler card.

8.04.680 Food handler training—Food handler training certificate.

(a) Food handler training certificates or renewals thereof shall be issued by the health officer, or any other qualified person or agency as may be designated by the health officer, to persons who, immediately preceding such issuance, have successfully completed a food sanitation training course having a duration of at least three hours, taught by an instructor approved by the health officer, and having a course content approved by the health officer. In order to successfully complete said course, a person must pass a proficiency test, approved by the health officer, with at least a seventy percent grade. The course of instruction shall include at least the following subjects:

(1) Microorganisms;

(2) Sources of food borne disease microorganisms;
(3) Food borne diseases;
(4) The means by which food is contaminated by microorganisms and toxic substances;
(5) Methods for protection of food to prevent food borne illnesses;
(6) Control of the spread of disease through food;
(7) Personal hygiene for food handlers;
(8) The role of utensils and equipment in the transmission of diseases; and
(9) Dish washing procedures.

(b) The health officer’s designation of persons or agencies to issue food handler training certificates and the health officer’s approval of instructors and course contents may be withdrawn by the health officer at any time. The food handler training certificate shall be valid for three years from the date of issuance.

8.04.690 Food handler training—Food service manager training certificate.

(a) A food service manager training certificate shall be issued by the health officer, or by a person or agency authorized by the health officer, to any person who has:

(1) Attended a food service manager’s training course, having a duration of at least sixteen hours, taught by an instructor approved by the health officer, and having a course content approved by the health officer; and

(2) Has passed a proficiency test, approved by the health officer, with at least a seventy percent grade.

(b) The course or instruction shall include at least the following subjects:

(1) Microbiology of food borne disease;
(2) Methods of preventing food borne diseases;
(3) Personal sanitation practices;
(4) Ware washing and sanitizing;
(5) Housekeeping and waste disposal practices;
(6) Food purchasing, transportation, receiving and storage;
(7) Food preparation and use;
(8) Sanitation of kitchens;
(9) Dining service;
(10) Legal regulations of the food industry; and
(11) Sanitation and safety management.

(c) A food service manager training certificate may also be issued to persons with any one of the following combinations of academic preparation and work experience, providing they pass the proficiency test specified above with at least an eighty-five percent grade:

1. A baccalaureate degree with at least a minor in food service occupations, environmental sanitation, biological sciences, hospitality services or related subjects and at least two years of occupational experience in said fields; or

2. An associate degree or sixty semester units of course work in food service occupations, environmental sanitation, biological sciences, hospitality services or related subjects and at least four years of occupational experience in said fields; or

3. A high school diploma or its equivalent or evidence of successful completion of secondary education and at least six years of occupational experience in the food service field.

(d) A food service manager training certificate may be issued by the health officer to any person possessing formal education and practical experience in the application of food sanitation principles determined by the health officer to be equivalent to the formal education and practical experience to that of a registered sanitarian with ten years' experience in food sanitation.

(e) The health officer's designation of persons or agencies to issue food service manager training certificates and the health officer's approval of instructors, course contents and proficiency tests may be withdrawn by the health officer at any time. The food service manager training certificate shall not expire by passage of time.

8.04.700 Food handler--Food handler card. A food handler card or renewal thereof, in a form prescribed by the health officer, may be issued by a food service manager possessing a food service manager training certificate to food handlers under the manager's supervision provided said food handlers pass a test relating to fundamental principles of sanitary food services practices, with at least a seventy percent grade. Said test shall be prepared by the health officer based on information contained in an information booklet on sanitary food practices, which shall also be prepared by the health officer and which shall be distributed at cost by the health officer. Test records and records of the duration of the food handler's employment, including the date that the food handler began to perform food handling services, shall be maintained on the premises where the food handler is performing such services. The food handler card shall be valid for three years from the date of issuance, or until the food handler's performance of food handling services at the establishment where the card was issued ceases, or until the expiration of sixty days from the date that the establishment ceases to have a food service manager possessing a food service manager training certificate to supervise the food handler, whichever occurs the earliest.

8.04.710 Employment of food handlers. No person who owns or operates a business, occupation or establishment for which a permit is required by Sections 8.04.010 through 8.04.650 shall permit or authorize any person to act as or be engaged as a food handler in said business, occupation or establishment unless such person is legally permitted to act as or be engaged as a food handler pursuant to Sections 8.04.670 through 8.04.700.
8.04.720 Transmissible disease. No person who has contracted or is afflicted with a disease or infection determined by the director to be a danger to public health transmissible either directly or through food or drink to other persons, or who is known or suspected to be a carrier of organisms causing such disease, or who has come in contact with any person afflicted with such communicable disease or infection, shall act or be engaged or employed as a food handler.

8.04.730 Transmissible disease--Medical examination--Exclusion. Whenever information that the possibility of transmission of disease determined by the director to be a danger to public health exists in a food handler or in any business, occupation or establishment for which a permit is required by Sections 8.04.010 through 8.04.650 is presented to the director, he shall investigate conditions and take appropriate action. The director may, after investigation, and for reasonable cause, require any of the following measures to be taken:

(a) The immediate exclusion by the director of any food handler from the affected business, or establishment;

(b) The immediate closing of any affected business or establishment until, in the opinion of the director, no further danger of the outbreak of disease exists.

(c) Medical examination of the owner, employee, and his co-employees, with such laboratory examination as may be indicated; or should such examination or examinations be refused, then the immediate exclusion of the refusing owner, employee or co-employee from that or any other food establishment operation, until a medical or laboratory examination shows that the person is not infected with, or a carrier of, any such disease in a communicable form.

8.04.740 Fees. No fee shall be charged for any test or examination made pursuant to this chapter by the department. The City shall not be liable for any fee or charge made for any test, x-ray or examination required by this chapter that is not made by the department.

8.04.750 Violations--Penalty. Any person who violates any provision of this chapter is guilty of a misdemeanor and each offense shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00) or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment.

ARTICLE VIII. DESTRUCTION OF SPOILED FOOD

8.04.760 Inspection by Department of Health Services. The Department of Health Services is authorized and empowered by this chapter to make inspections from time to time of lobsters, crawfish, shellfish, meat, meat food products and all other foodstuffs within the City, at such times and in such a manner as may be reasonable and necessary or advisable for protecting the public health and shall, after inspection, seize, condemn and destroy any and all lobsters, crawfish, shellfish, meat, meat food products and other foodstuffs appearing to said Department of Health Services to be unfit for human consumption.

8.04.770 Sale of unfit seafood prohibited. It is unlawful for any person, or the agent or employee of any person, to sell or exchange for other things of value within the City any lobster, crawfish or shellfish, or to have in their possession for the purpose of preparing same for human consumption any lobster, crawfish or shellfish that does not show conclusive signs of life immediately before the preparation thereof in any manner as food for human consumption.
8.04.780  Confiscation by Department of Health Services. Whenever it appears to the satisfaction of the Department of Health Services that any lobster, crawfish, or shellfish does not show conclusive signs of life immediately preceding the preparation thereof as food for human consumption, or that any lobster, crawfish or shellfish or parts thereof may be unfit for human food, or that the same is offered for sale contrary to the provisions of this chapter, such lobster, crawfish or shellfish and all parts thereof shall be subject to confiscation by the Department of Health Services or subjected to such treatment as shall satisfy the Department of Health Services that such lobster, crawfish, shellfish or parts thereof cannot thereafter be sold for human consumption in any manner whatsoever.

8.04.790  Possession or importation of uninspected meat prohibited. It is unlawful for any person to have in his possession, to bring into or cause to be brought into the City, any meat, meat food products, foodstuffs containing meat, or lobsters, crawfish and shellfish, unless such meat, meat food products, foodstuffs containing meat, or lobsters, crawfish and shellfish bear the inspection seal for the Department of Agriculture, State of California, or of the United States Department of Agriculture, Federal Meat Inspection Service. The presence of such meat, meat food products, foodstuffs containing meat, or lobsters, crawfish and shellfish in the City is declared to be a nuisance and inimical to public health.

ARTICLE IX. FOOD CATERERS AND CATERING EQUIPMENT RENTALS

8.04.800  Definitions. Whenever in this article, the following terms are used, they shall have the meanings respectively ascribed to them in this section:

(a)  "Caterer". A business which prepares food for a catering function for events such as, but not limited to, picnics, weddings, banquets, parties, gatherings.

(b)  "Catering Vehicle". A vehicle upon which food, beverages and related serving equipment are transported related to a catering function.

(c)  "Catering Function". Any event where a caterer provides food for a person or persons at other than an existing health regulated establishment. A catering function shall not include those functions that are conducted by persons engaged or employed in youth organizations, churches, church societies private clubs or other nonprofit associations of a religious, philanthropic, civic improvement, youth development, social, political, or educational nature which purchase food, food products, or beverages, for service without charge to their members, or for service or sale at a reasonable charge to their members or to the general public at fund-raising events, for consumption on or off the premises at which the food, food products, or beverages are served or sold, if the service or sale of such food, food products or beverages does not constitute a primary purpose or function of the club or association, and if no employee or member is assigned full time to care for or operate equipment used in such an arrangement.

(d)  "Catering Equipment Rental Establishment". A catering equipment rental establishment is an establishment that provides food service utensils such as dishes, tableware, pots and pans to caterers or to the public but does not provide catering services.

(e)  "Department". The San Diego Department of Health Services.
8.04.810 Application of Ordinances. The provisions of Division 1, Title 6, of the San Diego County Code of Regulatory Ordinances and the California Uniform Retail Food Facilities Law (CURFFL) relative to food handler training and the preparation and distribution of food apply to caterers and caterer operations.

8.04.820 Health Permits and Fees. Persons operating as caterers and catering equipment rental establishments are considered to be operating a health regulated establishment and are subject to public health permit requirements as specified in Sec. 8.04.060 of this code. Such persons shall pay the permit fees prescribed for restaurants in Section 8.16.080(a) of this Code and shall be subject to penalties for delinquent fee payment as set forth in Sections 8.16.050 and 8.16.060 of this Code.

8.04.830 Notification of Catering Events. When requested by the Deputy Director of Environmental Health Services, caterers shall notify the Department of the time, date and location of each catering function in a manner specified by the Department.

8.04.840 Potentially Hazardous Foods. All potentially hazardous foods as defined in Sec. 27531 of the California Uniform Retail Food Facilities Law that are stored, held, transported or served by a caterer must be protected from contamination and kept at temperatures as required by California State law.

8.04.850 Toilet Facilities. Adequate toilet and hand-washing facilities, as determined by the Deputy Director of Environmental Health Services, must be reasonably available in the vicinity of any location where food is prepared or served.

8.04.860 Catering Vehicles. No person or company shall operate or cause to be operated, a catering vehicle without complying with the following:

(a) Such person or company shall have a valid health permit as required in Sec. 8.04.060 of this code.

(b) Foods and food containers shall be carried in compartments with cleanable interior surfaces.

(c) Vehicles shall be maintained in a clean condition.

8.04.870 Catering Equipment Rental Establishment. No person or company shall operate or cause to be operated, a catering equipment rental establishment without complying with the following:

(a) All food service equipment shall be stored in a building that meets the requirements of the California State Law.

(b) All food service equipment such as dishes, glasses, tableware, pots and pans shall be cleaned and sanitized by methods prescribed in the California Uniform Retail Food Facilities Law.
ARTICLE X. REGULATION OF WHOLESALE FOOD WAREHOUSES

SECTIONS:

8.04.880  Purpose and Intent. Wholesale food warehouses are not adequately regulated by the State of California. Inspections of such warehouses by the County of San Diego in response to complaints have revealed persistent rodent infestations, mishandling of recalled food, and other conditions that could lead to foodborne illnesses. The County responded by enacting Ordinance 9525, establishing a mandatory permit program, a permit fee, and regulatory requirements applicable to wholesale food warehouses.

The food stored in wholesale food warehouses is frequently distributed across jurisdictional boundaries. An effective regional food warehouse permitting and regulatory program requires enactment of a regulatory ordinance in the City of San Marcos that parallels the County’s requirements and authorizes the County, as the City’s Health Authority, to implement the provisions of such local ordinance.

This chapter is adopted to provide a regulatory framework within which the County can administer its regulation of wholesale food warehouses and to provide further cooperation between the City and the County in the regulation of wholesale food warehouses. (Ord. No. 2003-1181, 4-22-03)

8.04.890  Adoption of County Ordinance by Reference. The provisions of the County Code of Regulatory Ordinances concerning permitting and regulation of wholesale food warehouses, codified at sections 61.212 through 61.256 of the County Code and any subsequent revisions or corrections to these sections, are incorporated into this code by reference. (Ord. No. 2003-1181, 4-22-03)

8.04.900  County Enforcement. The County of San Diego, or any successive designee of the City Manager, shall enforce the provisions of this article regarding wholesale good warehouses pursuant to an agreement with the City for the provision of certain services related to public health and sanitation by the County within the City. The City Manager is authorized to enter into any supplemental or modified agreement with the County, or any successive designee of the City Manager, that may be required to effect this purpose. (Ord. No. 2003-1181, 4-22-03)

8.04.910  Fees. The County shall retain all fees and charges collected by it in the performance of its duties in regulating wholesale food warehouse owners or operators pursuant to section 8.04.890 hereof. (Ord. No. 2003-1181, 4-22-03)
CHAPTER 8.08
CROPS AND PLANTS

SECTIONS:

ARTICLE I. QUARANTINE REGULATIONS

8.08.010 Established in Effect
8.08.020 Inspection Signs

ARTICLE II. PEST CONTROL

8.08.030 Registration of Pest Control Operators - Fee
8.08.040 Registration of Agricultural Pest Control Advisor - Fee

ARTICLE III. REMOVAL OF PLANTS

8.08.050 Removal of Plants Prohibited
8.08.060 Sale of Plants Prohibited
8.08.070 Permits Issued By Agricultural Commissioner
8.08.080 Enforcing Agents
8.08.090 Exceptions

ARTICLE I. QUARANTINE REGULATIONS

8.08.010 Established in effect. All plant quarantine and other quarantine rules and regulations established by the State Director of Food and Agriculture and the County Agricultural commissioner pursuant to the provisions of Sections 5301 through 5306, inclusive, of the Agricultural Code of the State of California are hereby recognized as having the force and effect of law. It is unlawful for any person to fail, neglect or omit to comply with the quarantine regulations established or made by the State Director of Food and Agriculture or the County Agricultural Commissioner under the provisions of said Agricultural Code.

8.08.020 Inspection signs. The Agricultural Commissioner shall erect appropriate signs notifying drivers and/or operators of motor vehicles of their duty to stop for inspection and of the location of the place of inspection.

ARTICLE II. PEST CONTROL

8.08.030 Registration of pest control operators--Fee. Pursuant to the provision of Sections 11732 through 11736, inclusive, of the Agricultural Code of the State of California, every person licensed as an agricultural pest control operator shall, before engaging in business as such operator in the City, register as such operator with the Agricultural Commissioner. There is hereby imposed a fee for such registration in the amount set by the Board of Supervisors per calendar year or fraction thereof, payable in advance for each calendar year. Said fee shall be paid to the Agricultural Commissioner.

8.08.040 Registration of agricultural pest control adviser--Fee. Pursuant to the provisions of Sections 12031 through 12036 of the Agricultural Code of the State of California, every person licensed as an agricultural pest control adviser shall, before performing any services as such adviser in the City, register as such adviser with the Agricultural Commissioner.
Registration shall be renewed annually. The fee established by the Board of Supervisors shall be collected for registration and renewal of registration.

ARTICLE III. REMOVAL OF PLANTS

8.08.050 Removal of plants prohibited. It shall be unlawful for any person to cut, pick, dig, collect, remove, mutilate or destroy the whole or any part of any species of yucca, cactus or agave, or any native tree, flowering shrub, ornamental plant, berry-bearing plant, vine, fern or wild flower, whether growing on public land or on any land not his own, including County and State roadways and railroad rights-of-way, in the City without a permit issued by the Agricultural Commissioner or except, in the case of private land, when and where the owner or his authorized agent has given his written consent thereto.

8.08.060 Sale of plants prohibited. It shall be unlawful for any person to knowingly sell, offer or expose for sale or transport for sale any native plant, wild flower, fern, vine, shrub or tree or any portion thereof which has been picked, cut, dug or removed from public or private land in violation of the provisions of this article.

8.08.070 Permits issued by Agricultural Commissioner. Permits may be issued by the Agricultural Commissioner to the duly accredited representatives of any public library, museum, school, scientific or other educational institution, or to herbarium and scientific collectors or to responsible individuals to take said plants or flowers for education or scientific purposes.

8.08.080 Enforcing agents. Any County fire warden, County forester or peace officer of the County shall have full power to enforce the provisions of this article and to confiscate any and all such plants or parts of plants or flowers that have been unlawfully cut, picked, dug or removed, or sold, offered or exposed for sale.

8.08.090 Exceptions. Nothing in this article shall be construed as making it unlawful for any person to graze, run or pasture livestock of any and all descriptions on any public lands of the United States in the City where any flowers, plants, or trees herein described are growing. It is also expressly provided that the provisions of this article shall not apply to any native plant which is declared by State law to be a public nuisance.
CHAPTER 8.12

DISEASE CONTROL

SECTIONS:

ARTICLE I. GENERAL PROVISIONS - NUISANCES

8.12.010 Duty of Health Officer
8.12.020 Resisting Health Officer Unlawful
8.12.030 Abatement of Nuisances
8.12.040 Notification of Nuisance
8.12.050 Recovery of Cost of Abatement

ARTICLE II. MOSQUITOES AND FLIES

8.12.060 Breeding places are Public Nuisances
8.12.020 Abatement
8.12.080 Order of Abatement not Prerequisite to Prosecution
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ARTICLE III. ABATEMENT OF PUBLIC FLY NUISANCES

8.12.100 Statement of Purpose
8.12.110 Definitions
8.12.120 Administration - Delegation of Authority
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8.12.160 Service of Notice or Order
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8.12.180 Abatement by the County
8.12.190 Payment of Costs by Owner - Lien for Costs
8.12.200 Additional Remedies

ARTICLE I. GENERAL PROVISIONS - NUISANCES

8.12.010 Duty of Health Officer. It shall be the duty of the health officer, under the direction and control of the Board of Supervisors, to enforce all laws, ordinances, and rules and regulations relating to the public health, prevention of sickness, nuisances or sanitation within the City.

8.12.020 Resisting Health Officer Unlawful. It is unlawful for any person to resist or attempt to resist the entrance of the health officer into any railroad, car, stage, vehicle, building, room, lot or other place in the City in performance of his duty, or to refuse to obey any lawful order of the health officer when made in performance of his duties or within the powers conferred by this chapter or by law.

8.12.030 Abatement of Nuisances. It shall be the duty of the health officer or his authorized agent, when necessary to secure the public health, to enter upon the premises or in the house or other place of any person to discover or inspect any nuisance that may there exist,
to inspect drains, vaults, cellars, cesspools, water closets, privies, or sewers, or the yards of such premises, to examine into their condition, and when satisfied that any such premises, house or place used for lodging or other purposes are improperly constructed or liable from overcrowding or filth to become dangerous to the public health, or to disseminate contagious or infectious disease, or are not provided with privies, water closets or with sewers, drains or cesspools properly tapped, they or any of them shall serve a written notice upon the owner or other person in charge of such premises, to remove the nuisance therein named and if such owner or other person in charge neglects to obey such notice, the health officer or his authorized agent shall, if deemed necessary, forthwith report the same to the County Attorney, who shall take necessary steps to have the same abated.

8.12.040 Notification of Nuisance. Whenever a nuisance endangering, in the opinion of the health officer, the public health shall be ascertained to exist on any premises, or in any house or other place in the City, the health officer shall notify in writing any person or person owning or having control of, or acting as agent for, such premises, house, or other place, to abate or remove such nuisance within a reasonable time, to be stated in such notice.

8.12.050 Recovery of Cost of Abatement. Upon the neglect or refusal of any owner, occupant or agent, or other person having control of such house, or other place to comply with such notice, the health officer may abate such nuisance, and the owner, agent, or occupant, or other person having control of such house, or place, in addition to the penalty provided by this chapter, shall be liable to the County for the cost of such abatement, to be recovered in a civil action in any court of competent jurisdiction.

ARTICLE II. MOSQUITOS AND FLIES

8.12.060 Breeding Places are Public Nuisances. In the City any breeding place of mosquitoes is a public nuisance.

8.12.070 Abatement. Such nuisance may be abated by the Director of Public Health in any manner permitted by law, or by an proceeding or remedy provided by law, including, but not limited to, proceedings in accordance with the uniform Public Nuisance Abatement Procedure contained in Chapter 2, Division 6, Title 1 of the County Code.

8.12.080 Order of Abatement not Prerequisite to Prosecution. The issuance of an order to abate shall not be a prerequisite to nor shall the fact that such order of abatement shall have been issued preclude or stay any prosecution pursuant to the provisions of this article.

8.12.090 Violation - Penalty. Any person who creates, allows, suffers or maintains a public nuisance as defined by Section 8.12.060 is guilty of a misdemeanor as provided in Section 1.12.020 of the Code.

ARTICLE III. ABATEMENT OF PUBLIC FLY NUISANCES

8.12.100 Statement of Purpose. The purpose of this article is to provide for the investigation, continuing regulation and abatement of conditions in the city productive of flies which constitute a hazard to the public health, safety and welfare. In the administration and enforcement of this article, there shall be taken into account factors of population density, zoning ordinances and the proper determination of all sources of fly breeding to the end that the public health, safety and welfare may be secured and maintained.
8.12.110 Definitions. As used in this article, the following definitions shall apply:

(a) "Public fly nuisance". The term "public fly nuisance" shall mean any place, condition, process or operation where by reason of the conduct, misconduct, neglect, failure or refusal of anyone, there is created or continues to exist the production of flies or fly larvae or pupae in such manner and in such quantity as:

(1) To constitute an immediate danger to the public health, safety or welfare, or

(2) To be indecent or offensive to the senses or an obstruction to the free use of the surrounding property so as to interfere with the comfortable enjoyment of life or property of an entire community, neighborhood or of a considerable number of persons.

(b) "Order of abatement". The term "order of abatement" shall include modifications, rescissions or reinstatements of any order of abatement and shall include both prohibitory and mandatory orders requiring or prohibiting one or more acts; said term shall include those orders effective for a limited as well as an indefinite period of time.

(c) "Abatement". The term "abatement" shall include demolition, removal, repair, maintenance, construction, reconstruction, replacement and reconditioning of structures, appliances, appurtenance or equipment; removal, transportation, disposal and treatment of refuse, manure or other substance or media capable of breeding or attracting flies and the application of chemical or other substances or the use of mechanical means to control, eradicate and eliminate sources or causes of fly breeding media or conditions.

8.12.120 Administration; Delegation of Authority. The director of public health shall be responsible for the administration of this article and shall conduct such area surveys as are appropriate. The term "Director of Public Health", as used in this article, shall include any employee of the Department of Public Health of the County of San Diego to whom any of the duties of the director under this chapter are delegated by the director.

8.12.130 Investigation. The Director of Public Health may, upon reasonable cause to believe a public fly nuisance exists, investigate conditions productive of flies, fly larvae or pupae. He shall have the power while in the performance of his duty and upon first presenting his credentials and identifying himself as an employee of the department of public health to the person apparently in control of the premises, if available, to enter upon any premises between the hours of 6:00 a.m. and 6:00 p.m., but not in the dwelling of any person without permission, to discover or inspect any thing or condition which is productive or susceptible to the production of flies. He may examine such places, things or media; take such samples and make such tests as needed and take any other steps reasonably necessary for the proper investigation and determination of conditions which may be productive of fly larvae or pupae.

8.12.140 Order to Abate a Public Fly Nuisance. The Director of Public Health shall determine whether or not any of the conditions investigated constitute a public fly nuisance. If he determines that any of such conditions do constitute a public fly nuisance, he may issue a written order requiring that the conditions productive of flies, fly larvae or pupae be abated within a period of not less than seven (7) days thereafter and shall forthwith serve the order upon the person maintaining the public fly nuisance. An order of abatement of a public fly nuisance made pursuant to this section shall continue in full force and effect until rescinded by the Director of Public Health or vacated or superseded by order of the Board of Supervisors after hearing
pursuant to section 64.306 of the County Code. The period of time specified in the order of abatement issued by the director may for good cause be extended by written order of the director. Any such order by the director may be modified by the director or modified by the Board of Supervisors after such hearing. Any such person served with a written order of abatement made pursuant to this section may appeal to the Board of Supervisors as provided in section 64.304 and such appeal shall stay the effect of such order until the Board of Supervisors hears the appeal and issues its orders modifying, vacating or affirming such order of abatement; however, the appeal and stay of the order of abatement shall not relieve any person from liability and responsibility, both criminal and civil, for maintaining a public fly nuisance and shall not stay or prevent the filing or prosecution of a criminal complaint for the maintenance of such public fly nuisance.

8.12.150 Appeal to the Board of Supervisors; Notice of Hearing; Hearing; Findings; Order of Abatement; Enforcement; Review. Within a period of three (3) days, exclusive of Saturdays, Sundays and holidays, following the service of the written order of the Director of Public Health issued pursuant to section 64.305 of the County Code, the person ordered to control or abate the public fly nuisance may file with the Board of Supervisors and the Director of Public Health a statement that he appeals the order of the director of public health, which statement shall contain the appellant's name, mailing address and a general description of the order appealed from. Upon receipt of an appeal, the clerk of the Board of Supervisors shall set the appeal for hearing at the next regularly scheduled meeting of the Board of Supervisors following the first Friday after the appeal is received. The clerk shall forthwith notify the Director of Public Health of the time, date, and place of hearing. At the time, date and place indicated, the Director of Public Health shall produce evidence of the existence of the public fly nuisance which is the subject of his order. The Board of Supervisors shall consider all relevant evidence adduced at the hearing and at any continued hearing and if it finds by a preponderance of the evidence that the public health, safety or welfare is in immediate danger by reason of the creation or maintenance of the public fly nuisance, or that by reason of the conduct or the neglect, failure or refusal of the appellant to act, he has created or continues to maintain that which is injurious to the public health, or is indecent or offensive to the senses, or an obstruction to the free use of surrounding property, so as to interfere with the comfortable enjoyment of life or property of an entire community or neighborhood or of any considerable number of persons, it may declare the same to be a public fly nuisance, shall make such findings as are necessary and proper and may order the abatement of such public fly nuisance within a reasonable time and upon such terms and conditions as are reasonable and just under the circumstances, or it may modify, vacate or affirm the offer of abatement made by the Director of Public Health. Thereafter, the Director of Public Health shall serve the order of abatement in accordance with section 64.307 of the County Code, shall enforce the order, shall supervise the abatement of the public fly nuisance and may make such further orders as circumstances may warrant. Review of the decision of the Board of Supervisors must be had, if at all, by commencing an appropriate proceeding pursuant to the Code of Civil Procedure, section 1094.5. Such proceeding must be commenced within ten (10) days following the service of the order of the Board of Supervisors.

8.12.160 Service of Notice or Order. Service of any notice or order issued pursuant to this article may be accomplished by complying with section 11.112 of the County Code. Each notice or order given or made under this article shall be served upon the person occupying the premises upon which the public fly nuisance exists. If no person occupies the premises, the notice or order shall be posted upon the premises in a conspicuous place and served upon the person appearing as owner of the premises according to the last equalized assessment roll of the county.
8.12.170 **Penalty.** Any person upon whom an order to abate a public fly nuisance is served, who fails, refuses or neglects to obey or to continue to obey any provision of the order shall be guilty of a misdemeanor as provided in section 1.12.020 of this code.

8.12.180 **Abatement by the County.** In the event the public fly nuisance as determined under section 8.12.140 or 8.12.150 is not abated or the conditions and provision of the order have not been complied with, the Director of Public Health, by order of the Board of Supervisors, may abate the public fly nuisance prevent its recurrence and eliminate or control the conditions productive of flies, fly larvae or pupae which constitute the public fly nuisance. Neither the County nor any of its officers or agents shall be liable for any reasonably necessary damage which is incident to the statement of such public fly nuisance as ordered under this article.

8.12.190 **Payment of Costs by Owner; Lien for Costs.** The cost of abatement shall be repaid to the county by the owner and the possessor of the property who shall be jointly and severally liable therefor. All sums expended by the county in abating a public fly nuisance or preventing its recurrence are a lien upon the property on which the public fly nuisance is abated or its recurrence prevented. Notice of the lien may be filed and recorded with the Recorder of the County of San Diego.

8.12.200 **Additional Remedies.** Provisions of this article empowering the Director of Public Health to require the abatement of or to abate a public fly nuisance are remedies in addition to any existing remedy authorized by law and are not to be construed as conflicting with or in derogation of any other provision of this code or of law.
CHAPTER 8.16

PERMIT FEES AND PROCEDURES FOR BUSINESSES AND HEALTH REGULATED ACTIVITIES

SECTIONS:

8.16.010 Application - Filing
8.16.020 Fees
8.16.030 Annual Inspection Fee for Health Regulated Activities
8.16.040 Investigation by Department of Health Services
8.16.050 Delinquent Payments
8.16.060 Renewal of Permit, License or Registration
8.16.070 Permit or License not Transferable
8.16.080 Reserved

8.16.010 Application - Filing. Every applicant for a permit, license or registration required by this chapter and issued by the health officer shall file with the Department of Health Services a written application on a form prescribed by said department. The application shall state the name and address of the applicant, the description of the property by street and number wherein or whereon it is proposed to conduct the business or activity for which the permit or license is required, the nature of the permit or license for which application is made, the character of the business or activity proposed to be conducted and such other information as the Department of Health Services may require.

8.16.020 Fees. Except as otherwise specifically provided in this chapter, every person applying for a permit under the provisions of this chapter shall at the time of making application for such permit pay a fee, the exact amount of which shall be determined by the County of San Diego Board of Supervisors and kept on record by the County Department of Health Services and on file in the City Clerk's Office. (Ord. No. 92-947, 1-12-93)

8.16.030 Annual Inspection Fee for Health Regulated Activities. Every person applying for a permit for a food establishment, apartment house or hotel, camp or picnic ground, public swimming pool, sewage pumping vehicle or other health regulated business for which an annual permit, license or registration is required under the provisions of this code and issued by the health officer shall at the time of making application for the permit pay the annual inspection fees, as set forth in Section 8.16.020 with the exception that the fee for food-vending and sewage pumping vehicles and food-vending machines shall be prorated so that the annual renewal date will be January 1 of each year. The fee for vehicles and vending machines that are prorated shall be reduced by an amount equal to one-twelfth of the total annual permit fee for each month less than one year for which the permit is issued.

8.16.040 Investigation by Department of Health Services. Upon receipt of such application, accompanied by the required fee, it shall be the duty of the health officer to investigate the matters set forth in such application, and the sanitary conditions in the place where it is proposed to conduct the business or activity mentioned in the application, and if it shall appear to the health officer, that the statements contained in the application are true, and that the existing sanitary conditions mentioned in said application comply with the provisions of law, a permit, license or registration shall thereupon be granted. Such permit or license shall
be granted only upon the express condition that it shall be subject to revocation or suspension by
said health officer upon a showing satisfactory to said health officer of a violation by the holder of
such permit or any person acting with his consent or under his authority, of any applicable
 provision of law regulating places or activities of the character for which the permit or license is
 granted.

8.16.050 Delinquent Payments.

(a) Any fee which is not paid by the first day of the month following the month in which
 it is due is thirty days delinquent, and on the first day of the next following month, if still unpaid, is
 sixty days delinquent.

(b) In any case where a fee is thirty days delinquent, a penalty of fifty dollars ($50) or
 an amount equal to 50% of the fee, whichever is less, shall be added to and collected with the
 required fee.

(c) In any case where a fee is sixty days delinquent, a total penalty of one hundred-fifty
dollars ($150) or 150% of the fee, whichever is less, will be added to and collected with the
 required fee.

(d) The imposition or payment of the penalty imposed by this section shall not
 prevent the imposition of any other penalty prescribed by this Code or any ordinance nor
 prosecution for violation of this Code or any ordinance.

(e) The delinquent penalty fee may be waived by the Health Officer or his or her
 designee in case of error made by Environmental Health Services staff or when the applicant has
 not held a health permit during the past five years, and was unaware that a health permit was
 required. (Ord. No. 92-947, 1-12-93)

8.16.060 Renewal of Permit, License or Registration.

(a) A permit or license issued pursuant to this Title shall expire on the last day of the
 month of the one year anniversary month in which the permit was issued and shall be renewed
 annually, except as provided in Section 8.16.030 for food vending and sewage pumping vehicles
 and food vending machines. At the time application is made, there shall be paid to the
 Department of Health Services the required annual fee, which fee is due and payable each year
 on the first day of the month following the expiration of the permit. (Ord. No. 92-947, 1-12-93)

8.16.070 Permit or license not transferable. A permit or license is not transferable from
 one person or one place to another, and shall be deemed voided if removed from the place or
 location specified in the written application and in the permit.

8.16.080 Fees. Reserved. (Ord. No. 92-947)
CHAPTER 8.20
CAMPS AND PICNIC GROUNDS

SECTIONS:

8.20.010 Definitions
8.20.020 Permit - Required
8.20.030 Permit - Application - Fee
8.20.040 Posting of Permit Required
8.20.050 Caretaker Required - Register Maintained
8.20.060 Regulations Covering Camp Grounds
8.20.070 Rule 1 - Supervision
8.20.080 Rule 2 - Supervision
8.20.090 Rule 3 - Supervision
8.20.100 Rule 4 - Garbage and Refuse
8.20.110 Rule 5 - Camping Space
8.20.120 Rule 6 - Water Supply
8.20.130 Rule 7 - Water Supply
8.20.140 Rule 8 - Fires
8.20.150 Rule 9 - Sewage and Refuse Disposal
8.20.160 Rule 10 - Sewage and Refuse Disposal
8.20.170 Rule 11 - Sewage and Refuse Disposal
8.20.180 Rule 12 - Dogs
8.20.190 Rule 13 - Construction and Maintenance of Buildings
8.20.200 Rule 14 - Communicable Diseases to be Reported
8.20.210 Violation - Penalty

8.20.010 Definitions. For the purpose of this chapter the following definitions shall apply:

(a) "Camping party" is a person, or two or more persons together, using at the same time a tent, automobile, or automobile camping outfit, a camp wagon, or such other camping facilities for living or sleeping purposes.

(b) "Public camp" is any place, area or tract of land upon which are located on said area or tract of land having a common use of any part thereof, or any convenience thereon.

8.20.020 Permit -- Required. No person shall operate, maintain, or offer for public use within the City a tract of land on which persons may camp or picnic either free of charge or by payment of a fee without a permit therefor from the Department of Health Services.

8.20.030 Permit--Application--Fee. The permit required by this chapter shall be applied for and issued as prescribed in Section 8.16.010 of this code. The annual fee for the permit shall be as prescribed in Section 8.16.080 of this code.

8.20.040 Posting of permit required. No person shall establish, maintain, conduct or carry on any public camp, unless there shall be at all times posted in a conspicuous place upon said area or tract of land upon which said public camp is located, a permit issued by the Department of Health Services in accordance with the provisions of this chapter.
8.20.050 Caretaker required--Register maintained. No person shall maintain, conduct or carry on, or cause or permit to be maintained, conducted or carried on any public camp, unless said camp shall be provided at all times with a resident caretaker whose duty it shall be to enforce all rules and regulations and to see that no law, this code or City ordinance is violated by any person camping thereon. It shall be the duty of said manager or caretaker to keep a record of all camping parties, which said register shall specify the date of arrival of said camping party, the full name and permanent address of each person in said camping party, and in the event said camping party is traveling by means of an automobile, said register shall further specify the name of the owner of said automobile, the City and State in which said owner is a resident, the make of said automobile, the State in which said automobile is registered, the license number thereof and the year of its issuance. Said register shall at all times be open for inspection to all peace officers of the City and to the health officer.

8.20.060 Regulations Covering Camp Grounds. The rules and regulations specified in the following sections of this chapter shall be applicable to every public camping ground, and it is unlawful for any person maintaining, operating, conducting or carrying on any such public camp to violate, or cause or permit to be violated, any of said rules or regulations.

8.20.070 Rule 1--Supervision. The management of every public camp or picnic ground shall assume responsibility for maintaining in good repair all sanitary appliances on said ground, and shall promptly bring such action as may be necessary to prosecute or eject from such ground any person who wilfully or maliciously damages such appliances or any person who in any way fails to comply with the regulations of this chapter.

8.20.080 Rule 2--Supervision. At least one caretaker shall be employed by the management to visit said camp or picnic ground every day that campers or picnickers occupy said ground. Such caretaker shall do whatever may be necessary to keep said ground and its equipment in a clean and sanitary condition.

8.20.090 Rule 3--Supervision. Every owner and lessee of any public camp or picnic ground shall be held responsible for full compliance with these regulations.

8.20.100 Rule 4--Garbage and Refuse. Supervision and equipment sufficient to prevent littering of the ground with rubbish, garbage or other refuse shall be provided and maintained. Fly tight depositories for such materials shall be provided and conspicuously located. Every camp or picnic spot on said ground shall be within a distance of not over two hundred feet from such a depository. These depositories shall not be permitted to become foul smelling or unsightly or breeding places for flies.

8.20.110 Rule 5--Camping Space. Each camping party shall be allowed usable camping space of not less than three hundred fifty square feet.

8.20.120 Rule 6--Water Supply. A water supply of sanitary quality shall be provided in ample quantity to meet all requirements of the maximum number of persons using such ground at any time. Said water supply shall be easily obtainable from its source on a pipe distribution system, faucets from which shall be located not more than three hundred feet from any camp or picnic spot within such ground. If water supply is obtained direct from above ground source, said source must be covered properly and water withdrawn by means of open pipe or faucet. In no case shall dipping from open springs be permitted.
8.20.130  Rule 7--Water Supply. Any water in the vicinity of such ground which may be unsafe for human consumption to which campers or picnickers may have access shall be either eliminated or purified, or shall be kept posted with placards definitely warning persons against its use.

8.20.140  Rule 8--Fires. No fires shall at any time be so located as to endanger automobiles or other property in the camp ground. No fires shall be left unattended at any time, and all fires shall be completely extinguished before leaving.

8.20.150  Rule 9--Sewage and Refuse Disposal. The method of final sewage or refuse disposal utilized in connection with the operation of any camp or picnic ground shall be such as to create no nuisance.

8.20.160  Rule 10--Sewage and Refuse Disposal. Fly-tight privies or water flush toilets shall be provided and shall be maintained in a clean and sanitary condition. Separate toilets for men and women shall be provided, one for each twenty-five men and one for each twenty-five women of the maximum number of persons occupying such ground at any time. No camp or picnic spot within such ground shall be at a greater distance than four hundred feet from both a men's or women's toilet. The location of all toilets shall be plainly indicated by signs. Toilet buildings shall be at all times lighted properly and from sunset to sunrise proper lights shall be kept burning.

8.20.170  Rule 11--Sewage and Refuse Disposal. A sufficient number of slop sinks or sinks shall be provided, and each shall be connected with a sewerage system or covered cesspool. These are to be used for the disposal of domestic waste waters.

8.20.180  Rule 12--Dogs. Dogs shall be tied up and at no time be permitted to run at large in any public camp.

8.20.190  Rule 13--Construction and Maintenance of Buildings. If cottages, cabins, dwelling houses or other buildings to be used for human habitation are erected in any public camping ground, the following minimum requirements for their construction shall be observed, in addition to other requirements of this code and City ordinances:

(a) All floors shall be raised at least eighteen inches above ground and space underneath shall be kept free of obstruction.

(b) All floors shall be constructed of tongue and groove material.

(c) Interior wall shall be of surfaced lumber or other material that may be kept clean and shall be constructed so that they may always be kept in a thoroughly clean condition.

(d) No room used for sleeping purposes shall have less than six hundred thirty cubic feet of air space.

(e) The area of window space in each sleeping room shall be equal to at least one-eighth of the floor area of the room.

(f) Windows of sleeping rooms shall be so constructed that at least one-half of each window can be opened.

(g) Cooking shall not be permitted in any sleeping room.
(h) If a kitchen is provided it must be equipped with running water and a sink connected with a sewerage system, septic tank or a covered cesspool. Kitchens must be screened against flies and mosquitoes.

(i) If a private toilet is provided it must be water flushed and connected with a sewerage system or septic tank. Rooms containing such toilets must have window openings to the outside air and their floors must be constructed of impervious material.

(j) If a bathroom is provided it must have an impervious floor and must have a window opening to outside air. Baths and lavatories must have a window opening to outside air. Baths and lavatories must be connected with a sewerage system, septic tank or cesspool.

(k) Covered metal garbage containers must be provided, at least one for every two buildings.

(l) Buildings shall be cleaned daily and after each occupancy shall be thoroughly cleaned. If bedding is provided it must be kept in a clean condition.

8.20.200 Rule 14--Communicable Diseases to be Reported. It shall be the duty of the management of any public camp to report immediately to the health officer any person afflicted with or reasonably suspected of being afflicted with a communicable disease. Upon receiving a report of communicable disease in a public camp, it shall be the duty of the health officer to take such steps as are necessary for the protection of public health.

8.20.210 Violation--Penalty. Any person violating the provisions of Sections 8.20.020, 8.20.030, and 8.20.200 of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in an amount not to exceed five hundred dollars ($500.00) or by imprisonment for a period of not more than six (6) months in the County Jail or by both such fine and imprisonment.
CHAPTER 8.24
REFRIGERATION PLANTS

SECTIONS:

ARTICLE I. GENERAL PROVISIONS

8.24.010 Refrigeration plant defined
8.24.020 Permit - Required
8.24.030 Permit - Application
8.24.040 Annual Permit Fee
8.24.050 Permit - Revocation
8.24.060 Bond Required

ARTICLE II REGULATIONS

8.24.070 Sanitation Requirements
8.24.080 Stamping of Uninspected Meat
8.24.090 Hides must Accompany Carcasses
8.24.100 Designation of Meat Processing Days
8.24.110 Uninspected Meat Includes Deer, Game and Fowl
8.24.120 Violation, Infraction, Misdemeanor

ARTICLE I. GENERAL PROVISIONS

8.24.010 Refrigeration plant defined. For the purposes of this chapter the following definition shall apply: "Refrigeration plant" means any facility or equipment for the refrigerated storage for compensation of meat not owned by the person maintaining the refrigeration equipment, or for the sale of frozen meat at wholesale or retail.

8.24.020 Permit--Required. It is unlawful for any person to operate, maintain or keep in the City any refrigeration plant without an annual permit therefor from the health officer.

8.24.030 Permit--Application. Any person desiring a permit required by this chapter shall make application therefor as prescribed in Section 8.16.010 of this code.

8.24.040 Annual permit fee. The annual fee for the permit required by this chapter shall be that prescribed by Section 8.16.080 of this code.

8.24.050 Permit--Revocation. Any permit issued pursuant to this chapter may be revoked by the health officer on proof of violation by the permittee of any provisions of State law, this code, City ordinance or rule of the health officer pertaining to health or sanitary matter.

8.24.060 Bond Required. Every refrigeration plant handling inspected and uninspected beef, lamb, pork or veal shall post with the Department of Health Services a surety or cash bond in the sum of one thousand dollars conditioned upon compliance by the permittee with all the terms and provisions of this chapter and subject to forfeiture upon the conviction of the permittee of violation of any provision of this chapter.
ARTICLE II. REGULATIONS

8.24.070 Sanitation Requirements. Every refrigeration plant where meat is stored shall be maintained and operated in a clean and sanitary manner. Every such plant shall be open at all times to inspection by the Department of Health Services.

8.24.080 Stamping of Uninspected Meat. All uninspected beef, veal or lamb kept or placed in any refrigeration plant shall be stamped immediately upon arrival with a roller stamp so as to be legibly marked "Uninspected Meat -- Not for Sale." All uninspected pork kept or placed in any refrigeration plant shall be stamped immediately upon arrival with a hot stamp so as to be legibly marked "Uninspected Meat -- Not for Sale." Every stamp required by this section shall also legibly show the plant permit number issued the plant by the health officer.

8.24.090 Hides must Accompany Carcasses. Every refrigeration plant shall accept and store beef, veal and lamb carcasses only when the hide accompanies the carcass. Every refrigeration plant shall keep a record of the disposition of each such hide, which record shall be available at all times to the Department of Health Services and the State Hide and Brand Inspector.

8.24.100 Designation of Meat Processing Days. Every refrigeration plant handling or processing inspected and uninspected meat shall designate different days of the week upon which inspected meat will be processed and uninspected meat will be processed, and shall notify the Department of Health Services in writing of such designation and of any change thereof together with the effective date of such change. It is unlawful for any refrigeration plant to process both inspected and uninspected meat on the same day, except with the permission of the Department of Health Services.

8.24.110 Uninspected Meat Includes Deer, Game and Fowl. The handling of meat or deer or other game or fowl shall be classified as handling of uninspected meat and shall not be handled on days designated for inspected meat. Except as in this section provided, this chapter shall not apply to carcasses of deer, game or fowl.

8.24.120 Violation - Infraction - Misdemeanor.

(a) Except as provided in subsection b, any person violating any provision of this chapter shall be deemed guilty of an infraction.

(b) A person convicted of a third or subsequent violation of this Chapter within two years from the date of the first conviction shall be deemed guilty of a misdemeanor.

(c) Each day on which a violation occurs or continues shall constitute a separate offense.
CHAPTER 8.28

REDUCTION PLANTS

SECTIONS:

8.28.010 Permit - Required
8.28.020 Permit - Application - Fee
8.28.030 Inspection of Reduction Plants
8.28.040 Removal of Decomposed Material
8.28.050 Construction of Structures
8.28.060 Offensive Odors Declared Public Nuisance
8.28.070 Violation - Infraction - Misdemeanor

8.28.010 Permit - Required. No person shall conduct, maintain or operate an establishment for the steaming, boiling, reducing, rendering, or cooking of any animal substance or matter, fish substance or matter, or vegetable substance or matter for the manufacture of fertilizer, fats, oils, chicken meal, or any byproduct of any kind or character, or conduct, operate, maintain, or carry on, whether as owner or lessee, Agent or superintendent or otherwise, any reduction works, or fertilizer plant or other places where the business of steaming, boiling, reducing, rendering, or cooking of an animal substance or matter, fish substance or matter, vegetable substance or matter, for the manufacture of fertilizer, fats, oils, chicken meal, or any byproducts of any kind or character is carried on or maintained within the City without a permit therefor issued by the Health Department.

8.28.020 Permit - Application - Fee. The permits required by this chapter shall be applied for and issued as prescribed in Section 8.16.080 of this code. The annual fee shall be as prescribed in Section 8.16.020 of this code.

8.28.030 Inspection of Reduction Plants. All material received by reduction plants for the process of reducing or rendering shall be immediately processed, and the processing of same shall continue until the entire supply is entirely reduced. The health officer shall cause an inspection to be made during the process of reduction to determine whether the process and equipment may be operated without becoming a nuisance, and if it shall be determined to the satisfaction of the health officer that the establishment is objectionable or liable to become a nuisance, said health officer is empowered by this section to suspend or revoke the permit therefor until satisfactory improvements have been made or suitable equipment has been installed.

8.28.040 Removal of Decomposed Material. Putrid or decomposed material shall be removed only under permit and under the direction of the Department of Health Services designated to perform such duties. Fish or parts of fish or fish guts not suitable for reduction shall be condemned and disposed of in a manner designated by the Department of Health Services.

8.28.050 Construction of Structures. Floors and gutters of reduction plants shall be constructed of concrete or other material impervious to liquids. Walls, ceilings, partitions, doors and other parts of all structures used as a part of a reduction plant shall be of such materials, construction, and finish as will permit them to be readily and thoroughly cleaned.
8.28.060 Offensive Odors Declared Public Nuisance. The escape into the open air of any offensive or obnoxious odors or gases from any material in the process of reduction under the provisions of this chapter is declared to be a public nuisance and may be summarily abated by the health officer.

8.28.070 Violation - Infraction - Misdemeanor.

(a) Except as provided in subsection b, any person violating any provision of this Chapter shall be deemed guilty of an infraction.

(b) A person convicted of a third or subsequent violation of this Chapter within two years from the date of the first conviction shall be deemed guilty of a misdemeanor.

(c) Each day on which a violation occurs or continues shall constitute a separate offense.
CHAPTER 8.32
ENFORCEMENT OF STATE HOUSING LAW

SECTIONS:

8.32.010  Enforcement by Health Officer
8.32.020  Inspection of Hotels and Apartment Houses

8.32.010  Enforcement by Health Officer. The Health Officer, in addition to his other
duties, is designated as the officer to enforce and is charged with the enforcement of the
provisions of the State Housing Law pertaining to sanitation, ventilation, use or occupancy of
apartment houses, dwellings and hotels within the City.

8.32.020  Inspection of Hotels and Apartment Houses. It shall be the duty of the health
officer to make periodic inspections of all hotels and apartment houses whenever the health officer
deems it necessary.
CHAPTER 8.36

PERMITS FOR APARTMENTS AND HOTELS

SECTIONS:

8.36.010 Definitions
8.36.020 Permit Required
8.36.030 Application for Permit
8.36.040 Violation - Infraction - Misdemeanor

8.36.010 Definitions. For the purpose of this chapter the words "Hotel" and "Apartment House", unless otherwise specified, shall have the following meaning:

"Hotel" means any structure, or any portion of a structure, including any lodging house, rooming house, dormitory, turkish bath, bachelor hotel, studio hotel, public club, or private club, containing six or more guest rooms and which is occupied, or is intended or designed for occupancy, by six or more guests, whether rent is paid in money, goods, labor or otherwise. It does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention, or other building in which human beings are housed and detained under legal restraint.

"Apartment House" means any structure more than one story in height, or any portion of any such structure occupied, or designed, built or rented for occupancy, as a home by three or more families, each living in a separate apartment and cooking within the structure.

8.36.020 Permit Required. It shall be unlawful to occupy, or to permit to be occupied, any apartment house or hotel now or hereafter erected, constructed, reconstructed, altered, converted or moved, as the case may be, or any portion thereof, for human habitation without an annual permit therefor issued by the Health Officer.

8.36.030 Application for Permit. The permit required by this chapter shall be applied for and issued as prescribed in Chapter 8.16.010 of this Code. Every person applying for a permit shall pay the annual inspection fee set forth in Section 8.16.080 of this Code.

8.36.040 Violation - Infraction - Misdemeanor.

(a) Except as provided in subsection b), any person violating any provision of this chapter shall be deemed guilty of an infraction.

(b) A person convicted of a third or subsequent violation of this chapter within two years from the date of the first conviction shall be deemed guilty of a misdemeanor.

(c) Each day on which a violation occurs or continues shall constitute a separate offense.
CHAPTER 8.40
SWIMMING POOLS

SECTIONS:

ARTICLE I. PUBLIC SWIMMING POOL PLANS

8.40.010 Review of Plans for Public Swimming Pools - Fee
8.40.020 Permit - Required
8.40.030 Permit - Not Transferable
8.40.040 Violation - Infraction - Misdemeanor
8.40.050 Enforcement

ARTICLE II. SWIMMING POOL FENCING

8.40.060 Definition of Swimming Pool
8.40.070 Fencing Required
8.40.080 Enforcement
8.40.090 Each Day a Separate Offense
8.40.100 Violation - Penalty

ARTICLE I. PUBLIC SWIMMING POOL PLANS

8.40.010 Review of plans for public swimming pools--Fee. Any person desiring the review and approval of plans and specifications for a public swimming pool by the Director Health Services pursuant to Section 8.16.080 of Title 17 of the California Administrative Code shall submit said plans to the director accompanied by a fee as set forth in Section 8.16.010 of this Code to cover the cost of said review. As soon after the plans and specifications are submitted as is practical, the director shall review or cause to be reviewed said plans and specifications and shall determine whether they are in accordance with the requirements of Section 7780, et seq. of Title 17 of the California Administrative Code. In the event that the plans and specifications do not comply with said Administrative Code provisions, amended plans and specifications may be submitted to the director for re-review and approval, and the fee for each such re-review shall as set forth in Section 8.16.080 of this code, payable to the director in advance.

8.40.020 Permit--Required.

(a) No person shall maintain or operate any pool except a private pool unless an annual operating permit is issued therefor by the Health Officer. A pool shall be considered a private pool if it is maintained by an individual for the use of his family and friends and for swimming instruction programs of short duration which are conducted by or sponsored by the American Red Cross.

(b) An annual operating permit issued by the Health Officer is required for operation of any public pool including, but not limited to, all commercial pools, real estate and community pools, pools at hotels, motels, resorts, auto and trailer parks, auto courts, apartment houses, clubs, public or private schools and gymnasium, and health establishments.

(c) Every person applying for a permit as required by this section shall, at the time of making application for such permit, pay an annual inspection fee for the first pool under one
ownership and on the same property as set forth in Section 8.16.010 of this Code, and a fee for each additional pool on the same property and under the same ownership as set forth in Section 8.16.010 of this Code.

(d) The annual operating permit shall be effective for a twelve-month period from the date of issuance. The required permit shall be applied for and issued as prescribed in Chapter 8.16.

8.40.030 Permit—Not transferable. A permit is not transferable from one person or one place to another, and shall be deemed voided if removed from the place or location specified in the written application and in the permit.

8.40.040 Violation - Infraction - Misdemeanor.

(a) Except as provided in subsection b, any person violating any provision of this article shall be guilty of an infraction.

(b) A person convicted of a third or subsequent violation of this article within two years shall be deemed guilty of a misdemeanor.

(c) Each day on which a violation occurs or continues shall constitute a separate offense.

8.40.050 Enforcement. The provisions of this article shall be enforced by the Director of Health Services.

ARTICLE II. SWIMMING POOL FENCING

8.40.060 Definition of swimming pool. "Swimming pool" means any confined body of water exceeding two feet in depth and located either above or below the existing finished grade of the site, designed or used, intended to be used for swimming, bathing or therapeutic purposes.

8.40.070 Fencing required. The following provisions shall apply to every swimming pool located on any lot or parcel or one acre or less, and to every hotel, motel, apartment house, planned mobile home development, and public swimming pool within the City:

(a) Fence required. In order to obstruct access thereto by persons other than the owners or occupants of the premises on which a swimming pool is located, every swimming pool shall be enclosed by a natural barrier, retaining wall, fence or other structure having a minimum height of five feet measured from the exterior grade of said barrier, wall, fence or structure. Said barrier, wall, fence or structure shall be constructed or installed so as to prevent ladder-like access and shall have no horizontal openings greater than five inches.

(b) Gates. Such fences may include gates therein. All gates must be self-closing and self-latching, with latches placed at least four feet six inches above the grade immediately below the latch in order to be securely closed. All gates opening through such enclosure shall be kept securely closed and latched at all times.

(c) Ingress and egress. No swimming pool shall be installed in any court or yard area if such pool would interfere with ingress and egress to any building or occupancy.
(d) **Modification.** The owner of any swimming pool may request approval of modification from the fencing requirements contained in this chapter by submitting to the County Zoning Administrator written application for such modification setting forth a description of such pool and an alternate safeguard or condition of the site by which entry into said swimming pool may be restricted or prevented. The Zoning Administrator may approve such alternate safeguard or obstruction upon finding that one of the following conditions exists:

1. That the site in which the swimming pool is contained is a mobile home park, certified by the owner to be restricted to adult residents only, and alternate safeguards or conditions exist whereby entry into said swimming pool may be restricted or prevented;

2. That the physical conditions of the site would make the erection of a fence or wall impractical;

3. That the proposed limitation of access or conditions of control which would be continuously effective would accomplish the intent of the fencing requirements. A fee for the cost of processing such application for modification shall be determined no less than annually by the Board of Supervisors. Said fee shall be paid to the County of San Diego through the Department at the time such application if filed.

(e) **Waiver.** Other provisions of this chapter notwithstanding, the owner of any swimming pool may request of the Director of Planning Services a waiver of all, or a portion, of the fencing requirements contained in this chapter when the following conditions exist:

1. A plot map is submitted to the Director of Planning Services showing all parcels of land lying within one thousand feet of the perimeter of the subject property; and

2. Said map identifies all swimming pools existing within said area; and

3. The number of such pools exceeds five; and

4. Fifty percent of the pools identified on the said map:

   (a) Are exempt from the fencing requirements of this chapter due to their construction prior to June 18, 1976, and

   (b) Do not otherwise comply with the provisions of this chapter.

The cost of processing an application for a partial or complete waiver of fencing requirements shall be the same as provided for a modification of fencing requirements.

(f) **Building-enclosed Pools.** All swimming pools which are completely contained within the walls of a building shall be exempt from the provisions of this article.

(g) **Appeal.** Any applicant dissatisfied with a decision of the Zoning Administrator relating to modification or waiver under this article may appeal such decision to the Board of Planning and Zoning Appeals; the decision of the Board of Planning and Appeals is the case of any such appeal shall be final.
8.40.080 Enforcement. The provisions of this article shall be enforced by the Director of Planning and Land Use.

8.40.090 Each Day a Separate Offense. Each person, firm or corporation found guilty of a violation shall be deemed guilty of a separate offense for every day during any portion of which any violation of any provision of this Chapter is committed, continued or permitted by such person, firm or corporation and shall be punishable therefor as provided for in this Chapter, and any use, occupation or building or structure maintained contrary to the provisions hereof shall constitute a public nuisance.

8.40.100 Violation - Penalty.

(a) Any swimming pool erected, constructed, altered or maintained and/or any use of property contrary to the provisions of this article is unlawful and a public nuisance, and any failure, refusal or neglect to install a fence as required by the terms of this chapter shall be prima facie evidence of the fact that a nuisance has been committed in connection with the erection, construction, alteration or maintenance of any swimming pool erected, constructed, altered or maintained or used contrary to the provisions of this chapter. Abatement proceedings may be commenced in accordance with the uniform Public Nuisance Abatement Procedure contained in Chapter 10.04, of this Code.
CHAPTER 8.44
WELLS

SECTIONS:

8.44.010 Purpose and Intent of Section 8.44.010 et seq. It is the purpose of this Chapter to further protect the environmental quality in this city by providing for the construction, repair and reconstruction of wells to the end that the ground water of this city will not be polluted or contaminated and that water obtained from such wells will be suitable for the purpose for which used and will not jeopardize the health, safety or welfare of the people of this city, and for the destruction of abandoned wells or wells found to be public nuisances to the end that such wells will not cause pollution or contamination or ground water or otherwise jeopardize the health, safety or welfare of the people of this city.

8.44.020 Definitions. The following words shall have the meaning provided in this section:

*Abandoned or abandonment* shall apply to a well which has not been used for period of one year, unless the owner declares in writing, to the Health Officer, his intention to use the well again for supplying water or other associated purposes (such as an observation well or injection well) and receives approval of such declaration from the Health Officer. All such declarations shall be renewed annually and at such time be resubmitted to the Health Officer for approval. Test holes and exploratory holes shall be considered abandoned twenty four (24) hours after construction work has been completed, unless otherwise approved by the Health Officer of San Diego County.

*Abatement* The construction, reconstruction, repair or destruction of a well so as to eliminate a nuisance caused by a well polluting or contaminating ground water.

*Agricultural well* A water well used to supply water for irrigation or other agricultural purposes, including so-called stock wells.
Cathodic protection well: Any artificial excavation in excess of twenty (20) feet constructed by any method for the purpose of installing equipment or facilities for the protection, electrically, of metallic equipment in contact with the ground. (See definitions of deep anode bed and shallow anode bed.)

Commercial well: A water well used to supply water for domestic purposes in systems subject to Chapter 7 of Part I of Division 5 of the California Health and Safety Code.

Construct, reconstruct (construction, reconstruction): To dig, drive, bore, drill or deepen a well, or to reperforate, remove, replace, or extend a well casing.

Contamination: An impairment of the quality of water to a degree which creates a hazard to the public health through poisoning or through spread of disease.

Deep anode bed: Any cathodic protection well more than fifty (50) feet deep.

Destruction: The proper filling and sealing of a well that is no longer useful so as to assure that the groundwater is protected and to eliminate a potential physical hazard.

Electrical grounding well: Any artificial excavation in excess of twenty (20) feet constructed by any method for the purpose of establishing an electrical ground.

Health Officer: The Health Officer of San Diego County or his designee.

Individual domestic well: Any artificial excavation in excess of twenty (20) feet constructed by any method for the purpose of establishing an electrical ground.

Industrial well: A water well used to supply an industry or an individual basis.

Modification, repair or reconstruction: The deepening of a well or the reperforation or replacement of a well casing and all well repairs and modifications that can affect the ground water quality.

Observation well: A well used for monitoring or sampling the conditions of water-bearing aquifer, such as water pressure, depth, movement or quality.

Order of abatement: Both mandatory and prohibitory orders requiring or prohibiting one or more acts; said term shall also include those orders effective for a limited as well as an indefinite period of time, and shall include modifications or restatements of any order.

Permit: A written permit issued by the Health Officer permitting the construction, reconstruction, destruction, or abandonment of a well.

Person: Any person, firm, corporation or governmental agency.

Pollution: An alteration of the quality of water to a degree which unreasonably affects (1) such waters for beneficial uses, or (2) facilities which serve such beneficial uses. Pollution may include contamination.

Public nuisance: The term "public nuisance", when applied to a well, shall mean any well which threatens to impair the quality of groundwater or otherwise jeopardize the health or safety of the public.
**Salt water (hydraulic) barrier well:** A well used for extracting water from or injecting water into the underground as a means of preventing the intrusion of salt water into a fresh water bearing aquifer.

**Shallow anode bed:** Any cathodic protection well more than twenty (20) feet deep but less than fifty (50) feet deep.

**Test or exploratory hole:** Any excavation used for determining the nature of underground geological or hydrological conditions, whether by seismic investigation, direct observation or any other means.

**Well:** Any artificial excavation constructed by any method for the purpose of extracting water from or injecting water into the underground, for providing cathodic protection or electrical grounding of equipment, for making tests or observations of underground conditions, or for any other similar purpose. Wells shall include, but shall not be limited to community water and supply wells, individual domestic wells, commercial wells, industrial wells, agricultural wells, cathodic protection wells, electrical grounding wells, test and exploratory holes, observation wells, and salt water (hydraulic barrier) wells, as defined herein, and other wells whose regulation is necessary to accomplish the purposes of this article. Wells shall not include: (a) Oil and gas wells, geothermal wells or other wells constructed under jurisdiction of the state department of conservation, except those wells converted to use as water wells; (b) wells used for the purpose of de-watering excavations during construction, or stabilizing hillsides or earth embankments; or (c) other wells whose regulation is not necessary to fulfill the purpose of this chapter as determined by the Health Officer.

**8.44.030 State Reporting.** Nothing contained in this chapter shall be deemed to release any person from compliance with the provisions of Article 3 of Chapter 10 of Division 7 of the Water Code of the State of California or any successor thereto.

**8.44.040 Standards - General.** No person shall construct, repair, reconstruct or destroy any well subject to this chapter which does not conform to the standards established herein.

**8.44.050 Standards for Water Wells.** Standards for the construction, repair, reconstruction or destruction of water wells shall be as set forth in Chapter II of State Department of Water Resources Bulletin No. 74 three (3) copies of which have been filed with the City Clerk with the following modifications:

(a) **Part II, Section 8(A).** Add: To footnote 1 "shallow dug or bored wells used for community water supply shall be located at least two hundred fifty (250) feet from any sewage disposal facility."

(b) **Part II, Section 9(A).** Substitute: "20 ft. 1 " for "none 3" (this automatically deletes the 3 footnote).

(c) **Part II, Section 9(E).** Add: Following footnote following section title:

**Exception:** Where the air-rotary method is used for individual domestic wells 8 inch in diameter or smaller, the thickness of seal may be reduced to one (1) inch.

(d) **Part II, Section 10(B).** Delete: Entire section with exception of that portion of the first sentence which states: "Because of their susceptibility to contamination and pollution, the use of well pits should be avoided."
Part II, Section 15 (A), Item 3. Delete: Phrase: "Where the water is to be used for domestic purposes."

Part II, Section 16. Delete: From Section 16 title the word: "Large and diameter" and substitute: The words "Bored or dug."

Part II, Section 16(A). Delete: Word "underground" from the last sentence so sentence reads: "When used for this purpose, these wells shall be located at least two hundred fifty (250) feet from any sewage disposal facility."

8.44.060 Standards for Cathodic Protection Wells. Standards for the construction, repair, reconstruction or destruction of cathodic protection wells shall be as set forth in Bulletin No. 74-1 of the State Department of Water Resources three (3) copies of which are filed with the City Clerk with the following modifications:

Chapter II, Part I, Section 1-A. Delete: Definition of "cathodic protection well" as printed and add: "A. Cathodic protection well:. A cathodic protection well means any artificial excavation in excess of twenty (20) feet constructed by any method for the purpose of installing equipment or facilities for the protection electrically or metallic equipment in contact with the ground, commonly referred to as Cathodic Protection."


Chapter II, Part II, Section 10. Delete: Subsection A-4 and the asterisked footnote in their entirety.

Chapter II, Part III, Section 13B. Delete: Phrase "if the casing is eight (8) inches or larger in diameter" thereby leaving the phrase "The well is covered with an appropriate locked cap."

8.44.070 Nuisances - Investigation. The County Health Officer may, upon reasonable cause to believe that an abandoned well or other well is causing a nuisance by polluting or contaminating groundwater, or constitutes a safety hazard, investigate the situation to determine whether such a nuisance does in fact exist. He shall have the power, when in the performance of his duty and upon first presenting his credentials and identifying himself as an employee of the County Health Department to the person apparently in control of the premises, if available, to enter upon such premises between the hours of 8:00 a.m. and 6:00 p.m., to discover or inspect such a nuisance. He may examine such premises, things or conditions, take such samples and make such tests as needed and take any other steps reasonably necessary for the proper investigation and determination of whether such a nuisance exists.

8.44.080 Order to Abate Nuisance. Whenever the Health Officer determines that an abandoned or other well is causing a nuisance by polluting or contaminating groundwater, or constitutes a safety hazard, he may issue a written order requiring that the conditions productive of the nuisance be abated within a period of ten (10) days thereafter and shall forthwith serve the order upon the person occupying the premises, if any, and if no person occupies the premises, the order shall be posted upon said premises in a conspicuous place. In addition, a copy shall be mailed to the owners of the premises as their names and addresses appear upon the last equalized assessment roll. The Health Officer may for good cause extend the time specified in order to otherwise modify or rescind the order. The order of abatement shall advise the processors and owners of the property of their right to appeal to the city council and to stay the order of abatement pending such appeal.
8.44.090 Penalties. Any person guilty of violating the terms of this chapter or any permit issued hereunder shall be deemed guilty of a misdemeanor and punishable in accordance with the provisions of section 1.12.020.

8.44.100 Construction, Repair, Reconstruction and Destruction of Wells - Acts prohibited. No person shall construct, repair, reconstruct or destroy any well unless a written permit has first been obtained from the Health Officer as provided in this chapter, and unless the work done shall conform to the standards specified in this chapter and all the conditions of the said permit.

8.44.110 Permits.

(a) Applications. Applications for permits shall be made to the Health Officer and shall include the following:

1. A plot plan showing the location of the well with respect to the following items within a radius of two hundred fifty (250) feet from the well:
   a) Property lines;
   b) Waste disposal systems or works carrying or containing sewage, industrial wastes, or solid wastes;
   c) All intermittent or perennial, natural or artificial bodies of water or watercourses;
   d) The approximate drainage pattern of the property;
   e) Other wells;
   f) Structures, surface or subsurface;

2. Location of the property, and the assessor's parcel number.
3. The name of the person who will construct the well.
4. The proposed minimum and the proposed maximum depth of the well.
5. The proposed minimum depths and types of casings and minimum depths of perforations to be used.
6. The proposed use of the well.
7. Other information as may be necessary to determine if the underground waters will be adequately protected.

(b) Fees. Each application shall be accompanied by a fee as set forth in section 8.16.080 of this code.

(c) Conditions. Permits shall be issued in compliance with the standards provided in this chapter except that such standards shall be inapplicable or modified as expressly provided by the Health Officer in such permit upon his finding that such modifications or inapplicability will accomplish the purposes of this chapter. Permits may also include any other condition.
or requirement found by the Health Officer to be necessary to accomplish the purposes of this chapter.

(d) **Ground for refusal of permit.** The Health Officer may refuse to issue a permit for any of the following reasons:

1. The applicant is not a person authorized to perform the work as provided in this chapter.
2. The applicant fails to post the required surety bond or cash deposit as provided in this chapter.
3. The permit application is not in proper form.
4. The proposed well would create a water pollution problem or would aggravate a pre-existing water pollution problem or would violate any of the standards established in this chapter.

(e) **Terms, completion of work.** The permittee shall complete the work authorized by the permit within the time and before the date set out in the permit. The permittee shall notify the Health Officer in writing upon completion of the work and submit a copy of the well drilling log and no work shall be deemed to have been completed until such written notification and a copy of the well drilling log have been received. A final inspection of the work shall be made by the Health Officer unless such inspection is waived by him, and no permittee shall be deemed to have complied with this chapter or his permit until such inspection has been performed or waived.

(f) **Guarantee of performance.** Prior to the issuance of a permit, the applicant shall post with the Health Officer a cash deposit or bond guaranteeing compliance with the terms of this chapter and the applicable permit, such bond to be in an amount deemed necessary by the Health Officer to remedy improper work, but not in excess of twenty-five hundred dollars ($2500.00). Such deposit or bond may be waived by the Health Officer where other assurances of compliance are deemed adequate by him.

(g) **Continuous bond or cash deposit.** In lieu of furnishing a separate bond for each permit as provided above, a properly licensed contractor may deposit with the Health Officer a surety bond or cash deposit in the amount of twenty-five hundred dollars ($2500.00), which bond or cash deposit shall be available to remedy any improper work done by the contractor pursuant to any permit issued under this chapter.

(h) **Review and appeal.** Any person aggrieved by the refusal of a permit or the terms of a permit required by this chapter may appeal in writing to the Board of Supervisors. The appeal shall be accompanied by a filing fee of fifteen dollars ($15.00). The Board of Supervisors shall, within forty (40) days after the filing of an appeal, hold a hearing on said appeal and shall mail notice in writing of the date thereof to the appellant and applicant at least five (5) days before the hearing date. The decision of the Board of Supervisors shall be rendered within ten (10) days after the initial hearing date and shall be binding upon the parties, except that the determinations made by the Health Officer relating directly to the public health may not be overruled or modified by the Board of Supervisors.

8.44.120 **Person Authorized to Perform Work.** Construction, reconstruction, repair, and destruction of wells shall be performed by a contractor licensed in accordance with the provision of the Contractors' License Law (Bus. & Prof. Code, Ch. 9, Div. 3) unless exempted by that law.
8.44.130 Inspections.

(a) Upon receipt of an applicant, an inspection of the well location may be required by the Health Officer to be made by the Health Officer prior to issuance of a well permit.

(b) The Health Officer or any person designated by the Health Officer may inspect the work in progress and may enter the premises at any reasonable time for the purpose of performing such inspection.

(c) After work has been completed pursuant to any permit the Health Officer shall be notified by the person performing the work and the Health Officer shall make a final inspection of the completed work to determine compliance with the well standards.

8.44.140 Expiration of Permit. Each permit issued pursuant to this chapter shall expire and become null and void if the work authorized thereby has not been completed within one hundred twenty (120) days following the issuance of the permit. Upon expiration of any permit issued pursuant hereto, no further work may be done in connection with construction, repair, reconstruction, or abandonment of well unless and until a new permit for such purpose is secured in accordance with the provisions of this chapter.

8.44.150 Extension of permit. Any permit issued pursuant to this chapter may be extended at the option of the Health Officer. Each individual extension granted by the Health Officer shall be for not longer than one hundred twenty (120) days. In no event shall the Health Officer grant an extension which would make the total term of the permit exceed one year. Application for extension shall be made on a form provided by the Health Officer. The fee for submitting such application shall be as set forth in section 8.16.080 of this Code.

8.44.160 Revocation of Suspension.

(a) A permit issued hereunder may be revoked or suspended by the Health Officer as hereinafter provided if he determines that a violation of this chapter exists, that written notice has been directed to permittee specifying the violation and that the permittee has failed or neglected to make the necessary adjustments within thirty (30) days after receiving such notice.

(b) A permit may be so revoked or suspended by the Health Officer if he determines at a hearing for such purpose that the person to whom any permit was issued pursuant to this chapter has obtained the same by fraud or misrepresentation, provided that notice of the time and place of such hearing is given to the permittee at least five (5) days prior hereto.

(c) The suspension or revocation of any permit shall not be effective until notice thereof in writing is mailed to the permittee, and the time for filing an appeal to the Board of Supervisors has expired. The notice shall advise the permittee of his right to appeal to the Board of Supervisors and to stay the suspension or revocation pending such appeal.

8.44.170 Log of Well. Any person who has drilled, dug, excavated or bored a well shall, upon completion of the well, submit to the Health Officer an accurate and complete log to include:

(a) A detailed record of the boundaries, character, size, distribution and color of all lithologic units penetrated.

(b) Type of well casing.
(c) Location of perforations and sealing zones, and

(d) Any other data deemed necessary by the Health Officer. In areas where insufficient subsurface information is available, the Health Officer may require inspection of the well log prior to any operation.
CHAPTER 8.48

SEWERS AND SEWAGE DISPOSAL PLANTS

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ARTICLE I: GENERAL PROVISIONS AND DEFINITIONS

8.48.010 Short Title. This article shall be known as the "Sanitary Sewer Ordinance" and may be cited as such.

8.48.020 Definitions. The definitions in this article shall govern the construction of this article unless otherwise apparent from the context.

(a) "Director" shall mean the Director of the Department of Sanitation and Flood Control of the County of San Diego or his authorized agent.

(b) "Permittee" shall mean any person who has obtained a permit from the Director under the provisions of this article.

(c) "Sanitary sewage" (also known as Domestic Sewage) shall mean sewage which originates in the sanitary conveniences of a residential dwelling, business building, factory, or institution.
(d) **"Effluent"** shall mean partially or completely treated sewage flowing out of any sewage treatment device.

(e) **"Building Sewer"** shall mean that part of the private sewer system which receives discharge from soil and waste pipes in a building and extends from the building to the sewer service lateral or public sewer.

(f) **"Industrial connection sewer"** shall mean a building sewer through which is discharged industrial waste, or industrial sewage as herein defined.

(g) **"Sewer service lateral"** shall mean that portion of a sewerage system in Public property which connects any property, Public or private, to a Public sewer. For practical purposes, a sewer service lateral shall be considered to terminate at the property line of the property being served.

(h) **"Industrial Liquid Waste"** shall mean any waterborne waste from industrial or manufacturing processes, labs, institutions, commercial or business buildings as distinct from sanitary sewage.

(i) **"Industrial liquid waste pretreatment plant"** means any works or device for pretreatment of industrial liquid wastes prior to discharge into the public sewer.

(j) **"Industrial sewage"** is sewage in which industrial wastes predominate.

(k) **"Inspector"** means the authorized inspector, deputy, agent, or representative of the Director.

(l) **"Lot"** means any piece or parcel of land bounded, defined, or shown upon a plat or described in a deed recorded in the Office of the County Recorder which conforms to the boundaries of such lot as shown upon such recorded plat or described in such recorded deed; provided, however, that in the event any building or structure covers more area than a lot as herein defined, the term "Lot" shall include all such places or parcels of land upon which said building or structure is wholly or partly located.

(m) **"Main line sewer"** means any sewer or pressure main which is used to convey the common sewage of any community.

(n) **"Public Sewer"** means the main line sewer constructed in a street, highway, alley, place, right of way or sewer easement dedicated for public use. "Public Sewer" does not include building sewer.

(o) **"Sewage"** (also known as Waste water) means the waterborne wastes from dwellings, kitchens, restaurants, institutions, stables, dairies, business buildings, and other similar structures; but excluding any storm water, rainwater, surface water, ground water, roof or yard drainage.

(p) **"Sewage Pumping Plant"** means any works or device used to raise sewage from a lower to a higher level or to overcome friction in a pipeline.

(q) **"Sewage Treatment Plant"** means any works or device for treatment sewage except any septic tank or cesspool designed to dispose of domestic sewage from one lot.
(r)  **"Soil Pipe"** means any pipe receiving the sewage from one or more water closets or clinic sinks, with or without connection to any other plumbing fixture, but does not include building sewers as herein defined.

(s)  **"Waste Pipe"** means any pipe receiving the discharge of any plumbing fixture, except a water closet and clinic sink, but not including building sewers as herein defined.

(t)  **"Wye" or "Y"** means a fitting for a branch, on which the spur joins the barrel of the pipe at an angle of approximately 45 degrees.

**8.48.030 Exception may be granted.** Whenever the Director is permitted by this article to grant an exception to any requirement of this article he shall do so only if he finds that literal compliance with such provision is impossible or impractical because of peculiar conditions in no way the fault of the person requesting such exception, and that the purposes of this article may be accomplished and public safety secured by an alternative construction or procedure, in which case he may permit such alternative construction or procedure.

**ARTICLE II: SPECIFIC APPLICATIONS**

**8.48.040 New Main Line Sewers.** New main line sewers shall conform to the requirements of this article unless otherwise specifically excepted.

**8.48.050 New Sewage Treatment Plants, Pumping Plants, and Industrial liquid waste pretreatment plants.** New sewage treatment plants, sewage pumping plants, and industrial liquid waste pretreatment plants shall conform to the requirements of this article unless otherwise specifically excepted.

**8.48.060 Sewer Service Laterals.** New sewer service laterals shall conform to the requirements of this article unless otherwise specifically excepted.

**8.48.070 Maintenance of Plants, Interceptors, and Sewer Facilities.** The requirements contained in this article covering the maintenance of sanitary sewage treatment plants, sewage pumping plants, and industrial liquid waste pretreatment plants shall apply to all such facilities now existing or hereafter constructed. All such facilities shall be maintained by the owners thereof in a safe and sanitary condition, and all devices or safeguards which are required by this article for the operation of such facilities shall be maintained in good working order. The section shall not be construed as permitting the removal or nonmaintenance of any devises or safeguards on existing facilities unless authorized by the Director.

**8.48.080 Revocation of Permits and Disconnection of Facilities.** The Director may revoke the permit issued to any person in the event of a violation by the permittee of any provision of this article. The Director may disconnect from the public sewer any connection sewer, main line sewer, or other facility which is constructed, connected, or used without permit, or which is constructed, connected, or used contrary to the provisions of this article.

**8.48.090 Notice.** The Director shall make every reasonable effort to notify the owner or occupant of the premises affected by any proposed disconnection and may grant a reasonable time for elimination of the violation. Notification shall be made by delivery of a notice in writing, either to the occupant of the premises or to the record owner of the property as shown upon the last equalized assessment roll for County taxes. Such notice shall be delivered either by first class mail, postage prepaid, or personal service.
8.48.100  Exceptions. Trunk line sewer, sewage treatment plants and sewage pumping plants under the jurisdiction of any Sanitary District in the County are excepted from the provisions of Articles 1 to 7, inclusive, of this title. The provisions of Articles 1 to 7, inclusive, of this title shall not be applicable within any Sanitary District of the City unless specifically adopted by the governing body of such Sanitary District.

ARTICLE III: PERMITS AND PLANS

8.48.110  When Permit Required. No person, other than persons specifically excepted by this article, shall commence, or do or cause to be done, or construct or cause to be constructed, or use or cause to be used, or alter or cause to be altered, any public sewer main line sewer, sewer service lateral, sewage treatment plant, sewage pumping plant or industrial liquid waste pretreatment plant in the City without first obtaining a permit from the Director.

8.48.120  When Permit Not Required. The provisions of these Articles 1 to 7, inclusive, of this article requiring permits shall not apply to any Sanitary or Sanitation District in the City or to contractors constructing public sewers and appurtenances under contracts awarded and entered into under proceedings had or taken pursuant to any of the special procedure statutes of this State providing for the construction of sewers and the assessing of the expenses thereof against the lands benefited thereby, or under contracts between the contractor and Board of Supervisors.

8.48.130  Permits Not Transferable. Permits issued under this article are not transferable from one person to another, or from one place to another, and connections shall not be made at any place other than the location specifically designated therein.

8.48.140  Application for Permit. Any person requiring a permit under the provisions of this article shall make written application therefor to the Director, giving such information as said Director may require. The Director shall provide printed application forms for the various types of work permitted under this article, indicating thereon the information to be furnished by the applicant. The Director may require, in addition to the information furnished by the printed form, any additional information from the applicant which will enable the Director to determine that the proposed work complies with the provisions of this article.

8.48.150  Director Shall Issue Permit. If it appears from the application for any permit required by this article that the work to be performed thereunder is to be done according to the provisions of this article, the Director upon receipt of the fees hereinafter required shall issue such permit.

8.48.160  Sewers in County Highway. The Director shall, before granting any sewer permit for the construction, installation, repair or removal of any sewer, or appurtenance thereto which will necessitate any excavation or fill-in, upon or under any public highway in the City except State highways, require the applicant to obtain a permit from the Department of Transportation, County of San Diego.

8.48.170  Sewers in State Highway. The person obtaining a sewer permit from the Director for the construction of a sewer in a State Highway shall, before commencing work thereon, obtain a permit from the California Department of Transportation.

8.48.180  Main Line Sewers. Before granting a permit for the construction of any main line sewer, with or without sewer service laterals, the Director shall check and approve the plans and specifications therefor as to their compliance with County, State and other governmental
laws or ordinances, and as to conformity with the standards of design hereinafter established by this article.

8.48.190  Industrial Liquid Waste and Industrial Sewage Disposal. Before granting an Industrial Waste Discharge Permit to any applicant to discharge any industrial liquid waste or industrial sewage into any public sewer, the Director shall determine either that the waste is one which will not damage or destroy the public sewer or cause an unwarranted increase in the cost of maintenance of the public sewer or retard or inhibit the treatment of the sewage, or is one that can be made acceptable by pretreatment.

8.48.200  Pretreatment Plants Required. In the event pretreatment is required to make the waste acceptable as provided under Section 8.48.190 the application for a permit to dispose of industrial liquid waste or industrial sewage shall be accompanied by suitable plans and specifications showing the method of collection and pretreatment proposed to be used, and a permit shall not be issued until said plans and specifications or required modifications thereof have been checked and approved by the Director.

8.48.210  Pumping and Treatment Plants. Before granting a permit for the construction of any sewage pumping plant or sewage treatment plant, the Director shall check and approve the plans and specifications thereof as to their compliance with County, State, and other governmental laws or ordinance and shall require that the facilities be adequate in every respect for the use intended.

ARTICLE IV: FEES

8.48.220  Record of Fees. The Director shall keep in proper books a permanent and accurate account of all fees received under this article, giving the names and addresses of the persons on whose accounts the same were paid, and the date and amount thereof, which books shall be open to public inspection. The Director shall pay all fees received by him into the County Treasury daily and take the Treasurer's receipt therefor.

8.48.230  Deposit for Checking Plans and Specifications. With every request to the Director to check and approve plans and specifications, as required under this article, the applicant shall deposit a sum estimated by the Director to be sufficient to cover the cost of checking the plans and specifications including all overhead and other indirect costs.

8.48.240  Deposit for Checking Rights of Way. Where the plans submitted to the Director for checking and approval provide for the construction of a main line sewer or sewer service lateral within a street, highway, alley, place, or right of way not dedicated or granted to the Sanitation District within which the line or lateral is to be located or to the City or the public, and such dedication or grant will be required prior to the connection of the sewer line or lateral to a sewer system, the applicant shall deposit a sum estimated by the Director to be sufficient to cover the cost of examining or preparing all documents required to accomplish such dedication or grant and investigating the title to the properties to be dedicated or granted; provided, however, the obligation of obtaining all necessary dedications and grants and the execution of all documents shall be that of the applicant.

8.48.250  Deposit for Inspection and Testing. Before granting any permit required by this article the applicant shall deposit with the Director a sum estimated by him to be sufficient to cover the costs of field inspection of the work and of making tests in accordance with the specifications, including all overhead, transportation, and other indirect costs.
8.48.260 Deficiency Deposits and Refunds. In the event the actual cost to the Director for checking plans, or inspecting construction, including all overhead, transportation and other indirect costs is more than the amount deposited by the applicant, the applicant shall deposit the deficiency. If the actual cost is less than the amount deposited by the applicant, the unused balance of the deposit shall be refunded after final acceptance of the work in the same manner as provided by law for the repayment of trust monies; provided, that no amount less than $10.00 shall be refunded.

ARTICLE V: INSPECTIONS

8.48.270 Inspection by Director. All work done under the provisions of this article shall be subject to inspection by and shall meet the approval of the Director; provided, however, that approval by the Director shall not relieve the permittee or any other person from fully complying with all of the applicable provisions of Division 3 of Title 5 of the County code (County Plumbing Code) and no provision of this article supersedes, affeets or modifies in any way the provisions of said Division 3 or any revision thereof or any ordinance which may hereafter be enacted regulating plumbing within the City. No facility constructed, altered or otherwise accomplished under the provisions of this article shall be used or placed in service by the permittee until the final approval and acceptance thereof by the Director has been obtained in writing. At any time during the progress of the work, however, the Director may, upon written notice to the permittee, take over and open to the public use the whole or part of any sewer or appurtenance thereto which has been substantially completed. Such use shall constitute a limited acceptance of that part of the work so taken over and utilized which shall relieve the permittee from responsibility for any damage to that part of the work which may be caused by the use of such part by the public. Such utilization, however, shall not relieve the permittee from responsibility for any defect, omission or faulty work, or for any damage caused by his subsequent operations at the site.

8.48.280 Materials and Construction. All materials used in any work done under provisions of this article shall be new first-class material and shall conform to and the manner of construction shall meet, all the requirements prescribed by the "San Diego Area Regional Standard Drawings" and the "Standard Specifications for Public Works Construction" referred to in Section 8.48.300 herein of the County Code, and any amendments thereto approved and adopted by the Board of Supervisors and filed in the office of said Clerk.

8.48.290 Maintenance Instructions. The Director may inspect as often as he deems necessary any sewage pumping plant, sewage treatment plant and industrial liquid waste pre-treatment plant to ascertain whether such facilities are maintained and operated in accordance with the provisions of this article. All persons shall permit the Director to have access to all such facilities at all reasonable times.

ARTICLE VI: SEWER DESIGN STANDARDS

8.48.300 Work and Plans Shall Conform. Except as provided in Article VIII of this Chapter, all work performed and all plans and specifications required under the provisions of this article shall conform to the requirements prescribed by "The San Diego Area - Regional Standard Drawings" and "The Standard Specifications for Public Works Construction", copies of which are on file in the Office of the Clerk of the Board of Supervisors and any amendments thereto approved and adopted by the Board of Supervisors and filed in the Office of said Clerk.
ARTICLE VII: GENERAL REGULATIONS

8.48.310 Director to Enforce. The Director shall enforce all the provisions of this article and for such purpose shall have the powers of a peace officer.

8.48.320 Implementation. To assure that the provisions of this ordinance are carried out the Director shall promulgate such detailed regulations and other requirements as are necessary to fully implement this ordinance. The specific provisions of the ordinance may be supplemented by additional requirements established by the Director and separate ordinances establishing charges for use of the public sewerage facilities which will provide for the recovery of capital and operating costs of such facilities.

8.48.330 Connecting Sewer in Undedicated Street. It shall be unlawful to connect or cause to be connected any sewer which has been or may hereafter be constructed in any street, highway, alley, right of way, or other public place prior to the dedication and acceptance of such street, alley, right of way, or other public place by the Board of Supervisors on behalf of the public with any public sewer of the City, unless such sewer first mentioned shall have been laid under the supervision and to the satisfaction of the Director or the Board of Directors of the County Sanitation District in which said sewer is located and in accordance with all provisions of this article.

8.48.340 Parcels Requiring Sewer Service from a Sewering District Governed by the Board of Supervisors.

(a) Any other provisions of Title 6 of the County Code notwithstanding, parcels requiring sewer service from a sewering district governed by the Board of Supervisors shall conform to the following:

(1) Any parcel that is to be divided into subdivisions of three (3) or more lots that desire sewer service shall be sewered by a public main installed ten (10) feet into the furthermost proposed lot. Easements shall be provided as required to provide for future public sewer extension to adjacent land area which may require sewer service.

(2) Any parcel that is located on a public or private road easement more than one hundred (100) feet from the existing public sewer will extend the public sewer to the closest lot line of the parcel and grant necessary easements across the parcel for the public sewer extension, if the Director determines that additional upstream areas will require sewer service from the extended public sewer main.

(b) It is intended that the Director or his authorized Agent may grant an exception to this section and shall do so only if he finds that compliance with such provisions is impossible or impractical because of physical conditions of the area or that a health hazard could result by imposing the above provisions. Exceptions because of immediate financial hardship may be granted only if an agreement is signed and recorded stating that the parcel ownership will:

(1) Participate in the construction of a public sewer main at such time as adjacent upstream land area requires sewer service.

(2) Contribute parcel's estimated share of costs for public sewer extension at time of agreement and agrees to pay parcel's actual share after construction of the public sewer is completed.
Connect existing lateral to future extended public sewer, thus eliminating long lateral.

Provide required easements for the public sewer extension.

8.48.350 Limitations on Use of Sewer. It shall be unlawful to place, throw, or deposit, or cause or permit to be placed, thrown, or deposited, in any public or building sewer any dead animal, offal, or garbage, fish, fruit, or vegetable waste, or other solid matters, or materials or obstructions of any kind whatever of such nature as shall clog, obstruct, or fill such sewer, or which shall interfere with or prevent the effective use or operation thereof. No person shall cause or permit to be deposited or discharged into any such sewer any water or sewage or liquid waste of any kind containing chemicals, greases, oils, tars, or other matters in solution or suspension which may, by reason of chemical reaction or precipitation, clog, obstruct, or fill the same, or which may in any way damage or interfere with or prevent the effective use thereof, or which may necessitate or require frequent repair, cleaning out or flushing of such sewer to render the same operative or which may obstruct or cause an unwarranted increase in the cost of treatment of the sewage.

8.48.360 Opening Manhole. It shall be unlawful to open or enter, or cause to be opened or entered, any manhole in any public sewer, to dispose of garbage or other deleterious substances or storm or surface water, or for any other like purpose.

8.48.370 Temperature of Effluent. It shall be unlawful to discharge into the public sewer effluent of a temperature exceeding 140 degrees Fahrenheit.

8.48.380 Control of PH and Biochemical Oxygen Demand. Before any person shall discharge alkalis, acids, or other corrosive or harmful wastes into the public sewer, he shall reduce the biochemical oxygen demand and control the PH to the extent which the Director finds adequate taking all circumstances into consideration.

8.48.390 Toxic Substances. All toxic chemical substances shall be retained or rendered acceptable before discharge into the public sewer.

8.48.400 Petroleum Products. It shall be unlawful to discharge any petroleum products into the public sewer.

8.48.410 Dilution of Wastes. Wastes shall be diluted when and in such amounts as required by the Director.

8.48.420 Flushing Sewer Connections. Every industrial waste pretreatment facility shall be equipped with an adequate fresh water supply easily available for diluting and flushing, and all sewer connections shall be thoroughly flushed after discharge of each batch of industrial liquid wastes.

8.48.430 Maintenance of Industrial Waste Pretreatment Facilities. Every industrial waste pretreatment facility shall be adequately maintained to accomplish its intended purpose. Abandonment or failure to properly maintain such equipment shall be cause for immediate revocation of the industrial connection sewer permit and disconnection from the public sewer.

8.48.440 Rain and Surface Water. It shall be unlawful to connect or cause or permit to be connected any roof conductor, yard drain, or other conduit used for carrying off rain or surface water with any public sewer or building sewer leading thereto. It shall be unlawful to
cause or permit any indirect connection to the public sewer or building sewer leading thereto by means of which rain or surface waters are permitted to enter said sewer.

8.48.450 Violator to Reimburse County for Disconnection. Whenever a disconnection from the public sewer has been made by the Director for failure to comply with the provisions of this article, reconnection shall be made only upon issuance of a permit as elsewhere in this article provided. Before such permit is issued the applicant shall reimburse the County for the cost of the disconnection made, and the Director may require the installation of a manhole for the purpose of measuring the flow or for making periodic tests of the waste for such

ARTICLE VIII: PUBLIC AGENCIES

8.48.460 Provisions not to Apply. The provisions of Articles 1 through 7, inclusive, of this article shall not apply to a sanitary district, County water district, community service district, public utility district, or any other district, municipality, or state agency empowered by the state law to acquire, construct, or operate public sewage facilities (hereafter in this article referred to as public agencies), except to the extent that the governing body thereof specifically subjects itself or its works thereto.

8.48.470 Minimum Standards. For the protection of the public health and safety, minimum standards for the design and construction of facilities hereafter constructed by a public agency for the transporting or disposal of sewage or industrial waste (hereafter in this article referred to as "sewer facilities") shall be established in the following manner: The Director with the advice and assistance of engineers for such public agencies and others designated by said Director, shall propose such minimum standards to the Board of Supervisors for adoption by it after public hearing. Any revisions shall be proposed and adopted in the same manner. The said standards adopted pursuant to this section are set forth in the "San Diego Area - Regional County Standard Drawings" and the "Standard Specifications for Public Works Construction" copies of which are on file in the Office of the Clerk of the Board of Supervisors. All plans and specifications for any sewer facilities constructed in the City and all work performed and materials used in the construction of any such facilities shall conform to the minimum standards adopted as provided in this section. No work will be done on any such sewer facility until the plans and specifications therefor shall have been approved as provided in this article.

8.48.480 Plans and Specification. Any public agency intending to construct any sewer facilities shall, within a reasonable time (not less than 10 days) before awarding a contract, file plans and specifications therefor with the Director. The Director shall, within a reasonable time (not more than 30 days) after such filing, examine the same and ascertain whether or not they conform to the minimum standards adopted pursuant to Section 8.48.470. He shall issue his certificate thereon if he finds that said plans and specifications meet said minimum standards, or if he finds that such plans and specifications fail to meet said minimum standards he shall specify in which particulars they do not. The Director may waive minimum standards when he finds reasonable compliance is provided in the plans and specifications.

8.48.490 Right of Appeal. In the event the Director shall report that said plans and specifications fail to meet the minimum standards established pursuant to Section 8.48.470, the engineer for the public agency shall have the right to appeal such decision to an Engineering Review Board.

8.48.500 Engineering Review Board. There is established an Engineering Review Board to be appointed in each instance of appeal as hereinafter provided. Said Engineering Review Board shall consist of three members who are Civil Engineers (registered in the State of
California), one appointed by the engineer for the public agency affected, one appointed by the Director, and the third to be selected by the two so appointed. No member of said Engineering Review Board shall be an employee of the County, the public agency, or its engineer.

**8.48.510 Decision of Board.** Said Engineering Review Board shall determine whether or not such plans and specifications conform to the minimum standards adopted pursuant to Section 8.48.470 hereof and shall issue its decision in writing. The decision of said Engineering Review Board shall be final, unless either the Director or the engineer for the public agency appeals said decision to the Board of Supervisors at its next regular meeting. On appeal the Board of Supervisors shall fully hear said appeal and its decision shall be final.

**8.48.520 Inspection of Facilities.** It shall be the responsibility of the public agency to inspect said facilities during construction and to cause the same to conform to the minimum standards. The Director may in his discretion cause periodic inspections to be made of said facilities and shall report in writing to the engineer of the public agency any particulars in which the construction of said facilities does not conform to said minimum standards. In the event there arises a difference of opinion as between the Director and the engineer for the public agency as to whether or not the construction of said facilities does conform to said minimum standards, said difference of opinion shall be resolved and determined by an Engineering Review Board appointed in the manner provided in Section 8.48.500 and with the powers provided in Section 8.48.510. The decision of said Engineering Review Board may be appealed to the Board of Supervisors as provided in Section 8.48.510 and its decision shall be final.

**8.48.530 Establishment of Standards.** It shall be the responsibility of each public agency to establish standards for sewage facilities constructed by others for acceptance by the agency which standards must not be lower than those established pursuant to Section 8.48.470. It shall be the responsibility of each agency to inspect all such construction and to cause the same to so conform.
CHAPTER 8.52

CONNECTIONS TO SEWER

SECTIONS:

8.52.010 Definitions
8.52.020 Chapter Applicable to City Territory in Sanitation Districts
8.52.030 Enforcing Agent
8.52.040 Persons Authorized to Make Sewer Service Lateral Connections - fees
8.52.050 Permit for Making Building Sewer Connections - Fee
8.52.060 Sewer Allocation Matrix (SAM)
8.52.070 Inspection of Sewer Connections
8.52.080 Connections to be Made of Specified Materials
8.52.090 Tampering with Manhole Covers Prohibited
8.52.100 Throwing Refuse in Manholes Prohibited
8.52.110 Cost of Removing Obstruction Charged to Property Owner in Certain Cases
8.52.120 Revocation of Permits and Disconnection of Facilities
8.52.130 Notice

8.52.010 Definitions. For the purpose of this Chapter the following definitions shall apply:

(a) "Department" means the Department of Sanitation and Flood Control and/or the Department of Planning and Land Use.

(b) "Building Sewer" includes only sewer lines and facilities which are connected to a sewer service lateral or trunk line sewer.

(c) "Sanitation District" means a district or service area formed pursuant to the Sanitation District Act of 1923, County Sanitation District Act, Sewer Maintenance District Act, Improvement Act of 1911, Community Services District Law, or the County Service Area Law and has by resolution of its governing body made this chapter applicable to the unincorporated territory of the County lying within said District or area.

(d) "Sewer Service Lateral" includes all that portion of building sewers located upon public property, highways or rights of way.

(e) "Trunk Line Sewer" includes all sewer lines and facilities used to convey community sewage.

(f) "Sewer Service Lateral Fee" means the sum of fees and charges due the Sanitation District for construction and connection of sewer service laterals and related work as authorized by Section 8.52.040 herein.

(g) "Building Sewer Connection Fee" means the sum of fees and charges due the Sanitation District prior to issuance of a Waste water Discharge Permit as authorized by Section 8.52.050.
8.52.010 - 8.52.050

(h)  "Waste water Discharge Permit" means the official document authorizing connection of a building sewer to the Sanitation district sewerage system.

(i)  "Permittee" means any person who has obtained a Waste water Discharge Permit from the Department under the provisions of this chapter.

8.52.020  Chapter Applicable to City Territory In Sanitation Districts. This chapter shall be applicable to the City territory located within Sanitation Districts.

8.52.030  Enforcing Agent. The Department is hereby authorized and empowered to make the inspections authorized by this chapter and to enforce the regulations contained in this chapter.

8.52.040  Persons Authorized to Make Sewer Service Lateral Connections - Fees. It shall be unlawful for any person to make any connections to or construct any sewer service lateral connections with or to any trunk line sewer within the boundaries of a Sanitation District, or with or to any trunk line sewer which is the property of a Sanitation District, except an officer, employee or agent of the County or Sanitation District authorized to perform such construction or make such connection, or a person authorized by a permit issued pursuant to Chapter 8.48 herein, to perform such construction or make such connection. The Department is hereby authorized and directed to make such connections and construct such sewer service laterals and perform related work at the rates, lateral fees, and charges which are now or may hereafter be established by said Sanitation Districts, and said Department is hereby authorized and directed to collect such rates, lateral fees, and charges and to issue its receipts therefor.

8.52.050  Permit for Making Building Sewer Connections- Fee. It shall be unlawful for any person other than a plumber or homeowner licensed by the County to make a connection between any sewer service lateral and any building sewer upon or within a private property in a Sanitation District; and before any such licensed plumber or homeowner may make any such connection between a sewer service lateral and a building sewer within such Sanitation District he shall obtain a Waste water Discharge permit authorizing the connection to be made. Any such connection must be made to the sewer prior to the installation of any plumbing fixtures discharging into the building sewer.

A plumber or homeowner desiring a permit to make a connection to a sewer service lateral or trunk line sewer shall file with the Department an application in writing on a form furnished and specified by said Department. The application shall include the name of the plumber or homeowner, the name of the owner of the premises on which the work is to be performed, the legal description of the property on which the work is to be performed or in lieu of such legal description of the property on which the work is to be performed, or in lieu of such legal description the official street and number of the premises; or, if there be no official street number, a street number recognized by the Department, a sketch or diagram showing the location of the premises. The applicant shall attach to the application a plat showing the location of existing trunk lines and laterals adjacent to the property upon which the work is to be done, and showing the place where it is desired to connect to the sewer service lateral or trunk line sewer.

Before a Waste water Discharge permit shall be issued, all applicable fees, rates and charges imposed by the Sanitation District shall be paid to said Department. No Waste water Discharge permit shall be issued unless the application is first approved by said Department.
8.52.060 Sewer Allocation Matrix (SAM).

(a) Definitions. For the purpose of evaluation development feasibility in obtaining public sewer within any of the County Sanitation Districts governed by the Board of Supervisors, the following definitions shall apply:

1. **Sewer Allocation Matrix (SAM) Index** is the official index to determine whether a waste water discharge permit and a building permit shall be issued. The SAM Index shall be utilized only when the public sewer is required and is the sum total of the Sewer Utility and Land Use Factors.

2. **Sewer Utility Factor** is the sewer capacity negative factor based on project sewer requirements and the available sewer capacity.

3. **Land Use Factor** is the project benefit factor based on employment opportunities, low and moderate income housing, public facilities availability, and environmental consideration.

4. **Available Sewer Capacity** is the remaining uncommitted sewer capacity composed of contract sewer capacity or physical sewer capacity.

5. **Contract Sewer Capacity** is the Sanitation District's contract average flow rights through any sewerage system.

6. **Physical Sewer Capacity** is the Sanitation District's physical average flow ability through its own or another sewerage system.

7. **Committed Sewer Capacity** is the sewer right committed by issuing a validated Waste water Discharge permit for the Sanitation District.

8. **Low and Moderate Income Housing** is housing which is provided for low or moderate income households pursuant to agreements with federal, state or local government agencies.

(b) **Sewer Allocation Matrix (SAM).** The SAM is the sum total of the Sewer Utility Factor and the Land Use Factor. The SAM Index shall be utilized only when public sewer is required.

1. **Sewer Utility Factor** (Maximum Range = 0 to minus 150 points.)

   **Sewer Utility Factor**

   Less than 1% of available = 0 points

   Greater than 1% of available=(150 x requested capacity/available sewer capacity)

   Available Sewer Capacity is Contract Sewer Capacity or physical sewer capacity, whichever is less, less total Committed Sewer Capacity.
(2) **Land Use Factor (Maximum Range 0-75 points)**

### Employment Opportunities (Maximum 20 points)

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<th>Points</th>
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<tr>
<td>Industrial Development</td>
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<tr>
<td>Residential Development</td>
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### Low and Moderate Income Housing (Maximum 20 points)

- Low and Moderate Income Housing = 20 points (see definition)
- Other housing = 0 points

### Availability of Public Facilities (Maximum 20 points)

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<tr>
<td>School Capacity Unavailable</td>
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</tr>
<tr>
<td>Within Water District</td>
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<tr>
<td>Outside Water District</td>
<td>0</td>
</tr>
<tr>
<td>Along Existing/Potential bus route</td>
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</tr>
<tr>
<td>Not along existing/potential bus route</td>
<td>0</td>
</tr>
<tr>
<td>Within Fire District (Within 5 minutes response)</td>
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</tr>
<tr>
<td>Within Fire District (Outside 5 minutes response)</td>
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<tr>
<td>Outside Fire District</td>
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### Environmental Consideration (Maximum 15 points)

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<td>Negative Declaration</td>
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<td>Mitigable</td>
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<tr>
<td>Non-mitigable</td>
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</table>
(c) **Official Sewer allocation Matrix Limitation.** Any development which requires use of public sewer capacity from any of the County Sanitation Districts governed by the Board of Supervisors within which a SAM has been implemented shall be evaluated officially by the Department of Planning and Land Use (PLU) based on the SAM Index at the time of application for a building permit and a waste water discharge permit. Use of the SAM Index at any other time and for any other purpose is unofficial. The Department of PLU will determine the land use factor. The waste water discharge permit and building permit shall not be issued if the SAM Index for the project results in less than 20 points. In addition, no project shall be separated into smaller units or projects for the purpose of obtaining separate waste water discharge permits within a period of 120 days of a previous waste water discharge permit issued for a portion of the project.

(d) **Unofficial Project Feasibility Analysis.** Prior to the processing of a development by the Department of PLU, the applicant, with the Matrix as a guide and assisted by the Department of PLU, will be provided an up-to-date unofficial measure to assist in determining potential development feasibility. The Department of PLU, with the assistance of the Department of Sanitation and Flood Control, will provide unofficial data to the applicant as appropriate to assist the applicant in deciding whether to proceed with a development. No binding commitment for sewer service shall be recognized based on this unofficial data.

(e) **Matrix Evaluation Fee.** A non-refundable fee of twenty-five dollars ($25.00) shall accompany:

1. an applicant's initial request for an unofficial feasibility analysis, or
2. each application for a waste water discharge permit for each project to which an official SAM is applied.

(f) **Appeal Procedures.** If the applicant is dissatisfied with any decision, action or determination based on the SAM Index, he may request consideration in writing filed with the Director of Sanitation and Flood Control not later than 30 days from the date of the SAM Index decision, setting forth in detail the facts supporting the applicant's appeal. The Director shall render a decision on the request for appeal within 30 days of receipt of the request. As appropriate, the Director may arrange a time and place for a conference discussion with the applicant to obtain necessary facts for resolving the decision. If the Director's ruling on the appeal is still unsatisfactory to the applicant, he may, within 15 days after receiving notification of the Director's action, file a written appeal with the Clerk of the Board of Supervisors. A fee of $100.00 shall accompany any appeal to the Board of Supervisors. Decision on the matter in dispute shall be final.

(g) **Termination.** This matrix shall be implemented on a demonstration basis upon the approval of the Chief Administrative Officer, County of San Diego, in any of the County Sanitation Districts governed by the Board of Supervisors at such time that the Director of Sanitation and Flood Control advises that there exists a condition of limited sewer capacity. This matrix shall then remain in effect until such time that its use is terminated upon approval of the Chief Administrative Officer and upon the advice of the Director of Sanitation and Flood Control that the available sewer capacity has been increased to an adequate level.

(h) **Annexations.** Upon implementation of this matrix, the Department of Sanitation and Flood Control shall immediately cease accepting applications for annexation to the District in which the matrix is implemented except where extreme and unusual hardship is alleged by the applicant. Extreme and unusual hardship shall be defined as follows:
(1) Health hazards created by failing septic tanks or other on-site subsurface disposal systems.

(2) Any other extreme hardship which is different from that suffered generally by the public as a result of the moratorium. Each claim of extreme and unusual hardship shall be ruled upon the Board of Supervisors or Board of Directors on an individual basis.

8.52.070 Inspection of Sewer Connections. When connections are made to the trunk line sewers or sewer service laterals within a Sanitation District, all pipes shall be left exposed and all ditches left open until the connection with the trunk line sewer or sewer service lateral has been inspected and approved by an inspector of the Department. In case a connection is made to the sewer where it crosses private property the plumber or homeowner shall install the pipe to the main sewer and shall uncover the main sewer line so that a saddle connection can be properly made by a person authorized pursuant to Section 8.52.040 and inspected by the inspector of the Department. The homeowner shall obtain all easements required for such installation.

8.52.080 Connections to be Made of Specified Materials. All connections to or with trunk line sewers or sewer service laterals within the boundaries of a Sanitation District shall be made in accordance with the requirements of Chapter 8.48 herein. All licensed plumbers and licensed homeowners engaged in any work provided for in this chapter shall be held responsible for the injury to any property and for all other damages.

8.52.090 Tampering with Manhole Covers Prohibited. It shall be unlawful for any person other than the duly authorized agents of the County or of the Sanitation District to remove, tamper with, or molest any manhole cover to any manhole of the trunk line sewers in a Sanitation District.

8.52.100 Throwing Refuse in Manholes Prohibited. It shall be unlawful for any person to drop, throw, put or place any refuse, trash, rubbish or obstruction into the manholes of the trunk line sewers in or owned by a Sanitation District.

8.52.110 Cost of Removing Obstruction Charged to Property Owner in Certain Cases. When it is necessary to clean a sewer service lateral to relieve stop-ups and the obstruction is found to be due to waste matters which should not have been placed in the sewer, the owner of the property served by the lateral shall pay to the Department the cost of removal of such obstruction. When it is necessary to clean a building sewer in order to relieve a stop-up, whether the obstruction causing the stop-up be in the building sewer or the sewer service lateral, the owner of the building sewer shall pay to the Department the cost of cleaning such building sewer.

8.52.120 Revocation of Permits and Disconnection of Facilities. The Department may revoke the permit issued to any person in the event of a violation by the permittee of any provision of this chapter. The Department may disconnect from the public sewer any connection sewer, main line sewer, or other facility which is constructed, connected, or used without permit, or which is constructed, connected, or used contrary to the provisions of this chapter.

8.52.130 Notice. The Department shall make every reasonable effort to notify the owner or occupant of the premises affected by any proposed disconnection and may grant a reasonable time for elimination of the violation. Notifications shall be made by delivery of a notice in writing, either to the occupant of the premises or to the record owner of the property as shown
upon the last equalized assessment roll of the County. Such notice shall be delivered either by first class mail, postage prepaid, or personal service.
CHAPTER 8.56
SEPTIC TANKS AND SEEPAGE PITS

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ARTICLE I: GENERAL PROVISIONS AND DEFINITIONS

8.56.010 Title. This chapter shall be known as the Septic Tank Ordinance.

8.56.020 Definitions. Whenever in this chapter the following terms are used, they shall have the meaning respectively ascribed to them in this chapter:

(a) Approval. Whenever the term “Approval” or “Approved” appears in this chapter, the approval of the Director is meant, and/or approval shall mean meeting the approval of the Director as the result of investigation and/or tests conducted by the Director or by reason of accepted principles or tests by national authorities, technical or scientific organizations, or a research laboratory of recognized authority.

(b) "Department" means the Department of Health Service.

(c) "Director" shall mean the Health Officer.

(d) "Drainage system" or "Drainage Piping" means and includes all the piping within public or private premises which conveys sewage or other liquid wastes to a legal point of disposal, but shall not include the mains or laterals of a public sewer system.
"Plumbing" includes all drainage systems, both direct and indirect, and all vent piping, water piping and other piping in any building or within the boundaries of any property through which sewage, water, waste water or any other substance or liquid is conveyed. (8-24-82)

ARTICLE II: GENERAL REQUIREMENTS

8.56.030 Required Sanitary Fixtures. Every building shall have the sinks, water closets and other sanitary fixtures and facilities required by Division 3, Title 5, of the County Code (County Plumbing Code).

8.56.040 Sewage to be Disposed of According to Plumbing Code and this Chapter. It shall be unlawful for any person to cause, suffer or permit the disposal of sewage, human excrement or other liquid wastes, in any place or manner except through and by means of an approved plumbing and drainage system and an approved sewage disposal system installed and maintained in accordance with the provisions of the Division 3 of Title 5 of the County Code (County Plumbing Code) and this chapter. "Approved sewage disposal system" means a system that is functioning satisfactorily by disposing of all sewage underground.

8.56.050 Plumbing and Drainage System to be Connected to Public Sewer if Available. The plumbing and drainage system of every building hereafter constructed or reconstructed shall be connected to a public sewer if the property on which such building is located abuts a public sewer. When a public sewer is not available for use the plumbing and drainage system of a building shall be connected to an approved private subsurface sewage disposal system. The type of system required shall be determined on the basis of location, area, soil porosity, the ground water level, the density of population in the area and shall be designed to receive and dispose of all sewage and liquid waste from the property served.

8.56.060 Connection of Existing Buildings to Newly Installed Sewers. No person shall maintain a septic tank, settling tank, cesspool or other subsurface sewage disposal unit or system on any premises adjacent to a public sewer; provided, however, that where a public sewer is installed adjacent to premises upon which there is located an existing building served by a septic tank, settling tank, cesspool or other subsurface disposal unit or system the Director may approve the continued use of such subsurface disposal system until such time as he deems that the public health and sanitation require the connection of such building to the public sewer and the discontinuance of the use or maintenance of such subsurface disposal system.

8.56.070 Director May Authorize Sanitary Toilets In Isolated Areas. For the temporary occupancy of buildings in isolated areas remote from any public highway, the Director may authorize the construction and use of an approved type sanitary toilet in lieu of connection to a public sewer or to a subsurface disposal unit or system installed in accordance with the provision of this chapter.

8.56.080 Chapter Not Applicable to Building for Which Temporary Occupancy Permit Issued. The provisions of this chapter requiring connection to a public sewer or to a subsurface disposal unit or system constructed in accordance with the provisions of this chapter shall not be applicable to a trailer, temporary building or an accessory building for which a temporary occupancy permit has been issued pursuant to Division 1 of Title 5 of the County Code (County Building Code) or Division 3 of said Title 5 (County Plumbing Code); provided however that the violation of any of the provisions or conditions of any such temporary occupancy permit shall constitute a violation of this Chapter.
**8.56.090  Temporary Facilities.** Where the Director determines it is probable that a public sanitary sewer will become available to property within 24 months, the Director may issue a permit to the owner of such property authorizing the construction of a temporary sewage disposal facility provided the permittee executes and records in the office of the County Recorder an agreement with the Director providing:

(a) That the permittee will connect the property to the sanitary sewer within 30 days after it becomes available to the property.

(b) That if the sanitary sewer does not become available to the property within a period of time specified by the Director, the permittee will apply for a permit for and construct a septic tank and sewage disposal system in accordance with the provisions of this ordinance.

(c) That the permittee will pump and remove all sewage from said temporary sewage disposal facility and fill said facility with soil or other material in a manner approved by the Director at the time the property is connected to the sanitary sewer or a septic tank and sewage disposal system specified in paragraph "b" of this section.

(d) That in the event the property is sold or transferred before the connection of the property to said sanitary sewer is made, the said agreement with the Director shall be made a part of the contract to sell or transfer said property.

(e) That the property will not be occupied until a sewage disposal facility has been installed and approved by the Director.

(f) That the agreement with the Director shall be binding upon the owners, their heirs, administrators, executors, successors and assigns.

It shall be unlawful for any person bound by the terms of such agreement to violate any provision of such agreement.

**8.56.100  Application for Permits not to be Accepted for Lots Created on Basis of Available Sewers.**

(a) No application for a septic tank permit shall be accepted for any lot created by a subdivision in which the tentative map or tentative parcel map was approved or conditionally approved on the basis that sewer service would be available to such lot even if sewer service is, in fact, not available.

(b) The Health Officer may waive the provisions of subsection (a) if the applicant agrees to furnish comprehensive soil analysis data satisfactory to the Health Officer, including hydrology studies where appropriate, to determine the cumulative effects of effluent disposal over the entire area subdivided or such larger area as may be determined to be reasonably necessary by the Health Officer.

**ARTICLE III: INSTALLATION OF SEWAGE COLLECTION TANKS**

**8.56.110  Authorization for Installation.** Where percolation tests have shown that subsurface drainage is not practical, or where the leaching from subsurface disposal systems may drain into a water supply or cause a nuisance, the Director may permit the installation of sewage collection tanks.
8.56.120 Procedure for Application. Application for a permit to install a sewage collection tank shall be made in writing to the Director and shall be accompanied by a sketch showing the location and special design features of the proposed installation.

8.56.130 Sewage Collection Tank Specifications. Any sewage collection tank for which a permit is issued shall be constructed of watertight concrete, shall have a capacity of not less than 1500 gallons and may, in the discretion of the Director, be required to have a greater capacity, shall be emptied before it is filled to three-fourths of its capacity or in accordance with a schedule prescribed by the Director, and the drain through which the tank is emptied shall be located at least six inches above the water level of the lowest fixture which it serves.

ARTICLE IV: PERMITS AND INSPECTIONS

8.56.140 Permit Required to Construct Septic Tank. No septic tank, settling tank, seepage pit, cesspool, subsurface tile line system, or any other subsurface sewage disposal unit or system, or any part thereof, shall be installed, constructed, reconstructed, repaired in any manner, or added to in the City unless there is in effect a valid permit therefor issued by the Director.

8.56.150 Application for Permit - Fee. Any person desiring to install, construct, reconstruct, repair or add to, a septic tank, settling tank, seepage pit, cesspool, subsurface tile line system, or other subsurface sewage disposal unit or system, or any part thereof, shall file with the Director a written application for a permit for such installation, construction, reconstruction, repair or addition. A separate application and permit for each installation shall be required. The application shall be made on a form prescribed and furnished by the Director and shall be accompanied by an inspection fee set forth below. The application shall contain the following information and such other information as the Director may require: street name and number of the premises where the installation is to be made; the name and address of the owner; the name and address of the contractor who is to perform the work; the size and type of the septic tank, settling tank, cesspool or other subsurface sewage disposal unit or system to be installed and the number of people it is to serve. When required by the Health Officer the application shall include or be accompanied by a plan or diagram showing the character and kind of installation to be made and the manner and location in which the work is to be done. The fee for filing all applications pursuant to this section shall be as set forth in Section 8.16.080 of this code.

8.56.160 Application for Permits Requiring No Field Investigation. The permit fee for land development applications that are processed without field investigation shall be as set forth in section 8.16.080 of this Code.

8.56.170 Special Project Review. Whenever the Health Officer is requested to review and comment on any special project designated by the Department of Planning and Land Use, such as a major or minor use permit or a special use permit, or any other special project or land development application, the applicant shall complete a written application furnished by the Health Officer requesting the review. This application shall be accompanied by a fee as set forth in Section 8.16.080 of this Code and any further documents required by the Health Officer to accomplish said review. The Health Officer shall have an investigation made to determine whether the special project complies with the rules and regulations of the Health Department and to the codes of the State of California and any regulations issued pursuant thereto pertaining to particular activities subject to regulation therein and whether the activity will result in a violation of such codes and regulations. The Health Officer shall notify the applicant of his reasons for approval or denial in writing.
8.56.180 Change of Location of Work by Supplemental Permit - Fee. A permittee to whom there has been issued pursuant to this chapter a permit for an installation to be made at a particular location may apply for a supplemental permit authorizing such work to be performed at a different location provided that no work has been commenced at the location specified in the original permit. The application for a supplemental permit shall be made on a form prescribed and furnished by the Director. On receipt of such application and a fee as set forth in Section 8.16.080 of this Code the Director may issue a supplemental permit authorizing the performance of work at the substituted location.

8.56.190 Investigation by Director - Director may Require Percolation Test --Denial of Permit. Prior to issuance of a septic tank permit, the Director shall make, or cause to be made, such investigation as deemed necessary. The Director may require the applicant for the permit to furnish a report of soil percolation tests performed on the site of the proposed subsurface disposal system or unit and the results of such tests. The soil percolation testing, and the preparation of plans, drawings or specifications shall be done by a:

(a) California Registered Engineer,

(b) California Registered Sanitarian,

(c) California Registered Geologist.

Persons listed in categories B & C are limited by the Business and Professional Code, Section 6737.1 to projects for:

(a) Single or multiple dwellings not more than two stories and basement in height.

(b) Garages or other structures appurtenant to building described under Subdivision (a) above.

(c) Farm or ranch buildings.

(d) Any one-story building where the span between bearing walls does not exceed twenty-five (25) feet; provided, however, that the exemption in this subdivision does not apply to a steel frame or concrete building.

The Director may require such individuals to demonstrate knowledge of San Diego County Laws and policies related to subsurface disposal systems.

If the Director determines that the location, area, soil, porosity, ground water level, density of population in the area, the number of persons to be served or other condition 8.56.230 would cause the operation of the subsurface sewage disposal unit or system described in the application to create an unsanitary condition endangering public health, he shall not issue the permit for which application was made.

8.56.200 Fees Required for Percolation Tests and Septic System Layout Review. If, pursuant to Sec. 8.56.190, a percolation test or septic tank system layout is performed by the County, there shall be paid to the Department a fee as set forth in section 8.16.080 of this code. For each percolation test the examination fee shall be as set forth in section 8.16.080 of this code.
8.56.210 Minimum Lot Area of One Acre - Exceptions.

(a) No septic tank, settling tank, cesspool or other subsurface sewage disposal system or unit shall be installed or constructed on a lot, parcel or building site containing an area of less than one acre, except that the Director may issue a permit for the installation or construction of any subsurface sewage disposal system or unit on a lot or a combination of lots shown on a recorded subdivision map, which lot or combination of lots contains an area of less than one acre but not less than 6,000 square feet, provided that there exists a one hundred percent reserve area, percolation data satisfactory to the Director, and the Director's investigation indicates that an approved type of subsurface disposal system would function satisfactorily in a building site of such area at that location.

(b) Notwithstanding the provisions of Section 17.101 through 17.103 of the County Code, this section shall expire and be of no further force and effect on August 21, 1981.

8.56.220 Expiration of Permit. Permits issued pursuant to this chapter shall be void at the expiration of one year from the date of issuance.

8.56.230 Evapotranspiration Type Systems - Revocation of Permits. The Director may revoke any outstanding permit for the installation of an evapotranspiration type system which in the judgment of the Director is not adequate for the lot and its use.

Any permittee whose permit is revoked may file an appeal with the Clerk of the Board of Supervisors pursuant to Section 16.114 of the County Code and shall be entitled to a hearing as prescribed by Section 16.114 and Section 16.115 of the County Code. The filing of such an appeal shall not stay the order of the Director revoking the permit.

8.56.240 Director to Make Inspections. The Director shall inspect or cause to be inspected in a thorough manner all septic tanks, settling tanks, cesspools and other subsurface sewage disposal units or systems hereafter installed, constructed or reconstructed in the County. It shall be the duty of the Director to see that there is compliance with the terms and provisions of this chapter.

8.56.250 Inspection Required - Approval. As soon as the septic tank, settling tank, cesspool or other subsurface sewage disposal unit or system is installed and ready to receive its cover, the person to whom the permit for such unit or system was issued shall notify the Department that such unit or system is ready for inspection. As soon thereafter as practical, the Director shall make or cause to be made an inspection of the work. If the unit or system is approved by the Director, an inspection certificate shall be posted in a conspicuous place upon the property where the unit or system is located, which inspection certificate shall note the date and approval and the signature of the Director or the person making the inspection on the Director's behalf.

8.56.260 Backfilling Work Before Approval Prohibited. No person shall backfill, or cause to be backfilled any septic tank, settling tank, seepage pit, cesspool, subsurface tile line system, or other subsurface disposal system or unit prior to its approval by the Director as provided in this chapter.

The responsibility for protecting the public from hazards from test holes and subsurface sewage disposal system excavations is that of the engineer, or persons performing percolation testing and proposing such systems.
8.56.270 Connecting Plumbing to Unapproved Disposal System Prohibited. It shall be unlawful for any person to connect any house sewer line or other plumbing to a septic tank, settling tank, cesspool, seepage pit or other subsurface sewage disposal unit or system hereafter installed, constructed or reconstructed, unless such septic tank, settling tank, cesspool, seepage pit or other subsurface sewage disposal unit or system has been approved by the Director as provided in this chapter.

8.56.280 Reinspections - Fee. When an inspection has been ordered and the work is found to be not ready for inspection and approval, the Director shall cause an official notice to be posted on the job stating the changes necessary in order that the work will comply with the requirements of this chapter. As soon thereafter as practicable the owner or contractor shall cause the changes to be made and upon completion thereof shall notify the Department that the unit or system is ready for reinspection. As soon thereafter as practicable the Director shall make or cause a reinspection to be made. If upon reinspection the work is approved, a certificate to that effect shall be posted as hereinabove specified. The fee for each reinspection shall be $30.00, which fee shall be paid to the Director.

8.56.290 Violation - Misdemeanor. Any person violating the provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed Five Hundred Dollars ($500.00) or by imprisonment for a period of not more than six (6) months in the County Jail or by both such fine and imprisonment.

ARTICLE V: SPECIFICATIONS

8.56.300 Location of Subsurface Disposal Systems. Any subsurface sewage disposal unit or system or part thereof thereafter constructed or installed in the City shall be so situated that it will be a "safe distance" from any source of water supply as determined by the Director. In determining what is a "safe distance" the Director shall consider the source of possible pollution, the type of soil, surface and subsurface, the type and source of water supply, the geological formation of the ground, the direction of surface drainage, and the depth and direction of ground water flow.

Under no circumstances shall any part of such subsurface sewage disposal unit or system, except the house sewer line, be located closer than 50 feet from any ground water supply.

No part of such subsurface sewage disposal unit or system except that house sewer line, shall be located less than five feet from every building or structure or less than five feet from every property line.

8.56.310 Type of Subsurface Disposal System Required. Any subsurface sewage disposal unit or system hereafter constructed or installed in the City shall consist of a septic tank with effluent discharging into either (1) a leach field disposal system, or (2) a distribution box connected to a subsurface tile system consisting of at least two lateral absorption lines of approximately equal length, with a maximum variation of 10%, provided, that with the approval of the Director such distribution box may be connected to a seepage pit or pits, each having at least four feet inside diameter.

8.56.320 Minimum Requirements for Septic Tanks. Any septic tank hereafter constructed or installed in the City, shall meet the following minimum specifications

(a) Such tank shall have an inside diameter of at least five feet with a liquid depth of at least four feet. The length of the tank shall not exceed three times the width of such tank.
Such tank shall have a liquid capacity of not less than 1,000 gallons. Such tank shall have at least two compartments, and a manhole with a minimum diameter or width of 22 inches shall be installed in each compartment, over the inlet and outlet pipe.

(b) The inlet and the outlet of such tank shall each be a vertical four inch diameter "T" extending such a distance below the liquid level that 40 percent of the liquid depth is below it, and extending a minimum of six inches above the liquid level of the tank. The outlet shall be two inches below the inlet.

(c) Such tank shall be watertight and shall be constructed of concrete, concrete block, brick or tile. The top of such tank shall be constructed of reinforced concrete at least four inches thick. When such tank is constructed, the walls and bottom of the tank shall be at least six inches thick and shall be adequately reinforced with steel or other approved material. The concrete used for such tanks shall contain one part cement, two parts sharp sand and four parts crushed rock or gravel. Where brick, concrete block, or tile is used in the construction of such tank, the inside shall be plastered with Portland cement mortar composed of one part cement and three parts sand. The side walls of such tank shall be adequately reinforced with steel or other approved material so as to withstand any inside or outside pressure. The Director may approve alternative materials and construction specifications to meet health requirements.

(d) The line from such septic tank to the distribution box or leach field shall be constructed of watertight bell and spigot pipe, or such other pipe with watertight joints that the Director may approve.

8.56.330 Minimum Requirements for Distribution Box. Any distribution box hereafter constructed or installed in the City shall meet the following minimum specifications:

(a) Such distribution box shall be watertight and shall be constructed of the same materials authorized for construction of a septic tank. The inner surface of the distribution box shall have a protective coating of Hunt's Emulsion, or some other protective coating equal thereto in the opinion of the Director.

(b) The outlets from such distribution box shall have exactly the same elevation and shall be located at least two inches above the bottom of the box. The inlet to such distribution box shall be one inch above the elevation of the outlets.

(c) Such distribution box shall be connected to a subsurface tile system consisting of at least two lateral absorption lines when approved by the Director.

8.56.340 Minimum Requirements for Disposal Lines. Any subsurface tile system hereafter constructed or installed in the City for the purpose of disposing of the effluent from a septic tank shall meet the following minimum specifications:

(a) Such tile system shall consist of at least two lateral absorption lines totaling at least 200 feet in length.

(b) Lateral absorption lines shall be constructed of tile pipe spaced one-quarter inch apart so as to provide open joints. The upper one half of each open joint shall be covered with tar paper or copper screen. Perforated pipe, of materials approved by the Director, may also be used.
(c) Each lateral absorption line shall be placed in a trench 36 inches deep and 18 inches of rock or gravel grading one to one and one half inch. At least 12 inches of such rock or gravel shall be beneath the bottom of the line, and four inches of such rock and gravel shall be over the top of the line.

(d) Lateral absorption lines in a serial disposal system shall be level with not more than two inches per 100 feet variation either way.

(e) Lateral absorption lines shall not be more than 36 inches below the surface of the ground without the prior approval of the Director.

(f) Every lateral absorption line shall be at least 10 feet (center to center) from every other lateral absorption line. All bends used in the disposal field shall have one (1) tight joint to each end of the bend.

8.56.350 Substitution of Seepage Pit for Tile System Upon Approval of Director. A seepage pit or series of seepage pits may be substituted for or used in conjunction with a subsurface tile system, when such substitution or use is approved by the Director, provided, however, no seepage pit shall be permitted where the Director determines that its use might contaminate or pollute an underground water supply.

8.56.360 Minimum Requirements for Seepage Pits. Any seepage pit hereafter constructed or installed in the City shall meet the following minimum specifications:

(a) Such seepage pit shall be not less than four feet inside diameter and shall be constructed to a depth where the side wall area of the seepage pit will have sufficient porosity to provide adequate drainage as determined by the Director.

(b) Such seepage pit shall be either rectangular or round. In the case of a rectangular shape, such seepage pit shall be constructed of brick, concrete block, and/or two inch redwood plank securely braced with four inch by four inch redwood boards of full thickness with supporting two inch redwood boards of full thickness with supporting two inch by three inch redwood timbers placed every five feet so as to form a securely braced octagon shape.

(c) The top of such seepage pit shall be covered with a concrete slab or cover constructed of concrete reinforced with steel or other approved material, which slab or cover shall extend not less than 18 inches beyond the outside of the side walls of the seepage pit.

8.56.370 Special Approval Required for Systems Serving Multiple Dwellings or Institutions for Industries Where Used by More than 10 Persons. Every applicant for a permit to install or construct a subsurface sewage disposal system or unit to serve residences, institutions, or industries, other than a one family residence or a small institution or industry, shall submit to the Director for approval the detailed plans and specifications of the proposed subsurface sewage disposal system. Upon the filing of the required application, accompanied by such detailed plans and specifications, the payment of the fee hereinbefore prescribed and the approval of such plans and specifications by the Director, the Director shall issue a permit for the construction of such subsurface sewage disposal system.
8.56.380  **Provisions Not to be Construed to Prevent the Director from Imposing Additional Requirements.** Nothing contained in this chapter shall be construed to prevent the Director from requiring compliance with higher or more stringent requirements or specifications than those contained herein where compliance with such higher or more stringent requirements or specifications is necessary to maintain a sanitary condition.

8.56.390  **Provisions Not to be Construed to Prevent the Director from Reducing Requirements.** Nothing contained in this chapter shall be construed to prevent the Director from establishing lower or less stringent requirements or specifications than those contained herein in such cases where a subsurface sewage disposal unit or system may be maintained at such lower or less stringent requirements or specifications in a sanitary condition without detriment to the public health or safety.

**ARTICLE VII: MISCELLANEOUS PROVISIONS**

8.56.400  **Cross Connections Prohibited.** No person shall install or permit to be installed an interconnection between a drinking water supply and any equipment or connection of any kind, class, or description which may contain water or any liquid or substance unfit for human or domestic consumption. The Director shall make or cause to be made inspections to determine if such conditions exist, and if such interconnections are discovered the Director shall require the purveyor of water to discontinue water service unless the condition is abated within a reasonable period of time fixed by the Director. No device shall be sold in the City which provides such an interconnection as a means of operation unless the water supply is adequate.

8.56.410  **Disinfection of Cesspools, Etc.** No privy, vault, privy, cesspool, or water closet shall be allowed by the owner or other person in charge of the premises upon which the same may be situated to become foul or offensive; and when in the opinion of the Director any such privy, vault or closet or cesspool shall need cleaning or disinfecting, it shall be the duty of said Director to notify such owner or other person having control to abate the same by such disinfecting or cleaning as in the judgement of said Director may be necessary, or in the case of a defective or offensive cesspool the owner, if deemed necessary by the Director, shall connect the premises to an available public sewer or construct a new sewage disposal system that meets the requirements of this chapter.
CHAPTER 8.60

SEPTIC TANK AND CESSPOOL CLEANERS

SECTIONS:

8.60.010 Definitions
8.60.020 Examination Fee
8.60.030 Delinquent Examination Fee
8.60.040 Annual Registration Fee - 10 Percent Penalty for Delinquency
8.60.050 Vehicle Registration Fee - 10 Percent Penalty for Delinquency
8.60.060 Equipment Standards
8.60.070 Fees Deposited in Treasury
8.60.080 Examination of Equipment
8.60.090 Reports to Health Officer
8.60.100 Dumping Sites
8.60.110 Penalty Clause

8.60.010 Definitions.

"Cesspools", "Septic Tanks", "Seepage Pits" shall be construed to include all manner of sewage disposal other than regular sewage disposal plants and systems operated by a political subdivision and holding a valid permit from the Department of Public Health of the State of California.

A "Sewage Pumping Vehicle" shall mean any vehicle used for the collection and transportation of sewage.

8.60.020 Examination Fee. Whenever any person not previously registered applies for examination as a septic tank or cesspool cleaner, said examination to be conducted by the Health Officer as provided in Section 25004 of the Health and Safety Code of the State of California, he shall pay to the Health Officer an examination fee as set forth in Section 8.16.080 of this code. In the event the applicant is unsuccessful in such examination no part of said examination fee shall be returned to the applicant.

8.60.030 Delinquent Examination Fee. In any case where the applicant has failed for a period of 30 days to apply for the examination and pay the examination fee required by this chapter, there shall be added to and collected with the examination fee a penalty equal to 10 percent of the fee; and for each additional month or fraction of a month after the expiration of said 30-day period that the applicant fails to make such application and pay said fee there shall be added to and collected with the examination fee an additional penalty equal to 10 percent of the fee; provided, however, in no event shall the total penalty added to the examination fee pursuant to this section be more than 60 percent of the examination fee. The imposition of or payment of the penalty imposed by this section shall not prevent the imposition of any other penalty prescribed by this code or prosecution for violation of this chapter.

8.60.040 Annual Registration Fee - 10 Percent Penalty for Delinquency. In addition to the examination fee provided in Section 8.60.020, there is hereby imposed an annual registration fee upon each person registered as a septic tank or cesspool cleaner under the provision of Chapter 6, Division 20 of the Health and Safety Code of the State of California. Said registration fee shall be paid to the Health Officer as set forth in Section 8.16.080 of this Code.
8.60.050 Vehicle Registration Fee—10 Percent Penalty for Delinquency. There is hereby imposed an annual registration fee for each sewage pumping vehicle. Said registration fee shall be paid to the Health Officer as set forth in 8.16.080 of this Code.

8.60.060 Equipment Standards.

(a) All trucks used in the transportation and collection of sewage shall be in good mechanical condition and otherwise maintained in an overall reasonable state of good repair. Said trucks shall have the name, address, and phone number of the permittee displayed on both sides of the vehicle, in letters not less than three (3) inches high. Such lettering shall be permanently affixed to the vehicle by painting, permanent decal, or other method approved by the Department of Health Services.

(b) Trucks used exclusively for pumping and servicing chemical toilets shall be a minimum tank capacity of one hundred fifty (150) gallons. Trucks used for pumping and servicing cesspools, septic tanks, and seepage pits have a minimum tank capacity of one thousand (1,000) gallons.

(c) Trucks used in the transportation and collection of sewage shall have closed, leak proof steel tanks with water tight main valves. Each truck shall have an approved pumping system operated by manifold vacuum, power takeoff, or auxiliary engine.

(d) Vacuum hose shall be maintained in a leak proof condition.

8.60.070 Fees Deposited in Treasury. All sums received by the Health Officer as fees or charges pursuant to this chapter shall be forthwith deposited with the County Treasurer for the use and benefit of the County.

8.60.080 Examination of Equipment. The Health Officer shall examine all equipment used in processing septic tanks, cesspools and seepage pits owned or under the control of each person registered under the provisions of this chapter at regular intervals not to exceed 90 days after said permit is granted.

8.60.090 Reports to Health Officer. Whenever a person cleans a septic tank or cesspool, he shall notify the Health Officer or his duly authorized representative on the form adopted by the Director of Public Health. Said form shall contain information such as location of septic tanks, cesspools, and seepage pits, location of the disposal site, where sewage effluent or other material has been finally disposed of, or any other information which the Health Officer may require.

8.60.100 Dumping Sites. No waste shall be deposited in any location other than those approved in writing by the Health Officer.

8.60.110 Penalty Clause. Any person violating any provision of this chapter shall be guilty of a misdemeanor and shall be punishable in accordance with Section 1.12.020. (Ord. No. 99-1053, 2/1/99)
CHAPTER 8.64
ABATEMENT OF WEEDS, SHRUBS, DEAD TREES
AND CERTAIN WASTE MATTER

SECTIONS:

8.64.010  Weeds, Grasses, and other Items Declared a Public Nuisance
8.64.020  Waste Matter Ordered a Public Nuisance
8.64.030  Waste Material Defined
8.64.040  Notice to Clean Premises
8.64.050  Service of Notice to Clean Premises
8.64.060  Appeal, Right Of, to City Council
8.64.070  Time Limit for Removal of Nuisance
8.64.080  Abatement of Nuisance by City Manager
8.64.090  City Clerk, Obligation of
8.64.100  Hearing before City Council
8.64.110  Payment Prior to Hearing
8.64.120  Government Code Provisions Adopted; Collection of Assessment
8.64.130  Violation

8.64.010  Weeds, grasses, and other items declared a Public Nuisance.

(a) All weeds, dry grasses, dead shrubs, dead trees, rubbish or any material growing upon the streets, sidewalks or upon private property within the City of San Marcos, which bears seeds of a wingy or downy nature or which by reason of their size, manner of growth and location constitute a fire hazard to any building, improvements, crops or other property, and weeds and grasses which, when dry, will in reasonable probability constitute such a fire hazard, are hereby declared to be a public nuisance.

(b) Cultivated and useful grasses and pasture shall not be declared a public nuisance. However, if the City Manager or his authorized representative shall determine it necessary to protect adjacent improved property from fire exposure, an adequate firebreak may be required.

(c) The declared nuisance shall be removed according to the specifications set forth by the City Manager or his authorized representative, the standard of which shall be to ensure the safety of the neighboring property and residents.

8.64.020  Waste Matter Declared a Public Nuisance. Waste matter as hereinafter defined, which by reason of its location and character is unsightly and interferes with the reasonable enjoyment of property by neighbors, or which would materially hamper or would interfere with the prevention or suppression of fire upon the premises, or the abatement of a nuisance as defined by Section 8.64.010, is hereby declared a public nuisance.

8.64.030  Waste Material Defined. Waste material is defined for the purpose of this chapter as unused or discarded matter having limited market value, which is exposed to the elements and is not enclosed in any structure or otherwise concealed from public view, and which consists (without limitation or exclusion by enumeration) or such matter and material as:
8.64.030 - 8.64.070

(a) Rubble, asphalt, concrete, plaster, tile;

(b) Rubbish, crates, cartons, metal and glass containers;

(c) Vehicle bodies and parts;

8.64.040 Notice to Clean Premises. If it is determined that a public nuisance, as herein defined, exists on any lot or premises, or upon any sidewalk, parking or street adjacent to such lot or premises, the City Manager shall cause a notice to be issued to abate such nuisance. Such notice shall be headed: "NOTICE TO CLEAN PREMISES" in letters not less one inch (1") in length and which shall, in legible characters, direct the abatement of the nuisance and refer to this chapter, section, and subsection for particulars. Notices served by means of other than posting as provided by this chapter shall contain a description of the property in general terms reasonably sufficient to identify the location of the nuisance.

8.64.050 Service of Notice to Clean Premises. The notice required by Section 6.64.040 of this Code may be served in any of the following manners:

(a) By personal service on the owner, occupant or person in charge or control of the property.

(b) By regular mail addressed to the owner or person in charge and control of the property, at the address shown on the last available assessment roll, or as otherwise known.

(c) By posting at a conspicuous place on the land or abutting public right-of-way and insertion of an advertisement at least once a week for the period of two (2) weeks in a newspaper of general circulation in the City of San Marcos. Said newspaper advertisement shall be a general notice that property in the City of San Marcos has been posted in accordance with this chapter and shall contain a general statement of the effect of such posting. The date of such newspaper advertisements shall not be considered in computing the appeal periods provided by this chapter.

8.64.060 Appeal, Right of, to City Council. Within ten (10) days from the date of posting, mailing or personal service of the required notice, the owner or person occupying or controlling such lot or premises affected may appeal to the City Council of San Marcos. Such appeal shall be in writing and shall be filed with the City Clerk. At the regular meeting or regular adjourned meeting of the City Council, not less than five (5) days nor more than thirty (30) days thereafter, it shall proceed to hear and pass upon such appeal; and the decision of the City Council thereupon shall be final and conclusive.

8.64.070 Time Limit for Removal of Nuisance.

(a) All waste materials as defined in Section 8.64.030 shall be removed within ten (10) days from the date of notification as provided herein, by the property owner or agent of the owner, or the person in possession of any lot or premises within the City of San Marcos, as notified.

(b) All weeds, grasses and similar materials as defined in Section 8.64.010 shall be removed within 21 days from the date of notification as provided herein, by the property owner or agent of the owner, or the person in possession of any lot or premises within the City of San Marcos, as notified.
(c) If any appeal is made to the City Council, and the abatement order is upheld, the property owner, agent or possessor shall fulfill their abatement duty within ten (10) days of the Council's decision by removing the nuisance.

8.64.080 Abatement of Nuisance by City Manager. If the owner fails or neglects to remove the nuisance as herein defined, within the time specified in this chapter, the City Engineer shall cause nuisance to be abated. The abatement work may be done by City crews or by private contractor. A report of the proceedings and an accurate account of the cost of abating the nuisance on each separate property shall be filed with the City Council.

8.64.090 City Clerk, Obligation Of. The City Clerk shall set the report specified in Section 8.64.080 and account for hearing by the City Council at the first regular or adjourned meetings which will be held at least seven (7) and no more than thirty (30) calendar days after the date of filing, and shall post a copy of said report and account and notice of the time and place of hearing in a conspicuous place at or near the entrance of the council chambers in San Marcos City Hall.

8.64.100 Hearing before City Council. The City Council shall consider the report specified in section 8.64.080 and account at the time set for hearing, together with any objections or protests by any interested parties. Any owner of land or person interested therein may present a written or oral protest or objection to the report and account. At the conclusion of the hearing, the City Council shall either approve the report and account as submitted, or as modified or corrected by the City Council. The amounts to approve shall be liens upon the respective parcels of land as they are shown upon the last available assessment roll, and determining that such weeds, grasses, dead trees, dead shrubs and waste matter constitute a public nuisance. The City Clerk shall prepare and file with the County Auditor of San Diego County a certified copy of such resolution of the City Council.

8.64.110 Payment Prior to Hearing. The City Clerk of the City of San Marcos may accept payment of any amount due at any time prior to the City Council hearing, as called for in section 8.64.100 of this Code.

8.64.120 Government Code Provisions Adopted; Collection of Assessment. The provisions of section 39580 through 39586, inclusive, or the Government Code of the State of California are incorporated by reference and made a part of this chapter. The County Auditor shall enter each assessment in the county tax roll opposite the parcel of land. The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes; and, if delinquent, the amount is subject to the same penalties and procedure of foreclosure and sale as is provided for ordinary municipal taxes.

8.64.130 Violation. The owner, occupant or agent of any lot or premises within the City of San Marcos who shall permit or allow the existence of a public nuisance as defined in this chapter, upon any lot or premises owned, occupied or controlled by him, or who shall violate any of the provisions of this Chapter, shall be guilty of an infraction and upon conviction thereof shall be punishable in accordance with Section 1.12.010.
CHAPTER 8.68

GARBAGE AND REFUSE COLLECTION

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ARTICLE I: IN GENERAL

8.68.010 Purpose. The City Council hereby finds that the storage, accumulation, collection and disposal of garbage, trash, rubbish, debris and other discarded material is a matter of public concern, in that improper control of such matters creates a public nuisance, can lead to air pollution, fire hazards, illegal dumping, insect breeding, rat infestation and other problems affecting the health, welfare and safety of the residents of this and surrounding cities. The City Council further finds that the periodic collection of garbage, rubbish and other refuse from all residences and places of business in the City benefits all occupants of residences and businesses within the City. Accordingly, the collection of garbage and refuse in the City shall be a mandatory service and all occupants as hereinafter defined are made liable for the payment of such fees as may be approved from time to time by the City Council. The City Council further declares that the regulations provided in this Chapter are designed to eliminate or alleviate the aforementioned problems.

8.68.020 Definitions. For the purpose of this Chapter, the following words and phrases are defined as follows, unless it shall be apparent from the context that they have a different meaning:

Agent means any employee or agent of the City designated by the City Manager or City Council as being responsible for directing, collecting and providing for the collection, disposal and transportation of garbage, rubbish and other refuse.
Animal Waste means manure, fertilizer, or any form of solid excrement produced by any and all forms of domestic or commercial livestock.

City means the City of San Marcos.

City Council means the Mayor and City Council of the City of San Marcos.

City Manager means the City Manager of the City of San Marcos.

Collection when used singly in this chapter, means the collection, transportation and disposal of any and all forms of refuse, as defined hereafter.

Combustible Rubbish includes paper, rags, discarded household bedding, packing materials, cartons, boxes, containers, grass, plants, shrubs, trees, vines and the prunings thereof, shavings, sawdust, chips, lumber scraps or other chapters from lumberyards, mills or factories and other chapters which will burn upon contact with flames of ordinary temperature. Combustible rubbish shall not include those materials listed under "Construction and Demolition Debris", below.

Contractor means the person or persons with whom the City Council has entered into written agreement for the collection, transportation and disposal of refuse within the City.

Construction and Demolition Debris includes dirt, sweepings, bricks, mortar, plaster and other building and construction materials, whether combustible or noncombustible, resulting from the repair, remodeling, demolition or construction of buildings, or other structures.

County means the County of San Diego.

Health Officer means an officer of the San Diego County Department of Health and Sanitation.

Fire Protection District means the San Marcos Fire Protection District.

Garbage includes, but is not limited to, every accumulation of animal, vegetable, fruit or other biodegradable materials:

(a) resulting from the preparation, selling, serving or consumption of edible foodstuffs, including the cans, containers or wrappers wasted along with such materials; or

(b) resulting from the dealing in, handling, processing, storage or decay of meats, fish, fowl, fruits, vegetables or grains; or

(c) the excrement, carcasses or residue of animals, fish or fowl; or

(d) other industrial, commercial or domestic organic solid wastes.

Hazardous Wastes includes any waste material or mixture of wastes which is toxic, corrosive, flammable, an irritant or a strong sensitizer which generates pressure through decomposition, heat or other means, and similarly hazardous waste materials if such a waste or mixture of wastes may cause substantial personal injury, serious illness, or harm to humans, domestic animals or wild life during, or as an approximate result of, any disposal of such wastes as defined in Article 2, Chapter 2.5, Section 25117 of the California Health and Safety Code. The
terms "toxic", "corrosive", "flammable", "irritant" and "strong sensitizer" shall be given the same meaning as in the California Hazardous Substance Act (Chapter 13 commencing with Section 28740 of Division 21 of the Health and Safety Code).

**Miscellaneous and Bulky Debris** means all garbage, rubbish and other discarded materials not otherwise provided for in the foregoing or following definitions including appliances, furniture, large auto parts, trees, branches, stumps, or amounts of garbage or rubbish collected at each collection in excess of the maximum amounts permitted by this chapter, and other wastes the size, weight, or volume of which precludes or complicates their handling by normal collection methods.

**Noncombustible Rubbish** includes, among other things ashes, bottles, broken glass, crockery, earthenware, metal cans, metalware, wire products, other chapters or discarded metal or stone of less than twenty (20) pounds in weight each, automobile tires, inner tubes, batteries and metal kegs, barrels or casks. **Noncombustible rubbish** shall not include those materials listed under "Construction and Demolition Debris", above.

**Occupants** means and includes every owner of, and every tenant or person who is in possession of, is the inhabitant of, or has the care and control of, an inhabited residence or place of business.

**Person** means any individual, firm, corporation, association, or group or combination acting as a unit.

**Place of Business** means any hotel, motel, lodging house, trailer court, restaurant, cafeteria, market, hospital, or any other educational, industrial establishment where there is an accumulation of refuse.

**Recyclables** means material having an economic value in the secondary materials market, including, but not limited to: aluminum cans and articles, bi-metal cans, glass containers, P.E.T. and H.D.P.E. plastic beverage containers, corrugated paper, magazines, computer printout paper, computer tab cards, office paper, steel cans, newspaper, and other paper products not chemically coated. *(Ord. 89-819, 6-13-89)*

**Refuse** when used singly in this Chapter, means any and all types of rubbish, garbage or waste material defined in this section.

**Residential Unit** means each place used for residential purposes for a single family; if more than one family is in one house, then such house shall constitute as many units as there are families. No place used primarily for business purposes shall be considered a residential unit.

**Rubbish** when used singly in this Chapter, means any and all types of nonbiodegradable waste or debris.

**Rubbish Disposal** includes the collecting, transporting and disposal of garbage and/or rubbish in the City.

**Streets** means the public streets, ways, alleys and places, except state freeways, as the same now or may hereafter exist within the City.
Truck means any truck, trailer, semitrailer, conveyance or vehicle used or intended to be used for the purpose of collecting refuse or to haul or transport refuse.

8.68.030  Burying Prohibited Generally. Except as provided in Sec. 8.68.040, no person shall bury any garbage, refuse, combustible or noncombustible rubbish on any premises within the City.

8.68.040  Burying Permitted; Procedure; Effect of Health Officer's Order Prohibiting. Garbage or garden refuse may be buried in the ground if the same is at once securely covered with earth to a depth of at least twelve (12") inches in such a manner as to prevent the escape of odors; provided, such burial shall occur no closer than sixty (60) feet to any dwelling; and provided further, that no person shall deposit any garbage or garden refuse in such a manner that the same is or may become a nuisance or endanger the public health. Any order from the County Health Officer prohibiting such burying or deposit shall be final.

8.68.050  Burning Prohibited Generally. The burning of any and all types of refuse within the City shall be prohibited, with the exception that agricultural crop wastes may be burned pursuant to permits issued by the Fire Protection District in accord with Section 41855 of the Health and Safety Code.

ARTICLE II: COLLECTION AND TRANSPORTATION

8.68.060  Refuse Collection Mandatory. It shall be the duty of every person owning, occupying, or having charge or control of any residential unit or place of business where refuse is accumulated to provide for refuse collection services by the Contractor with whom the City holds an agreement for such services.

8.68.070  Frequency and Scheduling of Collection. All refuse created, produced or accumulated in or about a residential unit or place of business shall be collected at least once each week. The City Manager may, at his discretion, or upon recommendation of the County Health Officer, require more frequent pick ups should the nature of a particular business so require. The Contractor shall arrange collection routes so that pick ups will be made on the same day of each succeeding week, with the following exception: no collection will occur on Thanksgiving, Christmas and New Year's Days, contingent upon advance notice to all those affected, in a manner satisfactory to the City Manager.

8.68.080  Special Collection.

(a) Availability and Payment for Services. Any occupant desiring to have refuse collections more frequently than provided by this chapter or who has accumulated refuse of any type exceeding the maximum amount permitted per collection, or who has accumulated miscellaneous and bulky debris or construction or demolition debris shall enter into an agreement with the Contractor for special collection service. Such service shall be rendered on terms mutually agreeable to both parties and payment for service shall be made directly to the Contractor.

(b) Payment Under Protest. Any occupant billed for special collection services and who desires to contest the extent or reasonableness of the charge billed, may make payment of such charges under protest and, at the same time, shall file a written statement of protest with the City Manager. Within thirty (30) days after date of filing, the City Manager shall notify the protesting party of the decision and adjustment in the matter. The decision of the City Manager
may be appealed to the City Council by any party and the determination of the City Council, in regular meeting, shall be final. One half the appeal fee shall be refunded to the protesting party in those cases where the City Council finds in favor of the protest.

**8.68.090 Exemption from Mandatory Collection.** Any occupant may request exemption from the requirement of Sec. 8.68.060 herein, on condition that proof of regular use of a County authorized solid waste facility for the disposal of refuse accumulated on occupants property is shown. Such proof shall consist of the following:

(a) **Residential occupancies.** A minimum of fifty-two (52) disposal receipts from a County authorized solid waste facility; provided, however, that receipts shall not be required during periods of substantiated vacations in which a residence is not occupied. Receipts shall have been issued during that calendar year for which exemption is requested and at intervals no greater than seven days.

(b) **Business occupancies:** generally, the same requirements as specified for residential occupancies, above, with the following exception: the City Manager may, at his or her discretion or upon recommendation of the County Health Officer, require a greater number of disposal receipts, issued at lesser intervals than specified above, should the nature of the business in question demand more frequent disposal. Applications for exemption shall be filed in writing with the City no later than January 1st. of each year for approval or disapproval by the City Manager or his or her designee. Subsequent applications by the same occupant shall be accompanied by proof of disposal during the preceding year, as required above.

**8.68.100 Economic Hardship - Exemption from Payment.**

(a) Any occupant of a residential unit in the City may request exemption from payment for mandatory collection services on grounds of economic hardship. For purposes of this section, "economic hardship" shall mean inability to pay, based on a combined family income falling at or below poverty level in the calendar year preceding that in which exemption is requested. Eligibility for exemption shall be determined based on most recent figures for Income at Poverty Level by Family Size published by the U.S. Bureau of Census. All requests for exemption shall be accompanied by such certification of income deemed appropriate by the City Manager and shall be decided by the City Manager or his or her designee. No person contracting for special collection services pursuant to Sec. 8.68.080 herein, shall be exempt from payment for such services.

**8.68.110 Unlawful Collection.** It shall be unlawful for any person to collect refuse within the City unless such person is under written contract with the City to perform collection services or is exempted as outlined in 1, 2, 3, 4, 5 and 6 of this section. It is further unlawful for any person to permit, allow or enter into any agreement whatsoever for the collection of refuse with any person not a Contractor as defined herein, except as permitted in 1, 2, 3, 4, 5 and 6 of this section.

(1) **Subcontractors to the Contractor** may perform such collection services as are approved in writing by the City Manager or this designee. **(Ord. No. 2004-1227, 6/22/04)**

(2) The occupant of any premises may remove garbage and combustible or noncombustible rubbish accumulated on premises owned, occupied or controlled by the person and may dispose of the same in a lawful manner. Except as provided in Sec. 8.68.090 herein, exercise of this right shall not exempt such person from payment of the mandatory refuse collection fee due the contractor as provided for under terms of this Chapter. **(Ord. No. 2004-1227, 6/22/04)**

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(3) The collection and removal of lawn clippings, shrub and tree trimmings and other vegetative matter by individual residents and by persons doing business as professional landscapers, when such activity is directly related to their work, shall be exempt from provisions of this Section. (Ord. No. 2004-1227, 6/22/04)

(4) The Contractor shall not be required to collect hazardous wastes as part of regular collection activity. Liquid and dry caustics, acids, biohazards, flammable or explosive materials, insecticides and similar hazardous wastes shall be handled and disposed of under separate agreement between customer and contractor or a designated subcontractor approved by the City, under arrangements made with the City and in accord with provisions of the California Health and Safety Code and all other applicable laws and regulations. Such agreements shall be exempt from the provisions of this section. (Ord. No. 2004-1227, 6/22/04)

(5) The Contractor shall not be required to collect infectious medical waste, as defined in Section 25117.5 of the California Health and Safety Code. Institutions producing and storing such wastes and any person handling or disposing of such material shall do so only in the manner approved by the County Health Officer or their designee and in accord with provisions of the California Health and Safety Code. Such activity shall be exempt from the provision of this section. (Ord. No. 2004-1227, 6/22/04)

(6) Individual residents and City recognized non profit organizations may collect recyclable materials such as, but not limited to, glass, newspaper, aluminum, and cardboard or transport to a City approved or City recognized recycling center, subject to the following restrictions: (Ord. No. 2004-1227, 6/22/04)

(a) collection of recyclables by residents shall be limited to premises owned, occupied or controlled by such persons. (Ord. No. 2004-1227, 6/22/04)

(b) this provision shall not apply to recyclable building materials generated by the repair, demolition or construction of buildings, the rights to collection of which shall remain with the Contractor or designated subcontractor. (Ord. No. 2004-1227, 6/22/04)

8.68.115 Abatement of Unauthorized Refuse Containers. When there is in force a franchise granted by the City pursuant to this Chapter, any refuse container placed within the boundaries of the City in violation of Section 8.68.110 shall be deemed a nuisance. The City Manager or his or her designee shall have the authority to cause the abatement thereof in accordance with the procedure prescribed in this section. When the City Council has granted a franchise pursuant to this chapter, such franchisee shall be the City Manager’s designee for purposes of causing the abatement of such nuisance and shall be authorized to enter upon private property or public property, in a manner consistent with the United States and California Constitutions, to cause the abatement of such nuisance. Upon notification to the City Manager of a violation of this section, franchisee may, at franchisee’s option, remove any refuse container placed within the boundaries of the City in violation of this Section, dispose of the contents thereof, and store the refuse container at franchisee’s place of business. Franchisee shall promptly mail written notice of its actions to the owner of the refuse container and advise how the owner may recover the refuse container. Franchisee may bill the owner of the refuse container for transportation and disposal costs, and daily impound fees, as prescribed in the rate schedule established from time to time by resolution of the City Council. All amounts due to the franchisee for transportation, disposal, and storage shall be paid in full before the owner may recover the refuse container. If the owner does not recover the refuse container within sixty (60) days of the Supplement No. 9 – 1994 Code
date of the notice of abatement, the refuse container shall be determined to be abandoned, at which time it shall become property of the franchisee. The action abating the nuisance may be appealed by the filing of a written notice of appeal in the office of the City Manager within ten days of the date of written notice thereof. The City Manager shall set the time and place for the hearing of the appeal that shall be within twenty days of the notice of appeal. The decision of the City Manager or his or her designee shall be final. The remedies provided in this Section 8.68.115 for breach of the prohibition against unauthorized refuse containers are cumulative and non-exclusive in nature, and may be exercised in addition to those set forth in Section 8.68.480, below. The indemnification provisions of Section 8.68.260 shall extend to the abatement process. (Ord. No. 2004-1227, 6/22/04)

8.68.120 Refuse Containers - Type and Construction. It shall be the duty of all occupants to provide containers for the accumulation and disposal of garbage and other refuse as follows:

(a) Residential Occupancies: containers used for the accumulation or disposal of garbage shall be water tight, of suitable strength and durability, tight seamed and provided with handles and a tight fitting lid or cover which shall remain affixed to the container. Noncombustible and similar refuse other than garbage shall be deposited in containers of suitable strength and durability, including plastic bags when securely sealed against spillage. Paper bags and cardboard containers shall not be used for the accumulation of refuse of any kind set out for regular collection.

(b) Business Occupancies and Residential Occupancies Involving Use of Common Receptacles: all containers used for the accumulation or disposal of garbage and other refuse shall be:

1. Approved by the contractor as being of suitable strength and durability and compatible with collection techniques employed; and

2. Approved by the Fire Protection District as providing adequate protection against fire hazard; and

3. Lined with a material suitable to prevent leakage of contents.

8.68.130 Volume/Weight Limitations on Refuse and Refuse Containers Placed for Collection. The following volume/weight restrictions shall apply to refuse and refuse containers placed for collection by the Contractor:

(a) Residential occupancies.

1. Volume and weight of refuse generated from within a residential unit: no limit

2. Volume of refuse generated outside a residential unit: one (1) cubic yard

3. Maximum total weight of refuse generated outside a residential unit: two-hundred (200) pounds

4. Maximum loaded weight of individual containers: fifty (50) pounds

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(5) Maximum volume of individual containers: forty (40) gallons

(b) Business Occupancies and Residential Occupancies Involving Use of Common Receptacles: refuse set out, and containers used by all such occupancies shall conform to the maximum volume/weight limitations established by the Contractor.

8.68.140 Special Provisions Regarding Method of Collection and Disposal.

(a) The removal of wearing apparel, bedding or other refuse from homes, hospitals or other places where highly infectious or contagious diseases have prevailed, shall be performed at the occupants expense under the supervision and direction of the County Health Officer and such refuse shall neither be placed in refuse containers nor left for regular collection and disposal.

(b) Highly flammable or explosive or radioactive refuse shall not be placed in containers or receptacles for regular collection and disposal, but shall be removed under the supervision of the Fire Protection District at the expense of the owner or possessor of the material.

(c) Hazardous wastes as defined herein, shall neither be placed in refuse containers nor left for regular collection and disposal. Such items shall be removed at the occupant's expense only after arrangements have been made with the City or its agent for such removal.

(d) Garbage or other refuse containing water or other liquids shall be drained before being placed in a container or receptacle. Matter which is subject to decomposition shall be wrapped in paper or other material before being placed in a container or receptacle.

(e) Animal wastes, as herein defined, shall not be placed in containers, or receptacles for regular collection and disposal, but shall be removed at the occupant's expense.

(f) Brush, tree trimmings, cardboard boxes and similar combustible materials placed for collection shall be tied securely in bundles weighing not more than fifty (50) pounds each and not over four (4) feet in length and eighteen (18") inches in diameter.

8.68.150 Placement of Containers for Collection. It shall be the duty of all occupants to set out containers for the collection of garbage, combustible and noncombustible rubbish, and/or other refuse as follows:

(a) Location

Residential occupancies: all refuse containers shall be placed at the curb on the nearest public street fronting the premises occupied by the person depositing the same, there to be collected by the Contractor; provided that the Contractor may designate some other location for the placement of containers when such placement will expedite collection; provided that placement of containers at such alternative location shall not result in a hindrance to vehicle movement nor constitute a visual nuisance.

(b) Restrictions on Time of Placement. It shall be unlawful to place or permit to remain any refuse containers on the curbs, parkways or sidewalks of any public street before 6:00 p.m. on the day prior to collection, or after 6:00 p.m. on the day of collection, after materials have been removed or collected.

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Generally. All occupants shall maintain supervision and surveillance over refuse containers on their premises and shall maintain the same in a sanitary manner. Should containers be placed for collection as required above and not be emptied on the date scheduled by the Contractor, the occupant should immediately notify the contractor, whose duty it shall be to arrange for the collection and disposal of such refuse forthwith.

8.68.155 Storage of Refuse and Recycling Containers. (Ord. No. 2002-1153, 9-24-02)

(a) Residential Occupancies: When not placed at the curb or another Contractor-designated location for collection, all refuse and recycling containers shall be stored, with lids securely closed, in one or more of the following locations:

1. Within a covered carport or enclosed garage; or

2. Within a required side or rear yard setback screened from surrounding view by a solid, view-obscuring fence meeting all applicable requirements of the Zoning Ordinance.

(b) Business Occupancies: When not being serviced by the Contractor, all refuse and recycling containers shall be stored, with lids securely closed, as follows:

1. Bins and Dumpsters: within a gated, masonry enclosure conforming to all applicable requirements of the Zoning Ordinance.

2. Commercial Cans: behind a solid, view-obscuring fence or another Contractor-approved location screened from surrounding view and meeting fire code requirements.

(c) Alternative Storage Arrangements: In the case of a space constraint or physical obstruction which precludes storage of waste receptacles in the manner prescribed by (a) or (b), above, the City Manager or his or her designee may, in consultation with the Contractor and building occupant, approve an alternative arrangement which achieves, to the maximum extent feasible, the goal of this section that waste receptacles be screened from view when not being serviced. Such alternatives may include, but are not limited to, the use of a smaller waste receptacle provided by Contractor, landscape screens and other measures.

8.68.160 Transporting Vehicles to Have Metal-Lined, Water Tight Body. No person shall collect, remove, transport or carry refuse over the public streets of the City except in vehicles having a metallic-lined, watertight body.

8.68.170 Body of Vehicle to be Covered When not in Use. When not actually collecting refuse, the body of the vehicle used to collect such material shall be covered with a tight fitting tarpaulin or other suitable covering to eliminate offensive odors, flies, leakage or loss of refuse.

8.68.180 Unlawful Transportation Through Public Streets. It shall be unlawful for anyone other than the Contractor pursuant to this Article or those persons as specifically permitted herein to carry or transport refuse in any manner or amount within the City or on or through any public street in the City.
8.68.190 Unlawful to Place Infectious or Hazardous Waste in Refuse Containers. It shall be unlawful for any person to place in any refuse container for collection, operable hypodermic needles, drugs, poisons or any infectious waste material, liquid or dry caustics or acids, biohazardous, radioactive, flammable, or explosive materials, insecticides or any other hazardous wastes as defined herein. Such materials may be collected only by the Contractor, their subcontractor or as provided in Sec. 8.68.110 herein, and in the manner specified in Section 8.68.140 herein.

8.68.200 Unsafe or Offensive Accumulation of Refuse Prohibited. It shall be unlawful for any person to permit the accumulation or refuse to become or remain offensive, unsightly, unsafe to the public health or hazardous from fire.

8.68.210 Interference with Refuse Containers Prohibited. No person shall interfere with or disturb any refuse container, or remove the same from where it has been placed for collection by its owner without having a written contract with the City to collect and dispose of refuse.

8.68.211 Scavenging of Recyclable Materials Prohibited. It shall be unlawful for any person, other than the owner thereof, the owner’s agent, the City, the Contractor or such other person or firm as the City may authorize, by permit or contract, to remove or tamper with containers, or the contents of containers, set out for the collection of recyclable materials. (Ord. 89-819, 6-13-89)

8.68.220 Spilling of Refuse Prohibited. No person, including the Contractor, shall place, sweep, spill or permit refuse to fall upon any private grounds or public streets within the City.

8.68.230 No Parking of Loaded Trucks Overnight. No person shall leave trucks or other transport loaded with refuse parked for over a twenty-four hour period on City streets.

8.68.240 Franchise Agreement Between Contractor and City.

(a) Contracts or franchise agreements executed to provide for garbage and refuse disposal shall conform with the terms of this Chapter.

(b) Provisions of this Chapter shall not preempt or negate terms of the franchise agreement for refuse collection and disposal services currently existing between the City and the contractor, unless such provisions of this chapter specifically conflict with terms of said agreement. All terms of the franchise agreement not in specific conflict with this chapter are saved from repeal and are continued in full force and effect.

8.68.250 Authority to Let; Bond Required; Amount of Bond. The City Council shall have the power to let contracts for the removal, transportation and disposal of refuse as provided herein, and may, as a condition of granting said contracts, require a bond from any contractor, the amount of which shall be determined by the City Attorney and set forth in the franchise agreement.

8.68.260 Indemnification to City. Any Contractor shall indemnify the City, its officers and its employees against all claims, demands, actions, suits and proceedings resulting from the actions or operations of the Contractor under terms of the franchise agreement. The Contractor
shall file with the City Clerk, certificates of liability insurance, property damage insurance, workers compensation insurance, or other instrument(s) acceptable to the City Attorney and required by the franchise agreement.

**8.68.270 Basis for Letting.** In letting contracts authorized by this article, the City Council shall not be required to let contracts to the lowest bidder, but shall be free to let such contracts to the person deemed best fitted to comply with the terms of this Chapter and the contract.

**8.68.280 Authority to terminate Contract, Let New Contract.** Should a Contractor fail or refuse to comply with the conditions of this Chapter and of his contract to remove, transport and dispose of refuse after the Contractor has been given written notice of such non-compliance but the City Manager and the Contractor has further been given thirty (30) days to correct such deficiencies, the City Council may, at its option and after a hearing, of which said Contractor shall have ten (10) days written notice, terminate the contract and let the contract to another person.

**8.68.290 Assignment or Transfer of Rights.** No assignment or transfer of any right conferred by contract shall be made in whole or in part by the contractor without the express written consent of the City. Should any assignment or transfer be authorized by the City Council, the assignee shall assume the liability and such other obligations of the contractor as may be related to the service performed.

**8.68.300 Refuse Collection - Spillage and Cleanup.** The Contractor shall exercise all reasonable care and diligence in collecting refuse to prevent spilling, scattering or dropping or refuse, and shall at the time of occurrence, clean up any spillage.

**8.68.310 Refuse Disposal.** The Contractor shall dispose of collected refuse, at Contractor's expense, at a County authorized solid waste facility in a manner satisfactory to the City and in accord with all state and local laws and regulations.

**8.68.320 Collection from Public Parks and Government Buildings.** The contractor shall without charge, collect refuse from City controlled public parks, playgrounds and City government buildings from the receptacles in which the same is confined, on a service frequency and day(s) of collection to be determined by the City Manager.

**8.68.330 Contractor Participation in Special Clean-Up Activities.** The contractor shall participate with the City in any annual clean-up activity upon request of the City Manager as may be necessary to supplement the City's available manpower and equipment resources, and shall otherwise cooperate with the City Manager in resolving special disposal-related problems.

**8.68.340 Compliance With Motor Vehicle Code.** The contractor's trucks shall comply with the regulations as set forth in the California Motor Vehicle Code, all other applicable California codes, and this chapter.

**8.68.350 Compliance With Local and California Laws and Regulations.** The Contractor shall operate in such a manner as to comply with all applicable local and state laws and regulations pertaining to the collection, storage, and transportation of refuse. The Contractor shall also comply with all other ordinances and regulations of the City and applicable laws and regulations of the City and applicable laws and regulations of the County of San Diego and State of California, and shall obtain and keep in force all required permits and business licenses.

*Supplement No. 9 – 1994 Code*
8.68.360  Service Required in Event of Nonpayment. In the event of nonpayment for collection service rendered to any person, the contractor shall continue to provide such service, subject to reimbursement as provided in Section 8.68.410 (e) herein. This section shall not apply to special collection services.

8.68.370  Council to Establish Charges. For the refuse collection services described in this chapter, and for the making available of such services, there shall be charged to each residential unit and place of business, the sums necessary to cover the costs of such services, as such sums may be established from time to time by written resolution of the City Council. Resolutions establishing charges shall be placed on file with the City Clerk's Office.

8.68.380  Basis for Charges. All charges provided for in this article shall be fair, reasonable and consistent with the scope of services rendered by the Contractor, as described and required by this Chapter.

8.68.390  Liability for Payment. The obligation to pay the charges provided in this article shall be upon the legal owner or owners of the residential unit or business so served. Nothing in this section however, shall prevent an arrangement or the continuance of an arrangement under which payments for refuse collection services are made by a tenant or tenants, or any agent, on behalf of the owner; provided, any such arrangement shall not affect the legal owner's obligation for payment of said charges for services rendered.

8.68.400  Direct Payment to Contractor. All charges billed for refuse collection services, shall be paid directly to the Contractor.

8.68.410  Failure to Pay Contractor for Refuse Collection.

(a) An account shall be deemed delinquent if payment for collection services has not been received within fifteen (15) days after the last day of the normal billing period for which service was rendered. Upon determination of delinquency, the Contractor shall give written notice to the delinquent account holder that the bill is now overdue and payable in full and shall attempt to collect payment through all available means, within thirty (30) days of the date of such notice.

(b) Provided adequate arrangements for payment have not been made between the contractor and delinquent account holder within sixty (60) days of the end of the earliest unpaid billing period the Contractor may assign the total unpaid bill amount to the City Manager for collection. The assignment shall provide all pertinent data including the name and address of the legal owner billed, address and parcel number of the property billed, dates of the period of service unpaid, amount due, and certification that the billing procedures pursuant to subsection (a) above, have been fulfilled.

(c) The delinquent bill presented by the contractor to the owner pursuant to (a) above, shall include a written notice warning that nonpayment within 60 days of the end of the earliest unpaid period may result in assignment of the debt to the City for collection, may include collection charges and may result in the recordation of a lien against the property to which service was rendered.

(d) Upon receipt of assignment of the debt, the City Manager shall advise the debtor in writing of the assignment that a minimum fee of 10% of the bill amount is imposed in all collection cases filed with the City, that an additional $25.00 lien fee will be charged in all cases.
where the filing of a lien with the County Auditor is necessitated, and that 30 days notice is given to permit payment of the debt to the City to avoid payment of the lien fee and to avoid a special assessment against said property in the amount of all aforesaid fees and charges.

(e) Originally billed amounts which are collected by the City shall be paid to the Contractor on a quarterly basis. All fees and lien charges collected shall be retained by the City.

8.68.420 Special Assessment Collection.

(a) The City Manager may initiate proceedings to make delinquent refuse collection service fees and collection charges a special assessment against properties for which such debts were assigned to the City for collection.

(b) Once a year, a report of delinquent charges, i.e., charges which remain unpaid 60 or more days after the date upon which they were billed, shall be transmitted to the City Council, which shall fix a time, date and place for hearing the report and any protests or objections thereto.

(c) The City Council shall cause notice of hearing to be mailed to the owner of real property to which service was rendered not less than ten (10) days prior to the date of hearing. At the time fixed for said hearing, the City Council shall hear any objections of the owner liable to be assessed for delinquent accounts. The City Council may make such revisions to the report as it may deem just and if satisfied with the correctness of the report as submitted or revised shall confirm or reject it by resolution. The decision of the City Council on the report and on all protests or objections thereto shall be final and conclusive.

(d) Upon confirmation of the report by the City Council the delinquent charges contained therein shall constitute a special assessment against the property and are a lien on the property for the amount of such delinquent charges. A certified copy of the report as confirmed by resolution of the City Council shall be filed with the County Auditor for the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The lien created attaches upon recordation, in the Office of the County Recorder, of a certified copy of the City Council Resolution confirming the reports. The assessment shall be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and procedure of sale as provided for delinquent, ordinary real property taxes.

(e) There is hereby created in the general fund an account entitled "Property Owners Delinquencies for Refuse Collection Service." This account shall be funded from refuse services franchise fees and shall be credited with such delinquencies as are collected by the County Tax Collector or otherwise collected for release of lien remitted to the City. The City will in turn, debit the account for payment to the contractor of delinquencies collected exclusive of fees and charges imposed by the City. Collection fees and charges imposed by the City shall be cleared to the general revenue account.

8.68.430 Duties of City Manager Regarding Collection and Removal.

(a) The City Manager shall have authority to administer the contract which provides for the collection and removal of refuse and shall approve routes and days for such activities, as proposed by the Contractor in accord with provisions of this chapter.
(b) The City Manager shall have the authority to act on behalf of the City to effect changes in routes and days of collection in cooperation with the Contractor, contingent upon notice to all affected thereby, in a manner deemed most appropriate by the Manager.

8.68.440 City Manager to Settle Controversies. The City Manager is hereby authorized and empowered to negotiate and settle any charge required or made under this chapter or out of contract between the City and any contractor or any other person.

8.68.450 City Manager to Regulate and Approve Vehicles and Methods of Hauling. The type and construction of vehicles transporting or carrying refuse over public streets and the method of hauling refuse in vehicles shall be subject to the regulation and approval of the City Manager.

8.68.460 Making of Rules and Regulations. The City Manager or his or her designee shall have the authority to make other reasonable rules and regulations concerning individual collection, transportation and disposal of refuse over City streets by the refuse contractor and private persons, as shall be found necessary, subject in each instance, to the right of appeal from any order of the City Manager to the City Council whose determination and judgment shall be final.

8.68.470 Notice of Violation. The City Manager or his other designee is hereby authorized and empowered to notify the owner, their authorized representative or the lawful occupant of any premises described herein, of violations of this chapter, and of the corrective steps necessary to conform to this chapter. Notice shall be given in writing and may be made to any person held responsible under this section by certified mail or hand delivery.

ARTICLE III: PENALTY

8.68.480 Violations of Certain Sections Declared An Infraction. Except as provided in Sec. 8.68.490 violations of this chapter shall be unlawful and classified as infractions, punishable in accordance with Section 1.12.010.

8.68.490 Violations of Section 8.68.190 Declared A Misdemeanor. Disposal of infectious or Hazardous wastes, in violation of Sec. 8.68.190 herein, shall be unlawful and classified as a misdemeanor, punishable as provided in Section 1.12.020 of this code.

8.68.500 Adoption of Bail Schedule. A bail schedule for violations of this chapter shall be adopted by the City Council and placed on file with the City Clerk and Clerk of the Court.

ARTICLE IV: MANDATORY IMPLEMENTATION

8.68.510 Mandatory Implementation. The refuse removal contractor shall implement mandatory refuse collection for all residences and business establishments in the City of San Marcos as defined in this chapter within ninety (90) days from the effective date of this ordinance.
8.70.010 - 8.70.030

CHAPTER 8.70

MEDICAL WASTE

SECTIONS:

8.70.010  County Code Adopted by Reference
8.70.020  Penalty
8.70.030  Fee

8.70.010  County Code Adopted by Reference.  Title 6, Division 8, Chapter 12, of the San Diego County Code of Regulatory Ordinances together with any secondary references included therein regarding storage and disposal of medical wastes is hereby adopted by reference.

8.70.020  Penalty.  Notwithstanding any of the provisions of this Code to the contrary any violation of the provisions of Section 8.70.010 of this Chapter or of the provisions adopted by reference thereby shall be a misdemeanor punishable by imprisonment in the county jail for a period of not more than one year, or by fine of not more than $10,000 or by both fine and imprisonment.  In addition, as an independent and non-exclusive remedy, a person who violates the provisions adopted by reference shall be liable for a civil penalty not to exceed $15,000 for each violation.  The civil and criminal provisions of this Section are remedies in addition to any existing remedy authorized by law and are not to be construed as conflicting with or in dereliction with any provisions of this Chapter or other law.  The provisions of this Section are construed to be independent non-exclusive remedies and are not conditioned upon each other.

8.70.030  Fee.  Any person applying for a permit under the provisions of this Chapter shall at the time of making the application for the permit, pay a fee the amount of which shall be determined by the County of San Diego and kept on record by the County Department of Health Services and on file with the City Clerk.  (Ord. No. 89-823, 9-12-89)
CHAPTER 8.72

ACCUMULATION OF JUNK

SECTIONS:

8.72.010 Definitions
8.72.020 Accumulation of Junk - Prohibitions
8.72.030 Accumulation of Junk - Regulations
8.72.040 Junkyards
8.72.050 Disposal of Junk
8.72.060 Firewood
8.72.070 Building Inspector to Enforce
8.72.080 Determinations of Building Inspector
8.72.090 Notice of Violation
8.72.100 Appeal and Stay Notice and Order
8.72.110 Appeal; Notice of Hearing; Hearing; Findings;
     Order of Abatement; Enforcement
8.72.120 Failure to Comply with a Notice of Misdemeanor
8.72.130 Nuisance
8.72.140 Bids for Abatement of Work
8.72.150 Collection of Cost of Abatement of Work

8.72.010 Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section:

(a) Front lot line means the line separating the front of the lot from the street. If a lot is bounded by more than one street then the front lot line is the line most nearly facing the front of the main building on the lot; provided, that if there is no building on the lot front lot line may be designated by the owner of the lot.

(b) Front yard means a yard extending across the full width of a lot and extending from the front lot line to the front foundation line, and its prolongations, of the main building as shown in Figure 1 following this subsection. If the lot is vacant, the front yard depth shall be fifty (50) feet.

Figure 1
(c) Junk for the purposes of this chapter means any combustible or noncombustible, nonputrescible or putrescible waste, including but not limited to trash; refuse; paper; glass; cans; bottles; rags; fabrics; bedding; ashes; trimmings from lawns, shrubbery or trees; household refuse (including garbage); lumber, metal, plumbing fixtures, bricks, building stones, plaster, wire or like materials from the demolition, alteration or construction or buildings or structures; tires or inner tubes; auto, aircraft or boat parts; plastic or metal parts or scraps; damaged or defective toys, recreational equipment or household appliances or furnishings, whether or not repairable.

(d) Lot means a lot or parcel two (2) acres or less in size.

(e) Lot used for residential purposes means a lot on which one or more dwellings are located.

(f) Rear lot line means the lot boundary line or lines most distant from and generally opposite the front lot line.

(g) Side lot line means any lot boundary line that is not a front or real lot line.

8.72.020 Accumulation of Junk - Prohibitions. No person shall accumulate junk:

(a) On any lot that is not in his ownership or possession, unless he has permission from the owner of such lot to do so.

(b) On any lot used for residential purposes, unless done in strict compliance with section 8.72.030.

(c) On any parcel of land adjacent to a lot used for residential purposes, except:

   (1) As a part of and incident to a lawfully established and conducted commercial or industrial enterprise; or

   (2) When done in strict compliance with section 8.72.030

8.72.030 Accumulation of junk - Regulations.

(a) No person shall accumulate junk, or permit junk to be accumulated, on a lot used for residential purposes or on a lot adjacent to a lot used for residential purposes:

   (1) Within four (4) feet of any building or structure, except that junk may be accumulated within two (2) feet of a fence or wall which constructed of non-flammable material and is not used for structural support of a building;

   (2) Within fifteen (15) feet of any rear lot line;

   (3) Within ten (10) feet of any side lot line; or

   (4) In the front yard.

(b) No person shall accumulate junk, or permit junk to be accumulated on a lot that is used for residential purposes or on a vacant lot that is adjacent to a lot used for residential purposes, except in accordance with all of the following regulations:
(1) The accumulation shall be stored either in sturdy, vermin proof, closed containers or on platforms elevated not less than eighteen (18) inches above the ground;

(2) The accumulation shall not be maintained so as to be conducive to the breeding, shelter or harborage of insects, rodents, vermin or pests;

(3) The accumulation shall not be strewn about or maintained in any unsightly condition;

8.72.040 Junkyards. This chapter does not prohibit the accumulation of junk in the course of the lawful operation of a junkyard, motor vehicle storage or wrecking yard, or salvage yard conducted in the manner authorized by Chapter 19 herein, the zoning ordinance and/or this code. Nothing contained in this chapter shall be deemed to authorize the establishment or maintenance of a junkyard, motor vehicle storage or wrecking yard, or salvage yard.

8.72.050 Disposal of junk. This chapter does not prohibit the accumulation of junk in accordance with the conditions and requirements of, and for the purposes authorized by, sections 68.530 and 68.550 of the County Code or for a reasonable time prior to disposal thereof in a public dump or other place where disposal lawfully may be made.

8.72.060 Firewood. This chapter does not prohibit the accumulation of used lumber, lumber scraps and/or materials fabricated out of wood for use as firewood or fuel; however, any such accumulation shall be neatly stacked and shall be maintained in accordance with the provisions of subsection (1) and (4) of subparagraph (a), and of subsection (2), (3) and (4) of subparagraph (b) of section 8.72.030; and provided further, that the components of such an accumulation shall be sawed or otherwise reduced in size so that no piece thereof exceeds five (5) feet in length or two (2) feet in width.

8.72.070 Building Inspector to enforce. The Building Inspector shall enforce this chapter.

8.72.080 Determinations of Building Inspector. The Building Inspector shall determine whether or not a person is accumulating junk in such a manner as to constitute a violation of this chapter. In making such determination, the Building Inspector may consider the nature, size and extent of the accumulation has been permitted to remain; whether, and to what extent, the accumulation is detrimental to the public health, safety and welfare; and whether any unusual conditions exist that would render the disposal of such junk in a lawful manner a hardship.

8.72.090 Notice of violation. If the Building Inspector determines that an accumulation of junk exists in violation of this chapter, he shall give a written notice and order to the owner or to the occupant of the premises or, if such person cannot be located on the premises, to any person over the age of eighteen (18) years who is apparently in possession of the premises or, if there is no such person, then by mailing the written notice and order, postage prepaid, return receipt requested, to the person shown to be the owner by the latest equalized assessment roll or any more recent record in the office of the county assessor. Such written notice and order shall be substantially in the following form:
"You are hereby informed that the Building Inspector of the City of San Marcos has determined that there is an unlawful accumulation of junk, contrary to Section 8.72.030(a) of the San Marcos City Code, on the following premises:

----- (street address or other designation of premises)-----

"You are hereby ordered to remove said accumulation of junk from said premises within ten days from the date of this Notice and Order or, alternatively, and within the same period of time, to bring said accumulation of junk into conformity with the requirements of said Section of the San Marcos City Code. You are hereby advised of your rights to appeal from this Notice and Order pursuant to Sections 8.72.100 and 8.72.110 of said San Marcos City Code. Failure to comply with this Notice and Order constitutes a violation of Section 8.72.120 of said San Marcos City Code."

8.72.100 Appeal and stay notice and order. Any person served with a notice and order made pursuant to section 8.72.090 may appeal to the City Council as provided in section 8.72.110 and such appeal shall stay the effect of the notice and order until the City Council hears the appeal and issues its order modifying, vacating or affirming the notice and order. The appeal and stay of the notice and order shall not relieve any person from liability or responsibility, criminal or civil action, for maintaining an unlawful accumulation of junk and shall not stay or prevent the filing or prosecution of a criminal or civil action for the maintenance of such unlawful accumulation of junk.

8.72.110 Appeal: Notice of Hearing; Hearing; Findings; Order of Abatement; Enforcement. Within a period of three (3) days, exclusive of Saturdays, Sundays and holidays, following the service of a written notice and order by the Building Inspector pursuant to section 8.72.090, the person ordered to remove the accumulation of junk may file with the Clerk of the City of San Marcos a written appeal from the notice and order. The appeal shall contain the appellant's name, mailing address and a general statement of exceptions taken by the appellant to the notice and order. Upon receipt of an appeal, the Clerk of the City of San Marcos shall immediately notify the Building Inspector, and shall set such appeal for hearing at the next regular meeting of the City Council at which, in the opinion of the Clerk, there will be sufficient time available to conduct such hearing. The Clerk shall forthwith give written notice of the time, date and place of hearing to the Building Inspector and shall send a copy of such notice through the United States mail to the appellant at the address specified in the appeal. At the time, date and place indicated, the Building Inspector shall produce evidence of the existence of the unlawful accumulation of junk which is the subject of his notice and order. The appellant may likewise produce relevant evidence.

The City Council shall consider all relevant evidence produced at the hearing and, if it finds by the preponderance of the evidence that there is in fact an unlawful accumulation of junk, it may declare it to be a public nuisance. The determination that such accumulation of junk constitutes a public nuisance shall be supported by such findings as are necessary and proper, which findings need not be reduced to writing unless the appellant so requests at the hearing. Upon determining that a public nuisance exists, the City Council may order the abatement thereof upon such terms and conditions as it deems reasonable and just under the circumstances, or it may modify or affirm the notice and order made by the Building Inspector. If the City Council does not find that a public nuisance exists, it shall vacate the order of the Building Inspector, in which event the City Council need not make findings. In the event the City Council determines that a public nuisance exists and orders the abatement thereof, the Building Inspector shall serve the order of abatement in the manner described in section 8.72.090, shall enforce the order, may supervise the abatement of the nuisance if he deems it necessary to do so, and may make such
further orders in furtherance of said order of abatement as he deems necessary under the circumstances.

8.72.120 Failure to Comply With a Notice of Misdemeanor. Failure to comply with the notice and order given by the building inspector pursuant to section 8.72.090, or with the order of abatement given by the City Council pursuant to section 8.72.110, constitutes a misdemeanor and is punishable in accordance with section 1.12.020. (Ord. No. 99-1053, 2/1/99)

8.72.130 Nuisance. The accumulation of junk contrary to this chapter is hereby declared to be a public nuisance. Upon direction of the City Council, the City Attorney shall bring an appropriate action to abate the public nuisance in a court of competent jurisdiction.

8.72.140 Bids for abatement work. The City Council of the City of San Marcos may as an alternate to proceeding under section 8.72.130 in the event of a failure to comply with the Order of Abatement within thirty (30) days proceed to seek bids for the purpose of removing the junk.

If the City Council elects to proceed hereunder the city shall hold a public hearing within sixty (60) days of the date of confirmation of the order of abatement in order to award a contract for the removal of said junk. The owner of the property shall be given notices of the hearing.

After the public hearing has been conducted, the City Council shall either award the contract for removal or accept the property owner's alternative proposal, if any. If the City Council accepts the owner's offer, then within thirty (30) days after the public hearing the Building Inspector shall inspect the property to determine that compliance has taken place. If not, the City Manager shall award the contract for removal to the lowest qualified bidder.

8.72.150 Collection of cost of abatement work. The removal of the junk shall be inspected by the City Building Inspector. Upon completion of the work removal, the City Council shall cause a lien to be filed against the real property for costs of removal. Said lien shall be filed with the County Tax Collector for collection as a part of the billing for the next annual property taxes installment.
CHAPTER 8.80

SMOKING IN CERTAIN PUBLIC PLACES

SECTIONS:

8.80.010 Purpose of Chapter
8.80.020 Definitions
8.80.030 Prohibitions
8.80.040 Designation of Smoking Areas
8.80.050 Optional Prohibition
8.80.060 Posting of Signs
8.80.070 Exceptions to Article
8.80.080 Enforcement and Appeal

8.80.010 Purpose of Chapter. Because smoking of tobacco or any other weed or plant, or inhaling e-liquids, smoke juices or cartomizers, is a positive danger to health and cause of material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined places, and in order to serve public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco, or any other weed or plant, or inhaling e-liquids, smoke juices or cartomizers, in public places of employment, except in designated smoking areas. (Ord No. 2016-1426, 6/28/2016)

8.80.020 Definitions.

(a) Smoke or smoking as defined in this chapter shall mean the gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory; and shall include the carrying of a lighted pipe, or lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar or cigarette of any kind or the carrying or use of an activated or functioning electronic and/or battery-operated device, the use of which may resemble smoking (commonly known as “vaping”) that can be used to deliver an inhaled dose of nicotine or other substances by delivering a vaporized solution. Electronic smoking device includes any such device, whether manufactured, distributed marketed or sold as an electronic cigarette, an e-cigarette, an electronic cigar, electronic cigarillo, an electronic pipe, an electronic hookah, or any product name or descriptor, including any component, part or accessory of such a device, whether or not sold separately. Electronic smoking device does not include any product specifically approved by the United States Food and Drug Administration for therapeutic purposes or for use in the mitigation, treatment or prevention of disease, where such product is marketed and sold solely for such an approved purpose. (Ord No. 2016-1426, 6/28/2016)

(b) Public place shall mean any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting rooms, reception areas, educational facilities and public transportation facilities. Public place shall also include all City buildings, facilities, grounds, trails, and/or parks and recreational areas, whether or not enclosed. A private residence is not a public place. (Ord No. 2016-1426, 6/28/2016)

(c) Place of employment shall mean any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not
limited to work areas, employee lounges, conference rooms, and employee cafeterias. A private residence is not a place of employment.  (Ord No. 2016-1426, 6/28/2016)

8.80.030 Prohibitions. No person shall smoke in a public place or place of employment, except in designated areas.

8.80.040 Designation of Smoking Areas. Smoking areas may be designated in public places and places of employment by proprietors or other persons in charge except in retail stores, retail service establishments, food markets, public conveyances, theaters, auditoriums, public assembly rooms, meeting rooms, rest rooms, elevators, pharmacies, libraries, museums or galleries which are open to the public or any other place where smoking is prohibited by law, ordinance or regulation. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas. It shall be the responsibility of employers to provide smoke-free areas for nonsmokers to the maximum extent possible within existing facilities.  (Ord No. 2016-1426, 6/28/2016)

8.80.050 Optional prohibition. All managers and owners of any establishments serving or doing business with the public may at their discretion post no-smoking signs within various areas of their businesses and utilize the full right of the provisions of this chapter.  (Ord No. 2016-1426, 6/28/2016)

8.80.060 Posting of signs. Signs which designate smoking or no-smoking areas established by this chapter shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place so covered in this chapter. No-smoking signs shall be specifically placed in retail food production and marketing establishments, including grocery stores and supermarkets open to the public, so they are clearly visible to persons upon entering the store, clearly visible to persons in checkout lines, and clearly visible to persons at meat and produce counters. The manner of such posting including the wording, size, color, design, and place of posting, whether on the walls, doors, tables, counters, stands or elsewhere shall be at the discretion of the owner, operator, manager, or other person having control of such room, building or other place so long as clarity, sufficiency, and conspicuousness are apparent in communicating the intent of this chapter.

8.80.070 Exceptions to Chapter. Exceptions to the requirements of this chapter shall be as follows:

(a) Certain areas designated for smoking by the business establishment in compliance with state and federal law, including individual private offices, hotel and motel meeting and assembly rooms rented to guests, areas and rooms while in use for private social functions, bars, and stores that deal exclusively in tobacco products and accessories.  (Ord No. 2016-1426, 6/28/2016)

(b) Any owner or manager of a business or other establishment subject to this chapter may apply to the City Manager for an exemption or modification of the provisions of this chapter due to unique or unusual circumstances or conditions.  (Ord No. 2016-1426, 6/28/2016)

8.80.080 Enforcement and Appeal.

(a) The City Manager shall be responsible for compliance with this chapter when facilities which are owned, operated or leased by the City of San Marcos are involved.

(b) The owner, operator, or manager of any facility, business, or agency within the purview of this chapter shall comply herewith. Such owner, operator, or manager shall post or cause to be
posted all no-smoking signs required by this chapter. Such owner, operator, or manager shall not allow service to any person who violates this chapter by smoking in a posted no-smoking area.

(c) It shall be the responsibility of employers to disseminate information concerning the provisions in this chapter to employees.

(d) The provisions of this chapter shall be effective May 1, 1983, excepting that those provisions pertaining to places of employment shall apply only to places of employment of the City of San Marcos, until July 1, 1984, at which time this chapter becomes applicable to all places of employment as well.
CHAPTER 8.76
RECOVERY OF EMERGENCY RESPONSE EXPENSES

SECTIONS:

8.76.010 Recovery of Emergency Response Expenses.

8.76.010 Recovery of Emergency Response Expenses.

(a) Those expenses of an emergency response action necessary to protect the public health or safety, or to prevent a substantial danger to domestic livestock, wildlife or the environment, incurred by an officer or employee of the City to confine, prevent or mitigate the release, escape or burning of any hazardous substance, hazardous waste, or flammable material are a charge against any person whose negligence causes the emergency conditions. The charge created against the person by this subdivision (a) is also a charge against the person's employer, if negligence causing the emergency conditions occurs in the course of the person's employment.

(b) Those expenses of an emergency response action necessary to protect the public health or safety or to prevent a substantial danger to domestic livestock, wildlife or the environment incurred by an officer or employee of the City to confine, prevent or mitigate the release or escape of any hazardous substance, hazardous waste, or flammable material are a charge against any person who causes such emergency conditions by violating or being in violation of any law relating to the generation, transportation, treatment, storage, recycling, disposal or handling of such hazardous substance, hazardous waste or flammable material, including, but not limited to the provisions of Chapters 6.5 to 6.7 of Division 20 of the California Health and Safety Code, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

(c) Persons who may be liable pursuant to subdivisions (a) and (b) of this section shall include, but not be limited to, present or prior owners, lessees, or operators of the property where the hazardous substance, hazardous waste, or flammable material is located and producers, transporters or disposers of such hazardous substance, hazardous waste of flammable material.

(d) Expenses reimbursable to the City pursuant to this section are a debt of the person or persons liable therefor, and shall be collectible in the same manner as in the case of an obligation under contract, express or implied.

(e) The meaning of all terms in this section, not otherwise defined, shall be as set forth in the California Health and Safety Code.

(f) "Hazardous substance" means any hazardous substance listed in section 25316 of the California Health and Safety Code or in section 6382 of the California Labor Code.

(g) "Hazardous waste" means any waste, or combination of wastes that would constitute a hazardous waste pursuant to section 25117 of the California Health and Safety Code, including an "extremely hazardous waste" as defined in section 25115 of the Health and Safety Code.
(h)  "Flammable material" means any material which constitutes a flammable material pursuant to the currently adopted Uniform Fire Code, which has been adopted by reference, with certain exceptions, by the City or the San Marcos Fire Protection District.

(i) Expenses reimbursable to the City pursuant to this section include, but are not limited to, personnel costs, costs of equipment usage, the cost of supplies, contract service costs, administrative and overhead costs, and the cost of legal services incurred in the emergency response action. Actions which may be taken in an emergency response action include, but are not limited to, prevention, suppression, extinguishment, abatement, removal, disposal, cleanup, mitigation, transportation, temporary storage, and all activities reasonably related thereto, including testing, sampling and staff work necessary to assess, evaluate and characterize the emergency condition and to formulate appropriate plans for corrective actions.

(j) Whenever emergency response expenses have been incurred for the purposes specified in subdivision (a) or (b) of this section, the county officer or officers incurring said expenses shall calculate the amount of expenses incurred, identify the person or persons liable for reimbursement, and promptly send out an invoice of all appropriate charges to all responsible parties. If said charges are not paid within thirty (30) days from the date of the invoice, said matter may be referred to the City Attorney, who shall be authorized to take all appropriate action, including bringing suit, for collection of the charges.

(k) In addition to its rights to cost recovery under this section, the City shall retain the alternative right to recover its costs through the City's adopted nuisance abatement procedures.

(l) The City may authorize the Unified San Diego County Emergency Services Organization or other designated body to recover costs incurred under this ordinance for and on behalf of the City.
CHAPTER 8.84

RENTAL OF SUBSTANDARD HOUSING

SECTIONS:

8.84.010 Prohibition

**8.84.010 Prohibition.** No person as owner, manager, or lessor shall provide, rent or lease, or allow to be used, rented or leased to another, for the purpose of human habitation, any "substandard building" as that term is defined in Health and Safety Code Section 17920.3. Any person violating the provisions of this chapter shall be guilty of a misdemeanor for each day such violation continues, and is punishable in accordance with the provisions of section 1.12.020. (Ord. No. 99-1053, 2/1/99)
CHAPTER 8.88
ALCOHOLIC BEVERAGE WARNING SIGNS

SECTIONS:

8.88.010 Purpose
8.88.020 Duty to Post Signs or Notices
8.88.030 Placement of Signs
8.88.040 Language
8.88.050 Department of Health Services Representative
8.88.060 Enforcement
8.88.070 Penalty

8.88.010 Purpose. The Surgeon General of the United States has advised women who are pregnant, or considering pregnancy, not to drink alcoholic beverages. Recent research indicates that alcohol consumption during pregnancy, especially in the early months, can harm the fetus, and result in birth defects including mental retardation, facial abnormalities and other defects involving heart and bone structure. In order to serve the public health, safety and welfare, the purpose of this chapter is to educate the public by requiring warning signs to be placed at all locations where alcoholic beverages are sold to the public.

8.88.020 Duty to Post Signs or Notices. Any person or entity who owns, operates, manages, leases or rents premises offering wine, beer, or other alcoholic beverages for sale, or dispensing for consideration to the public, shall cause a sign or notice to be permanently posted or displayed on the premises as provided in this chapter. The sign or notice shall read as follows: "PREGNANCY AND ALCOHOL DO NOT MIX - DRINKING ALCOHOLIC BEVERAGES, INCLUDING WINE AND BEER, DURING PREGNANCY CAN CAUSE BIRTH DEFECTS". Except as specified in Sec. 13-117, or in rules and regulations adopted by the Department of Health Services, a sign or notice as required herein shall not be smaller than 8 1/2 inches wide by 5 1/2 inches long, nor shall any letter thereon be less than 3/8 inch in height.

8.88.030 Placement of Signs. A sign or notice required by Sec. 8.80.020 shall be placed as follows:

(a) Where the sale or dispensing of wine, beer, or other alcoholic beverages to the public is primarily intended for consumption off the premises, at least one sign shall be so placed as to assure that it is conspicuously displayed so as to be readable at all points of purchase.

(b) Where the sale of wine, beer, or other alcoholic beverages to the public is primarily intended for consumption on the premises, at least one sign shall be placed to assure that it is conspicuously displayed so as to be readable in each public rest room.

8.88.040 Language. In the event a substantial number of the public patronizing a premises offering for sale or dispensing wine, beer, or other alcoholic beverages uses a language other than English as a primary language, an additional sign or notice as is required by Sec. 8.80.020 above shall be worded in the primary language or languages involved.
8.88.050 Department of Health Services Representatives.

(a) The Deputy Director of Environmental Health Services shall be responsible for the enforcement of compliance with this chapter. The City of San Marcos shall have the authority to adopt reasonable rules and regulations for the implementation of this chapter, including rules and regulations for alternative signs and placement of required signs.

(b) The San Diego County Department of Health services shall make warning signs available to vendors of alcoholic beverages. Persons or entities may, however, at their own expense, prepare and post signs meeting the requirements of this chapter. In no event shall the prescribed language of the warning sign be altered.

8.88.060 Enforcement. The County of San Diego Department of Health Services, Division of Environmental Health is authorized and empowered to enforce the provisions of this chapter and to inspect such locations as are regulated in this chapter and for the purpose of determining compliance with this chapter.

8.88.070 Penalty. Any person violating any provisions or failing to comply with any requirements of this chapter shall be guilty of an infraction and shall be punishable in accordance with the provisions of Section 1.12.010. (Ord. No. 99-1053, 2/1/99)
CHAPTER 8.92
AIDS DISCRIMINATION

SECTIONS:

8.92.010 Public Policy
8.92.020 Definitions
8.92.030 Housing Accommodations and Housing Services
8.92.040 Business Establishments
8.92.050 Testing
8.92.060 City Facilities and Services
8.92.070 Employment
8.92.080 Advertising
8.92.090 Exceptions
8.92.100 Liability and Damages
8.92.110 Enforcement
8.92.120 Purpose
8.92.130 Severability

8.92.010 Public Policy. It is hereby declared as the public policy of the City of San Marcos, that it is necessary to protect and safeguard the rights and opportunities of persons with AIDS, ARC or ARS in respect to discrimination in housing, business establishments, testing and city facilities and services.

8.92.020 Definitions.

(a) "AIDS" means Acquired Immune Deficiency Syndrome, a disease complex which occurs when an important part of the human immune system is destroyed by the action of a human immune deficiency virus known as HIV and previously referred to as HTLV-III or LAV and as it may be further defined by the United States Public Health Services Center for Disease Control. AIDS is manifested by infections, cancers or neurological diseases.

(b) "ARC" means aids-related complex. ARC occurs when the human immune system is weakened by the AIDS virus, and such conditions as enlarged lymph nodes, fever, weight loss, malaise, and chronic diarrhea result. ARC may or may not develop into AIDS.

(c) "ARS" means AIDS-related status. Such status includes being infected with the virus that causes AIDS.

(d) "Business establishment" includes any entity, however organized, which furnishes goods or services, including educational services, or accommodations to the general public; including any entity which has a membership requirement if its membership requirement consists only of the payment of a membership fee and a substantial number of the residents within the City of San Marcos could qualify.

(e) "Employee" includes any person employed by an employer.

(f) "Employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly.
8.92.020 - 8.92.030

(g) "Employment Agency" means any person regularly undertaking compensation to procure employees for an employer, or to procure for employees, opportunities to work for an employer and includes an agent of such a person.

(h) "Housing Accommodation" includes any improved or unimproved real property, or portion thereof, which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons.

(i) "Housing Services" shall mean services otherwise provided by the owner of any housing accommodation to persons renting or leasing such housing accommodation, including, but not limited to, utilities such as light, heat, water and telephone; ordinary repairs or replacement, and maintenance, including painting; elevator services, laundry facilities and privileges, the use of common recreational facilities, janitorial services, resident manager, refuse removal, furnishings, food service, parking and any other benefits, privileges or facilities provided.

(j) "Labor Organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(k) "Owner" includes the lessee, sublessee, assignee, managing agent, real estate broker or salesman, or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations.

(l) "Person" includes one or more individuals, partnerships, associations, corporations, labor organizations, legal representatives, trustees, trustees in bankruptcy, and receivers or other fiduciaries.

8.92.030 Housing Accommodations and Housing Services.

(a) It shall be unlawful for any owner of any housing accommodation or housing service to discriminate against any person because such person has AIDS, ARC or ARS.

(b) Nothing in this Section shall:

(1) Apply to any housing accommodation in which the owner or any member of his or her family occupies the same housing accommodation in common with the prospective tenant. This exception shall not apply where the owner occupies a separate apartment, condominium or other housing unit in a multiple-unit complex.

(2) Permit or require the rental or occupancy of any housing accommodation otherwise prohibited by law.

(3) Otherwise interfere with any just cause for an owner to evict a person from any housing accommodation or permit the delay of any unlawful detainer action.

(4) Require the renting of any housing accommodation reserved for the housing of students to non-student persons with AIDS, ARC or ARS.
8.92.040 Business Establishment. It shall be unlawful for any person to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment on the grounds that such person has AIDS, ARC or ARS.

8.92.050 Testing.

(a) It shall be unlawful for any person to require another person to take any test or undergo any medical procedure designed to determine that a person has AIDS or ARC or carries the AIDS virus.

(b) Nothing in this Section shall:

1) Prohibit any testing or medical procedure authorized by the laws of the United States, the State of California, the county of San Diego, or the City of San Marcos, or any testing or medical procedure required by the County Department of Health Services to protect the public health;

2) Apply to an employer who can show that the absence of AIDS, ARC, or the AIDS virus is a bona fide occupational qualification.

8.92.060 City Facilities and Services.

(a) It shall be unlawful to deny any person the full and equal enjoyment of, or to impose less advantageous terms, or restrict the availability of, the use of any City facility or participation in any city funded or supported service or program on the grounds that such person has AIDS, ARC or ARS.

(b) Nothing in this Section shall:

1) Apply to any facility, service or program which does not receive any assistance from the County and which is not open to or provided to the public generally; or

2) Restrict services or programs specifically designated for persons with AIDS, ARC or ARS.

8.92.070 Employment.

(a) It shall be unlawful:

1) For an employer to:

a) Fail or refuse to hire or to discharge any person with respect to his compensation, terms, conditions, or privileges of employment, on the basis such person has AIDS, ARC or ARS; or

b) Limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect his status as an employee, on the basis such person has AIDS, ARC or ARS.
(2) For an Employment Agency to:

a) Fail or refuse or refer for employment, or otherwise to discriminate against, any person, or to classify or refer for employment, any person on the basis such person has AIDS, ARC or ARS.

(3) For a Labor Organization to:

a) Exclude or to expel from its membership or otherwise to discriminate against, any person on the basis such person has AIDS, ARC or ARS;

b) Limit, segregate, or classify its membership or applicants for membership or to classify or fail or refuse to refer for employment any person, in any way which would deprive or tend to deprive any person of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, on the basis such person has AIDS, ARC or ARS; or

c) Cause, or attempt to cause, an employer to discriminate against any person in violation of this section.

(4) For any employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any person on the basis of AIDS, ARC or ARS in admission to, or employment in, any program established to provide apprenticeship or other training.

(b) Notwithstanding any other provision of this Chapter, it shall not be unlawful:

(1) For an employer to hire and employ employees, for an employment agency to classify, or to refer for employment any person, for a labor organization to classify its membership or to classify or refer for employment any person, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any person in any such program, on the basis such person has AIDS, ARC or ARS in those certain instances where lack of AIDS, ARC or ARS is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

(2) For an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate against a person on the basis such person has AIDS, ARC or ARS.
(3) For an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results of such test is not designed, intended or used to discriminate against a person on the basis such person has AIDS, ARC or ARS.

8.92.080 Advertising. It shall be unlawful to make, print, publish, advertise or disseminate in any way, or cause to be made, printed, published, advertised or disseminated in any way, any notice, statement, sign, advertisement, application or contract which indicates an intent to engage in any practice made unlawful by this Chapter.

8.92.090 Exceptions.

(a) Nothing in this Chapter shall be construed to prohibit any act specifically authorized by the laws of the United States, the State of California or the City of San Marcos or any act required by the County Department of Health Services to protect the public health.

(b) Nothing in this Chapter shall prohibit any act which is necessary to protect the health or safety of the general public. If a party to any action brought under this Chapter asserts that an otherwise discriminatory practice is justified as necessary to protect the health or safety of the general public, that party shall have the burden of proving:

(1) That the discrimination is in fact a necessary result of a necessary course of conduct pursued to protect the health or safety of the general public; and

(2) That there exists no less discriminatory means of satisfying the necessary protection of the health or safety of the general public.

8.92.100 Liability and Damages. Any person who violates any of the provisions of this Chapter, or who aids in the violation of any provisions of this Chapter, is liable for each and every such offense for civil damages up to a maximum of three times the amount of actual damages, for punitive damages as may be determined by a jury or a court sitting without a jury, and for costs, including reasonable attorney's fees, as may be determined by the court.

8.92.110 Enforcement.

(a) Any aggrieved person may enforce the provision of this Chapter by means of a civil action.

(b) Any person who commits, or proposes to commit, an act in violation of this Chapter may be enjoined therefrom by a court of competent jurisdiction.

(c) An action for injunction under subdivision B, may be brought by an aggrieved person or entity which will fairly and adequately represent the interests of the aggrieved person.

(d) Nothing in this Chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

(e) An action arising under this Chapter shall not be rendered moot because of the death or physical or mental incapacity of the person who was the subject of the claimed discrimination.
(f) Notwithstanding any provision of law, no criminal penalties shall attach for any violation of the provisions of this Chapter.

8.92.120 Purpose. This Chapter has been enacted at the request of the County of San Diego in order to ensure similar protection within the City of San Marcos as are currently provided by an ordinance adopted by the Board of Supervisors of the County of San Diego. The basis for adoption of this ordinance is contained in Section 32.1201 of the San Diego County Code of Regulatory Ordinances as adopted by County Ordinance 7435 (New Series).

8.92.130 Severability. If any part or provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the remainder of the Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.  (Ord. No. 88-785, 5-24-88)
CHAPTER 8.95
TATTOO PARLORS/BODY ARTS FACILITIES

SECTIONS:

8.95.010 Purpose
8.95.020 Definitions
8.95.030 Adoption of County Code by Reference
8.95.040 Issuing Authority
8.95.050 Regulations
8.95.060 Violation - Penalty

8.95.010 – Purpose. The purpose of Chapter 8.95 is to provide for the regulation of tattoo parlors/body arts facilities operating in the City by adopting by reference the San Diego County Code of Regulatory Ordinances which establishes sanitary standards to prevent communicable diseases that may be spread through improper tattooing/body art techniques.

8.95.020 – Definitions. As used in this chapter, the following words and phrases have the meanings set forth below:

(a) “Tattooing/Body Art” means any method of placing designs, letters, scrolls, figures, symbols and/or other marks upon or under the skin with ink or colors by the aid of needles or instruments.

(b) “Tattoo Artist/Body Art Technician” means a person who engages in tattooing, body art or permanent cosmetics using tattooing/body art techniques.

(c) “Tattoo Parlor/Body Art Facility” means any permanent premises where a tattoo artist/body arts technician engages in tattooing, body art or permanent cosmetics for a fee or other consideration.

8.95.030 – Adoption of County Code by Reference. The City adopts by reference the San Diego County Code of Regulatory Ordinances, consisting of Title 6, Division 6, Chapter 3, together with such secondary references that may be included in those portions, with the exception of Article 3 of Chapter 3 (Mobile Body Arts Vehicles), to prescribe regulations on tattoo parlors/body arts facilities, artists and technicians for the purpose of protecting the health, safety and welfare of its citizens and the community. A copy of the County Code of Regulatory Ordinances is filed in the Office of the City Clerk and is incorporated herein as though fully set forth in Chapter 8.95.

8.95.040 – Issuing Authority. The San Diego County Health Officer, together with the San Diego County Department of Health Services, is designated as the Health Officer for the City and has the authority to enforce and observe all California statutory requirements and those portions of the County Code of Regulatory Ordinances relating to public health and sanitation of tattoo parlors/body arts facilities operating within the City.

8.95.050 – Regulations. Any person who conducts a business or activity described in this Chapter must first obtain a valid health permit from the County of San Diego Department of Health Services. A copy of the health permit must be provided to the City prior to applying for or obtaining any license, permit and/or approval issued by the City and required under this Code to operate a tattoo parlor/body arts facility within the City.
8.95.060 – Violations – Penalty. Any violation of Chapter 8.95, or failure to comply with any requirement thereof, shall constitute an infraction under Section 1.12.010 of this Code. (Ord. No. 2011-1354, 10-11-2011)
9.04.010 - 9.04.020

TITLE 9

PARKS AND RECREATION

CHAPTERS:

9.04  General
9.08  Community Services Commission
9.12  San Marcos Youth Commission

CHAPTER 9.04

GENERAL

SECTIONS:

9.04.010  Purpose.
The purpose of this Chapter is to govern the conduct of members of the public by regulating the use of San Marcos municipal parks and trails so as to ensure the safety, health, enjoyment and welfare of all persons, and to preserve, protect and maintain public property and recreation facilities in all municipal parks.

9.04.020  Definitions.
The following words shall have the meaning indicated when used in these regulations:

(a)  “Alcoholic Beverages” includes alcohol, spirits, liquor, wine, beer, and every liquid containing more than trace amounts of alcohol, which is fit for beverage purposes either alone or diluted, mixed, or combined with other substances or as defined by California law. See Cal. Health & Safety Code §109.

(b)  “Area” or “areas” means a specified place within a park.

(c)  “Commercial Activity” means any activity in which there is an exchange of goods or services for money or something else of value in consideration therefore.

(d)  “Controlled Substance” means any drug substance or narcotics or drugs listed and defined in the California Health and Safety Code. See Cal. Health & Safety Code §§ 11053 et seq.
(e) “Director” means the Director of Community Services, his deputy, or other person authorized to act in the Director’s absence.

(f) “Litter” means garbage, refuse, paper, rubbish, debris, trash and all other waste material whether natural or artificial.

(g) “Motorized Vehicle” means any motorized equipment, such as an automobile, truck, motorcycle, ATV, moped, segway, motorized scooter, go-cart, or any other similar device.

(h) “Non-motorized Vehicle” means any non-motorized vehicle which is driven by means of pedaling or pushing without a motor. Such vehicles include, but are not limited to street bicycles, mountain bicycles, recumbent bicycles, tricycles, strollers, skateboards, roller skates, and scooters.

(i) “Park” includes those areas designated as City parks or municipal parks, trails, recreation areas, reserves, and every facility owned, managed, or controlled by the City and under the jurisdiction of the Director of Community Services. “Park” does not include recreation facilities or tot lots owned and maintained by private homeowners associations.

(j) “Park Property” includes real property, buildings or any other improvements, signs, equipment or facilities owned by City and located in any City park, municipal park, recreation area, reserve, or other facility owned, managed, or controlled by the City and under the jurisdiction of the Director of Community Services.

(k) “Person” means any individual, group, firm or corporation, societies or any gathering whatsoever.

(l) “Pet” means any animal that is domesticated and kept as a companion.

(m) “Shall” is mandatory and “may” is permissive.

(n) “Smoke” or “Smoking” means the carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, or any other combustible substance. Smoking includes emitting or exhaling the fumes of any pipe, cigar, cigarette, or any other lighted smoking equipment used for burning any tobacco product, weed, plant, or combustible substance.

(o) “Weapon” includes, but is not limited to, any firearm, rifle, pistol, revolver, paintball gun, or any weapon designed or intended to propel a shot, bullet, or other missile of any kind; or any device capable of discharging a projectile by air, spirit, gas or explosive; or any explosive substance or harmful solid, liquid and gaseous substance; or any spear, arrow, bow and arrow, slingshot, crossbow, spear or spear gun; or any dirk, Bowie knife, switchblade knife, ballistic knife, or any other knife, straight-edged razor, spring stick, metal or any flailing instrument or disk which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or any weapon of like kind, or any stun gun, taser or similar device.

9.04.030 Regulation of Public Use and Park Hours.

(a) Park Hours. Each park shall be assigned, by recommendation of the Community Services Commission, to Tier A or Tier B. Each tier shall be available to all members of the public to use during regular park hours.
TIER A shall be open daily from sunrise to sunset. Sunrise to sunset shall be determined by the official time as published in local newspapers. A fifteen-minute grace period before sunrise and after sunset shall apply before a person is considered to be in violation of this section.

Tier A parks include:
- Double Peak Park
- Jack’s Pond Park (except for Barn usage)
- Knob Hill Park
- Lakeview/Discovery Lake Park
- La Moree Park
- Montiel Park
- Mulberry Park
- San Marcos Creekside Park
- Simmons Family Park
- South Lake Park
- Walnut Grove Park (except for Barn usage)
- All City “mini” parks, City “tot lot” parks, and other public areas without any designated evening oriented amenities.
- All city trails except where adjacent to a public right-of-way.

TIER B Parks provide a public benefit that warrants their being open during evening hours and shall be open daily from sunrise until 10:00 p.m. *City scheduled sports events may remain past 10 p.m. to conclude play, but all participants shall vacate the park no later than 10:45 p.m.

Tier B parks include:
- Bradley Park*
- Buelow (Autumn) Park
- Cerro de Las Posas Park*
- Civic Center Recreation Area
- Hollandia Park*
- Mission Sports Park*
- Richmar Park
- San Elijo Park*
- San Marcos Elementary Park*
- Sunset Park*
- Woodland Park

Any section or part of any park may be declared closed to the public by the Director at any time for any period of time as the Director deems necessary to promote the public health, safety and welfare and to protect, preserve and maintain the areas and facilities under his/her jurisdiction.

(b) After Hours Use Prohibited Without Park Use Permit. All individuals or groups of individuals are prohibited from being in or upon municipal parks, other than during the hours of operation for each municipal park as listed in subsection (a) above, unless specifically authorized to do so by a valid Park Use Permit.

(c) Prohibition; Minors. In accordance with SMMC Chapter 10.20, no minor shall be present in any municipal park unless accompanied by a parent, guardian or other authorized responsible adult during the City curfew hours of 11:00 p.m. and 6:00 a.m. the following day.
(d) **Park Use Permit required.** Park Use Permits shall be required for the exclusive use of all or any portion of specific areas, buildings, and other municipal park facilities, or for conducting special or group events. Any person, group, or association of persons required to obtain a Park Use Permit shall file an application for said Permit with the Director. Applications may require:

1. Proof of Insurance indemnifying the City and the Redevelopment Agency against any liability arising from such exclusive use.

2. A bond determined by the City’s Risk Manager to be in sufficient amount to indemnify the City against all loss, the full expense of special police protection, anticipated damages to the park or its facilities, or the expense of cleaning up the park or facility after the proposed activity. The posting of such bond, when requested, shall be condition precedent to the issuance of the Park Use Permit.

Any person who fails to obtain a Park Use Permit as required, may, in addition to being subject to prosecution for violating this section, also be prohibited from obtaining a Park Use Permit for up to six months from the date of the most recent offense.

(e) **Designated Group Reservation Sites.** The Community Services Commission shall designate, and the City shall keep and make available to the public, a listing of those municipal parks, recreation sites and other municipal park facilities, or portions thereof, which due to their size, configuration, location or other characteristics shall be made available for the use and enjoyment of the public on a group reservation basis. It shall be the duty of any party desiring to use such sites to obtain a Park Use Permit beforehand and to comply with any conditions and/or restrictions attached thereto.

(f) **Permit Non-transferable.** Permittee shall not transfer or relinquish the Park Use Permit to another person or group of persons without written authorization from the Director.

(g) **Unlawful to harass permittee.** It is unlawful for any person to disturb, harass, or interfere with the grantee of a valid Park Use Permit, or with any of the grantee’s property or equipment.

(h) **Suspension or Revocation of Park Use Permit.** The City Manager, Director or a peace officer shall have the authority to revoke a Park Use Permit on any of the following grounds:

1. Misrepresentation of a material fact in the application for the Park Use Permit by the applicant or permittee.

2. The violation of any provision of any federal, state or local law by the permittee.

3. When, based on the totality of the circumstances, the continuance of the activity authorized by the Park Use Permit would be contrary to the public health, safety, or welfare of the citizens of San Marcos.

(i) **Hearing on Denial of Application for Park Use Permit.** Within five (5) days after receiving written notification from the Director that an application for a Park Use Permit
required by this chapter has been denied, or that said Permit has been revoked or suspended, a permittee or applicant may file a written request to appeal that decision with the City Manager. The decision of the City Manager shall be final.

9.04.040 Activities Authorized Only By Park Use Permit.

(a) Solicitation. It is unlawful for any person to solicit, sell or otherwise peddle goods, ware, merchandise, services, liquids, or edibles in a park except pursuant to a valid Park Use Permit.

(b) Photography. It is unlawful to commercially operate a motion picture, video or other camera without a valid Park Use Permit.

(c) Advertising. It is unlawful for any person to display, distribute or place any sign, advertisement, notice, poster or other advertisement in a park without having obtained prior written authorization from the Director.

(d) Commercial and Non-Commercial Activities. It is unlawful for any person, firm, corporation or charitable organization to engage in or to attempt to engage in any business, activity or act, whether or not it is offered in exchange for financial compensation, in or on any recreational facility or property owned, operated, or maintained by the City, including but not limited to any municipal park, playground, recreational area or parking lot, without a valid Park Use Permit. Permits will be required for all activities, whether or not they are single-day events or events such as classes that occur at regular intervals over a period of time.

(e) Meetings. No person shall hold any public meeting, service, sporting event, concert, exercise class, parade, public rally or exhibition in any municipal park or facility without first obtaining a valid Park Use Permit.

9.04.050 General Prohibited Conduct.

(a) Any conduct or activity that violates any other provision of the San Marcos Municipal Code is prohibited in or on any city or municipal park or trail.

(b) Personal Conduct. It is unlawful for any person to engage in any violent, abusive, loud, boisterous, vulgar, wanton, obscene or otherwise disorderly conduct, disturb or annoy others, or engage in any activity that could cause injury to other persons or disrupt the enjoyment of other persons on or in connection with their use of a recreation facility. No person upon or in connection with a recreation facility shall by act or speech willfully or unreasonably hinder, interrupt or interfere with any permissible activity.

(c) Possession, Use, or Consumption of Alcoholic Beverages Prohibited. It is unlawful for any person to possess, use, or consume any alcoholic beverage in a recreation facility or in a city or municipal park unless expressly authorized by a Park Use Permit. It is unlawful to be under the influence of any intoxicating substance at any time. Violation of this subsection is punishable as a misdemeanor pursuant to SMMC section 10.32.040 (c).

(d) Possession and or use of controlled substances. It is unlawful to use, manufacture, possess, constructively possess, sell, give away, barter, exchange, distribute, or otherwise transfer any controlled substance as provided by California law, except that a lawfully obtained medical prescription may be used as directed by a licensed physician or other authorized medical practitioner. The foregoing exception for a lawfully obtained medical
prescription shall not apply to smoking as defined in section 9.04.020(n) and described in section 9.04.050(e), which remains a prohibited conduct and activity.

(e) Smoking and/or Tobacco Use. It is unlawful for any person to smoke and/or to use, carry or hold a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, or any other combustible substance within 100 feet of any boundary of any municipal park, trail or facility, except in locations that are specifically designated as smoking areas by the Director. Designated smoking areas shall be identified with signage identifying the boundaries and perimeters of such smoking areas.

(f) Littering. It is unlawful for any person to deposit, scatter, drop or abandon in any park any litter, including bottles, cans, glass, hot coals, ashes, cigarette butts, sewage, waste or other material, natural or artificial, except in receptacles provided for such purpose.

(g) Gambling. It is unlawful for any person to gamble or participate in any game of chance for a consideration of items of value, except for non-profit fundraising, opportunity drawing or comparable activity that is in compliance with state law, provided a valid Park Use Permit has been issued for such activity.

(h) Possession and Use of Fireworks. It is unlawful for any person to have in their possession, or to set off or attempt to set off or ignite any firecrackers, fireworks, smoke bomb, rockets, black powder guns or other pyrotechnics without prior written authorization from the City Manager or Director. **Violation of this subsection is punishable as a misdemeanor pursuant to SMMC section 17.64.260.**

(i) Interference with Employee Performance of Duty. It is unlawful for any person to impersonate an employee of the City or Peace Officer or interfere with, harass, or hinder an employee in the lawful discharge of their duties. See Cal. Penal Code § 71.

(j) Pets. In addition to the restrictions contained in SMMC Chapter 6.24, it is unlawful for any person to:

1. Allow a pet, except a certified assistance dog, to enter or be in an organized sport area of any municipal park.

2. Bring a pet into an authorized area of a park without complying with the leash and restraint requirements of SMMC 6.24.090 (a), unless in a pet exercise or training area intended for off leash purposes designated by the Director.

3. Allow a pet under his/her control to disturb, harass, or interfere with any park visitor or a park visitor’s property.

4. Allow a pet to disturb, harass, or interfere with wildlife or wildlife nesting areas, or any tree, plant, building or park equipment.

5. Lead or attempt to control a pet while on any means of locomotion that could potentially interfere with full control of the pet.

(k) Failure to Properly Dispose of Animal Feces. Any person having the authorized custody or control of any dog shall be responsible for cleaning up the feces of the animal and properly disposing of such feces in a sanitary manner.
(l) **Amplified sound and annoying noises.** It is unlawful for any person to make any loud, unnecessary or unusual noise or display, play or operate any sound amplification device including radios, television sets, public address systems, musical instruments, CD players and the like in such a way which annoys, disturbs, injures or endangers the comfort, repose, peace or safety of other persons in a recreation facility, or is audible from more than twenty (20) feet away.

The following factors shall be considered in determining whether a violation of the provision of this section has occurred, and shall include, but not be limited to, the following:

- Volume of the noise;
- Intensity of the noise;
- Whether the nature of the noise is usual or unusual;
- The level and intensity of the background noise, if any;
- The type of area within which the noise emanates;
- The intensity of human use of the area during the time at which the noise emanates;
- The time of day or night when the noise occurs;
- The duration of the noise.

These criteria shall be interpreted by staff of the Community Services Department and/or a Peace Officer who shall allow, deny or restrict the level of sound allowed.

(m) **Fires and Use of Barbeque Grills.** It is unlawful for any person to light or maintain any fire in any park other than in a designated receptacle designed for such a purpose, except upon issuance of a Park Use Permit by the Director. All fires lighted or maintained pursuant to this section shall be in compliance with all applicable rules and regulations of the County of San Diego for air pollution and any Fire Department having jurisdiction over the respective park areas and or recreation facility.

It is unlawful for any person to use a City barbecue grill and allow such grill to remain in an untidy or unsanitary condition. Additionally, it is unlawful for any person to fail to clear away all cooking and eating utensils and waste matter after use. Any person using a City barbecue grill shall ensure that all fire is completely extinguished when such use is completed.

(n) **Amusement Contraptions.** It is unlawful to bring in, set up, construct, manage or operate any amusement or entertainment contraption, device or gadget without a valid Park Use Permit. The use of an amusement contraption is limited to designated group reservation sites as may be identified by the Community Services Commission pursuant to Section 9.04.030 (e), supra.

(o) **Engine Powered Models and Toys.** It is unlawful for any person to start, fly or use any fuel-powered model aircraft, model boat, model car, or rocket or like-powered toy or model, except at those areas or waters specifically designated by the Director for such use, or with a valid Park Use Permit.

(p) **Unlawful Occupancy.** It is unlawful in any municipal park for any person to enter any building, installation, or area that may be under construction or locked or closed to public use; or to enter or be upon any building, installation or area after the posted closing time or before the posted opening time, or contrary to posted notice.
9.04.050 - 9.04.070

(q) **Glass Containers**: No person shall possess any glass container in any municipal park.

(r) **Possession and Use of Weapons.** It is unlawful for any person to possess, use, fire, discharge, or cause to be discharged across, in, or into any portion of a park, any weapon, except in areas and at times designated by the Director for such use, or pursuant to a Park Use Permit. See also Cal. Penal Code § 12000 et seq.

9.04.060 **Protection of Park Property and Natural Resources.**

(a) **Release of Harmful or Foreign Substances.** It is unlawful for any person to place any debris, foreign substances, detergent or pesticide in, adjacent to and/or upon any municipal park body of water, including but not limited to any tributary, stream, storm or sewer drain, pond or swimming pool. **Violation of this provision is punishable as a misdemeanor pursuant to SMMC Chapter 14.15.**

(b) **Destruction/Defacement of Park Property/Signs.** It is unlawful for any person to intentionally deface, graffiti, vandalize, or remove park property, buildings, equipment, or facilities; or intentionally deface, destroy, cover, damage, or remove any placard notice, or sign or parts thereof, whether permanent or temporary, posted or exhibited by the Department of Community Services. **Violation of this provision is punishable as a misdemeanor.**

(c) **Disturbance of Natural Features, Wildlife.** It is unlawful for any person to remove, alter, injure or destroy any tree or other plant, rock, soil or mineral. It is unlawful for any person to kill, trap, remove, harass, annoy, pursue or in any manner disturb or cause to be disturbed, any species of wildlife, or to release or abandon any animal, plant or fish within a municipal park. With respect to fishing when permitted by a state fishing license, catch and release with a barbless hook is recommended.

9.04.070 **Recreational Activities.** It is unlawful for any person to engage in:

(a) **Camping.** No person shall camp, lodge or sleep overnight as defined in SMMC section 12.20.120 between sunset and sunrise in any area without a Park Use Permit. Camping shall only be permitted in areas designated specifically for those purposes. No person shall camp overnight in a park if under 18 years of age, unless accompanied by a parent or legal guardian or as part of a sponsored outing conducted by a scout, church, or other youth organization where the leader of the organized outing is age 21 or older.

(b) **Picnicking.** No person shall assume exclusive use of a reservation picnic site or a portion of a reservation picnic area without a Park Use Permit if the area is already reserved by a group with a valid Park Use Permit.

(c) **Boating and Swimming.** It is unlawful for any person to launch or travel in any watercraft, swim, bathe or wade in any body of water in a recreation facility unless designated for such use and then only in accordance with the rules, regulations and restrictions provided and posted at the recreation area.

(d) **Fishing.** No person shall fish in a municipal park in violation of any provision of California law. See Cal. Fish & Game Code §§ 2000 et seq.
(e) **Horseback Riding.** No person shall ride, lead, or allow a horse within a municipal park except in designated areas or on designated trails and only at designated hours. In addition, no person shall:

1. Ride a horse in a reckless manner so as to create nuisance or endanger the safety or property of any park visitor.
2. Tether a horse to a tree, other plant, building or park equipment not intended for such purpose.
3. Allow a horse to graze, browse, or roam freely except in designated areas. Horse owners/riders must be in control of their equine companions at all times.

(f) **Bicycling and Non-motorized Vehicles.** Bicycles and non-motorized vehicles shall yield to pedestrians and equestrians. No person shall operate a bicycle or non-motorized vehicle except in areas designated for that purpose. Cyclists shall ride as close to the right-hand side of a trail or roadway as conditions permit and in a reasonable, prudent and careful manner. No cyclist shall operate a bicycle at a speed faster than is reasonable and safe with regard to the safety of the operator and other persons in the immediate area, with a maximum speed of fifteen (15) miles per hour, which maximum speed shall be reduced to five (5) miles per hour when within fifty (50) feet of another park or trail user. All cyclists shall be outfitted with appropriate head/helmet gear as required by California law. See Cal. Vehicle Code § 21212.

(g) **Skateboarding and Skating.** No person shall skateboard or skate in a municipal park or facility unless in an area designated for that purpose by the Director. Skateboarders and skaters shall ride as close to the right-hand side of a trail or roadway as conditions permit and in a reasonable, prudent and careful manner. Skateboarders and skaters shall ride at a speed that is reasonable and safe with regard to the safety of the operator and other persons in the immediate area, with a maximum speed of fifteen (15) miles per hour, which maximum speed shall be reduced to five (5) miles per hour when within fifty (50) feet of another park or trail user. Skateboarders and skaters under the age of fourteen (14) must be supervised at all times by an authorized and responsible adult. Every person riding a skateboard or skating shall wear all appropriate safety equipment, including a functioning helmet, elbow and knee pads, and comply with all posted rules and regulations. See Cal. Vehicle Code § 21212, Cal. Health & Safety Code § 115800.

(h) **Golfing.** It is unlawful for any person to play or otherwise participate in the game of golf, except at a recreation facility designated for such use and only in accordance with the rules, regulations and restrictions provided by the Director.

(j) **Other Special Activity Use.** It is unlawful for any person to participate in or conduct any activity without a Park Use Permit, except those uses for which a park area or facility has been planned or promoted by the Community Services Commission.

9.04.080 **Regulation of Motorized Vehicles, Traffic and Parking.**

(a) **Motorized Vehicles.** It is unlawful for any person to operate a motorized vehicle within a park or trail, except on roadways and in areas specifically designated for such purposes or by Park Use Permit.
(b) **Motorized Vehicle Operation.** It is unlawful for any person to:

1. Operate a motor vehicle at a speed in excess of fifteen (15) miles per hour, which speed is reduced to a maximum of five (5) miles per hour when within fifty (50) feet of another park or trail user, or to obey other speed limits as posted.
2. Operate a motor vehicle within a park in violation of posted regulations.
3. Operate a motor vehicle on any city trail other than for maintenance, security or emergency purposes.
4. Operate a motor vehicle in a careless or reckless manner. **Violation of this provision shall be punishable as a misdemeanor.**
5. Operate a motor vehicle without an operable muffler, or that emits excessive fumes or dense smoke.
6. Fail to yield the right-of-way to pedestrians.
7. Wash, grease, change oil, service, or repair any motor vehicle in a park, except that disabled motor vehicles may be expeditiously repaired so that they are operational and can be removed.

(c) **Parking Vehicles.** It is unlawful for any person to:

1. Park or leave a vehicle standing, except in designated areas and then only in a manner so as not to restrict normal traffic flow.
2. Leave a vehicle standing after posted closing hours except by written authorization from the Director.
3. Park in a space designated for handicapped parking only, except with a valid handicapped vehicle license, placard, or permit on display as required by law.
4. Allow vehicles to remain illegally parked or disabled vehicles to remain for more than 72 hours. In accordance with SMMC Chapter 12.32, illegally parked or disabled vehicles may be towed away and impounded at the owner’s expense. Impounded vehicles may be sold, if left unclaimed, to pay towing and storage fees.

9.04.090 **Community Services Director; Power and Duties.** The activities at all municipal parks and recreational facilities shall be under the control of the Director, subject to the supervision of the City Manager, City Council, and Community Services Commission. The Director and employees under the direction of the Director shall:

(a) Establish, conduct, and maintain rules and regulations governing the use by members of the public of any municipal park, recreation area, recreation or community center, building, structure, equipment, apparatus or appliances thereon, or any portion thereof to include charges for the use of the same which shall be effective once approved by the City Council and/or Community Services Commission.
(b) Provide a copy of such rules and regulations, or a synopsis thereof, posted in some conspicuous place at or near the premises where such rules and regulations are to be effective; or in lieu thereof, signs or notices may be posted at or near said premises in order to give the members of the public notice of said rules and regulations. Copies of such rules and regulations shall be available to any person desiring copies at the office of the Director during regular business hours, and also on the City’s website. Failure to read such posted notices shall not be a defense to violating any of the provisions contained herein.

9.04.100 Enforcement and Expulsion. This Chapter shall be enforced by any authorized law enforcement officer or authorized employee of the City of San Marcos. Where there has been a violation of any of the provisions of this Chapter, the law enforcement officer or employee may, in his/her discretion, issue a citation or warning as provided in SMMC Chapter 1.12, and/or order the person to leave the park or recreation area. An individual ordered to leave the park must immediately comply as ordered and may not return to the area during the same calendar day during which s/he was ejected unless specifically permitted to do so by the law enforcement officer who expelled the individual or another enforcement official. The Director, in conjunction with the City Manager, may establish additional administrative rules or regulations under Section 09.04.090, supra, to prohibit a person from returning to a park for a longer period than provided herein.

09.04.110 Violations and Penalties. Except as otherwise provided, any person who violates any provision of this chapter, the conditions of any Park Use Permit issued pursuant thereto, or any rule or regulation relating to parks, shall be guilty of an infraction and punished in accordance with SMMC Chapter 1.12. Each day that any violation continues shall be deemed a separate offense.

Violations of provisions designated as misdemeanors shall be punishable by a fine of not more than $1,000, or by imprisonment for a period not to exceed 90 days, or both.
CHAPTER 9.08
COMMUNITY SERVICES COMMISSION

SECTIONS:

9.08.010  Creation
9.08.020  "Community Services" Defined
9.08.030  Number of Members, Qualifications, Appointments
9.08.040  Terms of Member
9.08.050  Compensation of Members
9.08.060  Removal of Members
9.08.070  Chairman and Vice-Chairman
9.08.080  Meeting Generally; Quorum
9.08.090  Absence from Meetings
9.08.100  Recording Minutes
9.08.110  Powers and Duties Generally
9.08.120  Jurisdiction over Public Parks and Playgrounds
9.08.130  Powers regarding Recreational Facilities
9.08.140  Funds
9.08.150  Budget
9.08.160  Advisory Capacity
9.08.170  Recommendations Regarding Contracts for Facilities
9.08.180  Interpretation of Policies and Functions and Informing Public of Cities Program

9.08.010 Creation. There is hereby created for the City of San Marcos, the Community Services Commission hereinafter called "Commission."

9.08.020 "Community Services" Defined. For the purposes of this chapter, the term "community services" shall mean those functions of the City of San Marcos involved with parks acquisition, development and maintenance; recreation programs; community beautification projects; provision for the enhancement of the cultural arts in the community; provisions for social services and recreational programs for senior citizens; coordination of City involvement with community-based organizations such as youth-serving organizations, civic societies, library services, clinics, and similar organizations.

9.08.030 Number of Members, Qualifications, Appointment. Said Commission shall consist of seven (7) members, who shall be qualified electors of the City of San Marcos.

9.08.040 Terms of Members. The terms of all members shall be modified as follows:

(a) The terms of the two (2) members currently scheduled to expire on June 30, 1987, shall now expire on April 14, 1987. The terms of the individuals appointed to succeed these members shall expire on December 31, 1990.

(b) The terms of the two (2) members currently scheduled to expire on June 30, 1988, shall now expire on December 31, 1987.

(c) The terms of the two (2) members currently scheduled to expire on June 30, 1989, shall now expire on December 31, 1988.
(d) The term of the member currently scheduled to expire on June 30, 1990, shall now expire on December 31, 1989.

Except as provided above, the term of each member shall be four (4) years. When vacancies occur other than by expiration of a term, the position shall be filled for the remainder of the term of the member who has vacated his or her position. All vacancies shall be filled by the Mayor with the approval of the City Council.

**9.08.050 Compensation of Members.** Each member of the Community Services Commission, including the Chairman shall receive compensation as established by Resolution adopted by the City Council. *(Ord. No. 89-811, 3-14-89)*

**9.08.060 Removal of Members.** Any member's term of the Commission may be terminated by the majority vote of the City Council.

**9.08.070 Chairman and Vice-Chairman.** The appointed members of the Commission shall elect their own chairman and Vice-Chairman to serve for a period of one year. Thereafter, successive elections shall elect a Chairman and Vice-Chairman at each succeeding year. A Chairman may serve more than one successive term.

**9.08.080 Meeting Generally; Quorum.** Said Commission shall meet at such time or times as they may in their discretion see fit, provided that such meetings be held at least once each month on a regularly scheduled basis. The majority of said appointed members shall constitute a quorum for the purposes of transacting the business of said Commission.

**9.08.090 Absence from Meetings.** If a member of the Commission shall be absent from two (2) successive, regular meetings of the Commission, without cause, the office of said member shall be deemed to be vacant and the term of the member shall be ipso facto terminated and the Commission shall immediately inform the City Council of the vacancy and terminated term.

An absence of any member of the Commission due to illness or an unavoidable absence from the City, if written notice thereof is given to the Commission on or before the day of any missed regular meeting of the Commission, shall be deemed an absence for cause.

**9.08.100 Recording Minutes.** Said Commission shall record the minutes of said Commission meetings.

**9.08.110 Powers and Duties Generally.** The Commission shall have the power and it shall be the duty of said Commission to make recommendations to the City Council and to advise said Council in matters pertaining to the creation, operation, maintenance, management and control of the community recreation programs, or playgrounds and indoor and outdoor recreations, activities and facilities.

The Commission shall continuously advise the Community Services Director on the development of recreational areas; facilities, senior citizens affairs programs, cultural arts programs, and in the improvement of such services and programs, and in matters related to the development of parks, community beautification projects, and facilities for recreational and cultural arts programs.
9.08.120  Jurisdiction over Public Parks and Playgrounds. The public parks and playgrounds of the City of San Marcos now in existence, and those which may hereafter be established, and all present park buildings and those which may be installed hereinafter, with all playground fixtures, shall hereby be placed under the control of the Commission, and said Commission shall have the power to make and alter, from time to time, all legal rules and regulations for the maintenance of order, safety, and decency in said parks and playgrounds, and shall supervise the expenditures of such funds as may be appropriated and authorized by the City Council.

9.08.130  Powers Regarding Recreational Facilities. The Commission shall have the power to equip, operate, and maintain playground, athletic fields, swimming pools, swimming centers, indoor recreation centers, auditoriums, and/or other park or recreational facilities on or in any public grounds or buildings in or about the City, which the Commission may from time to time acquire, provide, authorize, and designate for such use subject to the approval of the City Council.

9.08.140  Funds.

(a)  May be received by Commission. Said Commission is authorized to and may receive donations, gifts, legacies, endowments and/or bequests made to the City or to the Commission for or in behalf of the City for the acquisition of park and recreation facilities and the construction, maintenance and operation of any of the foregoing facilities, subject to the approval of the City Council.

(b)  Gifts paid to treasurer. All donations, gifts, legacies, endowments and/or bequests so received by said Commission shall be turned over to the City Treasurer of the City of San Marcos, and shall be kept in a special fund to be designated as the park and recreation fund.

(c)  Park and recreation fund. The City Council of the City of San Marcos shall establish a fund to be known as the park and recreation fund. There shall be deposited to and expended from this fund all fees or moneys received by the Commission, including the proceeds of other sources managed or controlled by the Commission and derived by it in connection with the operation of the public recreational activities and facilities under its jurisdiction. All monies in said fund shall be used for the promotion, supervision and operation of public recreation, and not otherwise, and if not used during any current year shall accumulate in said park and recreation fund.

9.08.150  Budget. Said Commission shall submit a budget for required funds to the City Council on or before the first day of May of each year.

9.08.160  Advisory Capacity. Nothing in this chapter shall be construed as restricting or curtailing any of the powers of the City Council, or as a delegation to said Commission of any of the authority or discretionary powers vested and imposed by law in the City Council. The City Council hereby declares that the public interest, convenience and welfare require the appointment of a Community Services Commission to act in purely advisory capacity to said City Council for the purposes enumerated. Any power herein delegated to said Commission to adopt rules and regulations shall not be construed as a delegation of legislative authority but purely a delegation of administrative authority.

9.08.170  Recommendations Regarding Contracts for Facilities. The Commission shall make recommendations to the Community Services Director and the Council concerning desirable contractual relations between the City and public schools and other agencies for use of buildings, playgrounds and other recreation facilities.
9.08.180 Interpretation of Policies and Functions and Informing Public of City's Programs. The Commission shall interpret the policies and functions of the Commission for the public and convey to the public the City's programs for parks, youth, adult and family recreation, senior citizens affairs, cultural arts programs and community beautification, and through this effort, encourage the public to participate in recreation programs, senior programs, senior citizens affairs programs and parks and beautification.
CHAPTER 9.12

SAN MARCOS YOUTH COMMISSION

SECTIONS:

9.12.010 Established: Composition: Appointment of Members: Alternates
9.12.020 Qualification of Members
9.12.030 Terms of Office of Members; Removal or Vacancy
9.12.035 Alternate Member
9.12.040 Compensation of Members
9.12.050 Purpose of Commission
9.12.060 Objectives of Commission
9.12.070 Commission's Functions are Advisory
9.12.080 Commission's Functions Enumerated
9.12.090 Meetings
9.12.100 Election of Officers
9.12.110 Duties of Chairman
9.12.120 Duties of Vice-Chairman
9.12.130 Rules and Regulations; Quorum; Required Vote to Take Action
9.12.140 Staff Services
9.12.150 Cooperation with Groups and Agencies
9.12.170 Annual Report

9.12.010 Established: Composition: Appointment of Members: Alternates. There is hereby established the "San Marcos Youth Commission" (hereinafter called "Commission") consisting of an odd number of members not to exceed nine as the City Council may from time to time establish by Resolution, and two (2) alternate members. The members and alternate members shall be appointed by the Mayor with the approval of the City Council. (Ord. No. 90-858, 9-25-90)

9.12.020 Qualifications of Members. Any legal resident of, and residing in, San Marcos who has completed the sixth grade, but has not yet attained the age of twenty-one (21) years at the time of his appointment, shall be qualified for membership on the youth Commission. If one member is appointed who lives outside the City limits of San Marcos, said member shall reside within the boundaries of the San Marcos Unified School District, but he or she shall not reside within the City limits of another City.

9.12.030 Terms of Office of Members; Removal or Vacancy.

(a) The term of each member or alternate member shall be for three (3) years. Each annual term shall commence on July 1st and shall end on June 30th of the following year. A member shall serve until the member's successor is appointed and qualifies. If a new office is created by Council resolution the term of the member first appointed to the newly created office shall expire on June 30th of the year following appointment. The terms shall be staggered so that the terms of not more than four (4) members will expire in any year. (Ord. No. 2005-1256, 11-8-2005)
(b) Any member may be removed by a majority vote of the City Council.

(c) A vacancy shall be filled in the same manner as an original appointment. A person named to fill a vacancy shall serve for the remainder of the unexpired term of said vacancy. If a member is absent for three (3) consecutive regular meetings of the Commission, the office becomes vacant automatically. An absence if with cause shall not subject his office to vacancy if said absence is due to illness or is unavoidable and the member notifies the secretary of the Commission in writing and said notice is approved by the Commission. The Commission shall immediately notify the City Council of any vacancy due to non-attendance.

9.12.035 Alternate Members. The alternate members of the Commission shall be considered as a member of the Commission and may fully participate in all meetings of the Commission, but shall not be entitled to vote on any matter coming before the Commission except when a regular member of the Commission is absent from the meeting at which the vote is taken. The alternate members shall not be qualified to serve as an Officer of the Commission. (Ord. No. 90-858, 9-25-90)

9.12.040 Compensation of Members. Each member of the Youth Commission, including the Chairman shall receive compensation as established by Resolution adopted by the City Council. (Ord. No. 89-811, 3-14-89)

9.12.050 Purpose of Commission. The purpose of the Commission is to investigate all aspects of juvenile activities and to advise the City as to its proper role and participation in the development of programs for the benefit of the youth of the City and to promote the general welfare of the young people in the City of San Marcos:

(a) By identifying and studying the social, economic, cultural, and emotional needs of the youth community in San Marcos and creating citizen awareness of these needs;

(b) By advising the City Council on all matters affecting the youth of San Marcos;

(c) By rendering advice and assistance to other City boards and Commissions, to City departments, and to private and voluntary agencies on matters concerning local youth; and

(d) By developing specific programs in areas in which it determines that the needs of youth are not being met by other organizations.

9.12.060 Objectives of Commission. The Commission shall undertake investigations and studies for the purpose of making recommendations to the City Council concerning, but not limited to, the following:

(a) Leisure time activities and recreational and social programs;
(b) Development of part-time employment opportunities;

(c) Programs for the understanding of adolescent problems;

(d) Policies for the improvement and strengthening of the physical, mental and moral welfare of the youth of the City of San Marcos; and

(e) Formulation of general policies relating to the duties and functions of the Commission.

9.12.070 Commission’s Functions are Advisory. The Commission is advisory in character and may not be delegated administrative authority or responsibility beyond that which the City Council may authorize.

9.12.080 Commission’s Functions Enumerated. The functions of the Commission are to:

(a) Hold hearings on and in other ways study all aspects of the problems related to the development of programs for the benefit of young people in the City;

(b) Assist and guide by providing consultation to the Council and other interested groups in the City for the development of programs to meet the needs of the youth in the City;

(c) Work closely with the departments and agencies of the City to the end that the resources of the City are used as effectively and as efficiently as possible on behalf of the City’s youth; and

(d) Act as a clearing house and information center on all aspects of youth activities. The Commission shall make this information available to the public.

9.12.090 Meetings. The Commission shall hold a regular meeting on the first Monday of each month at the hour of 4:00 p.m. at City Hall, 105 West Richmar Avenue, San Marcos, California.

9.12.100 Election of Officers. At the first meeting of the Commission and at the first meeting in each July thereafter, the members shall elect a Chairman and Vice-Chairman from among its members to serve a term of one year and until the successor of each takes office.

9.12.110 Duties of Chairman. The Chairman shall preside at all meetings of the Commission. He shall appoint all committees subject to the approval of the Commission and shall perform the duties necessary or incidental to his office.

9.12.120 Duties of Vice-Chairman. The Vice-Chairman of the Commission is Chairman in the absence of the Chairman or in case of the inability of the Chairman to act.

9.12.130 Rules and Regulations; Quorum; Required to Vote to take Action. The Commission shall adopt rules and regulations for the conduct of its business. Three (3) members of the Commission constitute a quorum for the transaction of business. The affirmative or negative vote of a majority of the entire membership of the Commission shall be necessary for it to take action.
9.12.140  **Staff Services.** The City Manager shall provide for staff services for the Commission. Staff services will be to provide such information and clerical assistance as are necessary to insure effectual functioning of the Commission.

9.12.150  **Cooperation with Groups and Agencies.** The Commission shall assist and cooperate with any existing City agency or groups which have among their objectives the development or improvement of programs for the benefit of young people.

9.12.160  **Acceptance of Gifts and Grants.** Subject to the approval of the City Council, the Commission may accept gifts and grants from any source to assist it in the performance of its functions.

9.12.170  **Annual Report.** The Commission shall prepare and give the City an annual written report of its activities.
TITLE 10
PUBLIC SAFETY, MORALS AND WELFARE

CHAPTERS:

10.04 Nuisance Abatement Procedure – Real Property
10.08 Race Discrimination
10.10 Youth Access to Smoking Materials
10.11 Police Services at Parties and Events and Consumption of Alcohol and Controlled Substances by Minors
10.12 Soliciting Tort Claims
10.16 Card Rooms and Gambling
10.20 Curfew
10.22 Daytime Loitering of Juveniles in Public Places on School Days
10.23 Intimidation Free Zones
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10.28 Alarm Systems
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10.32 Miscellaneous Offenses
10.34 Rental Housing Used for Drug Activity
10.36 Law Enforcement Forfeited Property and Assets Program
10.38 Disturbance Abatement
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10.43 Distribution or Solicitation To or From Persons in Vehicles On Public Roadways Posted With Speeds of Forty (40) Miles Per Hour or Higher, or Within One Hundred (100) Feet of An Intersection With Such A Public Roadway
10.44 Regulation of the Proximity of Sex Offenders to Children’s Facilities
10.46 Alcoholic Beverages – Responsible Beverage Sales and Service
10.48 Property Value Protection and Neighborhood Preservation
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CHAPTER 10.04
NUISANCE ABATEMENT PROCEDURE - REAL PROPERTY

SECTIONS:
10.04.010 Defined.
10.04.020 Determination of Nuisance on Real Property
10.04.030 Authority to Enter, Inspect and Abate
10.04.040 Notice of Pending Administrative Enforcement Action
10.04.050 Attorneys' Fees
10.04.060 Administrative Abatement Order
10.04.070 Compliance Report
10.04.080 Failure to Abate Nuisance
10.04.090 Account of Cost of Abatement to be Kept; Copies of Report of Abatement Cost to be Mailed
10.04.100 Confirmation, Rejection or Modification of Abatement Costs
10.04.110 Recovery of Costs and Attorneys' Fees
10.04.120 Collection of Costs Under Cost Recovery Order
10.04.130 Lien Procedure
10.04.140 Special Assessment Procedure
10.04.150 Satisfaction of Special Assessment
10.04.160 Provisions Alternative to Any Other Authorized Procedure

10.04.010 Defined. For the purposes of this Chapter, a nuisance is declared whenever there exists real property within the City:

(a) In a condition which is adverse or detrimental to public peace, health, safety or general welfare;

(b) Which is maintained so as to permit the same to become so defective, unsightly, dangerous or in a condition of deterioration or disrepair so that the same will, or may cause harm to persons, or which will be materially detrimental to property or improvements located in the immediate vicinity of such real property, is declared to constitute a public nuisance.

(c) Which is used or upon which a structure or use exists contrary to any zoning, land use or other provision of the San Marcos Municipal Code.

10.04.020 Determination of Nuisance on Real Property. Whenever an enforcement officer determines that a nuisance exists upon a parcel of land in violation of the Municipal Code, he or she may serve on the responsible party a Notice of Violation and Compliance Order under San Marcos Municipal Code Section 1.12.010 or 1.12.020 which may include a charge for the cost of issuance of the Notice. In addition to these remedies, or any other remedy provided under the Municipal Code, the enforcement officer may issue an administrative citation under Municipal Code Chapter 1.14 which may include a charge for the cost of issuance of the citation.

10.04.030 Authority to Enter, Inspect and Abate. If an owner, occupant or agent refuses permission to enter, inspect or abate nuisance on a property, the enforcement officer may seek a warrant pursuant to court order or an administrative inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure Sections 1822.50 through 1822.59 or any other procedure as authorized by law.
10.04.040 Notice of Pending Administrative Enforcement Action.

(a) A City code enforcement officer or official (hereinafter “enforcement officer”) may record with the County Recorder’s Office a notice against a property which is the subject of an administrative enforcement action pending with the City of San Marcos.

(b) A notice of pending administrative action shall be on a form approved by the City Manager and shall describe the nature of the administrative action and refer to the Municipal Code governing the pending administrative action.

10.04.050 Attorneys’ Fees. The prevailing party in any judicial action, administrative proceeding and/or special proceeding to abate a nuisance shall recover the incurred attorneys’ fees as follows:

(a) The recovery of attorneys’ fees shall be limited to those individual actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys’ fees.

(b) In no action, administrative proceeding, or special proceeding shall an award of attorneys’ fees to a prevailing party exceed the amount of reasonable attorneys’ fees incurred by the City in the action or proceeding.

10.04.060 Administrative Abatement Order. In addition to the findings required in section 1.14.110 of this Municipal Code, the hearing officer in an action to abate nuisance on real property shall issue an Administrative Abatement Order including the following:

(a) An Administrative Abatement Order shall address each contested violation in the citation, and contain findings of fact for each such violation. The findings shall be supported by evidence received at the hearing.

(b) An Administrative Abatement Order shall affirm, reject, or modify the terms of the citation. The Administrative Abatement Order may impose or order any or all of the following:

1. Administrative penalties;

2. An order to abate the nuisance within a specific time;

3. Administrative costs, including, but not limited to, costs of investigation, staffing costs incurred in preparation for the hearing and the hearing itself, all costs and charges for notice or citation, and costs for all reinspections necessary to enforce the compliance order;

4. Attorney’s fees pursuant to section 10.04.050, above;

5. Interest on the penalties and costs imposed at the legal rate from the date of the order.

(c) The Administrative Abatement Order shall also state that if the responsible party fails, refuses, or neglects to abate the condition constituting the violation within the time set forth therein, the City may abate the condition at the expense of the responsible party, and the expense thereof may be recovered by way of special assessment or lien on the property or any other legally authorized means.
10.04.070 Compliance Report. If an enforcement officer determines that compliance with the Notice of Violation and Compliance Order or Administrative Abatement Order has been achieved, the enforcement officer shall notify the responsible party and file a report with the City Manager indicating that compliance has been achieved and the date of the City’s final inspection of the property.

10.04.080 Failure to Abate Nuisance. In the event such public nuisance is not abated on or before the date described in the Notice of Violation and Compliance Order or Administrative Abatement Order, or compliance with the Order is not achieved, the enforcement officer shall, and is hereby authorized to direct the City Attorney to secure the appropriate court order for the abatement thereof by City agents, employees or by private contract. Any such abatement action shall be conducted in accordance with then current statutory and decisional law and the order of the issuing court.

10.04.090 Account of Cost of Abatement to be Kept; Copies of Report of Abatement Cost to be Mailed. The enforcement officer shall cause to be kept an itemized account of the cost of such abatement. Unless waived in writing by the parties, the enforcement officer shall schedule an Administrative Cost Hearing to certify abatement costs pursuant to Chapter 1.14 of this Municipal Code. At least ten (10) days prior to the Administrative Cost Hearing certifying costs, a Notice of Administrative Cost Hearing shall be served by certified mail on the parties and the property owner, if the property owner’s identity can be determined from the county assessor’s or county recorder’s records, and shall include a copy or copies of the itemized account of the cost of abatement. A party or the property owner may contest the abatement costs at the Administrative Cost Hearing. Pursuit of such a contest by a party or property owner is necessary to exhaust the administrative remedies in challenging the validity of any lien or special assessment against the property.

10.04.100 Confirmation, Rejection or Modification of Abatement Costs. On the date and time set for the Administrative Cost Hearing, the Hearing Officer shall consider the abatement cost report of the enforcement officer together with any appropriately made objections, and shall confirm, reject, or modify the report by issuing a written abatement costs order in accordance with this Chapter and Chapter 1.14.110.

10.04.110 Recovery of Costs and Attorneys’ Fees. The City Council may issue a Cost Recovery Order which assesses all costs of notice or citation, the cost of abatement, as confirmed, and any attorneys’ fees as a:

(a) Personal obligation of the person creating, causing, committing or maintaining the nuisance abated;

(b) Lien against the subject property;

(c) Personal obligation of the property owner of the subject property; and

(d) Special assessment against the subject property.

10.04.120 Collection of Costs Under Cost Recovery Order. The costs assessed under the Cost Recovery Order may be collected by the City by any or all of the following or any other lawful means:
10.04.120 – 10.04.130

(a) Recordation of a lien or special assessment pursuant to Section 10.04.130 or Section 10.04.140;

(b) Civil action by the City; and/or,

(c) Any other legally authorized procedure for the abatement of nuisance or collection of costs associated therewith.

10.04.130 Lien Procedure.

(a) Upon determination by the enforcement officer that the amounts assessed under the Cost Recovery Order have not been satisfied in full, the enforcement officer may prepare a nuisance abatement lien to be recorded with the San Diego County Recorder.

(b) Prior to recording the nuisance abatement lien, the enforcement officer shall serve notice to the property owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current.

(c) The nuisance abatement lien shall be served in the same manner as summons in a civil action in accordance with Code of Civil Procedure Section 415.10 et seq. If the owner of record, after diligent search cannot be found, the lien may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in San Diego County.

(d) Following proper notice to the owner of record as provided in subsection (c) of this section, the nuisance abatement lien shall be recorded with the San Diego County Recorder. Once recorded, the nuisance abatement lien shall have the force, effect and priority of a judgment lien.

(e) The nuisance abatement lien shall specify the amount of the lien, the City of San Marcos as the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(f) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in paragraph (e) shall be recorded by the City. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

(g) A nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.

(h) A copy of the nuisance abatement lien shall be filed in the office of the City Clerk.
(i) Interest shall accrue on the principal amount of the lien at the maximum rate permitted by law until the amount of the lien, inclusive of accrued interest and costs of recovery, is paid in full.

(j) A lien pursuant to this section may be foreclosed by an action brought by the City for a money judgment.

10.04.140 Special Assessment Procedure.

(a) As an alternative to the procedure authorized by Section 10.04.120 of this chapter, the City may make any unpaid amounts under the Cost Recovery Order a special assessment against the real property that was the subject of the Cost Recovery Order issued in accordance with this Chapter.

(b) Upon determination by the enforcement officer that the amounts contained in the Cost Recovery Order have not been satisfied in full by the date specified in the Order, the enforcement officer may prepare a notice of special assessment.

(c) The enforcement officer shall serve the notice of special assessment by certified mail to the property owner, if the property owner’s identity can be determined from the County Assessor’s or County Recorder’s records. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three (3) years by the tax collector for unpaid delinquent assessments. The tax collector’s power of sale shall not be affected by the failure of the property owner to receive the notice.

(d) The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the assessment relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

(e) The City may, subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, conduct a sale of vacant residential developed property for which the payment of the assessment is delinquent.

(f) A copy of the notice of assessment shall be filed in the office of the City Clerk.

(g) Interest shall accrue on the past due assessments at the maximum rate permitted by law until the amount of the assessment, inclusive of accrued interest and any costs of recovery, is paid in full.
**10.04.150 Satisfaction of Special Assessment.** For any special assessment imposed under this chapter, once payment in full has been received by the City, the City Clerk shall either record a notice of satisfaction or provide the property owner or applicable financial institution with a notice of satisfaction so they may record such notice with the San Diego County Recorder. The notice of satisfaction shall cancel the city’s special assessment.

**10.04.160 Provisions Alternative to Any Other Authorized Procedure.** The procedures provided in this Chapter shall be cumulative and in addition to any other procedure or legal remedy provided for in the San Marcos Municipal Code or by state law for the abatement of nuisance related activities, premises, conditions or conduct. Nothing in this Chapter shall be deemed to prevent the City from commencing alternative administrative, civil or criminal proceedings to abate or penalize a nuisance under applicable civil, criminal or Municipal Code provisions as an alternative to the proceedings set forth in this Chapter.

*(Ord. No. 2010-1330, 2/9/10)*
CHAPTER 10.08

RACE DISCRIMINATION

SECTIONS:

10.08.010 Discrimination Signs Prohibited.

10.08.010 Discrimination Signs Prohibited. It shall be unlawful for any person to display in any restaurant, hotel, eating house, place where ice cream or soft drinks are sold for consumption on the premises, barber shop, bath house, theater, skating rink, public conveyance, and all other places of public accommodation or amusement, any sign, written or printed, or notice of any kind whatsoever, which attempts to discourage patronage of members of any certain race or color and/or which tends to discriminate in the public service offered against any person because of race or color.
CHAPTER 10.10

YOUTH ACCESS TO SMOKING MATERIALS

SECTIONS:
10.10.010 Definitions
10.10.020 Prohibitions
10.10.030 Location of Tobacco Products and Advertising Inside Retail Establishments
10.10.040 Exceptions to Location of Tobacco Products and Advertising Inside Retail Establishments
10.10.050 Non-Retaliation
10.10.060 Conflicts With Other Applicable Laws
10.10.070 Violation-Enforcement and Penalties

10.10.010 Definitions.

(a) Advertising means printed matter that calls the public’s attention to things for sale.

(b) Advertising display means a sign, sign-board, poster, or banner that is temporarily or permanently affixed to the ground, sidewalk, a pole or post, or a building, or is displayed in the windows of a commercial establishment, and that is used to advertise or promote products.

(c) Arcade is any establishment within the City of San Marcos (other than a pool hall, billiard hall or card room) open to the public with six or more games of skill or amusement installed on the premises.

(d) Business means any sole proprietorship, joint venture, corporation or other business entity formed for profit making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medicinal, dental, engineering, architectural or other professional services are delivered.

(e) City shall mean the City of San Marcos.

(f) Electronic Smoking Device means an electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances by delivering a vaporized solution. Electronic smoking device includes any such device, whether manufactured, distributed marketed or sold as an electronic cigarette, an e-cigarette, an electronic cigar, electronic cigarillo, an electronic pipe, an electronic hookah, or any product name or descriptor, including any component, part or accessory of such a device, whether or not sold separately. Electronic smoking device does not include any inhaler or other product specifically approved by the United State Food and Drug Administration for therapeutic purposes or for use in the mitigation, treatment or prevention of disease, where such product is marketed and sold solely for such an approved purpose. (Ord. No. 2016-1427, 6/28/2016)

(g) Electronic Smoking Device Paraphernalia means cartridges, cartomizers, e-liquid, smoke juices, tips, atomizers, electronic smoking device batteries, electronic smoking chargers and any other item specifically designed for the preparations, charging or use of electronic devices. (Ord. No. 2016-1427, 6/28/2016)

(h) Employee means any person who is employed by an employer in consideration for direct or indirect wages or profit, and any person who volunteers his or her services for a non-profit
(i) **Minor** means any individual who is prohibited by state law and this Municipal Code from purchasing tobacco products. *(Ord. No. 2016-1427, 6/28/2016, Ord. No. 2016-1428, 7/26/2016)*

(j) **Non-profit entity** means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational-character building, political, social or other similar purpose, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a non-profit entity within the meaning of this section. *(Ord. No. 2016-1427, 6/28/2016)*

(k) **Person** shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity. *(Ord. No. 2016-1427, 6/28/2016)*

(l) **Playground** means any outdoor premises or grounds owned or operated by the City, a public or private school, child care center, youth or recreational center, that contains any play or athletic equipment used or intended to be used by minors. *(Ord. No. 2016-1427, 6/28/2016)*

(m) **Self-service merchandising** means open display of smoking materials and point-of-sale smoking materials-related promotional products that the public has access to without the intervention of an employee. *(Ord. No. 2016-1427, 6/28/2016)*

(n) **Smoking Materials** means Tobacco Products, Electronic Smoking Device, Electronic Smoking Device Paraphernalia, and any other product containing tobacco or nicotine that releases gases, particles or vapors into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose is human inhalation of the byproducts. *(Ord. No. 2016-1427, 6/28/2016, Ord. No. 2016-1428, 7/26/2016)*

(o) **Tobacco product** means: (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and (2) any Electronic Smoking Device. (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose. *(Ord. No. 2016-1427, 6/28/2016, Ord. No. 2016-1428, 7/26/2016)*

(p) **Tobacco retailer** means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange. *(Ord. No. 2016-1427, 6/28/2016, Ord. No. 2016-1428, 7/26/2016)*

(q) **Tobacco vending machine** means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a smoking materials. *(Ord. No. 2016-1427, 6/28/2016)*

(r) **Vendor-assisted** means only a store employee has access to the smoking materials and...
assists the customer by supplying the product. The customer does not take possession of the product until it is purchased. (Ord. No. 2016-1427, 6/28/2016)

10.10.020 Prohibitions.

(a) No person or business shall engage in the sale of tobacco products without first posting a plainly visible sign at the point of purchase of tobacco products which has wording and sizing as required by California Business and Professions Code Section 22952 and California Code of Regulations Title 17 Section 6902, as those sections may be amended from time to time. (Ord. No. 2016-1427, 6/28/2016, Ord. No. 2016-1428, 7/26/2016)

(b) No person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this ordinance shall sell, offer to sell, or permit to be sold any smoking materials to an individual without requesting and examining identification of customers appearing to be twenty-one (21) and younger for the purpose of establishing the purchaser's age unless the seller has some other reasonable basis for determining the buyer's age. (Ord. No. 2016-1427, 6/28/2016, Ord. No. 2016-1428, 7/26/2016)

(c) No person, business, tobacco retailer or other establishment shall sell or offer for sale cigarettes or other tobacco or smoking products not in the original packaging provided by the manufacturer and with all required health warnings. (Ord No. 2016-1427, 6/28/2016)

(d) It shall be unlawful for any person, business or tobacco retailer to sell, permit to be sold, offer for sale or display for sale any smoking materials by means of self-service merchandising or by any means other than vendor-assisted sales as defined in Section 10.10.010(o), above. (Ord. No. 2004-1219,1/27/04), Ord. No. 2016-1427, 6/28/2016)

(e) No person, business or tobacco retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any tobacco vending machine for the purpose of selling or distributing any smoking materials except as allowed hereinafter. Operating and maintaining a vending machine for dispensing cigarettes or other smoking materials shall be allowed and such machines or machine may be located in any business premises from which minor persons are excluded by law. (Ord. No. 2016-1427, 6/28/2016)

(f) It shall be unlawful for any person, business, or tobacco retailer to distribute “free sample” smoking materials, except in enclosed areas where minors are not permitted. A “free sample” does not include any form of smoking materials that is provided in connection with: 1) the vendor-assisted purchase, exchange or redemption for proof of purchase of any smoking materials after age verification is performed as set forth in Section 10.10.020(b), above, including, but not limited to, a free offer in connection with the purchase of smoking materials, such as a “two-for-one” offer; or (d) the conducting of consumer testing or evaluation of smoking materials with persons after age verification is performed as set forth in Section 10.10.020(b), above. (Ord. No. 2004-1219,1/27/04), Ord. No. 2016-1427, 6/28/2016)

10.10.030 Location of Smoking Materials and Advertising Inside Retail Establishments.

It shall be unlawful for any person, business, or tobacco retailer to place or maintain, or cause to be placed or maintained, any display containing smoking materials. (Ord. No. 2004-1219, 1/27/04), Ord. No. 2016-1427, 6/28/2016)

10.10.040 Exceptions to Location of Tobacco Products and Advertising Inside Retail
Establishments.

(a) Section 10.10.030 does not apply to commercial establishments where access to the premises by persons under twenty-one (21) years of age is prohibited by law. (Ord. No. 2016-1428, 7/26/2016)

(b) Section 10.10.030(a) does not apply to displays in any establishments that are located behind a counter and not accessible to patrons unless vendor-assisted, or are located in other restricted areas that are not accessible to patrons unless vendor-assisted. (Ord. No. 2004-1219, 1/27/04, Ord. No. 2016-1428, 7/26/2016)

10.10.050 Non-Retaliation.

(a) No person or employee shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant agrees to abide by the provision of this article.

(b) No person shall intimidate or threaten any reprisal or effect any reprisal for the purpose of retaliating against another person because such other person seeks to attain compliance with provisions of this article.

10.10.060 Conflicts With Other Applicable Laws.

This article shall not be interpreted or construed to permit tobacco vending machines and distribution of tobacco product samples where they are otherwise restricted by other applicable laws. Nor shall this article be construed as cause for breach of any pre-existing private contract, or cause for interference with regulations imposed by state or federal law or related to interstate commerce.

10.10.070 Violation-Enforcement and Penalties.

(a) Any person, business or tobacco retailer who violates any provision of this article shall upon conviction thereof, be guilty of a misdemeanor offense, punishable as provided in Section 1.12.020 of this code.

(b) The owner, operator or manager of any public place or place of employment within the purview of this article shall comply herewith. Such owner, operator or manager shall post or cause to be posted all signage required by this article.

(c) It shall be the responsibility of employers to disseminate information concerning the provisions of this article to employees. (Ord. No. 99-1066, 7/13/99)
CHAPTER 10.11

POLICE SERVICES AT PARTIES AND EVENTS AND CONSUMPTION OF ALCOHOL AND CONTROLLED SUBSTANCES BY MINORS

SECTIONS:

10.11.010 Definitions of Words or Phrases
10.11.020 Law Enforcement and/or Code Enforcement Services at Parties, Gatherings or Events Requiring a Second Response
10.11.030 Unsupervised Consumption of Alcohol by Minor at Private Party
10.11.040 Serving Alcohol and/or Controlled Substances to Minors at Parties, Gatherings or Events on Private Property
10.11.050 Duty to Inspect
10.11.060 Law Enforcement, Code Enforcement Services Fees
10.11.070 Reservation of Legal Options

10.11.010 Definitions of Words or Phrases. Unless the context requires otherwise, the definitions set forth in this section shall govern the construction of this chapter. (Ord. No. 2006-1260, 2/14/06)

(a) Alcohol means ethyl alcohol, hydrated oxide of ethyl or spirits of wine, from whatever source or by whatever process produced.

(b) Alcoholic Beverage includes alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

(c) Controlled Substances or Illegal Drugs shall include all narcotics or drugs, the possession of which is illegal under the laws of the State of California, as defined under the Penal Code, Health & Safety Code, and related statutes.

(d) Enforcement Services includes the salaries and benefits of law enforcement and/or other code enforcement personnel for the amount of time actually spent in responding to, or in remaining at, the party, gathering or event and the administrative costs attributable to the incident; the actual cost of any medical treatment to injured law enforcement personnel and/or other code enforcement personnel; and the cost of repairing any damaged City equipment or property; and the cost arising from the use of any damaged equipment in responding to or remaining at the party, gathering or event.

(e) Juvenile means any person less than eighteen (18) years of age.

(f) Guardian means (1) a person who, under court order, is the guardian of the person of a minor; or (2) a public or private agency with which a minor has been placed by the court.

(g) Minor means any person less than twenty-one (21) years of age.

(h) Parent means a person who is a natural parent, adoptive parent, foster parent or stepparent of another person.
(i) Party, Gathering or Event means a group of three (3) or more persons who have assembled or are assembling for a party, social occasion or social activity.

(j) Responsible Party(ies) or Person(s) Responsible includes, but is not limited to: (1) the person(s) who owns, rents, leases or otherwise has control of the premises where the party, gathering or event takes place; (2) the person(s) in charge of the premises; or (3) the person(s) who organized the event. If a person responsible for the event is a juvenile, then the parents or guardians of that juvenile will be jointly and severally liable for the costs incurred for enforcement services pursuant to this Chapter.

10.11.020 Law Enforcement and/or Code Enforcement Services at Parties, Gatherings or Events Requiring a Second Response. Any person responsible for a loud or unruly event shall be civilly liable to the City for all costs incurred by the City arising out of a second response which is made by law enforcement or the fire department to such event where:

(a) Law enforcement or the fire department initially responded to the event during the preceding 12 hour period;

(b) At the time of making such initial response, personnel from the law enforcement agency or fire department warned such responsible person(s), in writing, that the event was being conducted in an unlawful manner, and that if law enforcement or fire department personnel were required to respond a second time to the event, such person would be assessed a second response fee and/or be held responsible for the actual cost of enforcement services provided during the response; and

(c) Following such initial response, law enforcement agents or the fire department were required to respond a second time to the event by reason of the fact that the event continued to be conducted in an unlawful manner, notwithstanding such written warning.

(Ord. No. 2006-1260, 2/14/06)

10.11.030 Unsupervised Consumption of Alcohol or Controlled Substance by Minor at Private Party, Public Place or Place Open to Public. (Ord. No. 2006-1260, 2/14/06)

(a) Except as permitted by State law, no minor shall consume in any public place or any place open to the public any alcoholic beverage and/or controlled substance, or consume at any place not open to the public any alcoholic beverage and/or controlled substance.

(b) A violation of this section shall constitute a misdemeanor punishable by a fine of One Thousand Dollars ($1,000) or by imprisonment for a period of not to exceed six (6) months, or by both fine and imprisonment.
10.11.040  Serving Alcohol and/or Controlled Substances to Minors at Parties, Gatherings or Events on Private Property. Except as permitted by Article 1, Section 4 of the Constitution of the State of California, no person shall knowingly permit a party, gathering or event at his or her place of residence or other private property, place, or premises under his or her control where alcoholic beverages and/or illegal drugs are being consumed by any individual who is known by the responsible parties to be a minor. A violation of this section shall constitute a misdemeanor punishable as set forth in the City of San Marcos Infraction and Misdemeanor Bail Schedule per Section 1.12.010 of the City of San Marcos Municipal Code. This section shall not apply to conduct involving the use of alcohol that occurs exclusively between a minor and his or her parent or legal guardian. (Ord. No. 2013-1374, 3/12/13)

10.11.050  Duty to Inspect. The responsible party(ies) who permits or allows a party, gathering or event as specified in Section 10.11.040 of this Chapter has a duty to inspect the drivers license or other government issued identification card of each person who reasonably appears to be under the age of thirty (30) in order to ensure that they are over the legal age for consuming alcohol. If the responsible party(ies) fails to inspect the identification of a person consuming alcohol, and the person is in fact a minor, the responsible party has violated Section 10.11.040 of this Chapter. (Ord. No. 2006-1260, 2/14/06)

10.11.060 Law Enforcement, Code Enforcement Services Fees. (Ord. No. 2006-1260, 2/14/06)

(a)  The person(s) responsible for the event shall be liable for the cost of providing law enforcement and/or code enforcement services in response to a party, gathering or event in which minors have obtained, possessed or consumed alcoholic beverages. The law enforcement and/or code enforcement services fee shall include the cost of personnel and equipment. Such fee is deemed to be supplementary to all other applicable fines and penalties.

(b)  The amount of such fee charged shall be deemed a debt to the City of the person or persons receiving such services and if such person or persons be minors, then the amount shall be deemed a debt of their parents or guardians. Any person owing money shall be liable in an action brought in the name of the City for recovery of the actual costs of enforcement. Actual costs shall include, in addition to the law and/or code enforcement service fee, costs and expenses in bringing such recovery action, including, but not limited to, reasonable attorneys' fees, witness fees and associated costs and expenses. Such costs and expenses shall be in addition to the applicable fines and penalties referenced in sections 10.11.020, 10.11.030 and 10.11.040 above, and any other fines and penalties provided by law.

10.11.070  Reservation of Legal Options. The City does not waive its right to seek reimbursement for actual costs of enforcement services through other legal remedies or procedures. The procedure provided for in this chapter is in addition to any other statute, ordinance or law, civil or criminal. This chapter in no way limits the statutory authority of law enforcement, peace officers or private citizens to cite and/or make arrests for any criminal offense arising out of conduct regulated by this Article. (Ord. No. 2006-1260, 2/14/06)
CHAPTER 10.12
SOLICITING TORT CLAIMS

SECTIONS:

10.12.010 Soliciting Employment for Settling Tort Claim Prohibited
10.12.020 Exception

10.12.010 Soliciting Employment for Settling Tort Claim Prohibited. It shall be unlawful for any person to solicit employment for himself, or for any other person, either directly or through some other person acting on his behalf, to prosecute, collect, settle, compromise or to negotiate for the settlement, compromise, or collection of any tort claims, on behalf of any tort claimant, in which he himself has no pecuniary interest arising from such tort in the City of San Marcos.

10.12.020 Exception. The provisions of this chapter shall not be construed to prevent joint tort claimants from negotiating with each other for the purpose of combining respective claims or actions against the tort feasor.
CHAPTER 10.16

CARD ROOMS AND GAMBLING

SECTIONs:

10.16.010 Gambling Implements Prohibited
10.16.020 Letting Permits for Gambling Prohibited
10.16.030 Conducting Houses for Gambling Prohibited
10.16.040 Betting on Games Prohibited

10.16.010 Gambling Implements Prohibited. It is unlawful for any person within the City to exhibit or expose to view in any barred or barricaded house or room or in any place built or protected in a manner to make it difficult to access or ingress to police officers, when three or more persons are present, any cards, dice, dominoes, fan-tan table or layout, or any part of such layout, or any gambling implements whatsoever; or for any person to visit or resort to any such barred or barricaded house or room or other place in the City built or protected in a manner to make it difficult to access or ingress to peace officers, where any cards, dice, dominoes, fan-tan table or layout, or any such layout, or any gambling implements whatsoever are exhibited or exposed to view when three or more persons are present; or for any person in said City to become a visitor at any place for the practice of gambling in the City.

10.16.020 Letting Premises for Gambling Prohibited. It is unlawful for any person, either as principal, agent, employee, or otherwise knowingly to let or underlet, or transfer the possession of any premises for use by any person, or to permit any house, room apartment or place owned by him or under his charge or control in the City to be used, in whole or in part, as a gambling house or as mentioned in Section 330 of the Penal Code of the State of California, with cards, dice or other device for money, checks, chips, credit or anything of value.

10.16.030 Conducting Houses for Gambling Prohibited. It is unlawful for any person, either as principal, agent, employee, or otherwise, to keep, conduct or maintain within the City any house, room, apartment, or place used in whole or in part as a gambling house or a place where any game, not mentioned in Section 330 of the Penal Code of the State of California, is played, conducted, held, or carried on with cards, dice or other device for money, checks, chips, credit or anything of value.

10.16.040 Betting on Games Prohibited. It is unlawful for any person within the City to conduct, carry on, play at or bet upon any game known as a peon, chuck-a-luck or any other game played with cards, dice or other instruments for money or for anything of value whatsoever, or to bet with money or anything of value whatsoever at or upon the result of any of said games or either of them.
CHAPTER 10.20  
CURFEW

SECTIONS:

10.20.010 Purpose and Intent; Parental Responsibility Law
10.20.020 Definitions
10.20.030 Prohibition; Minor
10.20.040 Prohibition; Adult
10.20.050 Exceptions

10.20.010 Purpose and Intent; Parental Responsibility Law. By enacting curfew regulations which apply to minors and the parents of minors, the City Council intends to preserve and promote the peace of the community, as well as the safety and welfare of minors, during the late-night hours. In the course of adopting this ordinance, the City Council has considered and relied upon testimony which proves the effectiveness of a curfew in promoting such purposes. The City Council also recognizes that such regulations must protect the public interest without infringing upon certain fundamental rights of minors and their parents. This curfew measure is intended to reach a reasonable balance between said interests. Such balance is achieved by application of the principle that parental responsibility for the conduct of a minor is paramount to the exercise of regulatory authority by the City. Only in the absence of the exercise of parental authority over a minor will the enforcement of this curfew measure become necessary. Accordingly, this ordinance shall be entitled the "Parental Responsibility Law of the City of San Marcos."

10.20.020 Definitions.

Curfew Hours means the hours between 11:00 p.m. and 6:00 a.m. of the following day.

Public Place means any place to which any member of the public has access, including, but not limited to, any public right of way, public grounds, dedicated open or trail space, or any privately owned land that is unsupervised and is open and generally available to the public, including but not limited to vacant lots, the parking lots and the common areas of schools, hospitals, apartment houses, office buildings, housing complexes, shopping centers, and malls.

Guardian means (1) a person who, under court order, is the guardian of the person of a minor; or (2) a public or private agency with which the court has placed a minor.

Minor means any person under the age of 18.

Parent means a person who is a natural parent, adoptive parent, or step-parent of a minor.

Responsible Adult means the parent, guardian, or adult person at least 21 years old having the responsibility for the care, custody, and control of the subject minor.

10.20.030 Prohibition; Minor. No minor shall be present in any public place during curfew hours.
10.20.040 Prohibition: Adult. No responsible adult shall knowingly permit, or by insufficient control, allow a minor to be present in any public place during curfew hours.

10.20.050 Exceptions. The prohibitions described in Sections 10.20.030 and 10.20.040 above shall not apply to any minor who, in the alternative, is:

(a) accompanied by his or her responsible adult;
(b) engaged in or directly en route to or from an employment activity;
(c) engaged in any emergency or act of mercy;
(d) present at a public place abutting the minor's residence;
(e) present at any privately owned building or structure generally committed to a business or trade which is open to and serves the public, or going to or returning from said privately owned building or structure without detour or stop;
(f) attending or directly en route to or from a school sponsored, religious, or recreational activity supervised by at least one responsible adult and sponsored and conducted by the City of San Marcos, a civic organization, public agency, charitable organization, religious entity, or another similar entity or person that takes responsibility for the minor;
(g) exercising First Amendment rights protected by the United States Constitution while being supervised by at least one responsible adult, or exercising said right is part of an organized event which has been the subject of written notice to the City manager, or his/her designee, not less than 24 hours prior to the conduct of such event." (Ord. No. 97-1016, adopted 6-24-97 by Urgency Ordinance, Govt Code §36937)
CHAPTER 10.22
DAYTIME LOITERING OF JUVENILES IN PUBLIC PLACES ON SCHOOL DAYS

SECTIONS:
10.22.010 Purpose and Intent; Parental Responsibility Law
10.22.020 Definitions
10.22.030 Prohibition; Juvenile
10.22.040 Exceptions
10.22.050 Responsibilities
10.22.060 Remedies
10.22.070 Violation-Enforcement Penalties

10.22.010 Purpose and Intent; Parental Responsibility Law. The purpose of this chapter is to reduce the increase of juvenile truancy that plagues our schools and creates a burden upon the health, safety and welfare of the community. Students who are absent from school are denied an education; unexcused absences result in a loss of state and federal funding to the detriment of all students; unsupervised students may involve themselves in unsafe activities by loitering in residential neighborhoods, business districts, or industrial centers; some unsupervised students may engage in criminal activity to the detriment of the community; further some unsupervised students may become a burden on police who must return them to school, wait for parents to pick them up, and investigate any and all criminal activity related to the student's truancy. As a result, therefore, the City Council of the City of San Marcos finds and determines that a special need exists for the adoption of a City ordinance to prohibit truancy of any juvenile under the age of 18, who is subject to compulsory continuation education, with certain specific exceptions set forth herein. In addition, the City Council desires to discourage parents from permitting, or by insufficient control, allowing such truancy. It is further the intent of the City Council to provide appropriate criminal sanctions against any juvenile or parent who violates the provisions of this chapter. (Ord. No. 2004-1225, 5/11/04)


Juvenile means any person under eighteen (18) years of age.

Adult means any person eighteen (18) years of age and older.

Parent means a person who is the natural or adoptive parent of a person. Parent includes a court appointed guardian or other person eighteen (18) years of age or older, authorized by the parent, by a court order, or by a court appointed guardian to have the care and custody of the person.

Emergency includes but is not limited to fire, natural disaster, automobile accident, or requirement for immediate medical care for another person.

Public place means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, office buildings, transport facilities, shopping centers, and malls.
Establishment means any privately owned place of business operated for a profit to which the public is invited, including but not limited to, any place of amusement or entertainment.

10.22.030 Prohibition; Juvenile. It is unlawful for any juvenile who is subject to compulsory education or to compulsory continuation education to loiter, idle, wander, or be in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, public buildings, or the premises of any establishment, vacant lots or any unsupervised place between the hours of 8:00 a.m. and 2:00 p.m. on any day when school is in session for that juvenile. (Ord. No. 2004-1225, 5/11/04)

10.22.040 Exceptions. The prohibitions described in 10.20.030 above shall not apply to any juvenile who, in the alternative, is: (Ord. No. 2004-1225, 5/11/04)

(a) accompanied by his or her responsible adult;
(b) engaged in an emergency errand directed by his or her parent or other adult having care or custody of the juvenile;
(c) attending or directly in route to his or her place of school approved employment;
(d) en route to or coming directly from a medical appointment;
(e) permitted to leave the school campus for lunch and had in his or her possession a valid, school-issued, off-campus permit;
(f) attending or, without detour or stop, going to or returning from an event or activity directly related to the medical condition of a parent;
(g) appropriately documented as being enrolled in home schooling; or
(h) able to document that he or she has passed a general educational development test and received a California high school equivalency certificate.

10.22.050 Responsibilities. It is unlawful for the parent of any juvenile to knowingly permit or by insufficient control, to allow the juvenile to be in violation of section 10.20.030. (Ord. No. 2004-1225, 5/11/04)

10.22.060 Remedies. Upon any violation of section 10.20.030, a peace officer may issue a citation to the juvenile and may detain the juvenile until he or she can be placed in the care and custody of his or her parent or may transport the juvenile to his or her home or to the school from the juvenile is absent. If cited, the juvenile and a parent shall appear in court as directed in the citation. The parents shall be advised of the fact that the juvenile was cited for a violation of San Marcos Municipal Code section 10.22.030. The parents shall be warned of their responsibility and liability as the juvenile’s parents. (Ord. No. 2004-1225, 5/11/04)

If the parent has been previously warned as set forth in section 10.22.060, upon a parent’s first violation of 10.22.050, a peace officer may issue a citation for an infraction to the parent to appear in court. (Ord. No. 2004-1225, 5/11/04)
When a parent has previously been issued a citation for an infraction as set forth in section 10.22.060, upon any subsequent violation by a parent of section 10.22.050, a peace officer may issue a citation for a misdemeanor to the parents of the juvenile to appear in court. (Ord. No. 2004-1225, 5/11/04)

10.22.070  Violation-Enforcement Penalties.  Any person who violates any provision of this article shall, upon conviction thereof, be guilty of an infraction punishable by fine as provided in Section 1.12.010, et seq., of this Municipal Code, or by a requirement to perform city or school-approved work projects or community service, or both. If required to perform a project, the total time for performance shall not exceed twenty (20) hours over a period not to exceed sixty (60) days during times other than a juvenile’s hours of school attendance or a juvenile or parent’s hours of employment. As provided by Section 1.12.010 (b) of this Municipal Code, a fourth or subsequent violation of this article within one (1) year shall constitute a misdemeanor. (Ord. No. 2004-1225, 5/11/04)
CHAPTER 10.23

INTIMIDATION FREE ZONES

SECTIONS:

10.23.010 Prohibited Acts and Penalty
10.23.020 Definitions
10.23.030 Notice
10.23.040 Non-Application

10.23.010 Prohibited Acts and Penalty. Any person who willfully intimidates or harasses any individual or who makes a credible threat with the intent to place that individual in reasonable fear for his or her safety or the safety of his or her immediate family is guilty of a misdemeanor, provided that the prohibited activity specified above occurs in a park, on school property, on any public property or facility operated by a tax-exempt organization and utilized for organized and supervised after-school recreational activities or on any public property within one thousand (1,000) feet of the boundaries of a park, school property or public property or facility operated by a tax-exempt organization and utilized for recreational activities as specified above. (Ord. No. 2006-1264, 2/28/06)

10.23.020 Definitions.

(a) **Intimidate** means a knowing and willful course of conduct directed at a specific individual for the purposes of frightening or coercing the minor into submission or obedience and that serves no legitimate purpose. (Ord. No. 2006-1264, 2/28/06)

(b) **Harass** means a knowing and willful course of conduct directed at a specific individual that alarms, torments, or terrorizes the individual and that serves no legitimate purpose. (Ord. No. 2006-1264, 2/28/06)

(c) **Course of Conduct** means two or more acts evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct”. (Ord. No. 2006-1264, 2/28/06)

(d) **Credible Threat** means a verbal or written threat or a threat implied by conduct or a combination of verbal or written statements and conduct made with the intent to place the individual that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family and made with the apparent ability to carry out the threat so as to cause the individual who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. (Ord. No. 2006-1264, 2/28/06)

(e) **Immediate Family** means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. (Ord. No. 2006-1264, 2/28/06)
10.23.030 Notice. Prior to the effective date of this ordinance, the City shall post signs indicating the status of areas as intimidation free zones and notifying the public as to what conduct is prohibited in these zones. The City shall post notification signs at all public schools and on all public property regularly utilized for organized and supervised after-school recreational activities. (Ord. No. 2006-1264, 2/28/06)

10.23.040 Non-Application. This section shall not apply to conduct that occurs during labor picketing. (Ord. No. 2006-1264, 2/28/06)
CHAPTER 10.24

NOISE

SECTIONS:

10.24.010  Loud, Annoying, and Unnecessary Noise Prohibited
10.24.020  Definitions and Examples of Prohibited Noises
10.24.030  Assessment of Sound
10.24.040  Defenses
10.24.050  Violation – Enforcement and Penalties

10.24.010 Loud, Annoying, and Unnecessary Noise Prohibited. No person shall make, cause to be made, or continue to make or cause to be made, within the city limits of the City of San Marcos, any loud, annoying or unnecessary noise that injures, impairs or endangers the health, peace or safety of any person of reasonable sensibilities, or that disturbs the peace, quiet, comfort or tranquility of the neighborhood or community. The characteristics and conditions that should be considered in determining whether a violation of the provisions of this section exists, include, but are not limited to, the following:  (Ord. No. 2008-1300; 2/26/08)

1. The level and intensity of the noise;
2. Whether the nature of the noise is usual or unusual;
3. Whether the origin of the noise is natural or unnatural;
4. The level and intensity of background noise;
5. The nature and zoning of the area abutting and within which the noise emanates;
6. The time of the day or night the noise occurs;
7. Whether the noise is recurrent, intermittent or constant;


(a) “Prohibited Noise” means any sound that disturbs a reasonable person of normal sensibilities, or is plainly audible as further defined in this section. Where no specific distance is set forth for the determination of audibility, references to noise disturbance shall be deemed to mean plainly audible at a distance of two hundred (200) feet from the real property line of the source of the sound, if the sound occurs on privately owned property, or from the source of the sound, if the sound occurs on public right of way, public space or other publicly owned property.  (Ord. No. 2008-1300; 2/26/08)
(b) The following described noises are hereby declared to be in violation of this Chapter; this list is deemed illustrative and shall not be deemed or construed in any degree or way to be an exclusive or all-inclusive list of the noises prohibited by this Chapter, it being the intent and purpose of this Chapter to include and prohibit all noises of the character described in section 10.24.010. References to “adjacent” or “neighboring” residences or units in this subsection (b) shall mean those residences or units located next to or in close proximity to the source of the noise, and no specific distance standard for audibility shall be required for such locations. (Ord. No. 2008-1300; 2/26/08)

(1) Horns and other signaling devices. The sounding of any horn or signaling device on any automobile, motor vehicle or any other vehicle on any street or public street except as a danger warning; the creation by means of any such signaling device of any unreasonably and unnecessarily loud or harsh sounds; the sounding of any such signaling device for an unnecessarily or unreasonably long period of time; or the use of any horn, whistle or other device operated by engine exhaust.

(2) Motor vehicle noises. Any loud or annoying noise made by any motor vehicle and not reasonably necessary to the operation thereof under the circumstances, including, but not limited to, noise caused by screeching of tires; racing or accelerating the engine, except in the course of repair or adjustment thereof between the hours of 7:00 a.m. and 10:00 p.m.; backfiring the engine; or the emission of exhaust from the engine tail pipe or muffler.

(3) Stereos, TVs, Radios and Phonographs. The using, operating or playing, or the permitting to be played, used or operated, any stereo, radio receiving set, musical instrument, phonograph, television set or any like machine or device that produces or reproduces sound, in such manner as to disturb at any time, the peace, quiet and comfort of the neighboring inhabitants, with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, chamber or place in which the machine or device is operated and who are voluntarily listening thereto. The operation of any such machine or device between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible by inhabitants or occupants of any adjacent or neighboring residential properties or units, or plainly audible at a distance of fifty (50) feet from any non-residential building, structure, vehicle or place in which it is located, shall be prima facie evidence of a violation of this subsection. (Ord. No. 2008-1300, 2/26/08)

(4) Loudspeakers or amplifiers for advertising. The using, operating or playing, or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound, which casts sound upon the streets for the purpose of commercial or political advertising, or attracting the attention of the public to any building, structure or attraction between the hours of 10:00 p.m. and 7:00 a.m.

(5) Yelling or shouting. Loud or raucous yelling, shouting, hooting, whistling or singing in the public streets or in public places, or any other place, so as to annoy or disturb the quiet, comfort or repose of persons in any office or inhabitants or occupants of any neighboring or adjacent dwelling, hotel, apartment building or other kind of residence. The occurrence of such conduct between the hours of 10:00 p.m. and 7:00 a.m. shall be prima facie evidence of a violation of this subsection. (Ord. No. 2008-1300; 2/26/08)

(6) Animals or birds. The keeping of animals or birds which, by causing frequent
or long, continued noise plainly audible by inhabitants or occupants of any
adjacent or neighboring residential properties or units, or plainly audible at a
distance of fifty (50) feet from any non-residential building or structure, shall be
presumed to disturb the comfort or repose of any person or persons in the vicinity
and shall be prima facie evidence of a violation of this subsection; however,
nothing in this subsection shall be construed as applying to occasional noises
emanating from a legally operated kennel, animal hospital or veterinary clinic,
humane society or pound. (Ord. No. 2008-1300; 2/26/08)

(7) **Noise in proximity to schools, courts, churches or hospitals.** The creation of
any excessive noise on any street adjacent to a school, institution of learning, church
or court while such facilities are in use, or adjacent to any hospital which
unreasonably interferes with the work of the institution or which disturbs or unduly
annoys patients of the hospital; however, this subsection shall not apply unless
conspicuous signs are displayed in such streets indicating that there is located in the
vicinity a school, hospital, court or church.

(8) **Hawkers and peddlers.** The shouting or crying of peddlers, hawkers or
vendors, so as to disturb the peace and quiet of the neighborhood.

(9) **Erection or demolition of buildings,** excluding owner resident additions or
remodeling, and the grading and excavation of land including the use of blasting,
the start up and use of heavy equipment such as dump trucks and graders and the
use of jack hammers except on week days Monday through Friday between the
hours of 7:00 a.m. and 6:00 p.m. and on Saturdays 8:00 a.m. to 5:00 p.m. The City
Manager may waive any or all of the provisions of this subsection in cases of
urgent necessity, or in the interest of public health and safety. The provisions of
this subsection may also be waived or modified pursuant to a Conditional Use
Permit or other development entitlement processed and issued in accordance with
the applicable City requirements and procedures. (Ord. No. 2008-1300; 2/26/08)

(10) **Late Night Disturbances** that are plainly audible by inhabitants or occupants
of any adjacent or neighboring residential properties or units, or are plainly audible
at a distance of fifty (50) feet, that occur on week days, Monday through Friday,
between the hours of 10:00 p.m. and 7:00 a.m. the following day, and/or on
weekends, Saturday through Sunday, between the hours of 11:00 p.m. and 7:00
a.m. the following day, shall be prima facie evidence of violation of this subsection.
(Ord. No. 2008-1300; 2/26/08)

### 10.24.030 **Assessment of Sound.**

Any law enforcement officer, code enforcement
officer, or other official designated by the city manager or designee who hears a noise or sound
that is plainly audible, as defined in Section 10.24.020, in violation of this Chapter, may enforce
this chapter and shall assess the noise or sound according to the following standards: (Ord.
No. 2008-1300; 2/26/08)

(a) The primary means of detection shall be by means of the official’s normal
hearing faculties, not artificially enhanced. (Ord. No. 2008-1300; 2/26/08)
(b) The official shall first attempt to have a direct line of sight and hearing to the vehicle or real property from which the sound or noise emanates so that the official can readily identify the offending source of the sound or noise and the distance involved. If the official is unable to have a direct line of sight and hearing to the vehicle or real property from which the sound or noise emanates, then the official shall confirm the source of the sound or noise by approaching the suspected vehicle or real property until the official is able to obtain a direct line of sight and hearing, and confirm the source of the sound or noise that was heard at the place of the original assessment of the sound or noise. (Ord. No. 2008-1300; 2/26/08)

(c) The official need not be required to identify words, song titles, artists, or lyrics in order to establish a violation. (Ord. No. 2008-1300; 2/26/08)

10.24.040 Defenses. In any prosecution for a violation of this Chapter, it shall be a sufficient defense that the noise of which complaint is made resulted from reasons beyond the control of the person charged with making the noise, unless the noise is due to a reparable or otherwise curable cause which was not diligently cured or repaired; that it was necessary to make the noise to prevent injury to persons or property or that the creation or emission of the noise was done by or with a device, such as a horn, siren or muffler, installed and operated pursuant to state law and meeting the requirements thereof. (Ord. No. 2008-1300; 2/26/08)

10.24.050 Violation – Enforcement and Penalties.

(a) A violation of this Chapter shall be an infraction and shall be punished as prescribed in Section 1.12.010. (Ord. No. 2008-1300; 2/26/08)

(b) A violation of this Chapter shall be a public nuisance and, upon direction to do so by the city council, the city attorney shall proceed to abate the nuisance. (Ord. No. 2008-1300; 2/26/08)

(c) Joint and Several Responsibility. In addition to the person causing the offending sound, the owner, tenant or lessee of property, or a manager, overseer or agent, or any other person lawfully entitled to possess the property from which the offending sound is emitted at the time the offending sound is emitted, shall be responsible for compliance with this Chapter if the additionally responsible party knows or should have known of the offending noise disturbance. It shall not be a lawful defense to assert that some other person caused the sound. The lawful possessor or operator of the premises shall be responsible for operating or maintaining the premises in compliance with this Chapter and may be cited regardless of whether or not the person actually causing the sound is also cited. Notwithstanding the foregoing, an owner, manager, overseer or agent of property from which offending sound is emitted and who does not reside on such property shall not be cited for violation of the provisions of this Chapter unless such owner, manager, overseer or agent has previously been informed in writing by a law enforcement officer, code enforcement officer, or other official designated by the city manager or designee of the existence of an offending noise disturbance on the property, and such disturbance continues or occurs again. (Ord. No. 2008-1300; 2/26/08)
CHAPTER 10.28

ALARM SYSTEMS

SECTIONS:

10.28.010 Definitions
10.28.020 Alarm System Standards
10.28.030 Alarm Business Standards
10.28.040 Alarm Use Requirements
10.28.050 Prohibitions
10.28.060 Enforcement and Appeals
10.28.070 Limitations on Liability

10.28.010 Definitions. Whenever the following words or phrases are used in this Chapter, they shall have the meaning ascribed to them in this section unless from the context in which a word or phrase is used a different meaning is evident:

(a) "Alarm Agent" means a person employed by an alarm business, either directly or indirectly, whose duties include selling, leasing, altering, installing, maintaining, moving, repairing, replacing, servicing, responding to, or monitoring an alarm system, or a person who manages or supervises a person employed by an alarm business to perform any of the duties described herein.

(b) "Alarm Business" means any business held by an individual, partnership, corporation, or other entity for the purpose of selling, leasing, altering, installing, maintaining, moving, repairing, replacing, servicing, responding to, or monitoring any alarm system in a building, structure, or facility.

(c) "Alarm System" means any mechanical or electronic device or series of devices which transmits a signal or message, either directly or indirectly, to an Emergency Dispatch Center; or which emits an audible or visible signal at the alarm location, and which is designed to:

(1) Detect unauthorized entry into any building, structure, or facility; or

(2) Signal the occurrence of an unlawful act upon the premises; or

(3) Detect a fire, or detect activation, equipment problems, or the malfunction of a fire protection system; or

(4) Detect a hazardous material leak or system malfunction; or

(5) Signal the need for medical attention.

For purposes of this Chapter, devices operated by the City of San Marcos or devices which are not designed or used to register alarms that are audible, visible or perceptible outside of the protected premises are not included within the meaning of Alarm System.
(d) "Alarm User" means any person, firm, partnership, association, corporation, or organization of any kind which owns, leases, rents, uses, or makes available for use by its agents, employees, representatives, or family, any alarm system.

(e) "Chief of Police" means the senior officer in authority serving the law enforcement needs of the City whether by contract or as a direct employee.

(f) "City" means the City of San Marcos.

(g) "Day" means calendar day, unless specified otherwise.

(h) "Department Head" means the City Chief of Police, the City Fire Chief, or their designated representatives.

(i) "Direct Dial System" means an alarm system which is connected to a telephone line and, upon activation of an alarm system, automatically transmits a message or signal to the Emergency Dispatch Center, indicating the need for emergency response.

(j) "Emergency Dispatch Center" means any facilities owned or operated by one or more public agencies where police or fire, or both police and fire, communications are received and dispatched.

(k) "False Alarm" means an activation of an alarm system through mechanical failure, malfunction, improper installation or maintenance, or negligence of the alarm user when an emergency situation does not exist. A determination as to whether an alarm signal was a false alarm or an actual alarm shall be made by the appropriate Department Head. "False Alarms" shall not include those alarms activated by extraordinary meteorological, atmospheric, or other conditions or means, as determined by the Department Head.

(l) "Fire Department" means the San Marcos Fire Department.

(m) "Notice" means written notice, given by personal service upon the addressee, or given by United States mail, postage prepaid, addressed to the person to be notified at his last known address. Service of such notice shall be effective upon the completion of personal service, or upon the placing of the same in the custody of the United States Postal Service.

(n) "Police Department" means the San Diego County Sheriff or other public agency or department serving the law enforcement needs of the City whether by contract or as a City Department.

(o) "Private Alarm Dispatch Center" means a center maintained by an alarm business which receives emergency signals from alarm systems, and thereafter relays the message to the Emergency Dispatch Center.

(p) "Responsible Department" means the City Department having the responsibility of providing emergency services upon receipt of an alarm signal at the Emergency Dispatch Center. For incidents related to fires, or water flow in fire sprinkler systems, or other extinguishing agents in fire protection systems, as well as medical attention, the Fire Department shall be the responsible department. For incidents related to burglary, robbery, unauthorized building entry, etc., the responsible department shall be the Police Department.
(q) "Smoke Detector" means a device which senses visible or invisible particles of combustion and is designated to emit upon activation a sound sufficient only to provide warning to the occupants of the building, structure, or facility in which such device is situated.

(r) Whenever the singular or masculine of a word is used, the same shall be deemed to include the plural, feminine or body corporate as necessary.

10.28.020 Alarm System Standards.

(a) In General:

(1) The City Council, upon recommendation of the City Manager, may prescribe by resolution minimum standards and regulations for the construction and maintenance of all alarm systems installed in the City. All equipment shall meet or exceed these standards and regulations.

(2) No Alarm System shall be installed unless the alarm user has either a service agreement with an alarm business qualified under this chapter, or has available a designated person who will respond to the site of an activated alarm with the ability to deactivate the alarm.

(3) All Alarm Systems shall be supplied with an uninterruptible power supply in such a manner that the failure or interruption of the normal utility electric service will not activate the alarm system. The back up power supply shall be capable of at least four (4) hours of continuous operation.

(b) Audible Alarm Systems. No Audible Alarm System shall be installed or used unless it has an automatic reset capability, which silences the alarm within fifteen (15) minutes of activation.

(c) Silent Alarm Systems.

(1) Direct Dial Systems are prohibited.

(2) All Silent Alarm Systems shall be connected to a Private Alarm Dispatch Center.

10.28.030 Alarm Business Requirements.

(a) Alarm businesses operating within the City shall comply with all state and city licensing requirements and shall operate in accordance with the standards set forth in the State Alarm Company Act for the conduct of business and the qualifications of employees, including alarm agents.
(b) No person or company which installs, or otherwise provides an alarm system, shall install such a device or system without the ability to provide twenty-four (24) hour service for that system. "Service" for the purposes of this section includes the ability to promptly repair a malfunctioning alarm system, and, to provide a service response to the alarm location within thirty (30) minutes of a request for service. "Service" shall also include the ability to provide periodic maintenance necessary to assure normal functioning of the system. The failure to provide service as specified in this paragraph constitutes a violation of this chapter. This section shall not apply to those persons or businesses who merely sell alarm systems from fixed locations, or who manufacture alarm systems, unless such persons or firms also install, monitor, or service those systems.

(c) Any alarm business operating a Private Alarm Dispatch Center shall, by live voice, within one (1) minute of receiving notice that an alarm has been activated, notify the Emergency Dispatch Center of the activation. Notification of the emergency Dispatch Center shall be made via a designated one-way telephone line which has been designated for members of the San Diego Burglar and Fire Alarm Association solely for the reporting of alarm activations unless the circumstances prevent the use of the special telephone line. Alarm businesses not members of the Association may use the public, non-emergency telephone line of the Emergency Dispatch Center.

(d) Each alarm business that monitors fire alarm systems shall comply with all sections of the most current National Fire Protection Association Standards #71. A copy of the current standards shall be kept on file with the Police and Fire Departments.

(e) It shall be the duty of the owner, operator and all employees of an alarm business to cooperate fully at all times with the City and its employees. Every alarm business shall, upon request during normal working hours of business, make any and all records and information in its possession relating to alarm systems operating within the City, available to personnel authorized by the Chief of Police or Fire Chief. Each alarm business shall possess a current, valid City Business License.

10.28.040 Alarm Use Requirements.

(a) Unless otherwise provided in this chapter, no person shall use an alarm system which has caused one false alarm unless the person has first obtained an alarm system application as specified in this section.

(b) All users of alarm systems shall complete an alarm application approved by the responsible Department Head upon the alarm system installation. The Alarm Monitoring Company will be responsible for educating the alarm user on the matters pertaining to false alarm prevention. It will also be the responsibility of the Alarm Monitoring Company to obtain a City of San Marcos Alarm Permit Application, that is to be completed by the user, at the time of installation. A separate application shall be required for each separately alarmed building or facility, and for each separate alarm system. Each application shall contain the current name, address, telephone number, Business License number, and signature of the individual accepting responsibility for the proper functioning and maintenance of the alarm system covered. An alarm system application shall be valid for an indefinite period of time unless there is a change in the alarm user or the address location of the alarm system. The fees for alarm system applications shall be set forth by City Council Resolution. (Ord. No. 2003-1191, 7-08-03)
(c) The alarm user shall, at all times, insure that the City is in possession of a minimum of two (2) names, telephone numbers, and home addresses of persons with twenty-four (24) hour access to the alarm location and the alarm system, who are authorized to and shall respond to the location where an alarm has been activated within thirty (30) minutes of a request by the responsible department to do so. At such time as any one of these persons no longer possesses such access to the alarm location, the alarm user shall notify the City within forty-eight (48) hours of the time at which the person no longer possesses such access.

(d) In the event that an alarm system has been wired into a building, structure or facility and the last alarm user moves from that location, it shall be the responsibility of the last alarm user to notify the City of such changes prior to the change. Until notification of a change is made, the last known alarm user shall be responsible for all false alarm assessments imposed under this Ordinance.

(e) It shall be the responsibility of the alarm user to properly use the alarm system and to maintain it mechanically and technically to insure safe and responsible operation and to minimize the number of false alarms. If the Chief of Police or Fire Chief determines that a system is deficient in quality, components, servicing, or is improperly used by the alarm user, the Chief may require that modifications be made to the system to insure compliance with this chapter.

(f) If an alarm has been installed in living units of a multi-family project as part of that project, then the landlord or property owner shall be responsible for complying with the provisions of this chapter. An annual fee shall be established to insure the proper use and maintenance of the alarm systems by tenants from the project. False alarm penalty fees and assessment charges for false alarms which have occurred in the specific multi-family unit shall be deducted from this annual fee. In the event there are any monies which remain at the end of the fiscal year, such monies shall be applied toward the following year's annual fee for the project. A landlord is in a position to indemnify himself/herself from any violations by including such an indemnity provision in the lease between the landlord and the tenant. The amount of the annual fee shall be set by City Council Resolution.

(g) False Alarms shall be considered excessive when they exceed two (2) activations in any twelve (12) month period. A false alarm penalty assessment, as a civil penalty, shall be paid for each false alarm, message or signal in excess of two activations in any twelve (12) month period which results in a response by police or fire safety personnel. The amount of false alarm assessment shall be set by City Council Resolution.

(h) The Police Chief or Fire Chief shall cause to be issued a monthly bill for the unpaid fees accrued during any monthly billing period and any prior periods. Such bill shall be due and payable within thirty (30) days of the billing date.

(i) A penalty assessment shall be added to the unpaid balance of any assessment required by this section not paid within ninety (90) days of the billing date. The amount of the penalty assessment shall be set by City Council Resolution.
(j) The amount of any fee and late penalty assessed pursuant to this Section shall be deemed a debt to the City, and an action may be commenced in the name of the City in any court of competent jurisdiction in the amount of the delinquent debt. Payment of any user fees and late charges shall not prohibit criminal prosecution for the violation of any provisions of this chapter.

(k) The provisions of Section 39580 through 39586, inclusive, of the Government Code of the State of California are incorporated by reference and made part of this chapter. The County Auditor shall enter each assessment in the county tax roll opposite the parcel of land. The amount or assessment shall be collected at the time and in the manner of ordinary municipal taxes; and, if delinquent, the amount is subject to the same penalties and procedure of foreclosure and sale as is provided or ordinary municipal taxes.

10.28.050 Prohibitions.

(a) It is unlawful to install or modify an alarm system which upon activation emits a sound similar to sirens used on emergency vehicles or for civil defense purposes.

(b) It is unlawful to transmit to the Emergency Dispatch Center an alarm indicating that an emergency exists without being specific as to the type of emergency, such as robbery, burglary, fire or medical.

10.28.060 Enforcement and Appeals.

(a) Permit Revocation. In addition to other remedies provided herein, the Department Head of the responsible department may revoke an alarm system application for a violation of this chapter.

(b) Appeals. The decision of a Department Head to revoke an alarm system application; or to assess a civil penalty may be appealed, in writing, to the City Manager or his designee. All appeals must be filed within thirty (30) days of receipt of notice of the Department Head's action.

(c) Criminal Penalty. Any violation of this Chapter shall be unlawful and punishable as a misdemeanor, as provided in Chapter 1.12 hereof.

10.28.070 Limitation on Liability. The City of San Marcos shall have no obligation or duty to any owner or lessee of an alarm system or any other person by reason of any provision of this Chapter or by reason of the exercise of any privileges pursuant to this Chapter. Nor shall said provisions impose any liability, obligation or duty upon the City in regards to, but not limited to, defects in an alarm system, any delay in transmission of an alarm message to any emergency unit, damage or injury caused by non-response or in responding to an alarm by any City officer, employee or agent. (Ord. No. 94-971, 12-20-94)
CHAPTER 10.30

GRAFFITI

SECTIONS:

10.30.010 Definitions
10.30.015 Declaration of Public Nuisance
10.30.020 Graffiti Prohibited
10.30.030 Possession of Graffiti Implement by Minors
10.30.040 Wrongful Display of Graffiti Implement for Sale
10.30.050 Wrongful Storage of Graffiti Implement
10.30.060 Graffiti Removal
10.30.070 Notice of Pending Administrative Enforcement Action
10.30.080 Authority to Enter, Inspect and Abate
10.30.090 Compliance Report
10.30.100 Failure to Abate Nuisance
10.30.110 Account of Cost of Abatement to be Kept; Copies of Report of Abatement Cost to be Mailed
10.30.120 Service of Notice
10.30.130 Confirmation, Rejection or Modification of Abatement Costs
10.30.140 Recovery of Costs and Attorneys’ Fees
10.30.150 Collection of Costs Under Cost Recovery Order
10.30.160 Recordation
10.30.170 Violation: Liability of Parent or Guardian
10.30.180 Community Service: Alternative Remedy
10.30.190 Glass Etching Cream

10.30.010 Definitions. For the purpose of this chapter, the following words and phrases shall have the meanings ascribed to them in this section unless it is apparent from the context that they have a different meaning.

“City Manager” means the City Manager of the City of San Marcos or the city employees, departments or contractors authorized by the City Manager to enforce the provisions of this chapter.

“Expense of abatement” includes, but is not limited to, court costs, attorney’s fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced property, the law enforcement costs incurred by the city and/or its law enforcement agency, and any and all costs and expenses associated with the foregoing.

“Graffiti or other inscribed material” includes any unauthorized inscription, word, figure or design that is written, marked, etched, scratched, drawn, painted, placed on or affixed to any real or personal property.

“Graffiti Implement” includes any aerosol paint container and/or accessories used specifically in conjunction with aerosol paint containers, felt tip marker, paint stick, paint brushes, paint rollers or similar apparatus, or glass etching cream or related glass etching product or accessory.
“Minor” or “other person” means a minor or other person who has confessed to, admitted to, or pled guilty or nolo contendere to a violation of Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code, or a minor convicted by final judgment of a violation of Section 594, 594.3, 640.5, 640.6 or 640.7 of the Penal Code, or a minor declared a ward of the Juvenile Court pursuant to Section 602 of the Welfare and Institutions Code by reason of the commission of an act prohibited by Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code.

10.30.015 Declaration of Public Nuisance. The City Council declares graffiti is a public nuisance, subject to abatement as prescribed in this Chapter.

10.30.020 Graffiti Prohibited.

(a) It shall be unlawful for any person to paint, inscribe, mark, place or otherwise apply or affix graffiti on or deface any real or personal property in the City, public or private.

(b) The City shall notify a property owner of the existence of a graffiti nuisance on his or her property in writing by first class mail to the last owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current.

(c) It shall be unlawful for the owner of any private property to permit graffiti to remain in a manner visible to persons using any public rights-of-way in the City for more than fifteen (15) calendar days after City has given the owner written notice to remove the graffiti.

10.30.030 Possession of Graffiti Implement by Minors.

(a) It shall be unlawful for any person under the age of eighteen (18) years to have in his or her possession any Graffiti Implement while upon public property or while upon private property without the consent of the owner of such property whose consent is given in advance and whose consent shall be given as to the person's presence while in the possession of a Graffiti Implement.

(b) The foregoing provision shall not apply with respect to felt tip markers while a person is attending, or travelling to or from a school at which the person is enrolled, if the person is participating in a class at said school which has, as a written requirement of said class, the need to use felt tip markers.


(a) No person, firm or entity engaged in commercial enterprise shall display for sale, trade, or exchange, any Graffiti Implement except in an area from which the public shall be securely precluded without employee assistance. Two such acceptable methods for displaying a Graffiti Implement for sale shall be by containment in (1) a completely enclosed cabinet or other storage device which shall, at all times except during access by authorized representatives, remain securely locked; or (2) in an enclosed area behind a sales or service counter from which the public is precluded from entry.

(b) Penalties for Violation. Any person or retailer who violates any provision of this Section 10.30.040 shall upon conviction thereof, be guilty of a misdemeanor offense, punishable as provided in Section 1.12.020. It shall be the responsibility of employers to disseminate information concerning the provisions of this section to their employees.
10.30.050 Wrongful Storage of Graffiti Implement.

(a) No person shall store any Graffiti Implement except in either (1) a completely enclosed room which shall, at all times except during access or substantial occupancy by the owner or an authorized adult representative of the owner, remain securely locked; or (2) in a completely enclosed cabinet or other storage device which shall, at all times except during access by the owner or an authorized adult representative of the owner, remain securely locked. For the purposes of this section, an owner or authorized representative of the owner, shall be deemed to have substantial occupancy of a room even during short periods of absence if the room is part of a larger structure which is occupied by the owner.

(b) Penalties for Violation. Any person or retailer who violates any provision of this Section 10.30.050 shall upon conviction thereof, be guilty of a misdemeanor offense, punishable as provided in Section 1.12.020. It shall be the responsibility of employers to disseminate information concerning the provisions of this section to their employees.

10.30.060 Graffiti Removal.

(a) Whenever the City Manager determines that graffiti is located on public or private property within the City in a manner visible to persons using any public right-of-way, the City Manager is authorized to provide for the removal of the graffiti or, at the Manager's discretion, furnish or otherwise provide the owner with materials necessary to accomplish such removal. The City Manager may serve on the property owner a Notice of Violation and Compliance Order under San Marcos Municipal Code Section 1.12.010 or 1.12.020 which may include a charge for the cost of issuance of the Notice. In addition to these remedies, or any other remedy provided under the Municipal Code, the City Manager may issue an administrative citation, which may include a charge for the cost of the issuance of the citation, and pursue an administrative enforcement action under Municipal Code Chapter 1.14

(b) The City Manager shall not undertake to provide for the painting or repair of any more extensive area than that where the graffiti is located.

(c) Prior to the removal of the graffiti, the City Manager shall obtain the written consent of the property owner, and the owner shall execute an appropriate release prepared by the City Attorney.

10.30.070 Notice of Pending Administrative Enforcement Action.

(a) A City code compliance officer or official (hereinafter “enforcement officer”) may record with the County Recorder’s Office a notice against a property which is the subject of an administrative enforcement action pending with the City of San Marcos.

(b) A notice of pending administrative action shall be on a form approved by the City Manager and shall describe the nature of the administrative action and refer to the Municipal Code governing the pending administrative action.

10.30.080 Authority to Enter, Inspect and Abate. If an owner, occupant or agent refuses permission to enter, inspect and abate a graffiti nuisance on a property, the City Manager may seek a warrant pursuant to court order or any other procedure as authorized by law and as directed by the City Attorney.
10.30.090 **Compliance Report.** If an enforcement officer determines that compliance with the Notice of Violation and Compliance Order or Administrative Abatement Order has been achieved, the enforcement officer shall notify the responsible party and file a report with the City Manager indicating that compliance has been achieved and the date of the City’s final inspection of the property.

10.30.100 **Failure to Abate Nuisance.** In the event such public nuisance is not abated on or before the date described in the Notice of Violation and Compliance Order or Administrative Abatement Order, the enforcement officer shall, and is hereby authorized to direct the City Attorney to secure the appropriate court order for the abatement thereof by City agents, employees or by private contract. Any such abatement action shall be conducted in accordance with then current statutory and decisional law and the order of the issuing court.

10.30.110 **Account of Cost of Abatement to be Kept; Copies of Report of Abatement Cost to be Mailed.** The enforcement officer shall cause to be kept an itemized account of the cost of such abatement. Unless waived in writing by the parties, the enforcement officer shall schedule an Administrative Cost Hearing to certify abatement costs pursuant to Chapter 1.14. At least ten (10) days prior to the Administrative Cost Hearing certifying costs, a Notice of Administrative Cost Hearing shall be served by certified mail on the parties and the property owner, if the property owner’s identity can be determined from the county assessor’s or county recorder’s records, and shall include a copy or copies of the itemized account of the cost of abatement. A party or the property owner may contest the abatement costs at the Administrative Cost Hearing. Pursuit of such a contest by a party or property owner is necessary to exhaust the administrative remedies in challenging the validity of any lien or special assessment against the property.

10.30.120 **Service of Notice.** If the City intends to make the expense of abatement a personal obligation of the Minor, parent or guardian, or other person, or if the City intends to make the expense of abatement a lien or assessment against the property on which the nuisance is maintained, or against a parcel of land owned by the Minor or other person or by the parent or guardian having custody and control of the Minor, the City shall serve notice of same and of the Administrative Cost Hearing to said person in the same manner as summons in a civil action pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the Minor or other person, after diligent search, cannot be found, the notice may be served by posting a copy of the notice upon the property owned by the Minor or other person, in a conspicuous place, for a period of ten (10) days. The notice shall also be published pursuant to Section 6062 in a newspaper of general circulation that is published in the county in which the property is located. If the parent or guardian having custody and control of the Minor, after diligent search, cannot be found, the notice may be served by posting a copy of the notice upon the property owned by the parent or guardian having custody and control of the minor, in a conspicuous place, for a period of 10 days. The notice shall also be published pursuant to Section 6062 in a newspaper of general circulation that is published in the county in which the property is located.

10.30.130 **Confirmation, Rejection or Modification of Abatement Costs.** On the date and time set for the Administrative Cost Hearing, the Hearing Officer shall consider the abatement cost report of the enforcement officer together with any appropriately made objections, and shall confirm, reject, or modify the report by issuing a written abatement costs order in accordance with this Chapter and Chapter 1.14.110.
10.30.140  Recovery of Costs and Attorneys' Fees. The City Council may issue a Cost Recovery Order which assesses the cost of abatement, as confirmed, the costs of processing and recording the lien or assessment, the costs of notice and citation, and any expense of abatement as defined herein as a:

(a) Personal obligation of the real property owner, Minor, parent or guardian having custody and control of the Minor or other person;

(b) Lien against the subject property or real property of the Minor, parent or guardian having custody or control of the Minor or other person; and

(c) Special assessment against the subject property or real property of the Minor, parent or guardian having custody or control of the Minor or other person.

10.30.150  Collection of Costs Under Cost Recovery Order. The costs assessed under the Cost Recovery Order may be collected by the City by any or all of the following or any other lawful means:

(a) Recordation of a lien or special assessment pursuant to Section 10.30.160;

(b) Civil action by the City; and/or,

(c) Any other legally authorized procedure for the abatement of nuisance or collection of costs associated therewith.

10.30.160  Recordation. A graffiti abatement lien or assessment shall be recorded in the county recorder's office in the county in which the parcel of land is located. The lien or assessment shall specify the amount of the lien or assessment; the name and agency on whose behalf the lien or assessment is imposed; the date of the abatement order; the street address, legal description, and assessor's parcel number of the parcel on which the lien or assessment is imposed; and the name and address of the recorded owner of the parcel. If the lien or assessment is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified above shall be recorded.

10.30.170  Violation: Liability of Parent or Guardian. Any violation of the terms of Section 10.30.020 is hereby determined to be an act of willful misconduct as defined by California Civil Code § 1714.1 for which victims suffering damages resulting from such willful misconduct shall have a right to reimbursement from the violator for said damages. Further, any parent or guardian, having custody and control of a minor, which minor violates the terms of Section 10.30.020, resulting in damages to property in the amount of $25,000 or less per offense, shall be jointly and severally liable for such damages as provided in California Civil Code § 1714.1. The City may, at the election of the City Manager, undertake to recover damages on behalf of any victim suffering damages as a result of any violation of the terms of this Article.

10.30.180  Community Service: Alternative Remedy. In lieu of, or as a part of, prosecuting a civil action pursuant to the terms of Chapter 10.30 hereof, the City Attorney, upon the recommendation of the City Manager, shall be authorized to offer a minor or his or her parent or guardian an option to perform such community service as the City Manager deems appropriate. Such community service, if offered at all, shall have the purpose of advancing a solution to the problems of graffiti abatement and removal.
10.30.190 Glass Etching Cream.

(a) Storage of Glass Etching Cream. Every person who owns, conducts, operates or manages a retail commercial establishment selling glass etching cream or any commercially available product that can be used to etch glass (a “glass etching product”), whether sold separately or in a kit, shall store or cause to be stored such glass etching cream or glass etching product under lock and key in an area viewable by, but not accessible to, the public in the regular course of business without employee assistance, pending the legal sale or disposition of such glass etching cream or glass etching product.

(b) Prohibition of Sale to Minors. No person who owns, conducts, operates or manages a retail commercial establishment selling glass etching cream or any commercially available glass etching product, whether sold separately or in a kit, shall sell or cause to be sold any such glass etching cream or glass etching product to any person who has not yet attained the age of 18 years.

(c) Penalties for Violation. Any person or glass etching cream or glass etching product retailer who violates any provision of this Section 10.30.190 shall, upon conviction thereof, be guilty of a misdemeanor offense, punishable as provided in Section 1.12.020. It shall be the responsibility of employers to disseminate information concerning the provisions of this section to their employees.

(Ord. No. 2010-1331, 2-9-10)
CHAPTER 10.32

MISCELLANEOUS OFFENSES

SECTIONS:

10.32.010 Coin Operated Pinball Machines
10.32.020 Reserved (Ord. No. 99-1066, 07-13-99)
10.32.030 Trespassing Upon Parking Lots, Shopping Center Property and Other Property Open to Public Parking Uses
10.32.040 Consuming or Possessing Alcoholic Beverage in Public
10.32.050 Unauthorized Presence in Drainage Channels, Storm Water Channels, Culverts and/or Canals

10.32.010 Coin-operated pinball machines. Pinball machines, coin-operated, shall be permitted in commercial zones within the City of San Marcos, subject to approval of a special use permit.

It shall be illegal to operate pinball machines which would entitle the operator to receive money, credit, allowance, a thing of value, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance, or thing of value.

10.32.020 Reserved. (Ord. No. 99-1066, 07-13-99)

10.32.030 Trespassing upon Parking Lots, Shopping Center Property and Other Property Open to Public Parking Uses.

(a) No person other than a public officer or employee acting within the course and scope of his or her employment shall remain upon, wander, idle, or loiter on any parking lot, shopping center property or any other place open to the public without apparent reason or business, or without the written permission of the owner thereof, or the person entitled to the immediate possession thereof, or the authorized agent of either.

(b) Whenever any person is stopped by a peace officer pursuant to this section, he shall, upon the request of such peace officer, display said written permission.

(c) Property affected by this section shall be conspicuously posted at each entrance to such property using a sign seventeen (17) inches by twenty-two (22) inches in size with lettering not less than one inch in height that states the restriction and cites the regulation so as to inform potential violators at those locations where enforcement is to occur.

(d) Persons violating this section shall be guilty of a misdemeanor and are punishable as prescribed by section 1.12.010 of the municipal code.

10.32.040 Consuming or possessing alcoholic beverage in public.

(a) No person shall consume or be in possession of any unsealed or open alcoholic beverage container in any public place or place open to the public, street, sidewalk, alley, highway, arcade, court, or in any vehicle within five hundred (500) feet of any off-sale licensed public premises within the city.
(b) This section shall not in any way prohibit the lawful use and/or possession of liquor within the premises of a properly licensed on-sale establishment.

(c) Notwithstanding the provisions of subsections 10.32.040 (a) & (b), the consumption of alcohol or the possession of an unsealed or open alcoholic beverage container is prohibited in any municipal park or facility except at duly authorized community events during permitted hours of operation where the presence of alcohol has been granted specific written permission through an administrative permit from the City Manager or the designated representative. (Ord. No. 2002-1159, 9/24/02)

(d) Persons violating this section shall be guilty of a misdemeanor and are punishable as prescribed by section 1.12.020 of this Code. (Ord. No. 2002-1159, 9/24/02)

10.32.050 Unauthorized Presence in Drainage Channels, Storm Water Channels, Culverts and/or Canals. (Ord. No. 2005-1243, 2/22/05)

(a) It shall be unlawful for any person to be in, enter into, or remain in or within drainage channels, storm water channels, culverts and/or canals. For purposes of this section, "drainage channels, storm water channels, culverts and/or canals" shall mean a waterway, watercourse or conduit, natural or otherwise, that directs or conveys storm water or water runoff through or to the storm drain system.

(b) Notwithstanding the foregoing, persons who have been authorized by the owner of the property upon which the drainage channel, storm water channel, culvert and/or canal is located, or the authorized agent of the same, and/or those persons who have been issued the appropriate permits or licenses from a local, state or federal governmental agency with jurisdiction, may be present in, enter into, or remain in or within drainage channels, storm water channels, culvert and/or canals for the purpose of constructing, installing, maintaining and/or repairing such facilities or appurtenances thereto.

(c) This prohibition shall not apply to law enforcement officials, emergency response personnel and/or other governmental employees acting within the course and scope of their duties.

(d) Persons violating this section shall, upon conviction thereof, be guilty of a misdemeanor and are punishable as prescribed by Section 1.12.020 of this Code.
CHAPTER 10.34

RENTAL HOUSING USED FOR DRUG ACTIVITY

SECTIONS:

10.34.010 Definitions
10.34.020 Prohibition
10.34.030 Notice of Violation
10.34.040 Failure to Comply with Notice of Violation
10.34.050 Declaration of Public Nuisance
10.34.060 Construction
10.34.070 Severability

10.34.010 Definitions.

(a) **Landlord** means an owner, lessor, or sublessor (including any person, firm, corporation, partnership, or other entity) who receives or is entitled to receive rent for use of any rental unit, or the agent, representative or successor of any of the foregoing.

(b) **Tenant** means a tenant, subtenant, lessee, sublessee, any person entitled to use or occupy a rental unit, or any other person who is using or occupying a rental unit.

(c) **Rental Unit** means any dwelling unit, efficiency dwelling unit, guest room, apartment and suite, including any single family residence, duplex, and condominium in the City of San Marcos, the land and building appurtenant thereto, including common areas, garage facilities, alleyways, stairwells, and elevators. This term shall also include mobile homes, whether rent is paid for the mobile home and the land upon which the mobile home is located, or rent is paid for the land alone. Further, it shall include recreational vehicles, as defined in California Civil Code Section 799.24, if located in a mobile home park, whether rent is paid for recreational vehicle and the land upon which it is located, or rent is paid for the land alone.

(d) **Controlled Substance** means a drug, substance, or immediate precursor, as listed in the Uniform Controlled Substance Act, Health and Safety Code Section 11000 et seq., which is in an amount that is legally sufficient to establish by a preponderance of the evidence that the controlled substance was possessed for personal use or possessed for sale.

(e) **Drug Related Use** means any unlawful possession for personal use of a controlled substance in a rental unit, brought to the attention of the landlord by other tenants, neighbors, other community residents or law enforcement.

(f) **Illegal Drug Dealing Activity** means any unlawful possession for sale or distribution, or any unlawful sale or distribution, storage, possession or manufacturing of a controlled substance from a rental unit, including any acts which constitute violation of Health and Safety Code Sections 11366, 11366.5 or 11550, et seq.
(g) **Drug-Related Nuisance** means any activity wherein would lead a reasonable person to conclude that a rental unit is being used as a place where illegal drug dealing activity is occurring. This activity includes, but is not limited to, steady traffic day or night to a particular unit, barricaded units or sighting of weapons, brought to the attention of the landlord by other tenants, persons within the community, or law enforcement agencies.

**10.34.020 Prohibition.** A landlord shall not knowingly cause or permit any rental unit to be used or maintained for any drug-related use, illegal drug dealing activity, or drug-related nuisance.

**10.34.030 Notice of Violation.** If the City Attorney determines that a rental unit is being used or maintained in violation of 10.34.020, then the City Attorney or any law enforcement agency may order the landlord to comply with said section. This order shall be presented to the landlord either by personal service or by a letter sent certified mail with a return receipt requested. The order shall contain as enclosures sufficient documentation to establish that the premises are being used for illegal drug use, drug dealing activity or drug related nuisance. Nothing herein shall be interpreted as authorizing the release of documentation which would violate an individual's rights to privacy or any other applicable provision of law that precludes the release of public records.

**10.34.040 Failure to Comply with Notice of Violation.** A landlord shall in good faith comply with the Notice prescribed by 10.34.040. If the landlord fails to comply with the Notice, then the City Attorney or any law enforcement agency may take any lawful action to enforce 10.34.040 hereof.

**10.34.050 Declaration of Public Nuisance.** In addition to any other enforcement action the City Attorney may declare an alleged violation of 10.34.050 to constitute a public nuisance and may commence abatement of the conditions giving rise thereto.

**10.34.060 Construction.** Nothing contained in this Chapter shall be construed or interpreted in such a way as to create a principal-agent relationship between the City and the landlord.

**10.34.070 Severability.** If any section, clause, phrase, part, or portion of this Chapter is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. It is hereby declared that this Chapter and each section, subsection, sentence, clause, phrase, part, or portion thereof, would have been adopted or passed irrespective of the fact that any one or more sections, sentences, clauses, phrases, parts, or portions be declared invalid or unconstitutional.

(Ord. No. 89-826, 10-24-89)
CHAPTER 10.36

LAW ENFORCEMENT FORFEITED PROPERTY AND ASSETS PROGRAM

SECTIONS:

10.36.010 Program Established
10.36.020 Use of Funds
10.36.030 Title to Property or Assets
10.36.040 Accounting

10.36.010 Program Established.

(a) Notwithstanding other city ordinances relating to similar issues, a Law Enforcement Forfeited Property and Assets Program is established whereby the City may receive forfeited property and assets transferred to it from the San Diego County Sheriff's Department in accordance with Section 8 of the Agreement of General Law and Traffic Enforcement Services and other pertinent authority such as the Comprehensive Crime Control Act of 1984 (21 U.S. Code Section 873 et seq.), the United States Attorney General's Guidelines on Seized and Forfeited Property (Paragraph III D.3.e.), and the California Health and Safety Code Section 11470 - 11493.

(b) The property and assets subject to the program are those which have been seized or collected by contracted law enforcement personnel during the investigation of criminal activities, subsequently forfeited by judicial or administrative decision, and transferred to the City as a result of participation by contracted law enforcement personnel. The program's purpose shall be to provide an added incentive to the City to assist contracted law enforcement personnel in the fight against crime, especially illegal drug trafficking.

10.36.020 Use of Funds. Any monies received by the Forfeited Property and Assets Program including the monies received from the sale of any forfeited tangible property or other asset, and any interest thereon shall be deposited into a Law Enforcement Forfeited Property and Asset Account of the General Fund. The account shall be used by the City exclusively for law enforcement purposes.

10.36.030 Title to Property or Assets. Title to all property or assets received pursuant to this program shall be taken in the name of the City and shall vest in the City. Upon receipt of any transferred property or asset, the City Manager or Manager's designee shall immediately notify the City Finance Director of the acquisition. The Finance Director, or the Director's designee, shall make the necessary entries in the City's inventory and accounting records, using the property's or asset's fair market value on the date of acquisition, as deems it necessary or expedient to sell forfeited non-cash property or assets received, the proceeds shall be deposited in the Law Enforcement Forfeited Property and Asset Fund.

10.36.040 Accounting. The Finance Director shall establish regular accounting and reporting procedures in connection with the Law Enforcement Forfeited Property and Assets Program with strict accountability. A report shall be provided to the City Manager on no less than an annual basis detailing all monies and tangible assets received, all deposits, and all disbursements. (Ord. No. 90-838, 1-23-90)
CHAPTER 10.38

DISTURBANCE ABATEMENT

SECTIONS:

10.38.010 Purpose
10.38.020 Definitions
10.38.030 First Responses
10.38.040 Subsequent Responses
10.38.050 Notice to Owner
10.38.060 Confidentiality

10.38.010 Purpose. It is the purpose of this Chapter to provide a source of recovery for the costs incurred by the City in returning a second and subsequent time to the scene of a disturbance of the peace. For the purposes of this definition the owner of a single-family residential property shall mean the tenant of the owner in the case of rental property.

10.38.020 Definitions.

(a) "Responsible Person" means the person who owns the property where the disturbance of the peace is occurring, the person in charge of the premises where the disturbance of the peace is occurring or the person who organized the event which is causing the disturbance of the peace. If the "responsible person" is a minor, then the parents or guardians of that minor will be jointly and severally liable for the costs incurred for the second and subsequent City responses.

(b) "Costs of Second and Subsequent Responses" means the salaries of the City employees and officials for the amount of time actually expended in responding to or in remaining at the disturbance of the peace at a rate established by the City Council; together with the actual costs of any medical treatment to injured City employees; and the costs of repairing or replacing any damaged or destroyed City equipment or property.

(c) "City Employee and Officials" includes persons performing services to the City through a contract.

10.38.030 First Response.

(a) During the first response to a disturbance of the peace occurring on private property, the responding officer may, among other things, deliver to the responsible person or persons a "Notice of Violation: First Response" which shall contain a message substantially as follows:

"This notice of violation is given to you as a result of a first response of the City of San Marcos to a disturbance of the peace occurring in violation of Penal Code, Section 415. You will be charged all city personnel and equipment expenses incurred as a result of any second or subsequent response to this location."

(b) The "Notice of Violation: First Response" may contain such other information as deemed necessary by the City Manager to accomplish the purposes of this Chapter.
10.38.040 Subsequent Responses.

a) If the City is required to respond a second or subsequent time to a disturbance of the peace and a "Notice of Violation: First Response" has been delivered to the responsible person or persons, then the City shall commence computing the response costs.

(b) A statement of the charges incurred by the City in its second and subsequent responses shall be prepared and delivered to the responsible person or persons.

(c) The amount of the charge shall be deemed a debt to the City of the responsible person or persons who shall be liable in an action brought in the name of the City for recovery of such amount, including reasonable attorney's fees.

10.38.050 Notice to Owner. If the responsible person is not the record owner of the property, the city may notify the record owner that a subsequent response notice has been given.

10.38.060 Confidentiality. Information furnished and secured pursuant to this Chapter shall be confidential in character and shall not be subject to public inspection and shall be kept so that the contents thereof shall not be known except to persons charged with the administration of this Chapter or pursuant to a Court Order. (Ord. No. 91-901, 10-8-91)
CHAPTER 10.40

NEWSRACK AND NEWS STAND REGULATIONS

SECTIONS:

10.40.010 Findings and Declarations
10.40.020 Definitions of Words and Phrases
10.40.030 Newsrack Permits
10.40.040 Requirements and Duties
10.40.050 Prohibition of Display of Certain Matter
10.40.060 Display of Harmful Matter
10.40.070 Costs
10.40.080 Removal of Newsracks
10.40.090 Appeals
10.40.100 Severability; Supplemental Provisions

10.40.010 Findings and Declarations. The City of San Marcos finds that:

(a) The uncontrolled placement of newsracks in public rights-of-way causes an inconvenience and danger to the safety and welfare of persons using such rights-of-way, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services.

(b) The uncontrolled placement of newsracks detracts from the appearance of streets, sidewalks, and adjacent businesses; inhibits safe entry and departure of vehicles; impairs the vision and distracts the attention of motorists and pedestrians, particularly small children and may cause injury to the person or property of such person.

(c) Newsracks located so as to cause an inconvenience or danger to persons using public rights-of-way, and unsightly newsracks located therein, constitute public nuisances.

(d) The unregulated display of harmful matter (as defined by Section 313 of the California Penal Code) adversely affects the welfare of minors and others.

(e) The intent of the City Council of the City of San Marcos in adopting this chapter is to establish reasonable time, place and manner regulations of the use and placement of newsracks for the purpose of securing and promoting the public safety and general welfare of persons in the City in their use of public rights-of-way. It is the further intent of the City Council to protect the general welfare by establishing reasonable time, place and manner restrictions on the display of harmful matter in public places and places open to the public.

(f) By adopting this chapter, the City Council does not intend to authorize the placement of newsracks on property owned by the City, or public, except on public rights-of-way as defined herein.

10.40.020 Definitions of Words and Phrases. The following words and phrases when used in this chapter shall for the purpose of this chapter have the meanings respectively ascribed to them in this chapter.
(a) "Newsrack" means any self-service or coin-operated box, container, storage unit, or other dispenser installed, used or maintained for the display, sale or distribution of publications.

(b) "Parkway" means the part of the public right-of-way between the sidewalk and curb of a roadway, the area between the edge of the travelled roadway and the edge of a public right-of-way when there is no sidewalk and any part of a roadway that is not open to vehicular travel.

(c) "Public Right-of-Way" means any place owned and maintained by or dedicated to use of the public for the purpose of pedestrian or vehicular travel, including but not limited to a street, sidewalk, curb, gutter, parkway, highway, alley, mall or court. Public Right-of-way does not include improved or unimproved pedestrian, equestrian or bicycle trails; pathways, walkways, driveways, or similar areas within parks or other City owned property; or easements not previously used for the purpose of pedestrian or vehicular travel, and unless otherwise specifically permitted by the City Council newsracks are prohibited in such areas.

(d) "Publication" means any form of printed literature offered or available to the public including but not limited to hard and soft covered books, magazines, print advertising and calendars.

(e) "Roadway" means that part of a public right-of-way that is designed or used primarily for vehicular travel.

10.40.030 Newsrack Permits. A newsrack permit issued in accordance with this Chapter is required before the installation of, placement or maintenance of any newsrack which in whole or in part rests upon, in or over any public right-of-way.

Subject to the provisions of this Section and Section 10.36.040 of this chapter, a newsrack permit shall be obtained within ninety (90) days of the effective date of the ordinance adopting this chapter for any newsrack that was installed before such effective date. Newsrack permits issued pursuant to this Chapter shall be issued pursuant to the following conditions:

(a) Application A written application for a newsrack permit shall be filed with the City Manager, or his or her designee, and shall contain the following information:

(1) Name, address, and telephone number of the applicant and owner of the newsrack.

(2) Name, address, and telephone number of a representative or other responsible person whom the City may notify or contact at any time concerning the applicant’s newsrack.

(3) A scaled diagram of the location proposed for the installation of the newsrack(s).

(4) The number of newsracks at the street address of the proposed location of each as shown on the scaled drawing of the proposed location.

(5) Names of publications to be contained in each newsrack.

(6) Type or brand of newsrack, including description of the newsrack and mount.
(b) **Fee** Each application for a newsrack permit shall be accompanied by an application fee as established by resolution of the City Council.

(c) **Issuance and Denial** Upon a finding that the applicant is in compliance with the provisions of this Chapter, the City Manager shall issue a newsrack permit at a location approved by the City Engineer. If a permit is denied, the applicant shall be notified in writing of the specific cause of such denial by the City Manager and the right to appeal in accordance with Section 10.36.090 of this Chapter.

(d) **Conditions for Approval.** An application for a newsrack permit shall be approved unless:

1. The proposed newsrack projects onto, into or over any part of the roadway, or which rests, wholly or in part, upon, along or over any portion of the roadway;
2. The proposed newsrack is to be installed in whole or in part, in or over any sidewalk or parkway; and
   a) The newsrack, in its proposed location, would endanger the safety of persons or property; or
   b) The proposed location is used for public utility purposes, public transportation purposes or other public use; or
   c) The proposed newsrack would unreasonably interfere with or impede the flow of pedestrian or vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other objects present at or near said location.

**10.40.040 Requirements and Duties.** Any newsrack which, in whole or in part, rests upon, in or over any sidewalk, shall substantially comply with the following:

(a) **Physical Location, Numeric Limits and Installation Methods.**

1. Newsracks may be located near a curb (or if there is no curb, the edge of the roadway) or to the rear of a sidewalk. Newsracks located near a curb shall be placed not less than eighteen (18) inches nor more than twenty-four (24) inches from the edge of the curb. Newsracks placed adjacent to the rear of the sidewalk shall be placed parallel to the wall and at least six (6) inches from the wall. No newsrack shall be located directly in front of any display window of any commercial building abutting a sidewalk or parkway except near the curb without written permission of the owner of the business.
2. Newsrack mounts shall be bolted in place in accordance with specifications provided by the City.
3. Newsracks shall not be chained, bolted or otherwise attached to any private property without the consent of the property owner.
(4) Newsracks may be attached to one another. The City Engineer shall determine the number of newsracks that can be bolted, attached, grouped or placed together on a location by location basis.

(5) No more than eight newsracks may be placed in any space of two-hundred (200) feet in any direction within the same block of the same street. No more than twelve newsracks may be placed on any one block. For the purposes of this Section, a block means one side of a street between two consecutive intersecting streets.

The number of newsracks permitted on any public right-of-way within a space of two hundred (200) feet in any direction within the same block may be increased to twelve (12) and the number of newsracks permitted on any public right-of-way on any one block may be increased to sixteen (16) by a determination of the City Manager or the City Council on appeal, upon a finding that the increase is necessary because of the high demand for publications at the specified location.

(6) In determining which newsracks shall be permitted to be located in a particular place or, if already in place, to be permitted to remain in the same place, the City Manager shall be guided by the following criteria:

First Priority shall be given to newsracks used for the sale of publications which have been adjudicated to be newspapers of general circulation for San Diego County, pursuant to the procedure set forth in Division 7, Article 2 of the California Government Code.

Second Priority shall be given to newsracks used for the sale of daily publications (those published on five (5) or more days in a calendar week) which have not been adjudicated to be newspapers of general circulation for San Diego County.

Third Priority shall be given to newsracks used for the sale of weekly publications (those published on at least one (1) but less than five (5) days in a calendar week) which have not been adjudicated to be newspapers of general circulation for San Diego County.

(7) Newsracks shall not be placed, installed, used or maintained:

a) Within fifteen (15) feet of any marked crosswalk;

b) Within twenty (20) feet of the curb return of any unmarked crosswalk;

c) Within ten (10) feet of any fire hydrant, fire call box, police call box or other emergency facility;

d) Within twenty (20) feet of any driveway;

e) Within three (3) feet ahead, or fifteen (15) feet to the rear of any sign marking a designated bus stop;
f) Within three (3) feet of any bus bench;

g) At any location whereby the clear space for the passageway of pedestrians is reduced to less than four (4) feet;

h) Within one hundred (100) feet of another newsrack containing the same newspaper or news periodical except where separated by a street or corner, or except where:

1) a newspaper demonstrates that there is insufficient room in one machine for the newspapers which may be sold in one day, or;

2) where a newspaper demonstrates that it publishes more than one edition of the newspaper for sale at the same time;

i) Facing another newsrack, divided only by the width of a public sidewalk or public pedestrian wall;

j) Within five (5) feet of a curb painted blue, pursuant to the provisions of California Vehicle Code Section 21458;

k) Within a twenty-five foot sight triangle created by measuring along the curb beginning at the curb return to form a triangle free of any obstructions in excess of thirty inches in height;

l) In whole or in part in any roadway.

(8) Newsracks shall not be located on any street identified in the Circulation Element of the City General plan a local or collector street within any area of the city zoned for single family residential uses.

(b) **Identification of Responsible Person.** The name, address and telephone number of a responsible person who may be contacted at any time concerning the newsrack shall be displayed on the hood of a newsrack in such a manner as to be readily visible to and readable by a prospective customer.

c) **Advertising Concerns.** Newsracks shall carry no advertising except:

(1) The name of the Publication being dispensed in the same newsrack.

(2) Advertising racks cards contained in card pans which are attached to and located on the front of the newsrack and do not exceed fifteen (15) inches in height and twenty-two (22) inches in length. The rack cards shall be related to the display, sale, use or purchase of the newspaper or periodical being dispensed.

d) **Maintenance.** Newsracks shall be kept clean and maintained in good working order, freshly painted and with unbroken hoods or parts.
(e) **Physical Description of Newsracks.** shall not exceed a height of forty-six (46) inches, a width of twenty-six (26) inches or a depth of twenty (20) inches. Each newsrack shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event the person is unable to receive the publication paid for. The coin-return mechanism shall be maintained in good working order at all times.

(f) **Hold Harmless Agreement.** Prior to the issuance of a permit pursuant to this chapter, the applicant shall enter into an agreement with the City whereby the owner or permittee shall agree:

The City, its agents, officers and employees, shall not be, nor be held liable for any claims, liabilities, penalties, fines or for any damage to any goods, properties or effects of any personal injuries to or death of any person, whether caused by or resulting from any acts or omission of owner or permittee, or his or her agents, employees or representatives, or for dangerous or defective conditions of the property of owner or permittee or any way caused by newsracks placed or maintained pursuant to the permit; owner or permittee further agrees to indemnify and save free and harmless and defend in any lawsuit the City, its agents, officers, and employees against any of the foregoing liabilities and any of cost and expenses incurred by the City, its agents, officers or employees on account of any claims therefore.

(g) **Insurance Requirement.** No person, association, firm or corporation shall place, locate or maintain a newsrack on public rights-of-way unless there is on file with the City Manager, or his or her designee, in full force and effect at all times, a document issued by an insurance company authorized to do business in the State of California evidencing that the permittee or owner is insured under a liability insurance policy providing minimum coverage of $500,000.00 for each person who suffers injury or death arising out of the location, placement or operation of the company's equipment. A separate certificate is not required for each newsrack so long as the certificate evidences coverage for all newsracks placed, located or maintained by the person, association, firm or corporation involved.

**10.40.050 Prohibition of Display of Certain Matter.** Any publication offered for sale in a newsrack placed or maintained on a public sidewalk or public right-of-way shall not be displayed or exhibited in a manner which exposes to public view, from any public place, any of the following:

(a) Any statement or word describing explicit sexual acts, sexual organs or excrement where such statement or word has as its purpose or effect, sexual arousal, gratification or affront; or

(b) Any picture or illustration of genitals, pubic hair, perineum, anus or anal region of any person or any picture or illustration of any portion of the breast below the areola thereof of any female person, other than a child under the age of puberty, where such picture or illustration has as its purpose or effect sexual arousal, gratification or affront; or

(c) Any picture or illustration depicting explicit sexual acts where such picture or illustration has as its purpose or effect, sexual arousal, gratification or affront.
For purposes of this section the term "explicit sexual acts" means the depiction of sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, sadism, masochism, or excretory functions in conjunction with sexual activity, lewd exhibition of the genitals or masturbation, whether any of the above is depicted or described as being performed alone or between members of the same or opposite sex, or between humans and animals, or other acts of sexual arousal involving any physical contact with a person's genitals, pubic region, pubic hair, perineum, anus or anal region.

10.40.060 Display of Harmful Matter.

(a) Definitions For the purposes of this section, the terms "harmful matter," "matter," "person," "distribute," "knowingly," "exhibit," and "minor" shall have the meanings specified in Section 3.31 of the California Penal Code. For the purposes of this Chapter, the term "blinder rack" shall mean an opaque material placed in front of, or inside a newsrack which prevents exposure of matter to public view.

(b) Prohibition No person shall knowingly exhibit, display, or cause to be exhibited or displayed, harmful matter in any newsrack or any other display rack, case or shelf located on a public right-of-way, in a public place, or in a place open to the public from which minors are not excluded, unless blinder racks have been installed so that the lower two-thirds (2/3) of the matter is not exposed to public view.

10.40.070 Costs. The costs of installation, maintenance, replacement, removal and relocation of newsracks shall be at the sole expense of the permittee or owner of the newsrack. Upon removal of any newsrack, the permittee or owner shall, at his or her sole expense, cause the public right-of-way to be repaired to a condition in conformity to the surrounding area. Upon failure of the permittee or owner to make such repairs, the work may be done by the City and charged to the permittee or owner.

10.40.080 Removal of Newsracks.

(a) Commencing ninety (90) days after the adoption date of the ordinance codified in this Chapter, any newsrack in violation of any provision of the ordinance codified in this Chapter will be deemed nonconforming.

(b) In the event that the City Manager determines that a newsrack does not comply with the provisions of this Chapter, he or she shall provide written notice of such determination to the permittee or owner. The notice shall specify the nature of the violation, the location of the newsrack which is in violation, the intent of the City Manager to remove the nonconforming newsrack in the event a hearing is not requested, and the right of the permittee to request a hearing, before the City Manager, within fifteen (15) days from the date of the notice. If the newsrack is one which has not been authorized by the City Manager and ownership is not known, nor apparent after inspection, a notice complying with this section shall be affixed to the newsrack.

(c) In the event that a hearing is held pursuant to this section, the City Manager shall render a decision, in writing, within ten (10) days from the date of the hearing, and the decision shall advise the permittee or owner of his or her right to appeal to the City Council, pursuant to the provisions of Section 10.36.090 of this Chapter. Notice of the decision shall be mailed to the permittee or owner using the permittee or owner's address of record by placing such notice in the U.S. Mail with first class postage prepaid.
(d) The City Manager may take possession of a newsrack and, upon the expiration of thirty (30) days after taking possession, dispose of the newsrack as required by law, if:

1. No hearing is requested by the permittee or owner within fifteen (15) days of notice of violation as provided in Section 10.36.080(B); or

2. The appeal period specified in Section 10.36.090 has expired; or

3. The permittee or owner fails to remove the rack within ten (10) days from the date of the decision of the City Manager, or the City Council on Appeal, that the newsrack is not in compliance with the rules, regulations and standards established by this Chapter.

(e) The City Manager shall inspect any newsrack reinstalled after removal pursuant to this Chapter. The permittee of the newsrack shall be charged a fee for this reinspection as established by resolution of the City Council.

(f) In the event that any newsrack is abandoned, the City Manager may remove it pursuant to the procedures set out in this section. For the purposes of this section, a newsrack is "abandoned" if no publication had been displayed in the newsrack for a period of fifteen (15) consecutive days, no prior written notice has been given by the permittee to the City Manager specifying the reason(s) for nonuse, and the condition of the rack and related circumstances indicate it will not be actively used within a reasonable period of time.

**10.40.090 Appeals.** The City Council shall have the power to hear and decide appeals based upon enforcement or interpretation of the provisions of this Chapter. Any permittee or owner who is aggrieved by any decision of the City Manager may appeal that decision by submitting a written notice of appeal to the City Clerk within twenty-one (21) days of the date on which notice of the decision was mailed. The City Council may preside over the hearing on appeal or may designate a hearing officer to take evidence and submit a proposed decision together with findings, within fifteen (15) days from the date of the hearing. The City Council shall, within thirty (30) days from the date of the hearing, render its decision on the appeal, together with findings. The decision of the City Council shall be final.

**10.40.100 Severability; Supplemental Provisions** If any provision of this Chapter as herein enacted or hereafter amended, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect the other provisions or applications of this Chapter (or any section or portion of section hereof) which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are, and are intended to be, severable.

The provisions of this Chapter are intended to augment and be in addition to other provisions of the San Marcos Municipal Code. Whenever the provisions of this Chapter impose a greater restriction upon persons, premises, or practices that are imposed by other provisions of the San Marcos Municipal Code, the provisions of this Chapter shall control.

If any sentence, clause or phrase of this Chapter is, for any reason, held to be unconstitutional or otherwise invalid, such decision shall not effect the validity of the remaining provisions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each sentence, clause, and phrase thereof irrespective of the fact that any one or more sentences, clauses, or phrases be declared unconstitutional or otherwise invalid. (Ord. No. 92-934, 9-22-92)
CHAPTER 10.42

NUDITY, URINATION OR DEFCATION IN PUBLIC RIGHTS OF WAY AND PUBLIC PLACES

SECTIONS:

10.42.010 Purpose and Intent
10.42.020 Definitions
10.42.030 Public Nudity, Urination, Defecation Prohibited
10.42.040 Exclusions to the Prohibitions in this Chapter
10.42.050 Penalties for the Violation of this Chapter
10.42.060 Law Enforcement, Code Enforcement Services Fees
10.42.070 Reservation of Legal Remedies

10.42.010 Purpose and Intent. The presence of persons who are nude, exposed to public view, or urinating and/or defecating in a place open to the public, in or on public rights of way, public parks, public beaches or any other public land or facility, is offensive to members of the general public unwillingly exposed to such persons. Nudity, if it is to be permitted to be exposed to public view, should be confined to a defined area. Urination and/or defecation in a public place should be prohibited. The provisions of this chapter are enacted for the purpose of securing and promoting the public health, safety, morals, and general welfare of all persons in the City of San Marcos. (Ord. No. 2005-1244, 2/22/05)

10.42.020 Definitions.

(a) **Nude** means devoid of an opaque covering which covers the genitals, pubic hair, buttocks, perineum, anus or anal region of any person, or any portion of the breast at or below the areola thereof of any female person, or the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola. (Ord. No. 2005-1244, 2/22/05)

(b) **Public Rights of Way** shall mean any place of any nature which is dedicated to use by the public for pedestrian or vehicular travel, and includes, but is not limited to, a street, sidewalk, curb, gutter, crossing, intersection, parkway, highway, alley, lane, mall, court, way, avenue, boulevard, road, roadway, viaduct, drainage channel, storm water channel, canal, subway, tunnel, bridge, thoroughfare, square and any other similar public way. (Ord. No. 2005-1244, 2/22/05)

10.42.030 Public Nudity, Urination, Defecation Prohibited. It is hereby declared a public nuisance and unlawful for any person to: (Ord. No. 2005-1244, 2/22/05)

(a) Be nude and exposed to public view in or on any public right of way, public park, public beach or waters adjacent thereto, or other public land or facility, or. (Ord. No. 2005-1244, 2/22/05)
10.42.030 - 10.42.060

(b) Urinate or defecate in a public right of way or in or on any private property open to public view from any public right of way, public park, public beach or other public land or facility except in an area expressly set aside for such purpose, as stated in Section 10.42.040 (c). (Ord. No. 2005-1244, 2/22/05)

10.42.040 Exclusions to the Prohibitions in this Chapter

(a) The prohibitions contained in Section 10.42.030 (a) shall not apply to any child under the age of ten (10) years of age or to any person exposing a breast in the process of breast-feeding. (Ord. No. 2005-1244, 2/22/05)

(b) The prohibitions contained in Section 10.42.030 (a) shall not apply to persons live theatrical performances performed in a theater, concert hall or other similar establishment or premises located on public land or open to the public, and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification. (Ord. No. 2005-1244, 2/22/05)

(c) The prohibitions contained in Section 10.42.030 (b) shall not apply to urination or defecation which is done in any fixture provided for such purposes in any restroom or other facility designed for the sanitary disposal of human waste. (Ord. No. 2005-1244, 2/22/05)

(d) The prohibitions contained in Sections 10.42.030 shall not apply to any act authorized or prohibited by state or federal statute. (Ord. No. 2005-1244, 2/22/05)

10.42.050 Penalties for the Violation of this Chapter. A violation of this section shall constitute a misdemeanor and shall be punishable by a fine of at least One Thousand Dollars ($1,000) or by imprisonment for a period of not to exceed six (6) months, or by both fine and imprisonment. The City may prosecute violations of this chapter under its civil administrative authority pursuant to Section 1.12.020 of this Municipal Code, in which case the fine shall also be applicable. (Ord. No. 2005-1244, 2/22/05)

10.42.060 Law Enforcement, Code Enforcement Services Fees.

(a) The fee for law enforcement and/or code enforcement services shall include the cost of personnel and equipment, but shall not exceed One Thousand Dollars ($1,000) for a single incident prosecuted as a misdemeanor under Section 10.42.050, above. Such fee is deemed to be supplementary to all other applicable fines and penalties, and the City does not hereby waive its right to seek reimbursement for actual costs exceeding the above amount through other legal remedies or procedures. (Ord. No. 2005-1244, 2/22/05)

(b) The amount of such fee charged shall be deemed a debt to the City of the person or persons receiving such services and if such person or persons be minors, then the amount shall be deemed a debt of their parents or guardians. Any person owing money shall be liable in an action brought in the name of the City for recovery of such amount, and the City shall recover its costs and expenses in bringing such recovery action, including, but not limited to, reasonable attorneys' fees, witness fees and associated costs and expenses. Such costs and expenses shall be in addition to the One Thousand Dollar ($1,000) amount referenced in (a), above. (Ord. No. 2005-1244, 2/22/05)
10.42.070 Reservation of Legal Remedies. The City does not waive its right to seek reimbursement for actual costs of enforcement services through other legal remedies or procedures. The procedure provided for in this chapter is in addition to any other statute, ordinance or law, civil or criminal. This chapter in no way limits the statutory authority of law enforcement, peace officers or private citizens to cite and/or make arrests for any criminal offense arising out of conduct regulated by this Article. (Ord. No. 2005-1244, 2/22/05)
CHAPTER 10.43

DISTRIBUTION OR SOLICITATION TO OR FROM PERSONS IN VEHICLES ON PUBLIC ROADWAYS POSTED WITH SPEEDS OF FORTY (40) MILES PER HOUR OR HIGHER, OR WITHIN ONE HUNDRED (100) FEET OF AN INTERSECTION WITH SUCH A PUBLIC ROADWAY

SECTIONS:

10.43.010 Purpose
10.43.020 Definition
10.43.030 Prohibitions

10.43.010 Purpose. The purpose of this Chapter is to prevent dangers to persons and property, to prevent delays and distractions, and to avoid interference with the flow of traffic, on public roadways that are posted with speed limits of forty (40) or more miles per hour.

10.43.020 Definition. For purposes of this section, “the traveled portion of the public roadway” means that portion of the road normally used by moving motor vehicle traffic.

10.43.030 Distribution or solicitation to or from persons in vehicles.

(a) It is unlawful for any person, while on a public roadway posted with a speed limit of forty (40) or more miles per hour, or while on any median or sidewalk associated with or adjacent to such a public roadway, to distribute or attempt to distribute materials to, or to solicit, or attempt to solicit business or contributions from, any person who is in any type of motor vehicle in the traveled portion of a public roadway. Public roadways within the City’s jurisdictional limits that have posted speed limits of forty (40) or more miles per hour are shown on a map labeled ‘Public Roadways with Speed Limits Forty (40) or More Miles Per Hour,” which map is on file and available from the Office of the City Clerk.

(b) When a public roadway with a posted speed of less than forty (40) miles per hour intersects with another public roadway with a posted speed of forty (40) or more miles per hour, it is unlawful to distribute or attempt to distribute materials to, or to solicit, or attempt to solicit business or contributions from, any person who is in any type of motor vehicle that is within one hundred feet of the intersection of the two public roadways.

(c) Except as prohibited by subsections (a) and (b), above, distributing materials to or soliciting business or contributions from any person who is in any type of motor vehicle in the traveled portion of a public roadway is permitted on sidewalks adjacent to public roadways.

(d) Notwithstanding subsections (a) and (b), above, the provisions of this Section 10.43.030 shall not apply to sales for which a special event permit has been issued by the City, when such sales are in compliance with the same.
CHAPTER 10.44
REGULATION OF THE PROXIMITY OF SEX OFFENDERS TO CHILDREN’S FACILITIES

SECTIONS:

10.44.010 Purpose and Intent
10.44.020 Definitions
10.44.030 Prohibitions
10.44.040 Exceptions
10.44.050 Violation

10.44.010 Purpose and Intent. Sex offenders pose a clear threat to the children residing or visiting in our community. Since convicted sex offenders are more likely than any other type of criminal offender to re-offend by committing another sexual assault, the Council desires to impose safety precautions in furtherance of the goal of protecting our children. The purpose of this regulation is to reduce the potential risk of harm to children of our community by impacting the ability for sex offenders to be in contact with unsuspecting children in locations that are primarily designed for use by, or are primarily used by children, namely, the grounds of a public or private school for children, a center or facility that provides day care or children's services, a video arcade, a playground, park, or an amusement center. The City desires to add location restrictions where the state law is silent or allows stricter regulation. It is not the intent of the City to embarrass or harass persons convicted of sex offenses.

10.44.020 Definitions.
(a) "Sex Offender" means a person who has been required to register with a governmental entity as a sex offender.
(b) “Child” or “Children” means any person(s) who are under the age of eighteen (18) years of age.
(c) "Child care and development agency" shall have the meaning set forth in California Education Code section 8208.
(d) “Park” means any park, community center, lands, trail, or recreational facility open to the public or owned by, leased by, or under the control of the City.
(e) For purposes of this chapter, 'loitering' means remaining, lingering or wandering in a public or private place for the purpose of engaging in any lewd, lascivious or otherwise illegal conduct, including but not limited to committing offenses specified in Penal Code sections 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 288.3, 289, 311.1, 311.2, 311.4, 311.11 or for the purpose or intent of engaging any person in any sexual act of any kind, or for the purpose or intent of soliciting any person to engage in any sexual act of any kind.

10.44.030 Prohibition.
(a) Any sex offender who loiters, as defined by section 10.44.020, subdivision (e), of this chapter, in a public or private place that is on or within three hundred feet (300') of the real property of any public or private school for children, child care and/or development facility, trail, park, recreational facility, playground or arcade where children are present, is guilty of a misdemeanor.
(b) Any sex offender who resides within three hundred feet (300’) of the real property of any public or private school for children, child care and/or development facility, park, recreational facility, playground or arcade where children are present, is guilty of a misdemeanor.

10.44.040 Exceptions.

(a) With respect to section 10.44.030, subdivision (a), this chapter shall not apply to restrict incidental proximity not amounting to loitering as defined by section 10.44.020, subdivision (e) of this chapter.

(b) With respect to section 10.44.030, subdivision (a), this chapter shall not restrict access to public parks for the purpose of exercising First Amendment rights under the United States Constitution, nor any other constitutional rights under either the United States Constitution or the California State Constitution, so long as such activity does not constitute loitering as defined in section 10.44.020, subdivision (e).

(c) With respect to section 10.44.030, subdivision (b), this chapter shall not apply to any person who has established a residence (the address for which is used by the person in question as his or her address for purposes of Penal Code section 290 registration) prior to the effective date of this chapter.

(d) With respect to section 10.44.030, subdivision (b), this chapter shall not apply to a sex offender unless first notified by a law enforcement agency of the requirements of this chapter.

10.44.050 Violation. Any person violating this section is guilty of a misdemeanor. A misdemeanor is punishable by a fine up to one thousand dollars ($1,000) or by imprisonment for up to one year, or both. A person is guilty of a separate offense for each and every day during which a violation occurs.
CHAPTER 10.46

ALCOHOLIC BEVERAGES – RESPONSIBLE BEVERAGE SALES AND SERVICE

SECTIONS:

10.46.010 Definitions
10.46.020 Responsible Beverage Service Training Required - Proof
10.46.030 Violation - Penalty

10.46.010 Definitions. As used in this chapter, the following words and phrases have the meanings set forth in this section:

(a) **Alcoholic Beverage** shall have the same meaning as in the California Business and Professions Code, Section 23004, or any successor section.

(b) **Alcohol Outlet** means any physical location or structure from which any alcoholic beverage may be sold, delivered, or served at retail pursuant to a license granted by the California Department of Alcoholic Beverage Control.

(c) **Business Certificate** means a certificate or license authorizing a business to operate within the City of San Marcos, California.

(d) **Licensee** means any person or entity that has a license for the retail sale, delivery, or service of alcoholic beverages from the California Department of Alcoholic Beverage Control.

(e) **Manager** means the person, regardless of job title or description, who has discretionary powers to organize, direct, carry on, control or direct the operation of an alcoholic outlet.

(f) **Server** means any person who, as part of his or her employment, sells, serves or delivers any alcoholic beverage.

(g) **Patron** means a customer who purchases alcohol through a sale, service or delivery.

(h) **Responsible Beverage Sales and Service Training** or **RBSS Training** means a training program conducted by the California Department of Alcoholic Beverage Control or by a certified RBSS Training Provider to train alcohol licensees, their managers and servers in responsible alcoholic beverage sales and service methods and practices.

10.46.020 Responsible Beverage Service Training Required – Proof.

(a) No alcohol outlet may serve, sell, or arrange delivery to a patron any alcoholic beverages unless a manager, assistant manager or lead employee who has completed a Responsible Beverage Service and Sales Training course is on the premises.
(b) No licensee, manager or server shall sell, serve or deliver to a patron any alcoholic beverage unless he or she has completed RBSS Training. However, licensees, their managers and servers shall have ninety (90) days from the date of beginning of such activities or the effective dates of this chapter, whichever is later, to complete RBSS Training. Businesses existing as of the effective date of this ordinance shall have one hundred eighty (180) days from the effective date of this ordinance to comply with this chapter. Thereafter, all said businesses shall have ninety (90) days from the date of the beginning of such activities to comply with this chapter.

(c) Certification received from an RBSS Training program will be considered valid for a period of two years from the date of certification.

(d) Licensees shall be responsible for ensuring that all managers and servers they employ comply with this section.

(e) Licensees shall maintain on the premises a file of proof of completion of the RBSS Training by the licensee, managers and servers that shall be available for inspection by any peace officer or other enforcement officer during regular business hours. The proof of completion shall include: (1) the effective date of hire; (2) course completion date and, if applicable, the course renewal date; (3) the name of the certified RBSS Training completed; (4) a copy of each training certificate, if available; and (5) identifying information of the licensee, managers and servers, including the name, address, phone number and California driver’s license number, if applicable.

(f) The City shall provide to all applicants for a business certificate that are alcohol licensees, as defined in this chapter, a summary of the requirements of this chapter together with its penalties for violation prior to issuing a business certificate or renewal.

10.46.030 Violation - Penalty.

(a) Violation of any provision of this chapter or failure to comply with any requirement of this chapter is an infraction and shall be punishable in accordance with the provisions of Section 1.12.010 of the San Marcos Municipal Code. At the discretion of the prosecutor, a violation of this chapter may be charged as a misdemeanor.

(b) Civil Action. In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the City pursuant to Section 1.12.020 of the San Marcos Municipal Code.

(c) Administrative Citation. Alternatively, any violation of this chapter may be enforced by administrative action brought by the City pursuant to Chapter 1.14 of the San Marcos Municipal Code, to include civil fines not exceeding one thousand dollars ($1,000) per offense occurrence.
CHAPTER 10.48

PROPERTY VALUE PROTECTION AND
NEIGHBORHOOD PRESERVATION

SECTIONS:

10.48.010 Purpose and Intent
10.48.020 Definitions
10.48.030 Property in General
10.48.040 Buildings and Structures
10.48.050 Fences, Gates and Walls
10.48.060 Landscaping
10.48.070 Off-Street Parking
10.48.080 Obstructions in the Right-of-Way
10.48.090 Tents, Shelters, Canopies and Tarps
10.48.100 Dangerous Conditions to Children
10.48.110 Storm Water Conveyance System
10.48.120 Emission of Obnoxious Odors
10.48.130 Enforcement: Penalty

10.48.010 Purpose and Intent. This Chapter was developed based on the firm belief that the current and future property values and general welfare of the community are affected significantly by the appearance and maintenance of real property and that implementation of this Chapter will avoid further deterioration of residential and nonresidential areas and be of benefit to the community as a whole. The purpose and intent of this Chapter is to:

(a) Enhance and promote the maintenance and appearance of real property, both improved and unimproved, and by doing so, improve the livability, appearance and social and economic conditions of the community;

(b) Ensure that real properties, whether improved or unimproved, do not reach such a state of deterioration or disrepair as to cause the depreciation of the value of surrounding property or be materially or aesthetically detrimental to nearby properties and improvements;

(c) Utilize the sanctions and penalties of this Chapter after all reasonable efforts at resolution by educational and non-confrontational means have been exhausted, it being recognized that voluntary compliance is preferred over all other remedies;

(d) Establish a six (6) month educational period from the adoption of Ordinance No. 2009-1321 during which only notices of violations will be issued with educational material outlining the provisions of this Chapter. Health and safety violations are exempt from this provision;
(e) Set forth the requirement that all property within the City of San Marcos be maintained and has an appearance that is acceptable to the general public;

(f) Establish the minimum standards for the appearance and maintenance of real property. This Chapter applies to both residential and nonresidential developed properties, as well as undeveloped land. These standards apply to only portions of private property that is visible from the public right-of-way;

(g) Proactively enforce the provisions of this Chapter throughout the City except with respect to single family residential properties;

(h) No anonymous complaints will be investigated unless they relate to a health and safety matter;

(i) Establish that it is unlawful for any person owning, leasing, occupying or having charge or possession of any property in the City to maintain such property in such manner that any of the conditions as described in the this Chapter exist, except as may be allowed by the City code; and

(j) The City shall develop a program to assist those who are either physically or financially incapable of maintaining their property to the minimum standards of this Chapter.

**10.48.020 Definitions.**

(a) **Best Management Practice** – “Best Management Practice” (BMP) means the schedule of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce to the maximum extent practicable the pollution of the waters of the United States. BMPs also include treatment requirements, operating procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(b) **Building** – “Building” shall mean a structure having a roof.

(c) **Ground Cover** – “Ground Cover” means anything which covers the ground surface or topsoil and has the effect of reducing erosion. Preferably, this would be a vegetative layer of grasses and/or other low-growing plants but may also include plant residues such as leaf litter and tree debris as well as various forms of rock or mulch. Artificial groundcovers may also be established with such materials as straw mulch, jute mesh or artificial turf.

(d) **Street Side Yard** – “Street Side Yard” means a yard extending from the front yard to the rear yard, the depth of which contains all areas between the side property line of a corner lot back to the wall(s) of the building which are parallel or generally face the side property line.
(e) **Landscaping** – “Landscaping” shall mean live shrubs, bushes, trees and ground cover, on the grounds surrounding a structure. Landscaping shall also include but is not limited to, the installation of other landscape features such as planters, water elements, pedestrian walks, walls, patios or decks.

(f) **Public Right-of-Way** – “Public Right-of-Way” shall mean any place owned and maintained by or dedicated to use of the public for the purpose of pedestrian or vehicular travel, including by not limited to a street, sidewalk, curb, gutter, parkway, highway, alley, mall or court. Public Right-of-Way does not include improved or unimproved pedestrian, equestrian or bicycle trails; pathways, walkways, driveways, or similar areas within parks or other City owned property; or easements not previously used for the purpose of pedestrian or vehicular travel.

(g) **Property** – “Property” shall mean real property and includes buildings and other fixtures and improvements located upon the property and affixed to the land.

(h) **Structure** – “Structure” shall mean anything constructed or erected which requires location on the ground or attachment to something having a location on the ground. Structure shall include immobilized trailer coaches.

10.48.030 **Property in General.** It shall be unlawful for any person owning, leasing, occupying or having charge of any property within the City of San Marcos to maintain such property in such manner that any of the following conditions are found to exist thereon:

(a) **Outside Storage** – It shall be unlawful to maintain outside storage, at a location visible from the public right-of-way, of building material, machinery or other material or equipment, used in or for a business, on any lot within the City, except during the construction on the lot or unless permitted for the particular property. This includes but is not limited to:

1. Any material used for construction to include, but not limited to lumber, metal, electrical supplies or bricks;

2. The accumulation of dirt, sand, gravel, concrete, or other similar material not incorporated into landscaped design/areas on the property; and

3. Boats, trailers, camper shells, recreational vehicles, vehicle parts, furniture or other articles of personal property that are left in a state of partial construction or disrepair.

(b) **Graffiti** – Graffiti including but not limited to words, symbols or drawings on the exterior of any building, fence, wall, pole, sidewalk, tree or other structure must be removed within fifteen (15) calendar days of written notice to the property owner.
(c) **Solid Waste** – The existence of solid waste such as excessive animal feces or human waste of any kind as determined by the Health Department.

(d) **Clotheslines** – Clotheslines shall not be located in the front or front side yard if visible from the public right-of-way.

(e) **Outside Placement of Indoor Furniture** – No person shall store, collect, park, leave, deposit, maintain, reserve, put aside for future use, permit, allow, or suffer to remain on any porch, balcony, roof, or in a yard, except in a completely enclosed building or structure, any upholstered furniture, furniture, mattresses, appliances, materials and other similar products not designed, built, and manufactured for outdoor use unless such is in an enclosed porch or balcony.

**10.48.040 Buildings and Structures.** It shall be unlawful for any person owning, leasing, occupying or having charge of any building or structure within the City of San Marcos to maintain such property in such manner that any of the following conditions are found to exist thereon:

(a) **General Condition** – Buildings or structures that are dilapidated, abandoned, partially destroyed, have broken windows or broken windows secured with wood or other materials, or that are left in an unreasonable state of partial construction or demolition, or disrepair. An unreasonable state is defined as any unfinished building or structure, which has been in the course of construction, demolition or disrepair for two (2) years or more, or where the appearance and other conditions of said building or structure substantially detracts from the appearance of the immediate neighborhood.

(b) **Exterior Surfaces** – Buildings or structures with damaged or defective building exteriors, that are unpainted (except color coated or natural finish coated), or where the paint on the building exterior is mostly worn off, cracked or peeling; or where roofing or other exterior materials or components are deteriorated, mostly infected with dry rot, or warped so as to constitute an unsightly appearance, or contribute to blight and property degradation.

**10.48.050 Fences, Gates and Walls.** It shall be unlawful for any person owning, leasing, occupying or having charge of any property within the City of San Marcos to allow any fence, gate, wall or similar structure on said property to sag, lean, or have missing boards or bricks, or fallen over or otherwise be in an unsafe condition, or constitute an unsightly appearance, or left in a state of partial construction or disrepair.

**10.48.060 Landscaping.** It shall be unlawful for any person owning, leasing, occupying or having charge of any property within the City of San Marcos to inadequately maintain landscaping which is visible from any public street, or public right-of-way and which, either alone or in combination with other conditions on the subject property, degrades the aesthetic quality in the immediate vicinity, including without limitation any of the following:
(a) **Landscape Minimum** – The landscaping on any property shall meet the minimum area standards as established in the City’s Zoning Ordinance or approved site plan. However, no more than fifty percent of any residential front yard may be covered by concrete, asphalt or other like material, including driveways, patio areas, walkways, and other landscape features. Exceptions to this standard can be granted through the Planning Director Permit process should the proposed hardscape be compatible with the neighborhood. An aerial map of the City, taken by or before the effective date of Ordinance No. 2009-1321, will be referenced for the existing conditions of properties throughout the City.

(b) **Ground Cover Required** – Lack of vegetation, lawn, shrubs or other decorative ground cover on any improved property when compared to other properties in the surrounding neighborhood so as to cause dust, erosion or the accumulation of debris.

(c) **Lawn Standards** - Lawn areas and ground cover that is dead and/or exceeds a height of six (6) inches from grade; or lacks plant material necessary to prevent erosion or prevent an unsightly landscape appearance that contributes to conditions that cause blight and property degradation. Ornamental grasses that exceed six (6) inches in height are exempt from the height limitation set forth in this section.

(d) **Trees and other Vegetation** – Dead or hazardous trees and other vegetation that are unsightly or dangerous to public health, safety and welfare, or contributes to blight and property degradation.

(e) **Overgrown Vegetation** – Overgrown vegetation likely to: harbor rats, vermin and other nuisances dangerous to public health; cause a detriment to neighboring property; contribute to conditions that cause blight and property degradation, or grow into the public right-of-way such that it obstructs the view of drivers on public streets or private driveways, or substantially obstructs the use of a public sidewalk area. Vegetation that hangs over the edge of a public sidewalk must have a vertical clearance of seven (7) feet. Vegetation over public streets or alleys must be trimmed to a vertical clearance height of fourteen (14) feet.

(f) **Maintenance of Approved Site Plan** - Failure of any property owner, with the exception of single-family homeowners, to substantially comply with any landscaping plans previously approved by the City in connection with the City’s issuance of any land use approval.

(g) **Drought Restrictions** - If the property resides in an area where the water purveyor has declared any stage of mandatory drought restrictions, the property will be evaluated in light of such restrictions to determine if the landscaping has degraded due to the drought restrictions or inadequate maintenance.

**10.48.070 Off-Street Parking.** It shall be unlawful for any person owning, leasing, occupying or having charge of any property within the City of San Marcos to allow parking in the front yard and street side yard on such property in such manner that any of the following conditions are found to exist thereon:
(a) **Residential** – Any motor vehicle or other mobile equipment parked or stored on or in anything other than a garage, driveway or approved parking area constructed with an all-weather concrete, brick or similar material. Mobile Living Units and Recreation Vehicles shall be parked as per San Marcos Municipal Code Section 12.20.160. An approved parking area is one that was constructed as part of the original permitted construction of the residential unit, or approved by the City at a later date. All-weather parking areas must meet the standards of the City’s off-street parking ordinance, Chapter 20.84 and not exceed the standards for minimum landscaping established in the City’s Zoning Ordinance and Section 10.48.060 (a) of this chapter. The washing of a vehicle or other mobile equipment on lawn areas is exempt from this provision.

(b) **Nonresidential** – Storage or parking of vehicles in other than designated parking areas.

10.48.080 Obstructions in the Right-of-Way. It shall be unlawful for any person owning, leasing, occupying or having charge of any real property within the City of San Marcos, or owner of any personal property, to maintain such property in such a manner that any of the following conditions are found to exist thereon:

(a) **Shopping Carts** – The abandonment of shopping carts visible from the public right-of-way on private or public property is prohibited. Commercial businesses that provide shopping carts for customer use are responsible for retrieving their carts from public property.

(b) **Sight Obstruction** – The accumulation of any material, the placement of any object, or any overgrown vegetation that obstructs the view of drivers on public streets or private driveways.

(c) **Physical Obstruction** – The placement of any object in the public right-of-way including, but not limited to the following:

(1) Portable recreation equipment such as basketball hoops, hockey nets and skateboard ramps; or

(2) Abandoned, discarded or dilapidated objects, such as broken or neglected equipment, appliances, furniture, household equipment and furnishings, shopping carts, containers, packing materials, salvage materials, firewood, plant cuttings, scrap materials or similar materials; or

(3) News racks, newsstands, mailboxes of any kind, or benches, or any other object in the public right-of-way in such a manner as to impede the accessibility of persons with disabilities.
10.48.090 Tents, Shelters, Canopies and Tarps. Portable tents, shelters, canopies and tarps made of any material are not permitted on any property if used in the front yard and street side yard for permanent use. Temporary use of these types of structures and covers are allowed on a case-by-case basis. Temporary use is considered thirty (30) calendar days or less or during periods of construction. In addition, tarps shall not be used as a permanent shield or patio cover where visible to adjoining residents or from the public right-of-way.

10.48.100 Dangerous Conditions to Children. It is unlawful for any person owning, leasing, occupying or having charge of any property within the City of San Marcos to maintain such property in such manner that an attractive nuisance exists. Attractive nuisances generally considered dangerous to children include, but not limited to the following:

(a) Abandoned, broken or neglected appliances such as refrigerators or freezers; or

(b) Abandoned and broken equipment or vehicles.

10.48.110 Storm Water Conveyance System. It shall be unlawful to abandon, modify, remove or destroy any storm water conveyance system or Best Management Practice device installed to reduce storm water pollutants in accordance with the City’s Storm Water Management Program and the Permit issued by the Regional Water Quality Control Board, or other Federal or State laws. This includes the proper maintenance of Best Management Practice devices or storm water conveyance systems installed on private property. Modifications to any storm water conveyance system or Best Management Practice device shall be approved by the City prior to modification.

10.48.120 Emission of Obnoxious Odors. It shall be unlawful to emit dangerous, unwholesome, nauseous or offensive odors, gases or fumes arising from or incidental to any business or uses of property where such odors, gases or fumes are allowed to escape in the open air in such amounts as to be at any time detrimental to the health of any individuals or the public or that is so noticeable, discomforting or disagreeable so as to offend the sensibilities of any reasonable individuals or the public at a distance of two hundred (200) feet from the building or the source of such odors, gases or fumes or at the property boundary where the same are generated and released.

(a) Exemptions – The following are exempt from the requirements of Section 10.48.120:

(1) Emissions resulting from the activities of public fire services or law enforcement services;

(2) Emissions arising out of any reasonable and lawful use of property for farm or agricultural purposes;
(3) Emissions from sources that are properly permitted by the local, state or federal air pollution control agency regulating such sources and the emission is within permitted guidelines and authorized by such agency.

(b) For purposes of this Section 10.48.120 the phrase “use of property for farm and agricultural purposes,” as used in subsection (2) above, means actual dairy farming operations or the growing of crops, and does not mean the ancillary handling or processing of farm products, waste and/or manure where the actual farm or agricultural activity is not conducted.

10.48.130 Enforcement: Penalty.

(a) City Manager to Enforce - It shall be the duty of the City Manager or his/her designee to enforce all of the provisions of this Chapter and the provisions of the Policy and Procedures as may be adopted by the City Council, and amended from time to time, for enforcement of the provisions of this Chapter. The City Manager or his/her designee shall use any remedy afforded to the City by the San Marcos Municipal Code including, without limitation, those set forth in Chapter 1.12 and Chapter 1.14 of this Municipal Code.

(b) Violators Punishable by a Fine – Any person, firm or corporation violating any of the provisions of this Chapter shall be deemed guilty of a civil infraction, and upon conviction thereof shall be punishable by fine as established in Chapter 1.12 and Chapter 1.14 of the San Marcos Municipal Code.

(c) Each Day a Separate Offense – Each and every day a violation of any provision of this Chapter exists constitutes a separate distinct violation.

(Ord. No. 2009-1321, 10/13/09)
CHAPTER 10.50

PSYCHOACTIVE BATH SALTS AND PSYCHOACTIVE HERBAL INCENSE AND OTHER SYNTHETIC DRUGS

SECTIONS:

10.50.010 Purpose and Intent
10.50.020 Definitions
10.50.030 Sale and/or Distribution of Synthetic Cannabinoids or Substituted Cathinones Prohibited
10.50.040 Possession of Synthetic Cannabinoids or Substituted Cathinones Prohibited
10.50.050 Public Nuisance
10.50.060 Enforcement
10.50.070 Exemption for Approval by FDA or California Law

10.50.010 Purpose and Intent. The purpose and intent of this ordinance is to address the dangers to the community posed by the distribution, use, purchase or advertisement of Psychoactive Bath Salts, Psychoactive Herbal Incense, and similar products, and to provide the City with reasonable measures to abate the public nuisance created by such conduct.

10.50.020 Definitions.

(a) Psychoactive Bath Salts are defined as follows:

(1) Any crystalline or powder product that contains a synthetic chemical compound that elicits psychoactive or psychotropic stimulant effects including, but not limited to, the following substances: 3,4-Methylenedioxymethcathinone (Methylone), 3,4-Methylenedioxypyrovalerone (MDPV), 4-Methylmethcathinone (Mephedrone), 4-Methoxymethcathinone (Methedrone), 4-Fluoromethcathinone (Flephedrone), 3-Fluoromethcathinone (3-FMC), naphthylpyrovalerone and 2-amino-1-phenyl-1-propanone (cathinone) or any derivatives, synthetic substances and their isomers with similar chemical structure or any chemical alteration of these compounds which exhibit the same effects and/or any other substantially similar chemical structure or compound.

(2) Psychoactive Bath Salts are commonly marketed under the following trade names: Bliss, Blizzard, Blue Silk, Bonzai Grow, Charge Plus, Charlie, Cloud Nine, Euphoria, Hurricane, Ivory Snow, Ivory Wave, Lunar Wave, Ocean, Ocean Burst, Pixie Dust, Posh, Pure Ivory, Purple Wave, Red Dove, Scarface, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Night and White Lightning but may be marketed under other trade names and contain a common disclaimer that these products are “not safe for human consumption.”
(3) Psychoactive Bath Salts do not include normal, standard bath salts that do not contain synthetic chemical compounds such as those listed above that elicit psychoactive or psychotropic stimulant effects. Standard bath salts primarily contain magnesium sulfate (Epsom salts), sodium chloride (table salt), sodium bicarbonate (baking soda), sodium hexametaphosphate (Calgon, amorphous/glassy sodium metaphosphate), sodium sesquicarbonate and borax.

(b) Psychoactive Herbal Incense is defined as follows:

(1) Any organic product consisting of plant material that contains a synthetic chemical compound that elicits psychoactive or psychotropic euphoric effects including but not limited to the following: any synthetic cannabinoid compound that contains 1-pentyl-3-(1-naphthoyl) indole (JWH-018), 1-butyl-3-(1-naphthoyl) indole (JWH-073), 1-2-(4-morpholinyl) ethyl]-3-(1-naphthoyl) indole (JWH-200), 5-(1,1-dimethylethylheptyl)-2-(1R, 3S)-3-hydroxycyclohexyl]-phenol, (CP-47, 497), 5-1,1-dimethyloctyl]-2-(1R, 3S)-3-hydroxycyclohexyl]-phenol, (cannabicyclohexanol; CP-47, 497 C8 homologue) or any derivatives, synthetic substances and their isomers with similar chemical structure or any chemical alteration of these compounds which exhibit the same effects and/or any other substantially similar chemical structure or compound.

(2) Psychoactive Herbal Incense products are commonly marketed under the following names: K2, K3, Spice, Genie, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Black Mamba, Stinger, Ocean Blue, Stinger, Serenity, Fake Weed, Black Mamba, but may be marketed under other trade names and may contain a common disclaimer that these products are “not safe for human consumption.”

(3) Psychoactive Herbal Incense does not include normal, standard incense that are sold as incense sticks, oils or cones that are commonly used for their aromatic qualities that do not contain any synthetic chemical compounds listed above that elicit psychoactive or psychotropic euphoric effects.

(c) “Distribute”, “distributing” or “distribution” means and covers the following activity: to offer for sale, distribute, furnish, gift, transfer, exchange or give, to any person and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant, or employee.

(d) “Person” means any individual, corporation, business trust, estate, trust, partnership or association, or any other entity responsible for “distributing” Psychoactive Bath Salts and Psychoactive Herbal Incense.

(e) “Advertising” means printed matter that calls the public’s attention to things for sale.
(f) “Possession” means having for use or sale in one’s actual or constructive custody and/or control, and/or under one’s authority or power, whether such custody, control, authority and/or power be exercised solely or jointly with others.

10.50.030 Sale and/or Distribution of Cannabinoids or Substituted Cathinones Prohibited.

(a) It is unlawful for any person to sell, distribute, deliver, trade, barter, or give away any Synthetic Cannabinoid or Substituted Cathinones within the City of San Marcos.

(b) It is unlawful for any person to offer for sale, distribution, delivery, trade or barter any Synthetic Cannabinoid or Substituted Cathinones within the City of San Marcos.

(c) It is unlawful for any person to advertise or display any Synthetic Cannabinoid or Substituted Cathinones within the City of San Marcos.

(d) It is unlawful for any person to claim or represent that a product or substance is a Synthetic Cannabinoid or Substituted Cathinones within the City of San Marcos.

10.50.040 Possession of Synthetic Cannabinoids or Substituted Cathinones Prohibited.

It is unlawful for any person to possess any Synthetic Cannabinoid or Substituted Cathinones within the City of San Marcos.

10.50.050 Public Nuisance.

(a) It is a public nuisance for any person to distribute Psychoactive Bath Salts and Psychoactive Herbal Incense within the City of San Marcos.

(b) It is a public nuisance for any person to distribute any product or substance represented as or designed to resemble Psychoactive Bath Salts and Psychoactive Herbal Incense within the City of San Marcos. Indications of distribution of substances represented as or designed to resemble Psychoactive Bath Salts and Psychoactive Herbal Incense shall include, without limitation, one or more of the following: the manner in which such substances are packaged, branded, described, marketed and/or portioned.

(c) It is a public nuisance for any person to allow the distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense on property owned, controlled or managed by such person within the City of San Marcos.

(d) Merely disclaiming these products as “not safe for human consumption” will not avoid the application of this ordinance.
10.50.060 Enforcement.

(a) Violation of any provision of this chapter or failure to comply with any requirement of this chapter shall be punishable in accordance with the provisions of Section 1.12.010 of the San Marcos Municipal Code. At the discretion of the prosecutor, a violation of this chapter may be charged as a misdemeanor.

(b) Civil Action. In addition to any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City pursuant to section 1.12.020 of this Code.

(c) Administrative Citation. Alternatively, any violation of this Chapter may be enforced by administrative action brought by the City pursuant to Chapter 1.14 of this code, to include civil fines not exceeding one thousand dollars ($1,000.00) per offense and per occurrence.

10.50.070 Exemption for approval by FDA or California Law.

This chapter shall not apply to drugs or substances lawfully prescribed or to intoxicating chemical compounds which have been approved by the federal Food and Drug Administration or which are specifically permitted by California law.

(Ord. No. 2012-1363)
12.04.010 Definitions of Words and Phrases

(a) Motor vehicle code definitions to be used. Whenever any words or phrases used herein are not defined, but are defined in the vehicle code of the State of California and amendments thereto, such definitions shall apply.

(b) Commission. As used in this chapter, the word "commission" shall refer to the Traffic Safety Commission.

(c) Committee. As used in this chapter, the word "committee" shall refer to the Vehicle Abatement Committee.

(d) Council. As used in this chapter, the word "Council" shall refer to the City Council.
(e) **Holidays.** Within the meaning of this chapter, holidays are:

(i) January 1st

(2) February 12th, known as "Lincoln's Birthday"

(3) Third Monday in February, known as "Washington's Birthday"

(4) Last Monday in May, known as "Memorial Day"

(5) July 4th

(6) First Monday in September, known as "Labor Day"

(7) September 9th, known as "Admission Day"

(8) Second Monday in October, known as "Columbus Day"

(9) November 11th, known as "Veteran's Day"

(10) Fourth Thursday in November, known as "Thanksgiving Day"

(11) December 25th, "Christmas Day"

(f) **Loading zone.** "Loading zone" is the space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

(g) **Manager.** As used in the chapter, the word "manager" shall refer to the City Manager.

(h) **Mobile living unit.** "Mobile living unit" means a camp car, commercial coach, mobile home, recreational vehicle, or travel trailer, or as such of these terms are defined in Division 13 of the Health and Safety Code of the State of California, and a camp trailer, house car, or trailer coach, as each of these terms is defined in Division 1 (section 100-675) of the Vehicle Code, or any other vehicle or structure originally designed, or permanently altered in such a manner as will permit occupancy or use thereof for living or sleeping purposes and so designed or equipped with wheels or capable of being mounted on wheels as used as a conveyance on public streets or highways, propelled or drawn by its own or other motor, excepting a vehicle or device used exclusively upon stationary rails or tracks.

(i) **Motorcade.** "Motorcade" means an organized procession containing twenty-five (25) or more vehicles upon any public street, sidewalk or alley.

(j) **Official time standard.** Whenever certain hours are named herein, they shall mean standard time or daylight savings time as may be in current use in this City.

(k) **Parade/rally.** "Parade/rally" means any motorcade or any march, assembly or procession consisting of people, animals or vehicles, or combination thereof, upon any public street, sidewalk or alley which does not comply with normal and usual traffic regulations and controls.
Passenger loading zone. "Passenger loading zone" is the space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers.

Police or police department. "Police or police department" is the sheriff or deputy sheriff of the County of San Diego, or the Police Department of the City of San Marcos.

Recreation Vehicle means any vehicle designed or intended primarily for recreational use, including but not limited to, campers, campcars, travel trailers, motor homes, boats, boat trailers and vehicle carriers designed or intended to convey another recreational vehicle. The term recreational vehicle shall not include motorcycles, motor-driven cycles or pickup/camper combinations.

Residential district. For the purposes of this chapter, the term "Residential District" shall be deemed to include any property zoned R-I, R-2, R-3 and E-I-20.

Vehicle Code. "Vehicle code" is the vehicle code of the State of California.

12.04.020 Authority to Establish, Amend Traffic Schedules. The Council shall establish and may amend by ordinance or resolution, the following traffic schedules:

(a) U-turns
(b) Through streets
(c) Stop intersections
(d) Railroad stops
   (e) No parking zones
   (f) Limited parking zones
   (g) Time parking zones
(h) One-way streets
(i) Yield intersection
(j) Speed zones
(k) Bail schedule
   (l) Vehicle code enforcement of private property.

12.04.030 Applicability of this Chapter to Vehicles on Emergency Call. The provisions of this chapter regulating the operation, parking and standing of vehicles shall not apply to any vehicles operated by the police or fire department, any public ambulance, or any public utility vehicle or private ambulance, which public utility vehicle or private ambulance has qualified as an authorized emergency vehicle, when any vehicle mentioned in this section is operated in the manner specified in the vehicle code in response to an emergency call.

12.04.040 Duty Obligation of Operators of Vehicles Exempt from this Chapter. The exemptions contained in section 12.04.030 shall not, however, relieve the operator of any such vehicle from the obligation to exercise due care for the safety of others.
CHAPTER 12.08
ADMINISTRATION AND ENFORCEMENT

Sections:

ARTICLE I.  GENERALLY

12.08.010  Unauthorized Directing of Traffic

ARTICLE II.  ENFORCEMENT

12.08.020  Police Administration
12.08.030  Enforcement of Non-moving Violations
12.08.040  Fines for Citation of Violations

ARTICLE III.  CITY TRAFFIC ENGINEER

12.08.050  City Traffic Engineer
12.08.060  Powers and Duties of the City Traffic Engineer

ARTICLE IV.  TRAFFIC COMMISSION

12.08.070  Commission Established
12.08.080  Term of Office; Removal or Vacancy
12.08.090  Rules
12.08.100  Secretary; Staff Services
12.08.110  Meetings
12.08.120  Election of Officers
12.08.130  Duties and Responsibilities
12.08.140  Compensation of Members
12.08.150  Appeals Process

ARTICLE I.  GENERALLY

12.08.010  Unauthorized Directing of Traffic.  No person other than an officer of a police department or member of a fire department, or a person deputized by the chief of police, or person authorized by law, shall direct or attempt to direct traffic by voice, hand, or other signal, except that persons may operate, when and as herein provided, any mechanical push-button signal erected by order of the City Traffic Engineer.

ARTICLE II.  ENFORCEMENT

12.08.020  Police Administration.  It shall be the duty of the traffic division with such aid as may be rendered by other members of the police department to enforce the street traffic regulations of this City and all of the state vehicle laws applicable to street traffic in this City, to make arrests for traffic violations, to investigate traffic accidents and to cooperate with the City Traffic Engineer and other officers of the City in the administration of the traffic laws and in developing ways and means to improve traffic conditions, and to carry out those duties specially imposed upon said traffic division by this chapter and the traffic ordinances of this City.
12.08.030 **Enforcement of Non-moving Violations.** Authority is hereby given to issue citations for violations of the California Vehicle Code and City Traffic Code (Title 12) as it relates to stopping, standing, and parking.

(a) The City Manager may appoint parking enforcement personnel who shall be authorized to issue citations or violations of the California Vehicle Code and City Traffic Code (Title 12) as it related to stopping, standing and parking of a vehicle.

(b) Personnel designated per subsection 12.08.030(a) shall be guided by the provisions of the California Vehicle Code and City Traffic Code (Title 12) in the issuance of said citations.

(c) Personnel designations in subsections 12.08.030(a) and (b) do not alter in any manner authority already given to others as set forth in the San Marcos Municipal Code, Title 12, Article II.

12.08.040 **Fines for Citations of Violations**

(a) Fees set forth in these sections are due and payable to the City Finance Director upon issuance of a violation notice. In reference to Unsigned Citations, in the event the fee is not paid within ten (10) days of issuance, said fee shall increase to the amount set forth in section 12.08.040 c). *(Editor's note: "Exhibit 1" has been omitted as it is no longer applicable.)*

(b) Amendment to Fee Schedule. Any amendment or addition to fees set forth in this schedule shall be by amendment of this resolution.

(c) Fees. The following fees shall be charged for the violations of the California Vehicle Code and for violations of the San Marcos City Code as listed on Exhibits I and 2. (Res. No. 81-1581, Secs. 1-3, 4-28-81)

**ARTICLE III. CITY TRAFFIC ENGINEER**

12.08.050 **City Traffic Engineer.** The office of the City Traffic Engineer is hereby established. The City Traffic Engineer shall be appointed by the City Manager and he shall exercise the powers and duties as provided in this chapter. Whenever the City Traffic Engineer is required or authorized to place or maintain official traffic control devices or signals, he may cause such devices or signals to be placed or maintained.

12.08.060 **Powers and Duties of the City Traffic Engineer.** It shall be the general duty of the City Traffic Engineer to:

(a) Determine the installation, location and operation of traffic-control devices such as signs, signals and markings.

(b) Conduct engineering analyses of traffic accidents and to devise remedial measures.

(c) Conduct traffic engineering studies and present recommendations on speed limit zoning, traffic volumes, parking and transportation planning.

(d) Cooperate and consult with other City officials on development plans, street design, driveway design, and location, public transportation, planning, street lighting, and other topics of
the safe and efficient movements of pedestrians, bicyclists, automobiles, trucks and buses on or adjacent to public rights-of-way.

(e) Maintain a suitable system of filing traffic accident reports or cards referring to them and to file them systematically.

(f) Prepare annually a traffic report which shall be filed with the City Council. Such a report shall contain information on traffic matters in the City as follows:

1. The number of traffic accidents, the number of persons killed, the number of persons injured and other pertinent data on the safety activities of the police.

2. The number of traffic accidents investigated and other pertinent data on the safety activities of the police.

3. The plans and recommendations of the division for future traffic safety activities.

(g) Carry out the additional powers and duties imposed by ordinances of this City.

Whenever under the provisions of this chapter, a power is granted to the City Traffic Engineer or a duty imposed upon him, the power may be exercised or the duty performed by his deputy or by a person authorized in writing by him.

ARTICLE IV. TRAFFIC COMMISSION

12.08.070 Commission Established. There is hereby established the Traffic Commission, consisting of seven (7) regular members and two (2) alternate members. The members shall be appointed by the Mayor with consent of the City Council. (Ord. No. 2013-1375, 3/26/13)

12.08.080 Term of Office; Removal or Vacancy. The terms of all members shall be as follows:

(a) All Traffic Commissioners must reside within the City of San Marcos and be qualified electors (registered voters) of the City. All commissioners shall serve at the pleasure of the City Council. The alternate commissioners shall sit and vote in the absence of, or where a conflict exists for any regular commissioner.

(b) Except as provided herein, regular and alternate commissioners shall serve for a term of four (4) years. As of April 26, 2013, existing Commissioners shall serve their remaining term as assigned. Except as provided otherwise herein, additional terms shall be staggered in rotations determined by the City Clerk, and commence the first day of the calendar year.

(c) Any member may be removed by a majority vote of the City Council. A vacancy for a regular or alternate seat shall be filled in the same manner as an original appointment in accordance with state law. If a vacancy shall occur other than by expiration of a term for a regular or alternate commissioner, it shall be filled by an available alternate commissioner until such time as the City Council appoints an individual to fill the position during the annual appointment process.
12.08.080 - 12.08.140

(d) A commissioner position shall be deemed vacant when a commissioner is absent from three (3) successive regular meetings of the commission without cause; absence for cause is permitted due to illness or unavoidable absence where written notice is given to the City Engineer or his/her appointed designee on or before the day of the missed regular meeting. (Ord. No. 2013-1375, 3/26/13)

12.08.090  Rules. The commission shall adopt rules and regulations for the conduct of its business. Four (4) voting members shall constitute a quorum. The affirmative or negative vote of a majority of the members present at a meeting shall be necessary for the commission to take action. (Ord. No. 2013-1375, 3/26/13)

12.08.100  Secretary; Staff Services. The City Engineer, in charge of the traffic function, or his designated representative, shall provide the staff services necessary to ensure the effective functioning of the Traffic Commission. (Ord. No. 2013-1375, 3/26/13)

12.08.110  Meetings. The Traffic Commission shall hold at least one (1) regular meeting per month at the discretion of the commission, or at the direction of the City Council, unless the City Engineer determines that there is no such business to conduct. Special meetings may be held in accordance with the provisions of Section 54956 of the Government Code of the State of California. (Ord. No. 2013-1375, 3/26/13)

12.08.120  Election of Officers. At the first meeting of each calendar year, the Traffic Commission, shall elect a chairman and vice-chairman from among its members to serve for a term of one year and until the successor of each takes office. (Ord. No. 2013-1375, 3/26/13)

12.08.130  Duties and Responsibilities.

(a) The duties of the Traffic Commission shall consist of making decisions regarding the implementation of the City’s traffic safety measures, including those that involve all modes of transportation such as vehicular, pedestrian, bicycle or public transit. Those duties will be limited to those that cannot readily be addressed directly by City staff through the application of standard traffic engineering guidelines, which include those contained in the current editions of the California Manual of Uniform Traffic Control Devices, the Caltrans Highway Design Manual, the San Marcos Municipal Code and the California Vehicle Code. Further, traffic safety issues that are likely to be controversial within neighborhoods will also be referred to the Traffic Commission.

(b) Requests for commission action on traffic safety matters may either arise through citizen requests or staff referrals, whereby a staff report shall be prepared with the recommendations of the City Engineer or his/her appointed designee.

(c) The City Council may refer any matter regarding the implementation of traffic safety measures to the Traffic Commission for its recommendation. Additionally, the Traffic Commission shall receive regular staff reports and/or presentations at their meetings regarding transportation and traffic related capital improvement or land development projects in the City, which are in the planning, design or construction stages. The Commission may offer non-binding comments or recommendations to City staff regarding those projects. (Ord. No. 2013-1375, 3/26/13)

12.08.140  Compensation of Members. Each member of the Traffic Commission, including the Chairman shall receive compensation as established by Resolution adopted by the City Council. (Ord. No. 2013-1375, 3/26/13)
12.08.150  Appeal Process.

(a)  **Purpose and Applicability.**  An appeal from a decision of the Traffic Commission may be submitted by an applicant or any person having an interest in the issue that is the subject of the decision to the City Council under the provisions of this chapter. The appeals process is illustrated in Figure 12.08-1, “Traffic Commission Appeals Process.” The appeal process may only be applied to those situations where the Traffic Commission is authorized to make binding decisions regarding implementation of the City’s traffic safety measures as provided in this chapter (see 12.08.130(a)). The decision of the City Council in the case of any such appeal shall be final.

(b)  **Filing an Appeal.**  The appeal may be taken by filing a written appeal with the City Clerk and paying any required fee within ten (10) business days of the Traffic Commission decision. The appeal shall set forth the grounds upon which the appellant asserts the decision was erroneous.

(c)  **Hearing.**  Upon the filing of an appeal and payment of any required fee, the City Engineer shall forward to the City Council the papers and documents applicable to such hearing, including the decision of the Commission. The parties shall be given reasonable notice of the date set for the hearing.

(d)  **City Council Decision.**  The City Council shall consider the appeal at a public meeting and shall either:

1. Affirm the decision of the Traffic Commission; or
2. Render such decision as it considers appropriate.

(e)  **Action Halted by an Appeal.**  An appeal stays all proceedings in furtherance of the action appealed from.

(f)  The administrative appeals process set forth in Chapter 2.14 shall not apply to appeals from decisions of the Traffic Commission.  *(Ord. No. 2013-1375, 3-26-2013)*
CHAPTER 12.12

TRAFFIC CONTROL DEVICES

Sections:

12.12.010 Obedience Required
12.12.020 Traffic Control Signs Required for Enforcement Purposes
12.12.030 Authority to Install Traffic Control Devices
12.12.040 Authority to Place, Maintain Additional Devices; Determination of Location
12.12.050 Authority to Remove; Relocate and Discontinue Traffic Control Devices
12.12.060 Traffic Control Devices; Hours of Operation
12.12.070 Unauthorized Painting of Curbs
12.12.080 Unauthorized Flashing Lights
12.12.090 Authority to Sign One-way Streets or Alleys
12.12.100 Erecting Stop Signs
12.12.110 Authority to Place Restricted Turn Signs
12.12.120 Authority to Place Yield Right-of-way Signs
12.12.130 Authority to Designate Course to be Traveled when Turning at Intersections
12.12.140 Authority to Designate Multiple Lanes in Which to Make Turns
12.12.150 General Authority to Mark Lines, Lane Lines, in Which to Make Turns
12.12.160 Distinctive Roadway Markings
12.12.170 Authority to Erect Temporary Signs Closing Streets
12.12.180 Removal of Temporary Signs
12.12.190 Authority to Install, Maintain Devices Where Need Exists to Alternately Interrupt, Release Traffic
12.12.210 When Installation, Maintenance of Street Name Signs Required

12.12.010 Obedience Required. The operator of a vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the traffic regulations of the City, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle when responding to emergency calls.

12.12.020 Traffic Control Signs Required for Enforcement Purposes. No provisions of the vehicle code or of this chapter for which signs are required shall be enforced against an alleged violator unless appropriate legible signs are in place giving notice of such provisions of the traffic laws.
12.12.030 Authority to Install Traffic Control Devices. Whenever the vehicle code of the state requires for the effectiveness of any provisions thereof that traffic control devices be installed to give notice to the public of the application of such law, the Director of Public Works is hereby authorized to install the necessary devices, subject to any limitations or restrictions set forth in the laws applicable thereto. The Director of Public Works is authorized to prohibit parking along the curb of any public street for a distance not to exceed 200 feet on any block. For purposes of this section, a block shall be defined as the section of public street between any two intersecting public streets or a cul-de-sac. The City's Traffic Safety Commission, prior to installation of such devices, shall be informed of such installations unless previously directed by the City Council. (Ord. No. 97-1006, 1-14-97)

12.12.040 Authority to Place, Maintain Additional Devices; Determination of Location. The Director of Public Works may also place and maintain such additional traffic control devices as he may deem necessary or proper to regulate traffic or guide or warn traffic, but he shall make such determination only upon the basis of traffic investigation and in accordance with such standards, limitations and rules as may be set forth in the traffic ordinances of the City, or as may be determined by ordinance or resolution of the Council.

12.12.050 Authority to Remove, Relocate and Discontinue Traffic Control Devices. Subject to Traffic Safety Commission review, whenever it shall be deemed necessary, the Director of Public Works is hereby authorized to remove, or cause to be removed, relocate or discontinue the operation of any traffic controlled device not specifically required by the vehicle code or this chapter whenever he shall determine in any particular case that the conditions which warranted or required the installation no longer exist.

12.12.060 Traffic Control Devices; Hours of Operation. The City Traffic Engineer shall determine the hours and days during which any traffic control device shall be in operation or be in effect, except in those cases where such hours or days are specified in this code.

12.12.070 Unauthorized Painting of Curbs. No person, unless authorized by this City, by special permit, shall paint any street or curb surface in any manner. (Curb house numbers painted on the curb shall be included in the general prohibition.)

12.12.080 Unauthorized Flashing Lights. No person not authorized by the City Council shall erect or maintain any device which directs a beam of light in a flashing sequence toward any street or highway, nor shall any person erect or maintain any electric advertising sign or similar device that interferes with the visibility of any official traffic control devices or warning signal.

12.12.090 Authority to Sign One-way Streets or Alleys. Whenever any ordinance or resolution of this City designates any one-way street or alley, the Director of Public Works shall place and maintain signs giving notice thereof, and no such regulations shall be effective unless such signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection where traffic movement in the opposite direction is prohibited.

12.12.100 Erecting Stop Signs. Whenever any ordinance or resolution of the City designates and describes any street or portion thereof as a through street, or any intersection at which vehicles are required to stop at one or more entrances thereto, or any railroad grade crossing at which vehicles are required to stop, the Director of Public Works shall erect and maintain stop signs as follows:

Supplement No. 3, 1994
(a) **Location of signs.** A stop sign shall be erected on each and every street intersecting such through street or portion thereof so designated, at those entrances of other intersections where a stop is required, and at any railroad grade crossing so designated.

(b) **Conformance to vehicle code.** Every such sign shall conform with, and shall be placed as provided in the vehicle code.

**12.12.110 Authority to Place Restricted Turn Signs.** The City Traffic Engineer is hereby authorized to determine those intersections at which drivers of vehicles shall not make a right, left, or U-turn, and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the sign or they may be removed when such turns are permitted.

**12.12.120 Authority to Place Yield Right-of-way Signs.** The Director of Public Works shall erect and maintain yield right-of-way signs on any street or intersection when such signs are authorized by resolution or ordinance of the City Council. When said yield right-of-way signs are erected as herein provided, every driver of a vehicle shall yield the right-of-way required by the California Vehicle Code.

**12.12.130 Authority to Designate Course to be Traveled When Turning at Intersections.** The City Traffic Engineer is authorized to place, or cause to be posted, official traffic-control devices within or adjacent to intersections and indicate the course to be traveled by vehicles turning at such intersections.

**12.12.140 Authority to Designate Multiple Lanes in Which to Make Turns.** The City Traffic Engineer is authorized to locate and indicate more than one lane of traffic from which operators of vehicles may make right or left turns, and the course to be traveled as so indicated may conform to or be other than as prescribed by law or ordinance.

**12.12.150 General Authority to Mark Lines, Lane Lines, and to Designate Useable Lanes.** The Director of Public Works is hereby authorized to mark center lines and lane lines upon the surface of the roadway to indicate the course to be traveled by vehicles and may place signs temporarily designating lanes to be used by traffic moving in a particular direction regardless of the highway, when such lines have been authorized and established by the City Traffic Engineer.

**12.12.160 Distinctive Roadway Markings.** The Director of Public Works is hereby authorized to place and maintain distinctive roadway markings as described in the vehicle code of those streets or parts of streets where it is determined by the City Traffic Engineer that the volume of traffic or the vertical or other curvature of the roadway renders it hazardous to drive on the left side of such markings or signs and markings. Other such markings shall include bike lines, shoulder stripes, etc. Such markings or signs and markings shall have the same effect as similar markings placed by the state department of transportation pursuant to provisions of the vehicle code.

**12.12.170 Authority to Erect Temporary Signs Closing Streets.** Whenever the City Traffic Engineer shall determine that an emergency traffic congestion is likely to result from the holding of public or private assemblages, gatherings or functions or for other reasons, he shall have power and authority to order temporary signs to be erected or posted indicating that the operation, parking or standing of vehicles is prohibited on such streets and alleys as he shall direct during the time such temporary signs are in place.
12.12.180 Removal of Temporary Signs. Signs erected or posted pursuant to section 12.12.170 shall remain in place only during the existence of such emergency and the City Traffic Engineer shall cause such signs to be removed promptly thereafter.

12.12.190 Authority to Install, Maintain Devices Where Need Exists to Alternately Interrupt, Release Traffic. The City Engineer shall determine the need for temporary traffic-control devices at those intersections and other places where traffic conditions are such as to require that the flow of traffic be alternately interrupted and released in order to prevent or relieve traffic congestion or to protect life or property from exceptional hazard. The Director of Public Works is hereby directed to install and maintain these traffic control devices as required.

12.12.200 Determination of Location of Devices Which Alternately Interrupt, Release Traffic. The City Traffic Engineer shall ascertain and determine the location where signals referred to in section 12.12.190 are required by resorting to field observation, traffic counts and other traffic information as may be pertinent, and his determinations therefrom shall be made in accordance with those traffic engineering and safety standards and instructions set forth in the California Maintenance Manual issued by the State Department of Transportation.

12.12.210 When Installation, Maintenance of Street Name Signs Required. Whenever any official traffic control device is placed at any intersection, a street name sign shall be clearly visible to traffic approaching from all directions. This section shall not apply if such street name signs have previously been placed and are maintained at such intersections.
12.16.010 Driving Through Funeral Procession. No operator of any vehicle shall drive between the vehicles comprising a funeral procession or a parade while they are in motion and when the vehicles in such procession are conspicuously so designated.

12.16.020 Driving, Riding, on New Pavement, Markings. No person shall ride or drive any animal or any vehicle over or across any newly made pavement or freshly painted markings in any street when a barrier, sign, cone marker or other warning device is in place warning persons not to drive over or across such pavement or markings, or when any such device is in place indicating that the street or any portion thereof is closed.

12.16.030 Cling to Moving Vehicle. No person shall attach himself/herself with his/her hands, or to catch on, or hold on to with his hands or by other means, to any moving vehicle or train for the purpose of receiving motive power therefrom.

12.16.040 Obedience to Barriers and Signs. No person, public utility or department in the City shall erect or place any barrier, sign or other warning device, unless of a type approved by the City Traffic Engineer, or disobey the instructions, remove, tamper with, or destroy any barrier or sign lawfully placed on any street by any person, public utility or by any department of this City.

12.16.050 Removal of Ignition Key Required; Enforcement; Effect of Violation.

(a) No person shall leave a motor vehicle, except a commercial vehicle unattended on any street, alley, used car lot or unattended parking lot without first stopping the engine locking the ignition and removing the ignition key therefrom.
(b) Any officer of the police force, upon finding a motor vehicle unlocked and unattended as described above with the keys left therein, may remove said keys and deliver them forthwith to the police station where they will be impounded and held until called for by the owner thereof or his duly authorized agent.

(c) Any violation of this section shall not mitigate the offense of stealing such vehicle, nor shall such violation be used to effect a recovery in any civil action for theft of such vehicle, or the insurance thereof, or have any other bearing in any civil action.

12.16.060 No Entrance Into Intersection That Would Obstruct Traffic. No operator of any vehicle shall enter any intersection or a marked crosswalk unless there is a sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

12.16.070 Operating Vehicles on Private or Public Property. No person shall operate or drive a motor vehicle, motorcycle, minibike, dune buggy, motor scooter, jeep or other form of motorized transportation upon the private property of another or upon any public property, which is not held open to the public for any vehicular use and which is not subject to provisions of the vehicle code, without having, and upon request of a peace officer, displaying written permission from the owner of such property or his agent or the person in lawful possession thereof, provided, however, the provisions of this section shall not apply to emergency vehicles, governmental agencies or to other persons driving upon such property with the written consent of the owner or person in lawful possession of such property, or to the owner himself, his family, employees, agents or lessees.

12.16.080 Emerging from Alley, Driveway or Building. The operator of a vehicle emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or into the sidewalk area extending across any alleyway or driveway.

12.16.090 Limited Access. No person shall drive a vehicle onto or from any roadway except at such entrances and exits as are lawfully established.

12.16.100 Operation of Mobile Food Preparation Units.

(a) No person shall drive or operate a mobile food preparation unit on any public street or private property unless all persons within such vehicle are seated.

(b) No person shall drive or operate a mobile food preparation unit on any public street or private property while cooking or food preparation is going on in such vehicle.
CHAPTER 12.20

STOPPING, STANDING AND PARKING

ARTICLE I. GENERALLY

12.20.010 Application of Regulations
12.20.020 Applicability of Articles to City, Utility Mail Vehicles
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12.20.040 Parking to Advertise, Perform Maintenance
12.20.050 Parking on Grades
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ARTICLE II. STOPPING FOR LOADING AND UNLOADING

12.20.210 Authority to Establish Loading Zones
12.20.220 Authority to, Duty to Mark Curb; Meaning of Colors
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12.20.290 Painting of Bus Zones
12.20.300 Standing in a Bus Zone
12.20.310 Parking Enforcement on Private Property

Supplement No. , 1994 Code
12.20.010  Application of Regulations.

(a) The provisions of this article, prohibiting the stopping, standing or parking of a vehicle, shall apply at all times or at those times herein specified, except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the direction of a police officer or official traffic control device.

(b) The provisions of this article imposing a time limit on standing or parking shall not relieve any person from the duty to observe other and more restrictive provisions of the vehicle code or the ordinances of this City prohibiting or limiting the standing or parking of vehicles in specified places or at specified times.

12.20.020  Applicability of Article to City, Utility, Mail Vehicles. The provisions of this article regulating the parking or standing of vehicles shall not apply to any vehicle of a City department or public utility while necessarily in the use for construction or repair work or any vehicle owned by the United States Post Office Department while in use for the collection, transportation or delivery of United States mail.

12.20.030  No Parking Areas. No operator of any vehicle shall stop, stand, park or leave standing such vehicle in any of the following places, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or other authorized officer, or traffic sign or signal:

(a) In any area established by resolution of the Council as a no parking area, when such area is indicated by appropriate signs or an appropriate color of paint upon the curb surface as defined in section 12.20.220.

(b) Within any center median unless authorized and clearly indicated with appropriate signs or markings.

(c) Within twenty (20) feet of the approach to any traffic signal, boulevard stop sign or official electrical flashing device.

(d) In any area established by resolution of the Council, to limit parking for the purpose of street maintenance and/or cleaning.

(e) On any street or highway where the use of such street or highway or a portion thereof is necessary for the cleaning, repair or construction of the street or highway or the installation of underground utilities or where the use of the street or highway or any portion thereof is authorized for a purpose other than the normal flow of traffic or where the use of the street or highway or any portion thereof is necessary for the movement of equipment, articles or structures of unusual size, and the parking of such vehicle would prohibit or interfere with such use or movement; provided that signs giving notice of such no parking are erected or placed at least twenty-four (24) hours prior to the effective time of such no parking.

(f) On any length of public street marked by a traffic control device prohibiting parking and installed by the Public Works Director as set forth in Section 12.12.030 of the San Marcos Municipal Code. (Ord. No. 97-1006, 1-14-97)

Supplement No. 3, 1994 Code
12.20.040 Parking to Advertise, Perform Maintenance. No person shall park a vehicle on any roadway or City right-of-way for the purpose of:

(a) Displaying such vehicle for sale.

(b) Washing, greasing, changing oil or repairing such vehicle, except repairs necessitated by an emergency.

12.20.050 Parking on Grades. No person shall park or leave standing any vehicle unattended on a street or highway when upon any grade exceeding three (3) percent without blocking the wheels of said vehicle by turning them against the curb or by other means.

12.20.060 Parking Adjacent to Schools.

(a) Subject to approval by resolution of the City Council, the City Superintendent of Streets is hereby authorized to erect signs indicating no parking upon that side of any street adjacent to any school property when such parking would, in his opinion, interfere with traffic or create a hazardous situation.

(b) When official signs are erected prohibiting parking upon that side of a street adjacent to any school property, no person shall park a vehicle in any such designated place.

12.20.070 Parking in Roadway Not to Obstruct Traffic. No person shall park in any roadway in such a manner as to obstruct the flow of traffic thereon.

12.20.080 Stopping, Standing or Parking in Parkways or Sidewalks. No person shall stop, stand or park a vehicle within any parkway or upon any sidewalk, or within a designated bike lane.

12.20.090 Emergency No Parking Signs.

(a) Whenever the City Traffic Engineer shall determine that an emergency traffic congestion is likely to result from the holding of public or private assemblages, gatherings or functions or for other reasons, the City Traffic Engineer shall have the power and authority to order temporary signs to be erected or posted indicating that the operation, parking or standing of vehicles is prohibited on such streets and alleys as the City Traffic Engineer shall direct during the time such temporary signs are in place. Such signs shall remain in place only during the existence of such emergency and the City traffic engineer shall cause such signs to be removed promptly thereafter.

(b) When signs authorized by the provisions of this section are in place giving notice thereof, no person shall operate, park or stand any vehicle contrary to the directions and provisions of such signs. Any vehicle so stopped or parked shall be subject to the tow away provisions of this Code, whenever signs so marked are posted giving notice of the tow away provision.

12.20.100 Tow Away Authorized. Any regularly employed and salaried officer of the police department of the City of San Marcos is hereby authorized to remove a vehicle from a street or highway to the nearest garage or other place of safety, under the circumstances hereinafter enumerated:

Supplement No. 3, 1994 Code
(a) **Bus loading zone restriction.** Any vehicle which is parked in a bus loading zone as established by ordinance or resolution of the City Council of the City of San Marcos, and which bus loading zone is appropriately signed, giving notice that such vehicle will be removed under authority of this section.

(b) **Violation of temporary no parking.** When any vehicle has been parked or left standing on a street or highway twenty-four hours or more in violation of temporary no parking signs which have been posted on said street or highway pursuant to this article.

(c) When any vehicle has been cited more than five (5) times for the same parking violation in the same calendar year.

(d) Any violations of sections 12.20.120, 12.20.130, and/or 12.20.140 hereunder.

12.20.110 **Procedure by Police.** Any officers removing a vehicle as provided herein shall comply with the procedures set forth in Section 22651 of the Vehicle Code of the State of California.

12.20.120 **Camping or Remaining on Public Property.**

(a) No person shall camp or sleep overnight or loiter in, on or upon any public property, public facility, public right-of-way or property over which the City has been granted an easement.

(b) For purposes of this Chapter, “camp” shall mean to establish a temporary means of shelter and/or living accommodations during day and/or evening hours by means which may include, but which shall not be limited to, the following: storing personal belongings; making a camp fire; using a tent or shelter or other structure for a living accommodation; carrying on cooking activities; digging or earth breaking activities.

(c) Nothing in this section shall be construed to prohibit camping in public campgrounds as otherwise authorized by resolution or ordinance.

(Ord. No. 2005-1257, 01/10/06)

12.20.130 **Camping or Remaining on Private Property Without Permission.** No person shall camp (as defined in Section 12.20.120 above) or sleep overnight or loiter in, or upon any private property without the written permission of the owner or lessee of the property.

(Ord. No. 2005-1257, 01/10/06)

12.20.140 **Sleeping in Parked Automobiles.** No person shall sleep or recline in any automobile parked upon any public street or highway within the City limits of San Marcos for any period greater than two (2) hours continuously.

12.20.150 **Parking or Standing of Commercial Vehicles.**

(a) Except as provided in (b) below, no commercial vehicle shall be parked or allowed to stand on any street or private premise in a residential district of the City if such vehicle is one or more of the following:

Supplement No. 3 & 1994 Code
(1) A vehicle with a manufacturer's gross weight rating of 9,000 pounds or more

(2) A "truck tractor", as defined in California Vehicle Code Section 655;

(3) A "semitralier" or accessories thereto, as defined in California Vehicle Code Section 550;

(4) Construction equipment, as defined in California Vehicle Code Sections 565

(b) This Section shall not apply when such vehicle is:

(1) Loading or unloading property;

(2) Parked in connection with the performance of a short term service to or on a property;

(3) Engaged in the construction, installation, repair or maintenance of a publicly or privately owned improvement located on the property, for which a construction permit has been issued by the City;

(4) Engaged in the lawful conduct of a legally nonconforming business operation and is not parked or allowed to stand in violation of any other zoning or regulatory ordinance of the City.

(5) parked entirely within a completely enclosed garage, shed or outbuilding conforming to the height, size and setback requirements of the Zoning Ordinance, and having unobstructed, all-weather access from the nearest street. The following additional restrictions shall apply to vehicles parked in accord with this provision:

a) Painting and/or repair of such vehicle, other than regularly scheduled maintenance, shall be prohibited. For purposes of this Section, "regularly scheduled maintenance" shall mean minor tune-ups, lubrication, changing of fluids and other minor work not involving physical repair to a vehicle.

b) The starting, running or removal of such vehicle from the building in which it is stored shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m.

c) This provision shall apply only in those cases where the registered owner of such vehicle is the owner in fee or lawful occupant of the premises on which said vehicle is parked or standing. (Ord. No. 88-805, 1-10-89)
12.20.160 Parking or Standing of Mobile Living Units and Recreation Vehicles in Residential Districts.

(a) **On-Street**: Except as provided in Section 16.08.080 herein, no mobile living unit or recreation vehicle shall be parked or allowed to stand on any street or portion thereof, in a residential district of the City. This provision shall not apply to unoccupied pickup/camper combinations, provided such vehicles are parked in a manner permitting the free flow of traffic.

(b) **Off-Street**: No portion of a front yard or street side yard on any lot containing a single-family or two family dwelling shall be used for the parking of mobile living units or recreation vehicles. This prohibition shall not apply to surfaced driveways providing direct access to a garage or carport, provided no portion of a vehicle parked thereon shall be:

1. Allowed to overhang a sidewalk or encroach upon a public right-of-way.

2. Located closer than three (3) feet to any lot line, main residence, accessory structure or other vehicle.

(c) Yard areas other than those specified in (b), above, may be used for the parking of such vehicles, provided:

1. No portion of a vehicle parked therein shall be located closer than three (3) feet to any lot line, main residence, accessory structure or other vehicle.

2. Unobstructed all-weather access from the nearest street shall be provided to the affected yard area. Such access shall be of a width satisfactory to the San Marcos Fire Protection District.

3. Use of such yard areas shall be incidental to the primary use of the lot as a place of residence.

4. The registered owner of such vehicle shall be the owner in fee or lawful occupant of the lot on which said vehicle is parked.

5. Affected yard areas shall be screened from view on adjoining lots and streets with a minimum 6 foot high, solid wood or masonry fence or by other adequate screening as determined by the City Manager and conforming to the setback requirements of the Zoning Ordinance.

(d) Nothing in this Section shall prevent arrangements for the group parking of unoccupied mobile living units and recreation vehicles within screened, secured compounds on lots zoned for multiple-family dwellings, provided such use is not in violation of any other zoning or regulatory ordinance of the City.

(e) The setback requirement of (b)(2) and (c)(1) above may be modified or waived by the Fire Marshal, provided satisfactory measures are taken to prevent the transmission of fire from the vehicle in question to adjoining structures or vehicles.

(f) Nothing in this Section shall prevent the parking of unoccupied mobile living units and recreation vehicles within a completely enclosed garage or outbuilding in any residential district of the City. *(Ord. No. 88-805, 1-10-89)*

Supplement No. 3, 1994 Code
12.20.170 Commercial Vehicle, Mobile Living Unit and Recreational Vehicle Parking Limitation. It shall be unlawful to park or leave parked or unattended any vehicle of the types designated in Sections 12.20.150 and 12.20.160 on any street or alley within the City between the hours of 2:00 a.m. and 6:00 a.m. of each day. (Ord. No. 88-805, 1-10-89)

12.20.180 Prima Facie Responsibility for Unattended Vehicles. In the event that the driver of a vehicle found to be in violation of any section of this article cannot be located, then in accordance with Section 41102 of the California Vehicle Code, the registered owner of any vehicle so unlawfully parked as determined from the registration, shall be deemed prima facie liable and responsible for the illegal parking of such vehicle.

12.20.190 Use of Streets for Storage of Vehicles. No person who owns or has possession, custody or control of any vehicle shall park such vehicle upon any street or alley within the City for more than a consecutive period of seventy-two (72) hours. Successive acts of parking within the same one-tenth mile or in the same block between intersections, whichever is less, shall be presumed to be a single act of parking when the vehicle is moved merely to avoid the parking limitation prescribed in this Section. (Ord. No. 88-805, 1-10-89)

12.20.200 Removal of Vehicles Stored on a Public Street. In the event a vehicle is parked or left standing upon a street in excess of a consecutive period of seventy-two (72) hours, any member of the City Staff authorized by the City Manager may remove said vehicle from the street in the manner prescribed and subject to the requirements of Vehicle Code, Section 22651(k).

12.20.205 Angle Parking. Pursuant to Vehicle Code Section 22503 and upon a report submitted by the City Engineer, the City Council may, by Resolution, designate any street or portion thereof within the City where angle parking is permitted. When angle parking is permitted on a street, or portion thereof, the Superintendent of Streets shall paint markings designating the angle parking places. When angle parking has been established for a street, or a portion thereof, no person(s) shall stop, stand or park a motor vehicle except in a designated angle parking place. (Ord. No. 91-895, 6-11-91)

ARTICLE II. STOPPING FOR LOADING AND UNLOADING ONLY

12.20.210 Authority to Establish Loading Zones.

(a) The City Council may by resolution establish loading zones and passenger loading zones as follows:

(1) At any place in any business district.

(2) Elsewhere in front of the entrance to any place of business or in front of any hall or place used for the purpose of public assembly.

(b) In no event shall more than one-half of the total curb length in any block be reserved for loading zone purposes.

(c) Loading zones shall be indicated by yellow paint upon the top and side of all curbs within such zones.

(d) Passenger loading zones shall be indicated by white paint upon the top and side of all curbs within such zones.
12.20.220  Authority to, Duty to Mark Curbs; Meaning of Colors. The Street Superintendent is hereby authorized, subject to the provisions and limitations of this chapter, to place, and when required herein, shall place, the following curb markings to indicate parking or standing regulations; and said curb markings shall have the meanings as herein set forth:

(a) **Red** shall mean not stopping, standing or parking at any time except as permitted by the vehicle code, and except that a bus may stop in a red zone marked or signed as a bus zone.

(b) **Yellow** shall mean no stopping, standing or parking at any time between 7:00 a.m. and 6:00 p.m. of any day except Sundays and holidays for any purpose other than the loading or unloading of passengers or materials, provided that the loading or unloading of passengers shall not consume more than three (3) minutes or the loading or unloading of materials more than twenty (20) minutes.

(c) **White** shall mean no stopping, standing or parking for any purpose other than loading or unloading of passengers which shall not exceed three (3) minutes; and such restrictions shall apply between 7:00 a.m. and 6:00 p.m. of any day except Sundays and holidays.

(d) **Blue** shall mean stopping, standing and parking limited exclusively to the vehicles of the handicapped whose vehicles display a distinguished license plate issued to disabled persons by the department of motor vehicles. Such marking shall be effective between the hours of 7:00 a.m. and 6:00 p.m. of any day except Sundays and holidays unless signs are posted further restricting or authorizing other days and hours.

12.20.230  Painting of curbs for parking regulations.

(a) No parking shall be painted red on both the top and face of the curb for the entire length of the zone.

(b) Loading zones shall be painted yellow on both the top and face of the curb with black stencilled letters, "loading only," upon the top of all curbs within such zones.

(c) Passenger loading zones shall be painted white on both the top and face of the curb with black stencilled letters, "passenger loading only." upon the top of all curbs within such zones.

(d) Twenty-minute parking zones shall be painted green on both the top and face of the curb with white stencilled letters, "20 minutes only." upon the top of all curbs within such zones.

(e) Handicapped parking zones shall be painted blue on both the top and face of the curb with white stencilled letters, "handicapped parking only." In addition, a standard handicapped sign will be placed in a conspicuous location noting the location of such handicapped parking zone.

12.20.240  Standing in a Loading Zone. No person shall stop, stand or park a vehicle in any yellow loading zone for any purpose other than loading or unloading passengers or material for such time as is permitted in section 12.20.220(b).

12.20.250  Standing in Passenger Loading Zone. No person shall stop, stand or park a vehicle in any passenger loading zone for any purpose other than the loading or unloading of passengers for such time as is specified in section 12.20.220 (c).
12.20.260 Authority to Establish Bus Zones. The City Traffic Engineer is hereby authorized to establish bus zones opposite curb spaces for the loading and unloading of buses or common carriers of passengers and to determine the location thereof subject to the directives and limitations set forth herein.

12.20.270 Length of Bus Zones. No bus zone shall exceed eighty (80) feet in length except that when satisfactory evidence has been presented to the City Traffic Engineer showing the necessity therefore, he may extend bus zones not to exceed a total length of one hundred fifty (150) feet.

12.20.280 Direction of Bus Zones From Intersection. Bus zones shall normally be established on the far side of an intersection unless otherwise designated by ordinance.

12.20.290 Painting of Bus Zone. The City Traffic Engineer shall cause to have painted a red line stencilled with black letters "no standing," together with the words "bus zone" upon the top or side of all curbs and places specified as a bus zone. There shall also be signs erected at such zones.

12.20.300 Standing in a Bus Zone. No person shall stop, stand or park any vehicle except a bus in a bus zone. Vehicles in violation of this section are subject to tow away per section 12.20.100(a).

12.20.310 Parking Enforcement on Private Property

(a) The City Council may, by resolution, and after a request of the property owner, declare that there are privately owned and maintained off-street parking facilities that are generally held open for use of the public for purposes of vehicular parking. Upon enactment by the City Council of such resolution, and after property owner compliance with section 12.20.310(b), the City may enforce all pertinent motor vehicle and traffic regulations within that privately owned and maintained off-street parking facility.

(b) Notwithstanding the provisions of section 12.20.310 (a), no resolution enacted thereunder shall apply to any off-street parking facility described therein unless the owner has caused to be posted in a conspicuous place at each entrance to such off-street parking facility, a notice not less than seventeen (17) by twenty-two (22) inches in size with lettering not less than one inch in height, to the effect that such off-street parking facility is subject to public traffic regulations and control. No such resolution shall be enacted without a public hearing thereon and ten (10) days’ prior written notice to the owner of the privately owned and maintained off-street parking facility involved. All costs for such public hearing, posting and administrative fees shall be borne by the property owner requesting said hearing. The City shall not be required to provide patrol or enforce any provisions of this Code on any privately owned and maintained off-street parking facility other than those private properties which have been included under this section through Council resolution.
CHAPTER 12.24

PEDESTRIAN REGULATIONS

SECTIONS:

12.24.010   Authority to Establish Marked Crosswalks
12.24.020   Certain Uses of Coasters, Roller Skates and Similar Devices Prohibited
12.24.030   Obstruction of Public Ways

12.24.010 Authority to Establish Marked Crosswalks.

(a) The superintendent of streets shall install and maintain crosswalks at intersection and other places by appropriate devices, marks or lines upon the surface of any roadway, where the City Traffic Engineer determines that there is particular hazard to pedestrians crossing the roadway subject to the limitation contained in subsection (b) of this section.

(b) Other than crosswalks at intersections, no crosswalks shall be established in any block which is less than four hundred (400) feet in length and such crosswalk shall be located as nearly as practicable at mid block.

(c) The superintendent of streets may place signs at or adjacent to an intersection in respect to any crosswalk directing that pedestrians shall not cross except in the crosswalk so indicated.


(a) For the purpose of applying this section, the term "roller device" shall mean roller skates, roller blades, skateboards, coasters, toy vehicles or any similar device upon which a person may be propelled.

(b) No person shall use a roller device upon any public street, parking lot, parking structure, sidewalk or walkway in any business district in the City of San Marcos.

(c) No person shall use a roller device upon any public street, parking lot, parking structure, sidewalk or walkway in any district in the City of San Marcos in such a manner as to interfere with the lawful use thereof by motor vehicles or pedestrians.

(d) No person shall use a roller device upon any street, parking lot, parking structure, sidewalk or walkway which is open to the public for commercial purposes, provided that such street, parking lot, parking structure, sidewalk or walkway shall be posted by the owner thereof indicating that such use is prohibited pursuant to this section.

(e) No person shall use a roller device upon or within any drainage channel, ditch, culvert or other improved storm water control system which is either:

(1) Situated within a public right of way or is owned and controlled by a public entity; or is
12.24.020 - 12.24.040

(2) Situated upon private property which is posted by the owner thereof indicating that such use is prohibited pursuant to this section.

(f) Any person whose conduct is alleged to be in violation of this section shall be cited for an infraction pursuant to the terms of Section 1.12.010 of this Code. (Ord. No. 93-950, 5-25-93)

12.24.030 Obstruction of Public Ways. No person shall stand or sit on any crosswalk, or any other public street, highway, public park or public bench or arcade, shopping center or other property opened or dedicated to public use or to which the public is invited, so as in any manner to obstruct the free use thereof by the public or passage therein or thereon by pedestrians, or to hinder, molest or annoy any person or persons in passing along the same, or to obstruct the entrance of any public hall, public building, public bench or public park.


(a) Crossing of roadways between intersections that are not controlled by either traffic control signal devices or by police officers may be prohibited by action of the Traffic Safety Commission. Prior to designation of such a prohibited crossing, the Traffic Safety Commission shall consider a report from the City Engineer, which report may include, but shall not be limited to, relevant traffic volumes, prevailing speeds, accident history, pedestrian volumes, width of roadway, lane configuration, number of traffic lanes, length of intersection and sight distances relating to the affected roadway or segment thereof.

(b) Upon designation of a prohibited crossing by the Traffic Safety Commission as provided in Section 12.24.040(a), the affected roadway shall be posted with signage informing persons that crossing between the applicable intersections is prohibited.

(c) It shall be unlawful for any person to cross a roadway that has been designated as a prohibited crossing by the Traffic Safety Commission and posted pursuant to Section 12.24.040(b). (Ord. No. 2007-1291, 10-23-07)
CHAPTER 12.28
PARADES, PROCESSIONS AND RALLIES

SECTIONS:

12.28.010 Permit Required, Permit to be Carried by Leader
12.28.020 Parades and Processions; Exemptions
12.28.030 Application for Permit - Where, When Filed, Contents
12.28.040 Application for Permit - Authority for Manager to Consider Late Applications
12.28.050 Where Applicant May Submit Alternate Application Permit
12.28.060 Notice of Rejection of Permit Application
12.28.070 Authority of City Manager to Recommend Time, Date, Route When Denying Application, Acceptance by Applicant; Issuance of Permit
12.28.080 Appeal Allowed Upon Denial of Permit; Appeal Procedures; Council Authority; Effect of Council's Decision
12.28.090 When Permit is to be Issued
12.28.100 Contents of Permit
12.28.110 Officials to be Notified Upon Issuance of Permit
12.28.120 Joining; Interfering Prohibited

12.28.010  Permit Required, Permit to be Carried by Leader. No person shall hold, manage, conduct, aid, participate in, form, start or carry on any parade, procession or rally of any kind or any other similar display or cause or permit the same upon any public street, park, sidewalk or any other public grounds in the City unless there has first been obtained from the City Manager, a permit to do so, and such permit shall be carried by the person heading or leading the activity. A fee of three hundred fifty dollars ($350.00) shall be charged for issuance of such a permit; any additional costs (extra police protection, traffic control) shall also be charged and added to the cost of said permit. The applicant, if a non-profit, may request waiver of said fee if a request for such waiver is in writing. Waiver of said fee is at the discretion of the City Manager. (Ord. No. 2004-1229, 6/8/04)

12.28.020  Parades and Processions; Exemptions. Funeral and wedding processions shall be exempt from the regulations of this article.

12.28.030  Application for Permit--Where, When Filed; Contents. Any person desiring to conduct or manage a parade, procession or rally shall, not less than thirty (30) days before the date on which it is proposed to conduct such parade or procession, file with the City Manager a verified application on a form furnished by the City, setting forth the following information:

(a) The name of the person or organization wishing to conduct such parade, procession or rally.

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(b) If the parade, procession or rally is proposed to be conducted for, on behalf of or by an organization, the name, address and telephone number of the headquarters of the organization and the authorized and responsible head of such organization.

(c) The name, address and telephone number of the person who will be the parade, procession or rally chairman and will be responsible for its conduct.

(d) The name, address and telephone number of the person or organization to whom the permit is desired to be issued.

(e) The date when such parade or procession is to be conducted.

(f) The route to be traveled, the starting point and the termination point.

(g) The approximate number of persons who, and animals and vehicles which, will constitute such parade, procession or rally; the type of animals and a general description of the vehicles.

(h) The time when such parade or procession will start and terminate.

(i) Whether the parade, procession or rally will occupy all or only a portion of the width of the street proposed to be traversed.

(j) The location by streets of any assembly area for such parade or procession.

(k) The time at which units of the parade, procession or rally will begin to assemble at any such assembly area.

12.28.040 Application for Permit--Authority for Manager to Consider Late Applications. The City Manager may consider late applications for permits required by this article. The manager shall have authority, in his discretion, to consider any application for a permit to conduct a parade or procession which is filed less than thirty (30) days before the date such parade or procession is proposed to be conducted.

12.28.050 When Applicant May Submit Alternate Application Permit. If the City Manager's denial of a permit required by this article is based in whole or in part upon the date, hour or route of travel, the applicant may submit a new application proposing alternate dates, hours or routes of travel.

12.28.060 Notice of Rejection of Permit Application. The City Manager shall act upon the original application for permit required by this article within fifteen (15) days after receipt thereof. If the manager disapproves the application, he shall cause to be mailed to the applicant within five (5) days after his decision, a notice of his action. Such notice shall be mailed to the applicant at his address as given on the application.

12.28.070 Authority of City Manager to Recommend Time, Date, Route When Denying Application; Acceptance by Applicant; Issuance of Permit. The City Manager, in denying an application for a permit required by this article, may authorize the conduct of such parade, procession or rally on a date, at a time, or over a route different from that named by the applicant, and if the applicant desires to accept the proposed date, time and route, he shall, within two (2) days after notice of the action of the manager, file a notice of acceptance with the manager. The manager shall thereupon issue a permit setting forth the terms in conformance with section 12.28.080.
12.28.080  Appeal Allowed Upon Denial of Permit; Appeal Procedures; Council's Authority; Effect of Council's Decision.

(a) When a permit required by this article is denied by the City Manager, the applicant may, within ten (10) days of such action, appeal to the Council by filing a petition therefor with the City Clerk. If an appeal is not filed, the denial shall become final.

(b) Upon the proper filing of such an appeal, the City Clerk shall place the appeal on the next regularly scheduled Council agenda provided the appeal is received in a timely fashion for the next regular agenda.

(c) The Council may either approve or disapprove the denial of the permit, and its decision shall be final as to all issues involved.

12.28.090  When a Permit is to be Issued. The City Manager shall issue a permit required by this article when, after consideration of the application and after such other information as may otherwise be obtained, he finds that:

(a) The conduct of such parade or procession will not substantially interfere with the safe and orderly movements of other traffic contiguous to its route.

(b) The conduct of such parade, procession or rally will not require the diversion of so great a number of police officers to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection to the City.

(c) The concentration of persons, animals and vehicles at assembly points of the parade or procession will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas.

(d) The conduct of such parade or procession will not unduly interfere with the movements of fire-fighting equipment in route to a fire or the movement of other emergency equipment.

(e) The conduct of such parade, procession or rally is not reasonably likely to cause injury to persons or property or to provide disorderly conduct or create a disturbance.

(f) Such parade, procession or rally is not to be held for the sole purpose of advertising the goods, wares or merchandise of a particular business establishment or vendor.

12.28.100  Contents of Permit. The permit issued in accordance with this article shall prescribe the following:

(a) The name of the person or organization wishing to conduct such parade, procession or rally.

(b) If the parade, procession or rally is proposed to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization, and of the authorized and responsible head of such organization.

(c) The name, address and telephone number of the person who will be the parade, procession or rally chairman and will be responsible for its conduct.
(d) The name, address and telephone number of the person or organization to whom the permit is desired to be issued.

(e) The date when such parade, procession or rally is to be conducted.

(f) The route to be traveled, the starting point and the termination point.

(g) The approximate number of persons who, and animals and vehicles which will constitute such parade, procession or rally, and the type of animals and general description of the vehicles.

(h) The time when such parade, procession or rally will start and terminate.

(i) Whether such parade, procession or rally will occupy all or only a portion of the width of the streets proposed to be traversed.

(j) The location by streets of any assembly area for such parade or procession.

(k) The time at which units of the parade, procession or rally will begin to assemble at any such assembly area.

12.28.110 Officials to be Notified Upon Issuance of Permit. Immediately upon the granting of a permit required by this article, the City Manager shall send a copy thereof to the following:

(a) The Chief of the Fire Department.

(b) The Chief of the Police Department.

(c) The City Engineer.

(d) The Director of Public Works.

12.28.120 Joining, Interfering Prohibited. No person shall, without the consent of the person to whom a permit required by this article has been issued, join or participate in a parade, procession or rally, nor in any manner interfere with its progress.
CHAPTER 12.29

PROHIBITION OF SPECTATORS AT ILLEGAL SPEED CONTESTS OR EXHIBITIONS OF SPEED

SECTIONS:

12.29.010 Purpose
12.29.020 Definitions
12.29.030 Violation a Misdemeanor
12.29.040 Relevant Circumstances to Prove a Violation
12.29.050 Admissibility of Prior Acts

12.29.010 Purpose. The City Council of the City of San Marcos finds and declares that, pursuant to California Vehicle Code Section 23109, motor vehicle speed contests and exhibitions of speed conducted on public streets and highways are illegal. Motor vehicle speed contests and exhibits of speed are more commonly known as street races or drag races.

Streets within the City of San Marcos have the potential to be the site of illegal street racing. Such activity threatens the health and safety of the public, interferes with pedestrian and vehicular traffic, creates a public nuisance, and interferes with the right of private business and/or home owners to enjoy the use of their property within the City of San Marcos. In most cases, illegal street races attract spectators. The mere presence of spectators at these events fuels the illegal street racing and creates an environment in which these illegal activities can flourish.

This chapter is adopted to prohibit spectators at illegal street races with the aim of significantly curbing this criminal activity. It targets a very clear, limited population and gives proper notice to citizens as to what activities are lawful and what activities are unlawful. In discouraging spectators, the act of organizing and participating in illegal street races will be discouraged.

12.29.020 Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings set forth in this section:

(a) “Illegal motor vehicle speed contest” or “illegal exhibition of speed” shall mean any speed contest or exhibition of speed referred to in California Vehicle Code sections 23109(a) [engaging in a speed contest] and 23109(c) [aiding in a speed contest].

(b) “Preparations for the illegal motor vehicle speed contest or illegal exhibition of speed” shall include, but not be limited to, situations in which:

(1) a group of motor vehicles or individuals has gathered at a location for the purpose of participating in, or being spectators at, an illegal motor vehicle speed contest or illegal exhibition of speed (“illegal speed event”);

(2) a group of individuals has congregated on one or both sides of a public street or highway for the purpose of participating in, or being a spectator at, an illegal speed event;

(3) a group of individuals has gathered on private property open to the general public without the consent of the owner, operator, or agent thereof for the purpose of participating in, or being a spectator at, an illegal speed event;

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(4) one or more individuals has impeded the free public use of a public street or highway by actions, words, or physical barriers for the purpose of conducting an illegal speed event;

(5) two or more vehicles have lined up, with motors running, for an illegal speed event;

(6) one or more drivers is revving his or her engine(s) or spinning his or her tires in preparation for an illegal speed event; or

(7) an individual is stationed at or near one or more motor vehicles for the purposes of serving as a race starter.

(c) “Spectator” shall mean any individual who is within 200 feet of an illegal motor vehicle speed contest or exhibition of speed, or at a location where preparations are being made for such activities, for the purpose of viewing, observing, watching, or witnessing the event as it progresses. Spectator includes any individual within 200 feet of the event without regard to whether the individual arrived at the event by driving a vehicle, riding as a passenger in a vehicle, walking, or some other means.

12.29.030 Violation a Misdemeanor.

(a) Any individual who is knowingly present as a spectator, either on a public street or highway, or on private property open to the general public without the consent of the owner, operator, or agent thereof, at an illegal motor vehicle speed contest or exhibition of speed shall be guilty of a misdemeanor punishable as provided in section 1.12.020 hereof.

(b) Any individual who is knowingly present as a spectator, either on a public street or highway, or on private property open to the general public without the consent of the owner, operator, or agent thereof, where preparations are being made for an illegal motor vehicle speed contest or exhibition of speed is guilty of a misdemeanor punishable as provided in section 1.12.020 hereof.

(c) Exemption: Nothing in this section shall prohibit law enforcement officers or their agents from being spectators at illegal motor vehicle speed contests or exhibitions of speed in the course of their duties.

12.29.040 Relevant Circumstances to Prove a Violation. Notwithstanding any other provision of law, to prove a violation of this Chapter, admissible evidence may include, but shall not be limited to, any of the following:

(a) the time of day;

(b) the nature and description of the scene;

(c) the number of people at the scene;

(d) the location of the individual charged in relation to any individual or group present at the scene;

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(e) the number and description of the motor vehicles at the scene;

(f) that the individual charged drove or was transported to the scene;

(g) that the individual charged has previously participated in an illegal motor vehicle speed contest or exhibition of speed;

(h) that the individual charged has previously aided and abetted an illegal motor vehicle speed contest or exhibition of speed;

(i) that the individual charged has previously attended an illegal motor vehicle speed contest or exhibition of speed;

(j) that the individual charged was previously present at a location where preparations were being made for an illegal speed contest or exhibition of speed or where an exhibition of speed or illegal motor vehicle speed contest was in progress.

12.29.050 Admissibility of Prior Acts. The list of circumstances set forth in Section 12.29.040 is not exclusive. Evidence of prior acts shall be admissible to demonstrate the propensity of the defendant to be present at or attend an illegal motor vehicle speed contest or exhibition of speed, if the prior act or acts occurred within three years of the presently charged offense. These prior acts shall be admissible to demonstrate knowledge on the part of the defendant that a speed contest or exhibition of speed was taking place at the time of the presently charged offense. Prior acts shall not be limited to those occurring within the City of San Marcos.

(Ord. No. 2003-1166, 1-28-03)
CHAPTER 12.32

ABANDONED AND WRECKED VEHICLES

Sections:

12.32.010 Purpose of Article; Abandoned Vehicle Abatement Committee Created; Abandoned, Wrecked, etc. Vehicles Declared Nuisances
12.32.020 Definitions
12.32.030 Nonapplicability of Article
12.32.040 Supplemental to Other Regulations
12.32.050 Administration of Provisions; Right-of-way
12.32.060 Authority of Removal Franchise
12.32.070 Administrative Costs
12.32.080 Duties of City Manager
12.32.090 Abatement Notice; Form
12.32.100 Public Hearing
12.32.110 Hearing Procedure; Assessment of Costs
12.32.120 Appeal of Committee’s Decision to City Council
12.32.130 Time Limit for Removal
12.32.140 Notification of Department of Motor Vehicles
12.32.150 Unpaid Costs to Become Lien on Property
12.32.160 Abandonment Declared a Misdemeanor
12.32.170 Refusal to Comply With Article Declared a Misdemeanor

12.32.010 Purpose of Article; Abandoned Vehicle Abatement Committee Created; Abandoned, Wrecked, etc. Vehicles Declared Nuisances. In addition to and in accordance with the determination made and the authority granted by the State of California under Section 22660 of the Vehicle Code to remove abandoned wrecked, dismantled or inoperative vehicles or parts thereof as public nuisances, the City Council hereby makes the following findings and declarations:

(a) The abandoned vehicle abatement committee is hereby created. It shall consist of the members of the Traffic Safety Commission. The City Council shall provide for clerical or secretarial assistance for the hearing board.

(b) The accumulation and storage of abandoned, wrecked, dismantled or inoperative vehicles or parts thereof on private or public property, not including highways, is hereby found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vehicle or parts thereof, on private or public property not including highways, except as expressly hereinafter permitted, is hereby declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this article.
12.32.020 Definitions. As used in this article:

(a) The term "vehicle" means a device by which any person or property may be propelled, moved or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks.

(b) The term "highway" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. "Highway" includes "street."

(c) The term "public property" does not include "highway."

(d) The term "owner of the land" means the owner of the land on which the vehicle or parts thereof is located as shown on the last equalized assessment roll.

(e) The term "owner of the vehicle" means the last registered owner and legal owner of record.

12.32.030 Nonapplicability of article. This article shall not apply to:

(a) A vehicle or parts thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public property; or

(b) A vehicle or parts thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, a junk dealer or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise.

Nothing in this section shall authorize the maintenance of a public or private nuisance as defined under provisions of law.

12.32.040 Supplemental to Other Regulations. This article is not exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles within the City. It shall supplement and be in addition to the other regulatory codes, statutes and ordinances heretofore or hereafter enacted by the City, the state or any other legal entity or agency having jurisdiction.

12.32.050 Administration of Provisions; Right-of-way. Except as otherwise provided herein, the provisions of this article shall be administered and enforced by the City Manager. In the enforcement of this article, such officer and his deputies may enter upon private or public property to examine a vehicle or parts thereof, or obtain information as to the identity of a vehicle (and to remove or cause the removal of a vehicle or parts thereof), declared to be a nuisance pursuant to this article.

12.32.060 Authority of Removal Franchise. When the City Council has contracted with or granted a franchise to any person or persons, such person or persons shall be authorized to enter upon private property or public property to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this article.

12.32.070 Administrative Costs. The City staff shall from time to time determine and fix an amount to be assessed as administrative costs (excluding the actual cost of removal of any vehicle or parts thereof) under this article.
**12.32.080 Duties of City Manager.** Upon discovering the existence of an abandoned, wrecked, dismantled or inoperative vehicle or parts thereof on private property or public property within the City, the City Manager shall have the authority to cause the abatement and removal thereof in accordance with the procedure prescribed herein.

**12.32.090 Abatement Notice; Form.** (Editor's note: section reformatted to separate notice to landowner and registered car owner) A ten-day notice of intention to abate and remove the vehicle or parts thereof on private property or public property within the City, the City Manager shall have the authority to cause the abatement and removal thereof in accordance with the procedure prescribed herein. A ten-day notice of intention to abate and remove the vehicle or parts thereof as a public nuisance shall be mailed by registered mail to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. The notices of intention shall be in substantially the following form:

(a) Name and address of owner of the land:

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As owner shown on the last equalized assessment roll of the land located at (address), you are hereby notified that the undersigned pursuant to Ordinance No. 80-536 has determined that there exists upon said land an (or parts of an) abandoned, wrecked, dismantled or inoperative vehicle registered to ________________, which constitutes a public nuisance pursuant to the provisions of Ordinance 80-536.

You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) within 10 days from the date of mailing of this notice, and upon your failure to do so, the same will be abated and removed by the City and the costs thereof, together with administrative costs, assessed to you as owner of the land on which said vehicle (or said parts of a vehicle) is located. As owner of the land on which said vehicle (or said parts of a vehicle) is located, you are hereby notified that you may, within 10 days after the mailing of this notice of intention, request a public hearing and if such a request is not received by the hearing body or officer within such 10-day period, the locally designated officer shall have the authority to abate and remove said vehicle (or said parts of a vehicle) as a public nuisance and assess the costs as aforesaid without a public hearing. You may submit a sworn written statement within such 10-day period denying responsibility for the presence of said vehicle (or said parts of a vehicle) on said land, with your reasons for denial, and such statement shall not be construed as a request for hearing at which your presence is not required. You may appear in person at any hearing requested by you or the owner of the vehicle or, in lieu thereof, may present a sworn written statement aforesaid in time for consideration at such hearing.
(b) Name and address of last registered and/or legal owner of record of vehicle; notice should be given to both if different:

NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE

As last registered (and/or legal) owner of record of (description of vehicle make, model, license, etc.), you are hereby notified that the undersigned, pursuant to Ordinance No. 80-536 has determined that said vehicle (or parts of a vehicle) exists as an abandoned, wrecked, dismantled or inoperative vehicle at (describe location on public or private property) and constitutes a public nuisance pursuant to the provisions of Ordinance No. 80-536.

You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) within 10 days from the date of mailing of this notice. As registered (and/or legal) owner of record of said vehicle (or said parts of a vehicle), you are hereby notified that you may, within 10 days after the mailing of the Notice of Intention, request a public hearing and if such a request is not received by the hearing body or officer within such 10-day period, the locally designated officer shall have the authority to abate and remove said vehicle (or said parts of a vehicle) without a hearing.

SAN MARCOS CODE.

Notice mailed: __________/s/
locally designated officer

12.32.100 Public Hearing. Upon request by the owner of the vehicle or owner of the land, received by the City Clerk within (10) days after the mailing of the notices of intention to abate and remove, a public hearing shall be held by the Abandoned Vehicle Abatement Committee on the question of abatement and removal of the vehicle or parts thereof as an abandoned, wrecked, dismantled or inoperative vehicle, and the assessment of the administrative costs and the cost of removal of the vehicle or parts thereof against the property on which it is located.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his land within such ten-day period, said statement shall be construed as a request for a hearing which does not require his presence. Notice of the hearing shall be mailed by registered mail, at least ten (10) days before the hearing to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. If such a request for hearing is not received within said ten (10) days after mailing of the notice of intention to abate and remove, the City shall have the authority to abate and remove the vehicle or parts thereof as a public nuisance without holding a public hearing.

12.32.110 Hearing Procedure; Assessment of Costs. All hearings under this article shall be held before the Abandoned Vehicle Abatement Committee, which shall hear all facts and testimony on the condition of the vehicle or parts thereof and the circumstances concerning its location on the said private property or public property. The hearing [of the] Abandoned Vehicle Abatement Committee shall not be limited by the technical rules of evidence. The owner of the
land may appear in person at the hearing or present a sworn written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with his reasons for such denial.

The hearing [of the] Abandoned Vehicle Abatement Committee or officer may impose such conditions and take such other action as he deems appropriate under the circumstances to carry out the purpose of this article. It may delay the time for removal of the vehicle or parts thereof if, in its opinion, the circumstances justify it. At the conclusion of the public hearing, the Abandoned Vehicle Abatement Committee officer may find that [such] vehicle or parts thereof has been abandoned, wrecked, dismantled or is inoperative on private or public property as a public nuisance and [shall be] disposed of as hereinafter provided and determine the administrative costs and the cost of removal to be charged against the owner of the land. The order requiring removal shall include a description of the vehicle or parts thereof and the correct identification number and license number of the vehicle, if available at the site.

If it is determined at the hearing that the vehicle was placed on the land without the consent of the owner of the land and that he has not subsequently acquiesced in its presence, the City Manager shall not assess the costs of administration or removal of the vehicles against the property upon which the vehicle is located or otherwise attempt to collect such costs from such owner of the land.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his land but does not appear, or if an interested party makes a written presentation to the abandoned vehicle abatement committee officer but does not appear, he shall be notified in writing of the decision.

12.32.120 Appeal of Committee's Decision to City Council. Any interested party may appeal the decision of the Abandoned Vehicle Abatement Committee officer by filing a written notice of appeal with the City Clerk within five (5) days after its decision.

Such appeal shall be heard by the City Council which may affirm, amend or reverse the order or take other action deemed appropriate.

The City Clerk shall give written notice of the time and place of the hearing to the appellant and those persons specified in section 12.32.090.

In conducting the hearing, the City Council shall not be limited by the technical rules of evidence.

12.32.130 Time Limit for Removal. Five (5) days after adoption of the order declaring the vehicle or parts thereof to be a public nuisance, five (5) days from the date of mailing of notice of the decision if such notice is required by section 12.32.110 or fifteen (15) days after such action of the governing body authorizing removal following appeal, the vehicle or parts thereof may be disposed of by removal to a scrap yard or automobile dismantler's yard. After a vehicle has been removed, it shall not thereafter be reconstructed or made operable.

12.32.140 Notification of Department of Motor Vehicles. Within five (5) days after the date of removal of the vehicle or parts thereof, notice shall be given to the Department of Motor Vehicles identifying the vehicle or parts thereof removed. At the same time, there shall be transmitted to the Department of Motor Vehicles any evidence of registration available, including registration certificates, certificates of title and license plates.
12.32.150  Unpaid Costs to Become Lien on Property. If the administrative costs and the cost of removal which are charged against the owner of a parcel of land pursuant to section 12.32.110 are not paid within thirty (30) days of the date of the order, or the final disposition of an appeal therefrom, such costs shall be assessed against the parcel of land pursuant to Section 38773.5 of the Government Code and shall be transmitted to the tax collector for collection. Said assessment shall have the same priority as other City taxes.

12.32.160  Abandonment Declared an Infraction. It shall be unlawful and an infraction in accordance with the provisions of section 1.12.010 for any person to abandon, park, store or leave or permit the abandonment, parking, storing or leaving of any licensed or unlicensed vehicle or parts thereof which is in an abandoned, wrecked, dismantled or inoperative condition upon any private property not including highways within the City for a period in excess of five (5) days unless such vehicle or parts thereof is completely enclosed within a building in a lawful manner where it is not plainly visible from the street or other public or private property, or unless such vehicle is stored or parked in a lawful manner, on private property in connection with the business of a licensed dismantler, licensed vehicle dealer or a junkyard. (Ord. No. 99-1053, 2/1/99)

12.32.170  Refusal to Comply with Article Declared a Misdemeanor. It shall be unlawful and a misdemeanor in accordance with the provisions of section 1.12.020 for any person to fail or refuse to remove an abandoned, wrecked, dismantled or inoperative vehicle or parts thereof or refuse to abate such nuisance when ordered to do so in accordance with the abatement provisions of this article or state law where such state law is applicable.
CHAPTER 12.36

PEAK HOUR TRAFFIC MANAGEMENT

SECTIONS:

12.36.010 Findings
12.36.020 Purposes and Goals
12.36.030 Definitions
12.36.040 PHTM Requirements
12.36.050 PHTM Task Force
12.36.060 San Marcos Coordinator
12.36.070 Annual Report
12.36.080 Staged PHTM Goals
12.36.090 Evaluation of City-wide PHTM Progress
12.36.100 Mandatory PHTM Program
12.36.110 Enforcement

12.36.010 Findings. The City Council of the City of San Marcos hereby finds and determines that:

(a) A significant increase in new employment opportunities is anticipated in the City in the next twenty (20) years.

(b) Increased employment within the City will lead to increased traffic coming to and from, and within, the City.

(c) Traffic studies projecting future traffic levels within the City and adjoining freeways show that traffic will reach intolerable levels of congestion unless substantial measures are taken to reduce commute hour traffic levels; these studies indicate that a forty-five percent (45%) reduction in peak hour traffic is necessary to meet minimum standards of traffic levels of service and that greater reductions may be necessary to avoid intolerable levels of service.

(d) Companion studies project that the forty-five percent (45%) reduction is necessary to meet carbon monoxide concentration standards along local streets. Measures being undertaken to minimize the effects of future ambient noise levels along local streets and freeways are being based on future traffic volumes and distributions projected with the forty-five percent (45%) reduction in peak hour traffic.

(e) Peak Hour Traffic Management ("PHTM") programs have been shown to be capable of reducing peak hour traffic levels and can be simple, inexpensive, and effective.

(f) Reductions in vehicular trips, both absolutely and within peak hour periods, are beneficial in terms of reducing traffic congestion, vehicular emissions, energy consumption, and noise levels. Improved traffic levels of service, air quality, and ambient noise levels contribute to making the City an attractive and convenient place to live, work, visit, and do business.

(g) Minimizing inconvenience in commute trips and retaining an attractive environment will enable employers to continue effective recruitment and to retain qualified personnel.
(h) The City's General Plan mandates an uncongested traffic circulation system, energy conservation, and maintenance of noise and air quality levels within established standards.

(i) A PHTM program should equitably allocate responsibility for traffic level reductions and, combined with the assurance of mandatory requirements, if found necessary, will ensure that residents of, employees working within, and visitors to the City will not be adversely affected by traffic congestion.

(j) Cooperation with and coordination of PHTM programs with other communities in the region and through regional agencies will assist the City in meeting the goals of this ordinance.

(k) Adoption of the PHTM ordinance is in the best interests of the public’s health, safety, and general welfare, both within the City and the region.

12.36.020 Purposes and Goals.

(a) **Purposes.** In recognition of these findings, the City of San Marcos does establish a PHTM ordinance for the following purposes:

1. To reduce traffic impacts within the City and region by reducing both the number of vehicular trips and total vehicle miles travelled that might otherwise be generated by commuting.

2. To reduce vehicular emissions, energy usage and ambient noise levels by reducing both the number of vehicular trips, total vehicle miles travelled and traffic congestion.

(b) **Goals.**

1. To reduce peak hour traffic volumes generated by employees permanently working within the City by a minimum of forty-five percent (45%) through use of employer and commercial/industrial complex developed PHTM programs.

2. To maximize the use and application of alternative commute modes through cooperative public-private development of City-wide programs.

3. To minimize the percentage of employees travelling to and from work during the same peak hour periods.

12.36.030 Definitions.

(a) **"Alternative Work Hours Program"** shall mean a system for shifting the work-day of an employee so that the work day starts and/or ends outside the peak periods. Such programs include, but are not limited to: (1) compressed work weeks; (2) staggered work hours involving a shift in the set work hours of all employees at the work place; and (3) flexible work hours involving individually determined work hours within guidelines established by the employer. For purposes of determining the percentage reduction in peak period traffic, a non-retail employer may "pair-off" with another non-retail employer so that each is treated as if it were a part of a single employer, with each credited for the weighted average percentage reduction in peak period traffic when one employer has a work day with shift ends coinciding with the peak
periods and the other has a work day with shift ends outside the peak periods. Credit, or partial credit, for "paired off" employers shall be determined by the San Marcos Coordinator in accordance with established Task Force guidelines.

(b) "Car Pool" shall mean a motor vehicle occupied by two (2) or more employees travelling together.

c) "Commute" shall mean a regular trip to and from home to work related facilities, i.e.: home to park-n-ride to work.

d) "Complex" shall mean either:

(1) Any business park, shopping center of ten (10) acres or more, or other commercial/industrial project in separate or common ownership, which can be identified by two or more of the following characteristics:

(a) it is known by a common name given to the project by its developer;
(b) it is governed by a common set of covenants, conditions and restrictions;
(c) it was approved, or is to be approved, as an entity by the City;
(d) it is covered by a single tentative or final subdivision map; or

(2) Any non-retail multi-tenant building or group of buildings with fifty (50) or more employees at the single site, which is not included within the definition of "complex" pursuant to Section 12.36.030 (d) (1) above.

(e) "Employee" shall mean any person hired by any employer, including part-time and seasonal employees, but excluding any independent contractors hired by the employer.

(f) "Employer" shall mean any public or private employer, including the City, who has a permanent place of business in the City. For pur poses of this ordinance, employer size shall be determined by gross employment. "Employer" shall not include:

(1) Home occupations as defined in Section 62, Zoning code;
(2) Contractors with no permanent place of business in the City;
(3) Other businesses with no permanent work place location;
(4) Government agencies not required by law or regulations; and
(5) School districts with respect to employees actually employed at school sites however, school districts colleges, and universities are strongly encouraged to actively participate in PHTM programs.
"Level of Service" shall mean a measure of the percentage of capacity of a roadway or intersection being used during the peak hour.

The terms "Peak Hour Periods", "Peak Hour", and "Peak Periods" shall mean those times and days during the week with the highest concentration of employees' commute trips. The City Council shall, by Resolution, establish the times and days of peak hour periods, peak hours and peak periods. "Peak Period Trips" shall mean employees' commute trips to or from a work place when the employee's work day begins or ends within a peak hour period, peak hour or peak periods. The terms Peak Hour Periods, Peak Hour and Peak Periods are synonymous for the purposes of this Chapter and one or the other may be used depending upon the context. (Ord. No. 89-808, 2-14-89)

"Single-Occupancy Vehicle" shall mean a motor driven vehicle (to include two wheel motor driven vehicles) occupied by one (1) employee for commute purposes.

"Van Pool" shall mean a van occupied by three (3) to fifteen (15) employees travelling together.

"Work place" shall mean the place of employment, base of operation, or predominant location of an employee.

12.36.040 PHTM Requirements.

(a) All Employers - Survey Reports. Every existing or future employer not exempt pursuant to Section 12.36.030 (f) from the requirements of this ordinance shall submit, on an annual basis such survey information as required by the PHTM Task Force in order to establish commute pattern data and to provide car pool and van pool matching information. During the initial year of program participation, employers will be required to submit a survey report by August 31. Submittal of all succeeding survey reports will be in conjunction with the Annual Report as set forth in Section 12.36.070.

(b) Employers of ten (10) or more Employees Not Located in Complexes - Information Program. Every employer of ten (10) or more employees (determined by gross employment) not located in a complex shall design, implement, and provide a PHTM Information Program incorporating posting and dissemination of informational materials pertaining to transit, ride sharing and non-vehicular commute modes.

(1) Every such existing employer shall submit and implement the information program within three (3) months following the effective date of this ordinance. Every future employer shall submit and implement its PHTM Information Program within three (3) months following issuance to such employer of a certificate of occupancy, if required or, otherwise, within three (3) months following the date the employer opens for business.

(2) The informational materials to be posted and/or disseminated shall be provided by the San Marcos Coordinator, and/or the employer. Updated information relating to transit, ride sharing, and non-vehicular commute modes and alternative routes shall be disseminated to all employees, new hired and existing.
(c) *Employers of Fifty (50) or More Employees and All Employers Within Complexes - PHTM Programs.* Every employer of fifty (50) or more employees (determined by gross employment) and all employers located within complexes shall design, implement, and provide a PHTM Program designed to achieve the reductions in peak period traffic generated by its employees as set forth in the staged PHTM goals of this ordinance (Section 12.36.080.)

(1) Every such existing employer shall submit and begin implementation of its PHTM Program within three (3) months following the effective date of this ordinance. Every future employer shall submit and begin implementation of its PHTM Program within three (3) months following issuance to such employer of a certificate of occupancy, if required, or, otherwise, within three (3) months following the date the employer opens for business.

(2) The PHTM Program shall include the following:

(a) Appointment of an employee as a Coordinator who shall be responsible for primary implementation of the PHTM Program. Employers of less than fifty (50) employees located in complexes may appoint the Complex Coordinator for this task, if desired.

(b) Any reasonable combination of PHTM measures, including, but not limited to, transit related programs, ride sharing (including car pool and van pool programs), non-vehicular commute modes, alternative routes, and alternative work hour programs designed to achieve, over a period of time, a forty-five percent (45%) reduction in the number of vehicle trips that would occur during the peak periods if the commute trips of all employees were made by single-occupancy vehicle trips during the peak periods. Measures shall be designed to meet the staged PHTM goals set forth in Section 12.36.080.

(c) All PHTM Programs shall include information posting and dissemination as one element in the program.

(d) *Complexes.* Every complex shall design, implement, and provide the San Marcos Coordinator with a PHTM Program designed to achieve, in accordance with the schedule contained in the staged PHTM goals of this ordinance (Section 12.36.080), a forty-five percent (45%) reduction in the number of vehicle trips that would occur during the peak periods if the commute trips of all employees at the complex were made by single occupancy vehicle trips during the peak periods.

(1) Existing complexes shall comply with the following requirements within three (3) months following the effective date of this ordinance. Complexes not in existence of the effective date of this ordinance shall comply with the following requirements within three (3) months following initial occupancy of the first building in the complex.

(2) A PHTM Program shall include the following:
a) Any reasonable combination of PHTM measures, including, but not limited to, transit-related programs, ride sharing (including car pool and van pool programs), non-vehicular commute modes, alternative routes, and coordination of alternative work hour programs, designed to achieve the percentage reduction in peak period commute trips required within the complex pursuant to the stage PHTM goals of this ordinance (Section 12.36.080).

b) A program for coordinating, monitoring and assisting the PHTM Programs of employers within the complex.

(3) Every complex shall have a Complex Coordinator who shall be responsible for primary implementation of the PHTM Program at the complex. The Complex Coordinator shall also serve as the liaison to the San Marcos Coordinator and the PHTM Task Force. The complex Coordinator shall assist with developing and implementing PHTM Programs for employers of less than fifty (50) employees located within the complex, if so requested by such an employer.

(4) Every complex owner, property owners’ association, landlord, and/or manager shall include reference to, and mandatory participation in, the requirements of this PHTM ordinance (i) in the recorded conditions, covenants, and restrictions governing the complex, if any, and (ii) in every lease entered into subsequent to the effective date of this ordinance.

12.36.050 PHTM Task Force. A PHTM Task Force shall be formed by appointment of the City Council, and shall be responsible for ensuring the traffic levels of service during peak periods are accomplished in accordance with PHTM ordinance goals.

(a) Composition. The PHTM Task Force shall consist of the following:

(1) a representative who occupies an executive and/or management level position, or similar position within the complex, and has authority to act; relative to the mandated duties of the PHTM Task Force. Total Task Force representation of complexes shall not exceed six (6) representatives. One third (1/3) of complex representation shall be rotated from the Task Force every three (3) years to include all complexes that fall under the definition of complex.

(2) a representative from each employer of one hundred (100) or more employees (determined by gross employment) who occupies an executive and/ or management level position, or a similar position within the organization, and who has authority to act relative to the mandated duties of the PHTM Task Force; Total Task Force representation of employers of one hundred (100) or more shall not exceed ten (10) representatives. Thirty percent (30%) of the representation of employers of one hundred (100) or more shall be rotated from the Task Force every three (3) years to include all employers who meet this description.
(3) the San Marcos Coordinator;

(4) a representative from the transit authority serving San Marcos;

(5) a representative from the San Marcos School District, Palomar College and San Diego State University; and

(6) other governmental agencies as deemed necessary by the City Council.

(b) Meetings. The PHTM Task Force shall hold its first meeting within two (2) months following the effective date of this ordinance, and shall continue to meet on a regularly scheduled basis, as determined by the PHTM Task Force.

(c) Activities. The PHTM Task Force may undertake any and all programs necessary to coordinate and implement the City-wide PHTM effort.

(1) The PHTM Task Force shall undertake the following:

a) Monitor traffic congestion and compile results of employers' PHTM programs;

b) Establish guidelines for minimally acceptable PHTM programs designed to reach the staged goals of Section 12.36.080;

c) Coordinate PHTM efforts of all employers in the City;

d) Work with the City to coordinate PHTM efforts with local and regional transit authorities;

e) Seek the cooperation and assistance of neighboring communities and regional agencies and employers within neighboring communities in achieving PHTM goals;

f) Pursuant to Section 12.36.100, review employer/complex PHTM programs for adequacy and, if necessary, mandate revisions to achieve minimally acceptable PHTM programs;

(2) The PHTM Task Force may undertake other activities which may include, but are not necessarily limited to, the following:

a) Plan, coordinate and/or organize transportation services between the complexes, employment centers, and transit stops;

b) Compile, distribute and annually update ride sharing materials;

c) Plan and/or implement any PHTM Program element; and

d) Recommend to the City Council improvements in City services and facilities to assist employers in meeting the goals of this ordinance.

12.36.060 San Marcos Coordinator. The City Manager shall designate a Coordinator. The duties of the San Marcos Coordinator shall include, but not be limited to the following:
(a) Participate in the PHTM Task Force;
(b) Organize and collect intersection monitoring data;
(c) Coordinate with other City departments with transportation-related functions;
(d) Provide direct support to those employers not within a complex;
(e) Provide direct assistance in coordination of those employers choosing to "pair off";
(f) Review and evaluate the employers' and complexes' PHTM Programs, employers' PHTM Information Programs, and employers' survey reports;
(g) Participate in and coordinate with any regional PHTM activities, including Caltrans (COMMUTER COMPUTER) and North County Transit District;
(h) Review compliance with this ordinance pursuant to Section 12.36.090; and, if found necessary, recommend implementation of the requirements of Section 12.36.100 to the PHTM Task Force;
(i) Pursuant to Section 12.36.100, refer PHTM programs found inadequate to the PHTM Task Force for review and determination.

12.36.070 Annual Report. Every required PHTM Program shall be submitted to the San Marcos Coordinator as an annual report describing: (i) its PHTM Program and its results during the reporting period and (ii) the PHTM Program intended to be implemented in the ensuing year.

(a) Time and Period of Submittal. An annual report is required to be submitted to the City by every employer no later than August 1 (starting in 1988) of that calendar year. The annual report shall cover the immediately preceding July 1 - June 30 period, or, that portion of the period the employer was in business.

(b) Contents. The annual report shall contain sufficient information to allow the San Marcos Coordinator to evaluate the extent and results of the PHTM Program. The annual report shall contain information as required by the PHTM Task Force, which shall include, but not be limited to, the following:

(1) A description of the measures taken to comply with this ordinance;
(2) The marketing measures undertaken by the employer to promote PHTM including, but not limited to: newsletter articles, transportation fairs, new employee PHTM orientation, meetings with zip code groups, PHTM presentations at staff meetings, distribution of car pool and van pool applications, PHTM incentive programs, and/or PHTM information booths in the workplace.
(3) The average number of employees commuting to the work place by each of the following modes of transportation:

a) single-occupancy vehicles;
b) car and/or van pools, including the number of occupants per vehicle;

c) public transportation;
d) bicycles and/or walking; and
e) all other modes;

(4) The total number of work place employees;

(5) The total number of employees per shift and hours;

(6) The total number of employees participating in an alternative work hours program and a description of that program;

(7) The number of on site off-street parking spaces provided;

(8) A description of any internal or external shuttle service;

(9) The existence of an employer's subsidy, if any, to any part of its PHTM Program.

12.36.080 Staged PHTM Goals. Employers and complexes shall implement all feasible PHTM measures necessary to achieve the following reductions:

(a) At the time of an employer's first annual report, unless the employer has been in business in San Marcos for less than four months, a ten percent (10%) reduction; at the time of the complex's first annual report, unless the complex has had occupancy for less than four months, a ten percent (10%) reduction;

(b) At the time of the second annual report, a twenty percent (20%) reduction;

(c) At the time of the third annual report, a thirty percent (30%) reduction; and

(d) At the time of the fourth annual report, a forty-five percent (45%) reduction.

12.36.090 Evaluation of City-Wide PHTM Progress.

(a) Review of City-wide PHTM Progress. The San Marcos Coordinator shall review compliance with the requirements of the ordinance. Said review shall include review of (i) PHTM Programs, (ii) annual reports, (iii) the results of the City's intersection monitoring program, (iv) employer surveys, and (v) the programs and progress of the PHTM Task Force.

(b) Report to City Council and PHTM Task Force. The San Marcos Coordinator, as directed by the Task Force, shall yearly submit a summary report to the City Council and PHTM Task Force describing the results as of that date of the PHTM programs, a general summary of the programs of the PHTM Task Force and their prospects for success, and the relationship of the PHTM programs to the goals of this ordinance. The San Marcos Coordinator may recommend to the Task Force any changes to this ordinance as may be necessary to meet the goals established herein.
(c) Implementation of Mandatory PHTM Programs. If, at any time after two (2) years from the effective date of this ordinance, the PHTM Task Force determines, based on a report from the San Marcos Coordinator, that substantial progress is not being made to meet the goals of this ordinance based on the actual traffic reduction achieved by employers/complexes’ The Task Force may recommend that the City Council institute mandatory PHTM program requirements included in Section 12.36.100.

(1) A hearing shall be held before the City Council following thirty (30) days notice to all employers of more than 50 Employees on a single shift and to representatives of all Complexes.

(2) If, following said hearing, the City Council determines that substantial progress is not being made, and that time alone will not bring success to the PHTM Programs in place by Employers/Complexes, and the PHTM Task Force, the City Council shall, by resolution, deem the provisions of Section 12.36.100 operative.

12.36.100 Mandatory PHTM Program. If, pursuant to Section 12.36.090 (c), this section becomes operative, employers and complexes required to have PHTM programs shall be required to supplement their PHTM programs in accordance with this section.

(a) Revision of an Employer's or Complex's PHTM Program for Failure to Achieve Staged PHTM Goals. If, after review of an employer's or complex's second annual report, or any annual report thereafter, the PHTM Task Force determines (i) that, as indicated in such report, substantial progress is not being made toward reaching the staged PHTM goals, and (ii) that, on the basis of good cause, the PHTM measures included in the PHTM Program proposed for the ensuing year will not achieve the required reduction in peak period traffic, then the PHTM Task Force shall reject the submitted PHTM Program and require that revisions and/or additions be made in order to achieve the required reduction in peak period traffic within one year of submittal. Notice of such rejection shall be sent to the City Council by the PHTM Task Force. The San Marcos Coordinator shall assist the PHTM Task Force in its determination, by the following:

(1) The San Marcos Coordinator shall describe the reason(s) for rejection of a PHTM Program and shall include an indication of those kinds of measures which may be used to achieve an acceptable PHTM Program to the PHTM Task Force.

(2) If a PHTM Program has been required to be revised by any employer or complex, it shall be revised and resubmitted for review and approval within three (3) months following the request.

(3) If any resubmitted PHTM Program is determined to be inadequate by the San Marcos Coordinator, the matter shall be referred to the PHTM Task Force for resolution. The PHTM Task Force may approve the original PHTM Program, a revised program, or may incorporate those elements it determines are necessary to achieve the required reduction in the PHTM Program and require that the employer and/or complex implement the program as designed by the PHTM Task Force.
(4) Any employer or complex whose PHTM Program has been rejected or modified pursuant to this subsection may appeal the decision of the PHTM Task Force to the City Council. A hearing shall be held before the City Council within thirty (30) days of receipt of the appeal by the San Marcos Coordinator. The City Council may approve, modify, or overrule the action of the PHTM Task Force.

(b) Revision of PHTM Programs Due to Failure to Achieve LOS Goals.

(1) The PHTM Task Force may require additional PHTM Program elements of individual employers and/or complexes meeting their stage PHTM Goals if:

a) a forty-five (45%) reduction in peak period employee commute trips has not yet been achieved by the staged PHTM goals.

b) the PHTM Task Force determines that the employers and/or complexes are the primary contributors to the congestion at the affected City street or intersection.

(2) The PHTM Task Force shall specify a new peak period employee commute trip reduction goal and indicate those kinds of measures which may be used in addition to the then-existing PHTM Program to achieve an acceptably modified PHTM Program.

(3) Employers and/or complexes required to modify their PHTM Programs pursuant to this subsection may appeal in accordance with the procedure set forth in Section 12.36.100 (a) (4).

12.36.110 Enforcement.

(a) Failure to Provide Survey Data, Annual Reports, and/or Provide and Implement PHTM Information Programs and PHTM Programs. Any employer or complex who fails to provide the survey data or annual report required by this ordinance, after thirty (30) days notice to remedy the failure, shall be guilty of an infraction. Any employer or complex who fails to provide the PHTM Information Program and/or who fails to implement said plan, as required by this ordinance, after thirty (30) days notice to remedy the failure, shall be guilty of an infraction.

(1) The fine shall be an amount not exceeding fifty dollars ($50) for the first infraction, an amount not exceeding one hundred dollars ($100) for a second infraction, and an amount not exceeding two hundred fifty dollars ($250) for a third infraction in any calendar year. Any amounts collected as infraction fines shall be used to fund the development and purchase of PHTM marketing materials for employees in San Marcos.

(2) Each failure to supply data, reports, programs, or implement the PHTM Information Program or PHTM Program, following the PHTM Task Force written request for such material and/or acts, shall constitute a separate violation.
(b) **Other violations of This Ordinance, Except Section 12.36.100.** Every employer and/or complex who fails to comply with any other provision of this ordinance, except those requirements mandated pursuant to Section 12.36.100, shall have thirty (30) days, after notice of such failure, to correct the failure or be guilty of an infraction punishable as in Section 12.36.110(a) above.

(c) **Violations of Section 12.36.100.** Every employer or complex who fails to comply with any requirement mandated pursuant to Section 12.36.100 of this ordinance shall have thirty (30) days, after notice of such failure, to correct the failure, or satisfactorily explain to the PHTM Task Force why compliance is impossible. If the employer or complex does not correct the failure within the time period or is not excused from compliance by the PHTM Task Force, then the PHTM Task Force shall refer the matter to the City Council for one of the following actions:

1. The City Council may grant an extension of time for compliance solely on the evidence that time is the only condition needed to accomplish the requirements; or

2. The City Council may find that an extension is not warranted, find a violation of this ordinance, and order compliance. Failure to comply shall be a violation and subject to a civil penalty of two hundred fifty dollars ($250) per day from the date the City Council orders compliance until the failure to comply is corrected. Any amounts collected as penalty shall be used to fund traffic related improvements in order to improve the level of service on roadways in the City.
CHAPTER 12.40

TRUCK ROUTES

SECTIONS:

12.40.010 Truck Routes Established
12.40.020 Vehicles Subject to Public Utilities Code
12.40.030 Pickups and Deliveries
12.40.040 Vehicles Owned by a Public Utility or Licensed Contractor
12.40.050 Effective Subject to Proper Sign Erection on Streets Affected
12.40.060 Special Truck Weight Limits
12.40.070 Commercial Vehicle Restrictions

12.40.010 Truck Routes Established. No person, corporation or other organization shall use or operate any commercial vehicle over fourteen thousand pounds rated gross vehicle weight on or over any street, road or public right-of-way within the City, except on the following streets which are designated as truck routes:

1. Pico Avenue between Mission Road and San Marcos Boulevard
2. Via Vera Cruz between Grand Avenue and San Marcos Boulevard
3. Linda Vista between Grand Avenue and Rancho Santa Fe Road
4. Grand Avenue between Rancho Santa Fe Road and San Marcos Boulevard
5. Mission Road between Rancho Santa Fe Road and Barham Drive
6. South Santa Fe Road between Smilax and Rancho Santa Fe Road
7. San Marcos Boulevard between Business Park Drive and Twin Oaks Valley Road
8. Questhaven Road between Rancho Santa Fe Road and the Entrance to the San Marcos County Landfill
9. Woodland Parkway between Mission Road and Barham Drive
10. Las Posas Road between Mission Road and San Marcos Boulevard
11. Rancho Santa Fe Road between Mission Road and Melrose Drive

12.40.020 Vehicles Subject to Public Utilities Code. The provisions of this Chapter are not applicable with respect to any vehicle which is subject to the provisions of the Public Utilities Code Section 1031 through 1036, inclusive.

12.40.030 Pickups and Deliveries. This Chapter shall not prohibit any commercial vehicles coming from an unrestricted street having ingress or egress by direct route to and from a restricted street when necessary for the purpose of making pickups and deliveries of goods, wares and merchandise from or to any building or structure located on the restricted street, or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon the restricted street for which a building permit has been previously obtained.

12.40.040 Vehicles Owned by a Public Utility or Licensed Contractor. This Chapter shall not apply to any vehicle owned by a public utility or a licensed contractor while necessary in use in connection, installation or repair of any public utility.

12.40.050 Effective Subject to Proper Sign Erection on Streets Affected. This Chapter shall not be effective until the appropriate signs are erected indicating those streets which are truck routes. (Ord. No. 89-813, 4-11-89)
12.40.060 Special Truck Weight Limits. No person, corporation, or other organization shall use or operate any commercial vehicle over ten thousand pounds rated gross vehicle weight on or over the following streets within the City:

1. Linda Vista Drive between Specialty Drive and Rancho Santa Fe Road
2. La Mirada Drive between Poinsettia Drive and Rancho Santa Fe Road
3. Virginia Place between La Mirada Drive and Grand Avenue
4. Grand Avenue west of Rancho Santa Fe Road
5. Las Flores Drive between Oleander Avenue and Linda Vista Drive
6. Oleander Avenue between Smilax Road and Las Flores Drive
7. Descanso Avenue from Las Flores Drive to a point six hundred feet easterly


12.40.070 Commercial Vehicle Restrictions. No person, corporation, or other organization shall use or operate any commercial vehicle on or over the following streets within the City:

1. Linda Vista Drive between Specialty Drive and Rancho Santa Fe Road
2. La Mirada Drive between Poinsettia Drive and Rancho Santa Fe Road
3. Virginia Place between La Mirada Drive and Grand Avenue
4. Grand Avenue west of Rancho Santa Fe Road
5. Las Flores Drive between Oleander Avenue and Linda Vista Drive
6. Oleander Avenue between Smilax Road and Las Flores Drive
7. Descanso Avenue from Las Flores Drive to a point six hundred feet easterly

CHAPTER 12.44

INTERSTATE TRUCKS

SECTIONS:

12.44.010 Definitions
12.44.020 Purpose
12.44.030 Application
12.44.040 Fees and Costs
12.44.050 Retrofitting
12.44.060 Revocation of Route
12.44.070 Appeal Process

12.44.010 Definitions. The following words and phrases shall have the meanings set forth, and if any word or phrase used in this Chapter is not defined in this Section, it shall have the meanings set forth in the California Vehicle Code; provided, that if any such word or phrase is not defined in the Vehicle Code, it shall have the meaning attributed to it in ordinary usage.

(a) "CalTrans" means the State of California Department of Transportation or its successor agency.

(b) "Director of Public Works" means the Director of Public Works of the City or an authorized representative.

(c) "Interstate Truck" means a truck tractor and semitrailer or truck tractor, semitrailer and trailer with unlimited length, as regulated by the Vehicle Code.

(d) "Terminal" means any facility at which freight is consolidated to be shipped, or where full load consignments may be loaded and off loaded, or at which the vehicles are regularly maintained, stored or manufactured.

12.44.020 Purpose. The purpose of this Chapter is to establish procedures for terminal designation and truck route designation to terminals, for interstate trucks operating on a federally designated highway system and to promote the general health, safety and welfare of the public.

12.44.030 Application.

(a) Any interested person requiring terminal access for interstate trucks from the federally designated highway system shall submit an application, on a form as provided by the City, together with such information as may be required by the Director of Public Works and appropriate fees paid to the City.

(b) Upon receipt of the application, the Director of Public Works will cause an investigation to be made to ascertain whether or not the proposed terminal facility meets the requirements for an interstate truck terminal. Upon the Director of Public Work's approval of that designation, the Director of Public Works will then determine the capability of the route requested, and alternate routes, whether requested or not. Determination of route capability will include, without limitation, a review of adequate turning radius and land widths of ramps, intersections and highways and general traffic conditions such as sight distance, speed and traffic volumes. No access off a federally designated highway system will be approved without the approval of CalTrans.
12.44.030 - 12.44.060

(c) Should the requested route pass through the City to a terminal located in another jurisdiction, the applicant shall comply with that jurisdiction's application process. Coordination of the approval of the route through the City will be the responsibility of the entity which controls the terminal's land use. Costs of trailblazer signs shall be as provided in Section 12.44.040.

12.44.040 Fees and Costs.

(a) The applicant shall pay a non-refundable application fee, as established by the City Council by resolution, sufficient to pay the cost of the review of the terminal designation and the review of the route and alternate route.

(b) Upon the approval of the terminal designation and route by the City and by Caltrans, the applicant shall deposit with the City sufficient funds; as estimated by the Director of Public Works, to pay for the purchase and installation of terminal access signs and trailblazer signs. Trailblazer signs will be required at every decision point in the City on route to the terminal. Upon completion of the installation of the signs, the actual cost shall be computed and any difference between the actual and the estimated cost shall be billed or refunded to the applicant, whichever the case may be. No terminal or route may be used until such signs as may be required are in place.

12.44.050 Retrofitting.

(a) If all feasible routes to a requested terminal are found unsatisfactory by the Director of Public Works, the applicant may request retrofitting the deficiencies. All costs of engineering, construction and inspection will be the responsibility of the applicant. Except when the retrofitting of deficiencies is within the jurisdiction of Caltrans, the actual construction will be done by the City or by a contractor acceptable to it.

(b) When the work is to be done by the City, the applicant shall deposit with the City the estimated cost of retrofitting. Adjustments between the estimated and actual cost shall be made after completion of the work and any difference between the actual and the estimated cost shall be billed or refunded to the applicant as the case may be. When the work is done by the applicant, the applicant may file with the Director of Public Works, on a form satisfactory to the Director of Public Works, a statement detailing the actual costs of the retrofitting.

(c) If at any time within five years from the date of completion of the retrofitting by the applicant, should any new applicant seek approval of a terminal which would use the route upon which such retrofitting was accomplished, the new applicant may be required to pay a fee to the City equal to the proportionate share of the cost of the previously completed retrofitting, as determined by the Director of Public Works, which fee shall be disbursed by the City to the applicant who paid for the retrofitting, as well as to any applicant who contributed to the cost of retrofitting under this subsection. Nothing in this Chapter shall require the payment of a proportionate fee if the applicant doing the work failed to file the report with the Director of Public Works required by subsection b) of this Section.

12.44.060 Revocation of Route. The Director of Public Works may revoke any approved terminal or route if the terminal or route becomes a safety hazard for vehicular traffic. A safety hazard includes the inability of interstate trucks to negotiate the route of said vehicles causing unsafe driving conditions for other vehicular traffic or pedestrians.
12.44.070 Appeal Process.

(a) If the Director of Public Works denies terminal designation, route feasibility or revokes a previously approved terminal or route, the applicant/terminal owner, within ten (10) days following the date of receipt of the decision of the Director of Public Works, may appeal said decision to the City Council in writing. An appeal shall be made on a form prescribed by the Department of Public Works and shall be filed with the City Clerk. The appeal shall state specifically wherein there was an error or abuse of discretion by the Director of Public Works or wherein the decision is not supported by the evidence in the record. Within five (5) days of the filing of an appeal, the Director of Public Works shall transmit to the City clerk the terminal application, the sketches of the revoked route and all other data filed therewith, the report of the Director of Public Works, the findings of the Director of Public Works and his decision on the application.

(b) The city clerk shall make copies of the data provided by the Director of Public works available to the applicant and to the appellant, if the applicant is not the appellant, for inspection and may give notice to any other interested party who requested notice of the time when the appeal will be considered by the City Council.

(c) If CalTrans and not the Director of Public Works, denies or revokes terminal access from federally designated highways, no appeal may be made to the City Council, but must be made to CalTrans, as may be permitted by CalTrans. (Ord. No. 89-813, 4-11-89)
CHAPTER 12.45

SPEED LIMITS ON CERTAIN GRADES

SECTIONS:

12.45.010 Speed Limits on Certain Grades

12.45.010 Speed Limits on Certain Grades. Whenever the Director of Engineering determines, on the basis of an engineering and traffic survey, that the prima facie limit of 25 miles per hour is more than is reasonable and safe on any portion of a street having a grade in excess of 10 percent, the Director may declare a maximum limit of 20 or 15 miles per hour, whichever is found most appropriate and is reasonable and safe. The declared maximum speed shall be effective when appropriate signs giving notice thereof are erected upon the street. The City’s Traffic Safety Commission, prior to installation of such signs, shall be informed of such installations unless previously directed by the City Council.
TITLE 13

AIRPORTS & CEMETERIES

CHAPTERS:

13.04 Airports
13.08 Cemeteries

CHAPTER 13.04

AIRPORTS

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SECTIONS:

13.04.460 Other Regulations
ARTICLE I. GENERAL PROVISIONS

13.04.010 Existing Airports Exempt. This article shall not apply to any airport or airstrip in actual use and operation on August 30, 1945, and in compliance with all applicable rules and regulations of the Federal and State governments.

13.04.020 Nuisance. Any building, structure, runway, hangar or airstrip set up, erected, built or maintained and/or any use of property contrary to the provisions of this article shall and the same is hereby declared to be unlawful, and a public nuisance, and any failure, refusal or neglect to obtain a permit as required by the terms of this article shall be prima facie evidence of the fact that a nuisance has been committed in connection with the erection, construction, maintenance, alteration or repair of any building, structure, runway, hangar or airstrip set up, erected, built, maintained, or used contrary to the provisions of this article. The City Attorney shall, upon order of the City Council, immediately commence necessary proceedings for the abatement, removal or injunction of any such nuisance in the manner provided by law.

ARTICLE II. ZONED AREAS - LICENSE.

13.04.030 License Required. No land located within any precise section of the Land Use Master Plan of the City shall be used for an airport or airstrip or for the landing or takeoff of any aircraft except in compliance with the zoning regulations covering said land and unless a license therefor has been issued by the Director of Planning and Land Use.

13.04.040 Application and Fee for License - Fee. Application for a license required by this article shall be made to the City Manager on forms provided by him for that purpose. Each application shall be accompanied by a fee of two hundred dollars ($200) and by a sketch of the proposed flight pattern together with evidence of tentative approval of such flight pattern from the civil Aeronautics Authority or its successors where approval is required or permitted by law.

ARTICLE III. AIRPORT RULES AND REGULATIONS - GENERAL PROVISIONS

13.04.050 Applicability. This Article applies to each and every person and to each and every activity or operation of any kind whatsoever except to the extent superseded by agreement or other written document executed by a duly authorized representative of the City.

13.04.060 Definitions. The following words have the meaning ascribed to them in this section unless otherwise apparent from the context:

(a) "Airport" means each and all of the airports in the City.

(b) "Airport Manager" means the City Airports Director, the manager of any of the City airports, or their duly authorized representatives.

(c) "Person" means any individual, estate, political body, or any business, financial, social, recreational or athletic association of any form whatsoever, and includes any member, trustee, agent, employee, officer, receiver, assignee or other representative of any of these.

13.04.070 Construction. This chapter shall be construed so as to promote the objectives thereof and to protect and further the public health, safety, and welfare.
13.04.080 Applicability of Previous Rules. The provisions of this supersede and replace all previous airport rules and regulations, provided, that to the extent that such provisions are unchanged from such previous rules and regulations, they shall be deemed a continuation thereof.

13.04.090 Violation of Article Forbidden; Sanctions. Noncompliance with or violation of this Article is forbidden. Any person operating or handling any aircraft, operating any vehicle, equipment or apparatus, or using the airport or any of its facilities in violation of this Chapter or any person who refuses to comply with this Chapter after being duly ordered to do so, or any person who enters or remains upon an airport without complying with each and every section and provision of this Chapter is in violation of this Chapter. A person who is in violation of this Chapter does not have, and is acting without, the permission of the City to remain on or to conduct any activity on an airport. Any person who is in violation of this Chapter shall be promptly ejected and removed from the airport, upon the order of the city Manager, by the airport manager, or by a law enforcement officer acting pursuant to the request of the airport manager; provided, however, that if the airport manager deems it necessary for the immediate protection of the public health, safety, or welfare, or for the protection of property, or for the protection of the health, safety or welfare of any person lawfully utilizing the airport facilities, he may eject and remove, or request an appropriate law enforcement officer to eject and remove, any person who is in violation of this Chapter without first obtaining the order of the City's Director of Transportation to do so. Any person who is so ejected and removed from the airport may be deprived of and refused the future use of the airport and of the airport facilities for such time as the City Council may determine and order, and until such time as such person may accomplish to said Council's satisfaction such remedial actions as said Council may order, notwithstanding any rights such person may otherwise have by virtue of any lease, permit or other written document. The foregoing penalties are cumulative and supplemental to any penalties or remedies cognizable at law.

13.04.100 Nonassumption of Liability. The City, and its agents, officers and employees, assume no liability or responsibility, and shall not be liable or responsible other than as required by law, for any loss, damage, destruction, injury or death to any person or persons or to any property by reason of any accident, incident, occurrence or mishap of any nature whatsoever or from any cause whatsoever. Any person entering an airport, or using or seeking or preparing to use an airport or any airport facility, does so at his own risk.

ARTICLE IV. GENERAL RULES AND REGULATIONS

13.04.110 Restricted areas. No person shall enter any area which is posted with signs reading "restricted" "closed to the public", or the like, except:

(a) Persons assigned to duty in such area.

(b) Persons authorized by the airport manager.

(c) Passengers, under appropriate supervision, entering such areas for the purpose of embarkation or debarkation.

13.04.120 Conduct of Business. No person shall use the airport or any part thereof, or any airport facilities, for revenue producing or commercial activities without first securing an appropriate permit, lease or other such document from the City and, after having obtained such document, without complying fully and completely with all of the terms and conditions thereof including the payment of rates and charges.
13.04.130 Vehicles for Hire. No person shall operate any vehicles for hire on the airport unless the provisions of Section 13.04.120 above have been complied with.

13.04.140 Commercial Photography. No person shall take still, motion or sound pictures or photographs for commercial purposes without the written permission of the airport manager.

13.04.150 Advertisements. No person shall post, distribute, circulate or display any signs, posters, advertisements, circulares, or any other such printed, painted or written materials without first obtaining the approval of the airport manager.

13.04.160 Soliciting. No person shall solicit funds, goods, donations or pledges at the airport without first securing the written permission of the airport manager.

13.04.170 Use of roads and walks. No person shall travel on the airport property other than on the roads, walks, and places appropriate to the type of travel, nor shall any person use said roads, walks, or other places in such a manner so as to hinder or obstruct the proper usage thereof by others.

13.04.180 Animals. No person shall enter the terminal building or landing area of the airport with a dog or other animal, except a seeing-eye dog, unless such dogs or other animals are restrained by a leash and kept under complete control. Dogs and other animals are permitted in other areas of the airport if they are restrained by a leash or otherwise confined so as to be under the complete control of the person accompanying such animal.

ARTICLE V. AIRCRAFT OPERATION

13.04.190 Operation of Aircraft. No person shall navigate, land, takeoff or fly any aircraft or service, maintain or repair any aircraft, or conduct any aircraft operations or activities on, from or about the airport other than in conformity with current Federal Aviation Administration (FAA) Federal Air Regulations (FAR), and Civil Aeronautics Board (CAB) rules and regulations and with applicable laws of the State of California.

13.04.200 Rates and charges. Aircraft and business operations on the airport shall be subject to Schedule of Rates and Charges and Use Control Policy for City Airports, as adopted by the City Council.

13.04.210 Aircraft takeoffs and landings. All takeoffs and landings at airports without control towers, or when control towers are inoperative, shall be made at safe distances from other aircraft, and from all buildings, automobile parking areas and similar areas and obstructions. Aircraft shall clear all highways and roads on or adjacent to the airport by a vertical distance of no less than fifty (50) feet.

13.04.220 Restriction of movement. The airport manager may delay or restrict any ground movement or other operation or activity on the airport, and may refuse departure of aircraft from parking areas on the airport, for any reason the airport manager deems necessary in the public interest or to protect public health, safety or welfare.

13.04.230 Aerobatics Prohibited. No aircraft shall be flown within the airport traffic area in any aerobatics maneuver or maneuvers other than those required in normal and routine operation unless specifically approved by the City Managers.
13.04.240 **Aircraft Storage and Repairs: Area.** No aircraft shall be stored or repaired in any area or space other than those areas and spaces designated for such purposes by the airport manager.

13.04.250 **Securing of Unattended Aircraft.** Securing of unattended aircraft shall be the responsibility of the pilot of the aircraft.

13.04.260 **Safe Handling of Aircraft.** The pilot of moving aircraft, or of an aircraft preparing or waiting to move, shall take all due care to avoid, and shall assure himself that there is no danger of a collision with any other aircraft, whether moving or stationary, or with any building or obstruction. Aircraft shall at all times be taxied, landed or takeoff at reasonable speeds and while under the full control of the pilot.

13.04.270 **Taxing.** Aircraft shall not be taxied into or out of hangars.

13.04.280 **Night Flying.** No person shall land at, taxi on or take off from an unlighted runway after dusk or before dawn, except in the event of an emergency.

13.04.290 **Starting and Running Engine: Location.** Aircraft engines shall be started and warmed up only in those places designated for such purposes by the airport manager. Aircraft shall be so placed and oriented while an engine is running that no hangar, building or person is in the path of the propeller slipstream, and so that no dust cloud or other hazard to aircraft is created.

13.04.300 **Running of Aircraft Engines.** No aircraft engine shall be started or run unless a licensed pilot or mechanic is attending the controls. Blocks equipped with ropes, or other suitable equipment for blocking an aircraft, shall always be placed in front of the main landing wheels prior to starting an engine of the aircraft unless the aircraft is equipped with adequate locking brakes.

13.04.310 **Running of Engine in Hangar.** No aircraft engine shall be started or run in a hangar at any time.

13.04.320 **Plant Quarantine Inspection.** Federal and California plant quarantine laws, as may be currently in effect, shall be enforced. Any person bringing plants, fruits, vegetables, nuts, seeds, cotton balls, raw cotton, cottonseed, or unprocessed plant products from any state or territory, including Hawaii, or from any foreign country, shall report to the airport manager who will arrange for inspection by the proper plant quarantine officials. All aircraft carrying such plants or plant products, including aircraft having come directly from Hawaii, which are not certified as inspected and released by the United States Department of Agriculture, shall remain unloaded of such plants and plant products until inspected or otherwise cleared by the proper authorities.

13.04.330 **Damage to Airport Property.** Any and all airport property damaged, injured or destroyed, by accident or otherwise, shall immediately be paid for by the person or persons responsible for such damage, injury or destruction; provided that the City Manager may, in his discretion, authorize deferred payment.

13.04.340 **Disposition of Disabled Aircraft.** The owner, pilot or operator of any aircraft which becomes wrecked or disabled at an airport, shall be responsible for the prompt removal of the wrecked or disabled aircraft, and parts thereof, as directed by the airport manager. In the event the owner, pilot or operator fails to comply with such directions, the wrecked or disabled aircraft, and parts thereof, may be removed by the airport manager at the expense of the owner, pilot or operator.
13.04.350  Accident Reports. Persons involved in or witnessing an aircraft accident on the airport shall report such accident to the airport manager's office or to the nearest guard as soon as it is reasonably possible to do so. Such persons shall make written reports as requested by the airport manager.

13.04.360  Present Hours of Operation. Hours of operation effective as of March 13, 1979 shall remain in effect unless changed by the City Council.

ARTICLE VI. NOISE ABATEMENT

13.04.370  Noise Abatement Procedures. All persons operating aircraft from City airports shall comply with all noise abatement procedures, traffic patterns and policies as may be established by City and acceptable to FAA.

13.04.380  Training Flight Restrictions. Only those aircraft that on takeoff or landing cause an effective perceived noise level (EPNL) not greater than 90 decibels (DB) at a sideline location 450 meters (1500 feet) from the extended centerline of the runway shall be permitted to conduct training flights at the City Airports.

(a) For purposes of this part the sideline effective perceived noise level shall be that measured or estimated as provided in Federal Aviation Administration Advisory Circulares 36-1B, dated December 5, 1977, and 36-2A, dated February 6, 1978, which circulares, including all subsequent revisions, amendments and reissues thereof, are incorporated herein by reference.

(b) For the purpose of this part "training flight" shall mean any instrument or visual approach to the airport conducted for the purpose of student instruction, pilot proficiency training, or pilot evaluation check rides, whether or not a landing touchdown is accomplished.

13.04.390  Permanently Based Aircraft. Only those aircraft that on takeoff or landing cause an effective perceived noise level (EPNL) not greater than 90 decibels (DB) at a sideline location 450 meters (1500 feet) from the extended centerline of the runway shall be permitted to establish permanent base of operations at City Airports after the effective date of this ordinance.

(a) For the purpose of this part the sideline effective perceived noise level shall be that measured or estimated as provided in Federal Aviation Administration Advisory Circulares 36-1B, dated December 5, 1977, and 36-2A, dated February 6, 1978, which circulares, including all subsequent revisions, amendments and reissues thereof, are incorporated herein by reference.

(b) A "Permanent Base of Operations" for an aircraft is established at an airport whenever that airport serves as the base of activities for flight operations, maintenance and/or storage for any period exceeding 21 days in a calendar year.

ARTICLE VII. MOTOR VEHICLE REGULATIONS

13.04.400  General. Motor vehicles shall be operated on the airport in strict compliance with the applicable provisions of the California Motor Vehicle Code, the San Marcos Municipal Code, and with these rules and regulations.

13.04.410  Restricted Areas. No motorized equipment or vehicles shall be operated on the aircraft aprons of the field or on the taxiway and aircraft landing area, except by persons assigned to duty in those areas or by persons so authorized by the airport manager.
13.04.420 Speed. Motor vehicles shall be operated in strict compliance with the speed limits prescribed by the airport manager and indicated by posted traffic signs. In no event shall any motor vehicle, except emergency vehicles in an emergency situation, exceed a speed of twenty-five (25) miles per hour.

13.04.430 Parking. Vehicles shall be parked on the airport in the manner and at the locations indicated by posted traffic signs.

13.04.440 Common Carriers. No bus, truck, taxi or other common carrier or vehicle for hire shall load or unload passengers or personal property at any place on the airport other than that place or those places designated by the airport manager.

13.04.450 Accident Reports. Persons involved in or witnessing a motor vehicle accident on the airport shall report such accident to the airport manager's office or to the nearest guard as soon as it is reasonably possible to do so. Such persons shall make written reports as requested by the airport manager.

ARTICLE VIII. OTHER REGULATIONS

13.04.460 Other Regulations. In addition to the provisions of this chapter, all activities on City Airports shall conform to Federal, State, and local laws, ordinances, regulations, policies or other publications applicable to aircraft operations, land use, construction, safety, or any other activities conducted on a City airport.

Such regulations shall include, but are not limited to, Federal Aviation Administration Regulations, Noise Standards, Zoning Ordinances, Building Codes, Motor Vehicle Codes, Uniform Fire Codes, and Air Pollution Control District Rules.
CHAPTER 13.08
CEMETERIES

SECTIONS

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13.08.030 Permit Required

13.08.040 Permit Nontransferable

13.08.050 Application for Permit

13.08.060 New Application After Denial

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13.08.080 Public Cemetery Districts - Application for Extension

13.08.090 Application Fee - Deposit

13.08.100 Notice of Hearing

13.08.110 Notice To Be Given By Applicant

13.08.120 Public Hearing

13.08.010 Definitions.

(a) Cemetery means a place used for the permanent interment of dead human bodies or the cremated remains thereof. It may be either a burial park for earth interments, a mausoleum for vault or crypt interments, a columbarium for incinerary interments or a combination of one or more thereof.

(b) Director of Planning means the Director of Planning and Land Use of the City of San Marcos.

(c) Planning Division means the Division of Planning and Land Use of the City of San Marcos.

13.08.020 Cemetery Deemed Established. A cemetery shall be deemed to be established and/or maintained and/or extended where the interment of one or more dead human bodies or cremated remains is made in or upon any property, whether or not the same has been duly and regularly dedicated to cemetery purposes under the laws of the State of California, and which on February 24, 1942, was not included within the boundaries of an existing cemetery or for which a permit has not been granted by the City Council; and any person who shall make or cause to be made any interment in or upon any such property, and any person having the right of possession of such property who shall knowingly permit the interment of a dead human body or cremated remains therein or thereupon shall be deemed to have established and/or maintained and/or extended a cemetery within the meaning of the provisions of this chapter.

13.08.030 Permit Required. No person shall establish or maintain any cemetery or extend the boundaries of any existing cemetery at any place within the City without a permit first having been applied for as provided in this chapter and obtained from the City Council; provided, however, that such permit shall be granted unless it shall affirmatively appear on the hearing and be found as a fact by the City Council that the establishment or maintenance of such cemetery in the location proposed would jeopardize or adversely affect the health, safety, comfort or welfare of the public. Nothing in this section shall be construed to prevent the maintenance, development and operation within their present boundaries of cemeteries which were established on February 24, 1942.
13.08.040 Permit Nontransferable. No permit granted pursuant to this chapter shall be assignable prior to the actual establishment of the cemetery or extension of any existing cemetery as authorized by the permit, nor shall such permit be used by any person other than the applicant in the establishment of such cemetery or extension of an existing cemetery.

13.08.050 Application for Permit. Any person desiring a permit required by this chapter shall file a written application therefor with the City Planning Commission.

13.08.060 New Application After Denial. In the event that said City Council shall have denied its approval of any application heretofore or hereafter made for any permit provided for in this chapter, no new or further application for any such permit shall be made to establish or extend a cemetery upon the same premises or any portion thereof as described in such previous application, until the expiration of one year from and after the date of the denial of such approval.

13.08.070 Data Required In Application. Every application for a permit required by this chapter shall be signed by the president and secretary of the corporation which will be in charge of the operation of said cemetery and the owner or owners of the land to be included therein, shall be verified as provided in the Code of Civil Procedure of the State of California for the verification of pleadings in civil actions and shall set forth in separate paragraphs or in exhibits attached thereto the following information:

(a) The names and addresses of all persons and/or corporations owning all or any part of the property which it is proposed to use as a cemetery.

(b) The names and addresses of all officers and directors of the corporation which will be in charge of the operation of the cemetery.

(c) A map showing the exact location, exterior boundaries and legal description of the property which it is proposed to use for a cemetery and the location of all buildings, whether public or private, located within a distance of one and one half miles from the exterior boundaries of said premises, and the location and depth of all wells in said area from which domestic or irrigating water is obtained. Said map shall also show the location and names of all public streets located within a distance of one and one-half miles from the exterior boundaries of said premises, and if no public streets are located within said distance then said map shall show the location and at least one-half mile of the extent of the three public streets having a length of at least one-half mile which are located nearest to said premises. Said map shall further show the elevation in feet above sea level of the highest and lowest points on said premises and the width, depth and location of all natural watercourses and artificial drains or conduits for the drainage of storm water located upon said premises or within 2,000 feet from the exterior boundary thereof in any direction.

(d) A financial statement of applicant showing the financial ability of applicant to establish, care for, and maintain the proposed cemetery in such a manner as to prevent the same from becoming a public nuisance.

(e) A statement setting forth whether said cemetery is to be established as a perpetual care or non-perpetual care cemetery, and if a perpetual care fund is to be or has been created, the amount then on hand and the method, scheme or plan of continuing and adding to the same in full details sufficient to show that said cemetery will be maintained so as not to become a public nuisance.
13.08.080  **Public Cemetery Districts - Application for Extension.** Notwithstanding the provisions of Section 13.08.070, where a public cemetery district formed pursuant to Part 2 of Division 8 of the California Health and Safety Code proposed to extend an existing cemetery, the application for the permit required by this chapter shall be signed by an officer of the district and shall set forth the following information:

(a) The name and business address of the district;

(b) A legal description of the land included within the extension;

(c) A map showing (1) the location of the exterior boundaries of the existing cemetery and the boundaries of the proposed extension; (2) the location of all buildings, whether public or private, within 300 feet of the exterior boundaries of said extension or addition and the location and depth of all wells within said 300 feet;

(d) Such other information as the Director of Planning may require.

In addition to the notice of hearing specified in Section 13.08.100, and in lieu of the notice specified in Section 13.08.110, notice of the hearing may be given by mail in the manner prescribed for the giving of notice of hearing on an application for special use permit pursuant to Title 20 herein.

13.08.090  **Application Fee - Deposit.** At the time of filing any application required by this chapter, the applicant shall pay to the City through the Planning Division a permit fee of two hundred dollars ($200.00). He shall also deposit with the City through the Planning Department the sum of two hundred dollars ($200.00) to defray the expense of publication of notice required by Section 13.08.100. Any portion of said deposit not so used shall be returned to the applicant, but in the event that the amount of the deposit shall be insufficient to defray all of said expenses, applicant shall immediately deposit an additional sum sufficient to defray all of said expenses. Should any applicant fail or refuse within five days after written notice from the said Director of Planning to make such additional deposit, the Director of Planning shall remove said application from the calendar of said Commission, and before any further proceedings may be had with reference to the premises described therein a new deposit shall be made.

13.08.100  **Notice of Hearing.** The Planning Commission shall fix the time and place for public hearing on said application which shall not be less than 30 days nor more than 60 days from the date on which said application is filed. The Director of Planning shall cause a copy of the notice of hearing on such application to be published in a newspaper of general circulation in the City. Such publication, if made in a daily newspaper, shall be for a period of not less than 10 consecutive publications of said paper immediately preceding the date of hearing, and if made in a weekly newspaper shall be for a period of not less than three consecutive publications of said paper immediately preceding the date of said hearing.

13.08.110  **Notice to be given by applicant.** Not less than 20 days before the date fixed for said hearing, the applicant shall cause notices of said hearing to be printed and conspicuously posted along the exterior boundary line of said proposed cemetery, or extension of said existing cemetery, not more than 300 feet apart, and at each change of direction of said boundary line, and also in the same manner along both sides of all public streets within one and one-half miles of the exterior boundaries of the proposed cemetery, in such manner as would reasonably give notice to passers-by of the matters contained in said notice. The form of said
notice shall be prescribed by the Director of Planning and shall contain a copy of the notice of hearing on said application, a sketch showing the boundaries of said cemetery or extension of an existing cemetery and all public highways within a distance of one and one-half miles from the exterior boundaries of such proposed cemetery, or extension of an existing cemetery, together with a statement which shall appear in a minimum of one inch blackfaced letters as follows: "NOTICE OF PROPOSAL TO ESTABLISH CEMETERY". Where there are 50 or more buildings used either for residential or business purposes within a distance of one and one-half miles from the exterior boundaries of said proposed cemetery or extension of an existing cemetery, the applicant shall cause a postcard notice of said hearing to be printed and mailed to all property owners within said distance at least 15 days prior to said hearing, using for this purpose the last known name and address of such owners as shown by the records of the County Assessor; provided, however, that where a public cemetery district formed pursuant to the provisions of Division 8 of Part 4 of the California Health and Safety Code proposes to extend an existing cemetery such postcard notice is not required to be given. The form of said postcard notice shall be as prescribed by the Director of Planning.

At least five days prior to said hearing, the applicant shall file with the Director of Planning an affidavit that such notices were mailed, if required, and posted as prescribed by this section. Said affidavit of mailing such notices, if required, shall include a list of the property owners and their addresses as shown by the records of the County Assessor to which such notices were mailed.

13.08.120 Public Hearing. At the time and place fixed for the hearing on any application for a permit required by this chapter, the County Planning Commission shall hear the same and any protest or evidence relevant thereto, and upon such application, evidence, and protest, if any, shall determine whether or not the establishment or maintenance of such proposed cemetery or extension of an existing cemetery will or may jeopardize or adversely affect the public health, safety, comfort, or welfare and whether or not the establishment or maintenance thereof will or may reasonably be expected to constitute a public nuisance. Upon such hearing said Commission shall have power to consider the present or probably density of population in the area contiguous to said proposed cemetery or extension of an existing cemetery and if said Commission shall find that the locality is or will be in all probability thickly settled within a period of five years, it may recommend to the City Council a denial of a permit therefor. The Planning Commission shall also have power to consider the probable effect that the establishment or maintenance of said cemetery or extension of an existing cemetery would be likely to endanger the public health, it may recommend to the City Council a denial of a permit therefor. The Planning Commission shall also have power to consider the effect of the location of said proposed cemetery or extension of an existing cemetery on the free movement of traffic and whether or not it would tend to interfere with the proper protection of the public through interference with the movement of police, ambulance, or fire equipment, and if, in its opinion, the establishment or maintenance of said proposed cemetery or extension of an existing cemetery would interfere with the convenience of the public or protection of the lives and property of the public, it may recommend to the City Council a denial of a permit therefor. The Planning Commission shall also have power to consider whether or not through the proposed perpetual care fund or otherwise applicant can demonstrate adequate financial ability to establish and maintain said proposed cemetery in such manner as to prevent the proposed cemetery from becoming a public nuisance.

After such public hearing, said Commission shall report to the City Council its findings as to whether the establishment, maintenance or extension of said cemetery will be a menace to or endanger the public health, safety or general welfare. The Commission shall also recommend the granting or denial of such permit. In either case, such recommendation shall be
accompanied by a transcript of the testimony received at such public hearing. Upon receiving such report and transcript, the City Council shall determine whether the establishment, maintenance or extension of such cemetery will or will not be a menace to or endanger the public health, safety or general welfare, and shall grant or deny said permit accordingly.

The City Council shall have the power to continue its consideration of said application and record of hearing before the Planning Commission from time to time and before taking final action thereon may require of the applicant any reasonable dedication of public streets or highways through the premises proposed to be used for said proposed cemetery or extension of an existing cemetery so as to prevent the same from jeopardizing the public safety, comfort or welfare, and if the time required by said City Council for compliance with said conditions shall elapse without said conditions having been met, said City Council Board of Supervisors may deny the permit, and said Council may grant the permit subject to such reasonable conditions and limitations as it shall deem reasonable and necessary or advisable to protect the public health, safety and welfare of the neighborhood.
14.0400 Definitions. For the purposes of this chapter, the following words shall have the meanings set out in this section:

(a) **Building or structure.** In addition to the meaning ordinarily ascribed thereto, includes any machine, implement, device, tree, derrick, stage or other setting, lumber, sash or door, structural steel, pipe bend, dynamo, transformer, generator, punch, agitator, object or thing having a width of more than eight feet, other than any implement of husbandry or any special
mobile equipment, as defined in the Vehicle Code of the State, having a width of ten feet or less. The term also includes a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum permitted by said Vehicle Code.

(b) **Commercial driveway.** Means any driveway that is not a "residential highway" as defined in this section.

(c) **Director.** Means the Director of Developmental Services of the City of San Marcos.

(d) **Driveway.** Means a commercial highway.

(e) **Encroachment.** Means any tower, pole, poleline, pipe, pipeline, driveway, private road, fence, billboard, stand or building, or any structure or object of any kind or character not particularly mentioned in this chapter, which is placed in, under or over any portion of the highway.

(f) **Highway.** Means any public highway, public street, public way, or public place in the City, either owned by the City or dedicated to the public for purpose of travel.

(g) **Moving contractor.** Means any person defined by subsection K of Section 1.04.010 and also includes the United States, this State, this County, this City, including all departments and bureaus thereof.

(h) **Person.** Means any person defined by subsection K of Section 1.04.010 and also includes the United States, this State, this County, this City, including all departments and bureaus thereof.

(i) **Residential driveway.** Means any driveway serving any property which is used solely as a private residence consisting of one, two, or three dwelling units including farms or ranches which are not used as retail outlets.

(j) **Total number of tire inches.** Means that number calculated by adding the respective tire sizes as specified by the manufacturer of all tires resting upon the surface of the highway.

(k) **Vehicle Code.** Means the Vehicle Code of the State.

(l) **Width.** Means the dimension measured at right angles to the anterior-posterior axis of the conveyance upon which the building or structure or portion thereof is or is to be loaded or moved, or to the median line of the highway over which the same is being or is to be moved.

**14.04.020 Application.** Every applicant for a permit or license required by this title shall make an application to the Director.

**14.04.030 Application of Contractor.** In addition to the application required by Section 14.04.020, the contractor of any such person also shall be required to obtain a permit; provided, however, any contractor of this City for highway construction, improvement or repair shall not be required to obtain a permit pursuant to this title.
14.04.040  **City Free from Liability.** The applicant shall agree to indemnify and/or hold harmless the City, each of its officers and its employees from any liability or responsibility for accident, loss or damage to persons or property arising by reason of the work done by the applicant, or his agents, employees or representatives.

14.04.050  **Fee.** Every applicant for a permit or license required by this title shall at the time of making application for the permit or license pay the fees and make the deposits required for such permit or license.

14.04.060  **Fee or Deposit Exemption.** If the United States, this State, this or any other City, any municipal corporation, school district, or her public district or public body files with the Director a written guarantee of payment of all costs for which they may become liable to the City, then neither an issuance fee nor deposit is required from such persons.

14.04.070  **Waiver of Prepayment of Fees.** At the request of the permittee who maintains with the Director a general deposit as provided in this title the Director may waive the requirement covering prepayment of the issuance fees and bill said permittee for issuance fees covering permits issued subsequent to such request; provided, that the amount of said deposit is sufficient to cover said fees and to provide for other contingencies for which it is given. The Director may revoke such waiver at any time and must revoke the waiver if the permittee fails to pay his bill for fees within the required time.

14.04.080  **Billing of Permittee Granted Waiver.** Where the Director grants the waiver provided in Section 14.04.070, he shall bill the permittee at the end of each month for all permits issued during the month, and the permittee shall pay said bill not later than the last day of the following month. The Director may in his discretion accept a personal check drawn on a bank located within San Diego County or Los Angeles County in payment of such bill provided the check is received by the Director not later than the fifteenth day of the month following the month covered by the billing. The acceptance of the check constitutes a payment of such bill when but not before the check is duly paid. All such checks shall be deposited daily by the Director with the City Treasurer.

14.04.090  **Purpose of Fees.** The issuance fees required by the provisions of this title are for the purpose of defraying the cost of issuing the requested permit. No part of any issuance fee may be refunded to any applicant.

14.04.100  **Deposit of Fees.** Issuance fees and charges for repairs, inspection, or engineering collected under the provisions of this title shall be deposited in the respective funds from which the corresponding disbursements were made.

14.04.110  **Explanation of Costs.** Whenever in the provisions of this title any costs are to be charged to any permittee, and no other method for the calculation of such costs is specified, such costs are the actual costs including the proportionate part of the salaries, wages, or other compensation of any deputy or employee, plus cost of overhead not to exceed fifteen percent of the total.

14.04.120  **Approval of Application.** The Director shall not approve the application unless it appears to him that the work proposed to be done will not significantly damage the highways or create an unreasonable risk of harm to persons or property and that the approval of said application is in the public interest; provided, however, the Director may approve the application subject to conditions if the Director determines that by doing so it would be in the public interest, no significant damage to the highways would be created, and no unreasonable risk of harm to persons or property would be created.
14.04.130  **Issuance of Permit.** When the Director approves an application for a permit he shall issue the permit.

14.04.140  **Application of Public Agencies or Public Utilities.** Notwithstanding the provisions of Section 14.04.120, the Director shall approve the application for permit subject to conditions of any public agency or public utility having lawful authority to occupy the highways and authorized by law to establish or maintain any works or facilities in, over, or under any public highway. Any such permit shall contain a provision that in the event the future improvement of the highway necessitates the relocation of its facilities the permittee will relocate the same at its sole expense.

14.04.150  **Conditions may be Changed after Permit is Issued.** Any permit issued by the Director under any of the provisions of this title, or the conditions to which it has been made subject, may be amended or changed if the Director deems such amendment or change to be necessary for the protection of the highways, or to prevent undue interference with traffic, or to protect both persons and property within or adjacent to such highways from damage or danger. Notification of the amendment or change shall be made by the Director either by mailing written notice to the permittee. The amendment or change shall be effective either twenty-four hours after said written notice is deposited in the United States mail or immediately upon completion of personal service.

14.04.160  **Revocation of Permit.** All permits other than those issued to public agencies or a public utility having lawful authority to occupy the highways are revocable on five days' notice and the encroachment must be removed or relocated as may be specified by the Director in the notice revoking the permit and within a reasonable time specified by the Director unless the permit provides a specified time.

14.04.170  **Purchase of Specifications.** Copies of the specifications entitled "The Standard Specifications, Road Department of the County of San Diego," referred to in this title may be sold by the Director for the sum of $10.50. Any portion of said specifications may be sold by the Director at the cost of producing the same. All moneys received pursuant to sales made under this section shall be paid into the City Treasury as provided by law.

14.04.180  **Enforcement by Director.** The Director is authorized to enforce the provision of this title.

14.04.190  **Violation--Penalty.** Except where otherwise specifically provided by this title, every person is guilty of an infraction who, before obtaining a construction, excavation or encroachment permit from the Director so to do:

(a) Moves or cause to be moved along any highway any building or structure;

(b) Makes or causes to be made any excavation, fill or obstruction of, or lays, constructs or repairs any curb, sidewalk, gutter, driveway, roadway surface, retaining wall, storm drain or culvert or other work of any nature in, over, along, across or through any highway.

(c) Places, changes or renews any encroachment in, under or over any portion of a highway.
CHAPTER 14.08

MOVING BUILDINGS AND STRUCTURES

Sections:

14.08.010 Scope of Regulations
14.08.020 Permit Required
14.08.030 Application for Permit
14.08.040 Application Changes by Director of Public Services
14.08.050 Permit Fee
14.08.060 Permit Affixed to Structure
14.08.070 Copies of Permit on Sections of Structure
14.08.080 Extension of Permit
14.08.090 Classification of Buildings
14.08.100 Deposits According to Classification
14.08.110 Tree Trimming Deposit
14.08.120 Estimate of Tree Trimming Costs
14.08.130 General Deposit in Lieu of Special Deposits
14.08.140 Additional Deposit
14.08.150 Increase in Deposit to Cover Higher Class
14.08.160 Deductions from Deposit
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14.08.180 Billing in Lieu of Deductions
14.08.190 Supervision by Inspector
14.08.200 Planks Required under Dollies on Wheels
14.08.210 Charge for Damage to Highway
14.08.220 Warning Lights
14.08.230 Defacing Trees not Permitted
14.08.240 Trimming of Trees
14.08.250 Permit for Structures Exceeding Permissible Weights
14.08.260 Permit for Specific Equipment - Fee - Bond
14.08.270 Insurance in Lieu of Bond

14.08.010 Scope of Regulations. The provisions of this chapter apply only to the moving of buildings and structures.

14.08.020 Permit Required. No person shall move or cause to be moved along any highway any building or structure without first obtaining from the Director a permit to do so.

14.08.030 Application for Permit. Application for a permit required by this chapter shall be made in duplicate and in accordance with Chapter 14.04. The application shall specify the kind of building or structure to be moved, the approximate weight thereof, as nearly as may be ascertained, the location of the same, the location to which and the route over or along which such building or structure and each section or portion of such building or structure is to be moved, the number of sections in which the building or structure will be moved, the type and number of conveyances upon which the same is to be moved, the total number of tire inches thereof for each separate section to be moved, and the time when such building, structure, or portion thereof, is proposed to be moved and within which such removal will be completed. The applicant shall attach to the application a copy of a valid building permit for the building or structure at its destination point, or in the case of intended storage, a copy of an appropriate special use permit or other evidence that storage at the destination point is not in violation of the zoning ordinance.
14.08.040  Application Changes by Director. The Director may make such changes in any application for a permit as in his opinion are necessary for the protection of the highways along or over which it is proposed to move the building or structure or to prevent undue interference with traffic or to avoid jeopardizing the safety of any persons using such highways.

14.08.050  Permit Fee. Every person applying for a permit required by this chapter shall at the time of making application for the permit pay an issuance fee of fifteen dollars.

14.08.060  Permit Affixed to Structure. The moving contractor shall affix and maintain at all times while it is on the highway, in a conspicuous place on the building or structure to be moved, the permit for such moving.

14.08.070  Copies of Permit on Sections of Structure. If a building or structure is moved in more than one section, and more than one of such sections is moved at the same time, the moving contractor shall affix and maintain at all times while they are on the highway in a conspicuous place on each section on which the original permit is not affixed, true copies of such permit. Such true copies shall be issued by the Director upon payment to him by the applicant of an issuance fee of twenty-five cents for each additional copy.

14.08.080  Extension of Permit. Each permit issued shall become null and void upon the expiration of the time specified in the application unless the Director of Developmental Services extends the time, which he may do if in his opinion the moving of the building or structure, or any portion thereof, is impractical because of inclement weather, act of God, strikes, or other causes not within the control of the permittee.

14.08.090  Classification of Buildings. All buildings and structures are classified as follows:

(a) Class A is any building or structure or any portion thereof which is moved on a motor truck or other vehicle propelled by its own power;

(b) Class B is any building or structure or any portion thereof, not of Class A which is not more than sixteen feet in width;

(c) Class C is any building or structure or any portion thereof, not of Class A which is more than sixteen feet and not more than twenty-two feet in width;

(d) Class D is any building or structure or any portion thereof, not of Class A which is more than twenty-two feet and not more than twenty-eight feet in width;

(e) Class E is any building or structure or any portion thereof, not of Class A which is more than twenty-eight feet and not more than forty feet in width;

(f) Class F is any building or structure or any portion thereof, not of Class A which is more than forty feet in width.

14.08.100  Deposits According to Classification. Every applicant for a permit from whom an issuance fee is required, who does not maintain a sufficient general deposit with the Director, shall deposit with the Director:

(a) One Hundred dollars for a Class A permit;
(b) Fifty dollars for a Class B permit;
(c) One Hundred dollars for a Class C permit;
(d) Two Hundred dollars for a Class D permit;
(e) Four Hundred dollars for a Class E permit;
(f) Six Hundred dollars for a Class F permit.

14.08.110 Tree Trimming Deposit. Before any permit is issued, in addition to any deposit made as required by Section 14.08.100, the moving contractor shall also deposit with the Director an amount equal to that estimated by him pursuant to Section 13.12.120 to cover the cost of necessary tree trimming.

14.08.120 Estimate of Tree Trimming Costs. If examination of the application and/or route to be traversed discloses that the moving will require the trimming of trees, the City shall estimate the cost of such trimming of trees growing upon any grounds or property belonging to the City or upon the highway, as is necessary:

(a) At the time the structure is moved to facilitate the moving thereof;
(b) Subsequent to the moving of the structure to correct previous trimming done when the structure was moved.

14.08.130 General Deposit in Lieu of Special Deposits. In lieu of making the special deposits required by Sections 14.08.100 and 14.08.110, the moving contractor may make and maintain with the Director a general deposit in a sum equal to the amount of the special deposit for the highest class of building or structure which he desires, expects or intends to move. This general deposit shall be held and used for the same purpose as said special deposits. While such general deposit is maintained in an amount sufficient to cover the amount of the deposit required for the removal of any building or structure sought to be moved, the moving contractor need not make any special deposit.

14.08.140 Additional Deposit. If, in the opinion of the Director, any special or general deposit is not sufficient for the proper protection of the public interest in the highways, including any trees thereon, over which it is sought to move a building or structure, the Director may require an additional deposit in such amount as he determines will be sufficient to protect such public interest.

14.08.150 Increase in Deposit to Cover Higher Class. Before any permittee moves any building, structure, or portion thereof, of a class higher than the class for which he has made any general or special deposit, he shall increase such deposit in an amount sufficient to cover the class sought to be moved.

14.08.160 Deductions from Deposit. The City shall deduct from the deposit made or maintained by each permittee:

(a) The permit issuance fee if that has not otherwise been paid;
(b) The cost of the services and transportation of any inspector appointed pursuant to Section 14.08.190;
(c) The cost of any repairs made necessary because of the moving of the building or structure;

(d) The total cost of all tree trimming done by the Director made necessary in order to move the building or structure as specified in the permit, including all such trimming after the moving of the building or structure to correct trimming done when the structure was moved.

14.08.170 Refund or Deficiency Payment. The remainder of any such special deposit, if there is any remainder, shall be refunded to the person making such deposit, or to his assigns. In case the deposit made pursuant to this title shall not be sufficient to pay all fees and deductions provided for in this title, the person to whom such permit is issued, shall, upon demand, pay to the Director a sufficient sum to fully cover the same. Upon failure to pay such sum, the same may be recovered by the City in any court of competent jurisdiction, and until paid, no further such permit shall be issued to such moving contractor.

14.08.180 Billing in Lieu of Deductions. If a moving contractor makes and maintains a general deposit with the Director, the deductions provided for in Section 14.08.160 need not be made. In lieu of such deductions, the Director may bill the moving contractor for the amount due from him to the City under the provisions of this title. If, fifteen days after such bill has been sent, the moving contractor does not pay the same in full, then such amount may be deducted from his general deposit and Sections 14.08.160 and 14.08.170 shall apply.

14.08.190 Supervision by Inspector. The Director may require that the moving of any building or structure be under the supervision of an inspector to be appointed by the Director. The permittee shall pay to the Director an amount equal to the compensation and cost of transportation of such inspector during the time he is assigned to such inspection.

14.08.200 Planks Required under Dollies on Wheels. When so required by the Director, a moving contractor shall place under each dolly or wheel used in moving the building or structure, boards or planks of adequate width and strength to carry the load without being broken, to serve as a runway for such dolly or wheel during such moving along any portion of any highway which has a surface other than natural soil. The moving contractor shall prevent such dolly or wheel from ever revolving on or resting on such surface except upon such board, plank or runway.

14.08.210 Charge for Damage to Highway. The Director may restore, or cause to be restored, every highway damaged by the moving of any building or structure thereon, to a condition equivalent to that prior to such damage. The moving contractor who caused such damage shall pay the cost of the repair thereof to the Director.

14.08.220 Warning Lights. When a building or structure, while being moved, is located on any highway, at all times between sunset and sunrise the moving contractor shall keep burning a red warning light not over six feet above the surface of such highway at each corner of such building or structure, and unless the Director otherwise directs, on all sides and projections thereof at intervals of not more than five feet.

14.08.230 Defacing Trees not Permitted. A permit granted under this title does not permit, license, or allow any person, except the Director to trim, prune, cut or deface in any manner any tree upon any grounds or property belonging to the City or upon any road, street or highway.
14.08.240  **Trimming of Trees.** At the request of a moving contractor holding an unrevoked permit granted pursuant to the provisions of this chapter, the Director within a reasonable time after such request, shall trim such trees under his supervision as it is necessary to trim, and where it will not harm the trees, to the extent required to move the structure to the location specified in the permit.

14.08.250  **Permit for Structures Exceeding Permissible Weights.** The Director shall not issue a permit to move any building or structure when the weight of such building or structure, plus the weight of the vehicle or other equipment, exceeds the weight permitted by the Vehicle Code, except that if it appears to the Director that the size, shape or physical characteristics of the building or structure or portion thereof to be moved, or of the highway over which such building or structure is to be moved, makes it impossible or impracticable to keep within such weight limits, the Director may issue a permit:

   (a) To move a building or structure on a vehicle every wheel of which is equipped with rubber tires where the total weight of both building or structure and vehicle does not exceed sixty thousand pounds;

   (b) To move a building or structure on a vehicle every wheel of which is equipped with pneumatic tires.

14.08.260  **Permit for Specific Equipment--Fee--Bond.**

   (a) The Director may in his discretion, if good cause appears, issue a permit authorizing the applicant to operate or move over and along highways specific pieces of mobile mechanical equipment, on specific vehicles or specific pieces of mechanical equipment or specific vehicles, or emergency public utility equipment on specific vehicles. Any such permit shall be subject to the following conditions:

      (1) The permit shall be limited to specified highways or a specified area of the City and shall specifically describe the highways or the area of the City to which it is limited. This limitation shall be fixed by the Director so as to afford protection to highways and the traveling public;

      (2) The granting of the permit shall in no way relieve the permittee from liability for damage to the highways or to person or property;

      (3) The permit shall be issued for a specific period of time designated by the Director and set forth in the permit, which period shall not exceed one year;

      (4) The permit may be issued subject to such other conditions as the Director deems necessary for the protection of the highways and the traveling public.

   (b) The application for a permit pursuant to this section shall be made on a form furnished by the Director and shall contain the information required by Section 35781 of the Vehicle Code and such other information as may be required by the Director including the power unit to be used to tow any oversize or overweight trailer coaches. The application shall be accompanied by payment of a fee of fifty-five dollars which shall be in lieu of any other fee prescribed by this title. Prior to the issuance of any permit, the applicant shall file with the Director in the amount of five thousand dollars for the protection of highways from injury and to provide indemnity for any damage resulting from the operation or movement under the permit.
The filing of such bond shall satisfy the provisions of this chapter requiring the deposit of money with the Director, insofar as any permit issued pursuant to this section is concerned, and a single five thousand dollar bond may in the discretion of the Director be deemed sufficient security for the issuance of one or more permits to the same applicant pursuant to this section.

14.08.270 Insurance in Lieu of Bond. In lieu of the surety bond specified in Section 14.08.260 the Director may accept a certificate of insurance certifying that the applicant for the permit has an insurance policy in the amount specified by the Director, but not less than five thousand dollars property damage, to which there has been attached and executed an Oversize-Overweight Vehicle Permit Endorsement on a form approved by the Director.
CHAPTER 14.12
EXCAVATIONS, FILLS AND OBSTRUCTIONS

Sections:

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14.12.050 Determination of Responsibility
14.12.060 Proof of Right To Use Highway
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14.12.310 Enforcement
14.12.320 Penalty
14.12.330 Liability of City
14.12.340 Backfill Requirements

(Ord. No. 2003-1196, 8/26/03)

14.12.010 Definitions. For the purposes of this Chapter, the Definitions as listed within Title 14 of the Municipal Code shall determine the meaning of words found within this Chapter except those words as listed in this section:

(a) Applicant. Means any person making written application to the Public Works Director for an excavation permit hereunder.

(b) Conflicting Utility. Means a facility held by one firm that is located in such a manner that it conflicts with the placement of a structure from another utility.

Supplement No. 8 – 1994 Code
(c) **Director.** Means the City Manager for the City of San Marcos, or his designee.

(d) **Emergency Work.** Means work which is caused by outages or a safety hazard to residents or employees, or a failure of systems that creates a situation that could possibly be detrimental to the health, safety and welfare of the City residents.

(e) **Excavation.** Means any opening/closing in the surface of a public place made in any manner whatsoever, except an opening into a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place.

(f) **Facility.** Means any pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, cable, junction box, transformer, pole, anchor or any other material, structure or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed, or maintained in, upon, along, across, under, or over a public place.

(g) **First Phase of Excavation.** Means the actual excavation, backfill and temporary street patch.

(h) **Final Phase of Excavation.** Means the complete and permanent restoration of the street surface to standards included within this Chapter.

(i) **Mark Out.** Means the process of locating sub-structure facilities on the surface and marking those locations with paint, tape, etc. and by means of contacting Underground Service Alert (USA) as required by law.

(j) **Minor Excavation.** Means all single excavations, exploratory excavations or potholes that are less than ten (10) square feet in size.

(k) **Pavement Management System.** Means the system employed by Public Works to rate the condition of a roadway using a predetermined index.

(l) **Person.** Means any person, firm, partnership, association, corporation, company, political body, or organization of any kind.

(m) **Public Place.** Means any public street, way, place, alley, sidewalk, trail, park, square, or any other public property owned or controlled by any government agency in a governmental capacity.

(n) **Public Works Inspector.** Means the Public Works Inspector employed by or contracted by the City of San Marcos.

(o) **Sidewalk.** Means any concrete sidewalk, made of either Portland Cement Concrete (PCC) or Asphalt Concrete (AC) or other public way used expressly for pedestrian traffic.

(p) **Street.** Means any street, highway, alley, avenue, or other public way or public grounds in the City used for vehicular traffic.

(q) **Substructure.** Means any pipe, conduit, duct, tunnel, manhole, vault, buried cable, or wire, or any other facility located below the surface of any public place.

Supplement No. 8 – 1994 Code
Traffic Control. Means by which vehicular traffic is safely routed through a work zone.

Trail. Means any trail or graded path, either natural or composed of asphalt concrete, Portland cement concrete, decomposed granite or wood mulch used for pedestrian, animal or bicycle traffic.

Scope of Regulations. The provisions of this chapter apply only to permits for the making of excavations, fills or obstructions, for the purpose of installing or repairing utilities including, but not limited to, sanitary sewer, storm drainage, domestic and irrigation water, oil and natural gas, electrical power, data communication, telephone, and television signals; both main and lateral lines.

Permit - Required. No person shall excavate, tunnel, cause to undermine, or in any manner break up any street, sidewalk, trail or public place, or make or cause to be made any excavation in or under the surface of any public place for any purpose, or deposit, place, or leave upon any public place any earth or other excavated material obstructing or tending to interfere with the free use of the public place, or fill any excavation in any public place, unless such person shall first have obtained an excavation permit therefore from the Director.

Permit--Application. The Director is hereby appointed and authorized by the City to process and handle excavation permits applied for within the City. Application for a permit required by this chapter shall be made in accordance with Chapter 14.04 of the San Marcos Municipal Code. The application shall specify in detail:

(a) The name and address of the applicant.

(b) The location, dimensions, purpose, extent and nature of the excavation, fill, or obstruction.

(c) The time during which it is estimated that such excavation or obstruction will exist.

(d) The method of traffic handling, in the form of a traffic handling plan prepared by the applicant or their engineer, around the construction.

(e) Other such information as may be required by the Director.

No permit shall be issued unless a standard City application form for the issuance of any excavation permit is submitted to the Director. The standard application form shall be accompanied by: plans showing the location and extent of the proposed work, by plans showing how traffic will be controlled through the work zone of the proposed work, by a liability insurance certificate which additionally insures the City, its officers and employees and, by a cash deposit or surety bond which guarantees both the restoration of the highway surface and the adequate maintenance, for a subsequent twelve (12) month period, of such restoration. Such application will be submitted to the Director at least two (2) working days prior to the proposed work. The City shall require a minimum of two (2) working days in order to review the application package. The permit shall be issued by the Director upon his determination of the suitability of the application and its attachments and upon payment of fees associated to the permit.

Supplement No. 8 – 1994 Code
14.12.050  Determination of Responsibility. The applicant shall indicate on the permit application the following information:  Who is requesting the proposed work,  Who will actually be performing the proposed work, Which agency will maintain the facility being installed or repaired, Which agency will provide inspection services, and who will actually be performing the paving portion of the proposed work.  (Ord. No. 2003-1196, 8/26/03)

14.12.060  Proof of Right to Use Highway. The Director may require each applicant for a permit to file with him proof of an applicants right to use a highway for the purposes set forth in the application.  (Ord. No. 2003-1196, 8/26/03)

14.12.070  Location Changes Required by Director. The Director may require changes in the location of the proposed excavations, fills or obstructions as may be necessary to prevent undue interference with the use of the highway for other lawful purposes.  (Ord. No. 2003-1196, 8/26/03)

14.12.080  Permits Subject to Use of Highway by Others. Every permit for an excavation in or under the surface of any highway shall be granted subject to the right of the City or of any other person entitled thereto, to use that part of such highway for any purpose for which such highway may lawfully be used.  (Ord. No. 2003-1196, 8/26/03)

14.12.090  Permits Nontransferable. Permits issued under this chapter are nontransferable.  (Ord. No. 2003-1196, 8/26/03)

14.12.100  Commencement of Work - Cancellation of Permits. The Director may cancel a permit unless the work is commenced within sixty (60) days of the issuance thereof and thereafter, in the opinion of the Director, is diligently prosecuted to completion.  Permit is automatically void if work is not started six (6) months after date of issuance.  (Ord. No. 2003-1196, 8/26/03)

14.12.110  Applicant Responsible for Removing Obstructions. Every application shall contain a statement, signed by the applicant, that as to any encroachment not placed in a right-of-way which is prior in time and/or right to the City's right-of-way, if any tank, pipe, conduit, duct, tunnel, pole, anchor, or overhead line placed in the excavation or obstruction for which a permit is issued interferes with the subsequent improvement, grading or realignment of the highway by the City then the applicant and his successors or assigns will at his own expense remove such tank, pipe, conduit, duct, tunnel, pole, anchor, or overhead line, or relocate at a location designated by the Director.  (Ord. No. 2003-1196, 8/26/03)

14.12.120  Applicant Responsible for Maintaining Facilities. Every application shall contain a statement, signed by the applicant, that as to any facility placed within the City's right-of-way, that the applicant shall agree, that if any failure to an obstruction or facility were to occur, that the applicant, utility or franchisee for which the facility is placed shall be responsible for the restoration, in perpetuity of time, of their facility, its structure and any effected public improvements. The structure shall include subgrade, points of load bearing, excavations, trench backfills, and fills within which is found the facility. Public improvements shall include roadways, drainage facilities, sidewalks, trails, shoulders and public places.  (Ord. No. 2003-1196, 8/26/03)

14.12.130  Applicant Responsible for Maintaining Surface Restoration. Upon permanent completion of the surface restoration of the work area, the applicant shall subsequently be responsible for the maintenance of the surface restoration for a period of twelve (12) months from the opening of the street to public traffic, except for ordinary wear and tear. Any settlement, cracking or raveling of the surface restoration area within a twelve (12) month period
shall be evidence of defective surface restoration. The applicant shall restore the backfill or surface area as required by the Director and shall subsequently be responsible for the maintenance of the surface for a period of twelve (12) months following the restoration. Any failure by the applicant to restore the backfill or the surface area upon order of the Director shall be cause for the City to draw down or claim upon deposits or sureties held by the City in order to make the necessary repairs as determined by the Director. The applicant shall request that the Director make a final inspection of the surface restoration area at the end of the twelve (12) month maintenance period. Upon inspection and findings of a satisfactory condition of the surface restoration area, the Director shall release deposits and sureties held, less any outstanding fees, costs, etc. owed to the City, to the applicant. (Ord. No. 2003-1196, 8/26/03)

14.12.140 Fees. Every person, unless exempted by law, applying for a permit required by this chapter and requiring City inspection services shall, at the time of making application for the permit, pay an issuance fee and an Inspection fee, of an amount as determined by the City Council and as adopted by City Council Resolution. (Ord. No. 2003-1196, 8/26/03)

14.12.150 Deposits, Surety and Liability Insurance. Every person applying for a permit required by this chapter shall, at the time of making application for the permit, provide sureties or deposits as required by the Director, which shall provide assurance for the proper restoration of existing or new improvements. The surety or deposit shall also provide assurance that the restoration remains in good condition, as determined by the Director, for a period of twelve (12) months following the permanent completion and acceptance by the Inspector for the work performed under the permit. The City shall hold the surety or deposit for a period of twelve (12) months after the Director's acceptance of the work performed under the permit. The surety or deposit may be claimed upon or drawn from by the City if the applicant fails to conform to the conditions of the permit or of this chapter. The surety or deposit may be claimed upon or drawn from by the City for the payment of fees to the City and costs incurred by the City associated with the enforcement of the conditions of the permit.

(a) Deposits. Except as provided in this section, each applicant for a permit in addition to the payment of the issuance fee shall deposit with the Director a sum of money which is twice the estimated cost of repairing the highway which may be damaged or destroyed by the proposed excavation or obstruction. The cost shall be estimated, multiplying the number of square feet of surface area that may be damaged, as shown on the application and accompanying plans, by such sums, as determined by the Director, which most accurately represents the actual cost of the repair. The Director may change and revise such sums from time to time. No deposit shall be less than two thousand dollars ($2,000.00) per excavation.

(1) Where the deposit as calculated above in this section will exceed five thousand dollars ($5,000.00), an exemption from the provisions of this section may be granted for the excess above five thousand dollars ($5,000.00) to an applicant for a permit in case of a contract secured by a public agency or by a public utility company authorized to occupy a City highway under terms of a franchise granted by the City or under the terms of a franchise issued by the State. The public agency or public utility company for whom the work is to be performed shall submit to the Director a written guarantee of restoration of the highway to the satisfaction of the Director and a guarantee of payment of all costs for which the agency or the company or their contractor may be liable to the City as a condition for such exemption. The public agency or public utility company for whom the work is to be performed shall submit to the Director a written certification that the restoration of the highway to the satisfaction of the Director is a condition precedent to the acceptance of the work by the public agency or public utility company.

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(2) If, in the opinion of the Director, any above described deposit is not sufficient for the proper protection of the public highways in which it is proposed to excavate or on which it is proposed to place obstructions, the Director may require as additional deposit in such amount as he determines will be sufficient to protect such public interest.

(b) **Surety.** As an alternative to a cash deposit, the applicant may provide a surety bond in the amount of five thousand dollars ($5,000.00) payable to the City which shall assure restoration of the highway, maintenance of the restoration for twelve months after permanent completion and payment of fees described within this section. The surety bond must be: 1) with good and sufficient surety, 2) by a surety company authorized to transact business in this state, 3) satisfactory to the City Attorney in form and substance and, 4) conditioned upon the applicants compliance with items described with in this chapter. If, in the opinion of the Director, any above described surety is not sufficient for the proper protection of the public highways in which it is proposed to excavate or on which it is proposed to place obstructions relating to the excavation, the Director may require a different or an additional surety amount in such manner or amount as he determines will be sufficient to protect such public interest.

(c) **Liability Insurance.** Every person applying for a permit required by this chapter shall at the time of making application for the permit provide required satisfactory evidence of public liability insurance for the protection of the City and the applicant against claims for injury or death to any person or persons, or damage to any property arising out of the performance of the work. The contractor shall purchase and maintain a Commercial General Liability Policy on an “occurrence” basis with minimum limit of not less than One Million Dollars ($1,000,000) combined single limit for bodily injury and property damage and general aggregate limit of not less than Two Million Dollars ($2,000,000) (or current limit, if greater) providing deductibles or self-insured retentions not to exceed $25,000. Such policy shall specifically name the City, its officers and its employees as additionally insured. Such policy shall guarantee payment of any final judgment rendered against the applicant or the City, within the coverage provided, irrespective of the financial condition of or of any acts or omissions of such applicant. Such policy shall not be terminated or cancelled except upon thirty (30) days written notice to the City. If requested by the applicant, the City shall keep in its file a copy of the applicant’s insurance certificate and thereby eliminate the need to provide a copy of the certificate with each excavation application.

(d) **Waiver.** In the case of a public utility, the Director of Public Works, may waive any or all of the requirements of this Section (14.12.150). This waiver, if granted, shall be granted based on the presentation of evidence that satisfactory safeguards exist that protect the City, the traveling public and otherwise accomplish the intent of this section.

(Ord. No. 2003-1196, 8/26/03)

**14.12.160 General Requirements.** A copy of the excavation permit shall be on the job at all times. All work completed under this Chapter, unless otherwise specified in this Chapter, shall follow and comply with the detail drawings as shown in Section 14.12.340, most current Standard Specifications for Public Works Construction (“Green Book”) and the most current San Diego Area Regional Standard Drawings. A copy of such items will be on file and available for public inspection in the office of the Director. All work conducted under this Chapter shall comply with the Safety Orders issued by the California State Division of Industrial Safety, which are determined to be necessary for the protection of employees, pedestrians, and other persons, particularly children using or properly in or upon such public streets, thoroughfares, highways, sidewalks, trails or public places, or in the immediate vicinity thereof. The Director

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may, at his sole discretion, modify the requirement of Attachment “A” from time to time as determined necessary.

The working areas shall be confined so as not to obstruct roadways, driveways sidewalks, and trails so that not more than one lane of traffic shall be closed at any time, unless specific permission is granted otherwise. Temporary roadways, driveways, and walks shall be constructed where required. Upon approval of a written application to the Director, streets, driveways, or other areas may be closed for specified periods. Free and unobstructed access shall be provided to all driveways and private property access, mailboxes, fire hydrants, water gates, valves, manholes, drainage structures, communication facilities, and other public service structures and property. The applicant shall take appropriate measures to assure that prompt replacement of detector loops or installation of video detection to ensure traffic conditions remain as near to normal as practical at all times. The applicant shall take appropriate measures to assure that occupants of abutting properties and the general public are notified well in advance of the work and shall experience as little inconvenience as possible. The applicant shall route and control traffic, including its own vehicles, as directed by the municipal law enforcement agency, in accordance with standard safety operations for traffic control as outlined within Appendix “A” of the San Diego Area Regional Standard Drawings and as indicated by the approved traffic control plans which have been prepared by the applicant or his engineer. The applicant shall erect and maintain suitable barriers to confine excavated earth from encroachment upon the highways. The applicant shall construct and maintain adequate and approved safe crossings over excavations in order to accommodate pedestrian and vehicular traffic.

The applicant shall provide two (C17) Road Work Speed Limit signs 2’x2’ as authorized by Section 22362 of the Vehicle Code in areas where the speed limit exceeds 25 MPH. This section provides authority to post a speed limit not less than 25 miles an hour at locations where employees of any contractor, or of the agency in charge of the job, are engaged in work upon the roadway. This sign should be placed within 400 ft. of the zone where workers are on the roadway or so nearly adjacent as to be endangered by traffic. It shall only be used in conjunction with appropriate advance warning signs. The signs shall be removed promptly when no longer applicable.

The applicant shall provide two (2) suitable signs of at least 2’x3’ in dimension denoting the fact that the excavation of the public street is being accomplished by that particular company and contractor. These signs will be located at either end of the job site in a location which will allow the traveling public to observe said signs. This requirement is applicable for all excavations, except that major development project signs will satisfy the intent of this requirement. (Ord. No. 2003-1196, 8/26/03)

14.12.170 Preservation of Monuments Within Roadway. Where plans are submitted, it shall be the responsibility of the engineer of the work to show which monument of record is to be disturbed. The applicant shall not disturb any monuments of record found on the line of the improvements without permission of the Director, and the permittee shall bear the expense of resetting any monuments or stakes that may be disturbed. A licensed surveyor shall complete all work of resetting any monuments or stakes and a corner record shall be filed with the County Recorder before acceptance of the work. Upon proper notification (within seventy-two (72) hours prior to start of excavation), the City will locate, using the most current map available from Engineering, all existing monuments for the applicant. (Ord. No. 2003-1196, 8/26/03)
14.12.180 Working Hours, Noise, Dust, and Debris. Each applicant shall conduct and carry out the work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. Normal working hours for excavations are 7:00 a.m. to 4:30 p.m. Monday through Friday, excluding City recognized holidays. Night work may be required if necessary to avoid severe traffic congestion. The applicant shall take appropriate measures to reduce the fullest extent practical, noise, dust, and unsightly debris. Working hours may be extended with the express written permission of the Director, if the Director deems it necessary for the health, safety, and welfare of the community. Working hours may be restricted by the Director, if the Director deems that the public interest requires restrictions be placed on the working hours. (Ord. No. 2003-1196, 8/26/03)

14.12.190 Removal and Protection of Utilities. The applicant shall be responsible for notifying the affected utilities, agencies and districts, which own utilities within the area of the applicants work, that work is going to be performed which may affect existing facilities. The applicant shall be responsible for notifying Underground Services Alert or the current utility location service of the need to mark out existing utilities within the area of the applicant’s work. The applicant shall conduct exploratory minor excavation or pothole to determine the exact location of all existing utilities within the area of the applicant’s work. The applicant shall support and protect, as recommended by the utility owner, substructure apparatus that may be in any way affected by the excavation work. The applicant shall do everything necessary to support, sustain, and protect existing utilities under, over, along, or across said work. The applicant shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipe, sewer, gas pipe, electrical conduit, communication facility or any other substructure.

An applicant shall not unreasonably interfere with any existing utilities without the written consent of the Director and the utility company or person owning the utility. If it becomes necessary to remove an existing utility, the owner shall complete this only after appropriate notification to Underground Service Alert (USA) as required by law. No utility owned by the City shall be moved to accommodate the applicant, unless the cost of such work shall be borne by the applicant; nor shall the City be required to pay for moving utilities, when acting as a applicant unless State or Federal law requires said payment. The cost of moving conflicting utilities shall be borne by the applicant unless other arrangements with the owner of the utility are made, or unless State and Federal law specifies otherwise. (Ord. No. 2003-1196, 8/26/03)

14.12.200 Protection of Adjoining Property. The applicant shall at all times and at his own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purposes of support. Where, in the protection of such property, it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the applicant shall obtain permission from the owner of such property for such purpose. The applicant shall, at their own expense, shore up and protect all buildings, walls, fences, or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or public streets resulting from its failure to properly protect and carry out said work.

Care shall be exercised during trenching operations, particularly where trenches are in the vicinity of mature trees and their extensive root systems. The construction layout should be located away from the trees, however, in some areas, locating the construction layout close to trees is unavoidable. Since damage to mature, historical, specimen or other irreplaceable trees is usually final, the applicant will confer with the Director regarding conflicts of this nature. (Ord. No. 2003-1196, 8/26/03)

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14.12.210 Damage to Existing Improvements. The applicant shall repair all damage done to existing improvements during the progress of an excavation, including private landscaping and irrigation systems within the Public's right-of-way. Materials for such repair shall conform to the requirements of any applicable code or ordinance. If, upon being ordered to perform such repairs in a reasonable period of time, the applicant fails to furnish the necessary labor and materials to perform such repairs the cost of such repairs, as provided by the City or its agents, plus a 30% markup for general overhead and administrative expenses, shall be charged to the applicant. The applicant shall be liable on his deposit or bond therefore. (Ord. No. 2003-1196, 8/26/03)

14.12.220 Excavation in New Street Improvements. The provisions of this section are intended to prevent unnecessary interference with new pavement during the period immediately following its construction or resurfacing. Failure by the City to give notice to owners of substructures within the highway shall not affect the provision of this section. No excavation shall be made through the final paving course of any City street prior to nor within two (2) years following the date of completion and acceptance of any work of paving, repaving, chip sealing or seal coating of City Streets except for emergency repairs or service unless the person proposing to make such excavation shall agree to make appropriate restoration of the surface satisfactory to the Director. (Ord. No. 2003-1196, 8/26/03)

14.12.230 Sidewalk and Trail Excavations. Excavations made in or under a sidewalk or trail shall be subject to this Chapter and all other conditions determined by the Director when a permit is being requested. (Ord. No. 2003-1196, 8/26/03)

14.12.240 Restoration of Surfaces. Applicant shall comply with the requirements and standards in the most current Standards for Public Works Construction (Green Book), in the most current San Diego Regional Standard Drawings and in the requirements as defined in Section 14.12.340 and subsequent modifications. Section 14.12.340 and Figure 14.12.1 describes the City’s specific requirements as they pertain to excavations, the breaking of pavement, backfilling, and the restoration of surfaces. Acceptance or approval of any excavation work by the Director shall not prevent the City from asserting a claim against the applicant and their surety for incomplete or defective work if discovered. The Director's, or his representative’s, presence during the performance of any excavation work shall not relieve the permittee of its responsibilities hereunder.

In the case of excavations and cuts within new street sections see Section 14.12.340, Figure 14.12.2. Appropriate restoration of the surface for cuts perpendicular to the traffic flow may include the entire resurfacing of the entire street section with necessary grinding and an asphalt concrete cap of a minimum thickness of one inch for a distance of 50’ on either side of the excavation on a longitudinal basis from curb to curb or the full width of the street.

In the case of excavations and cuts within new street sections see Section 14.12.340, Figure 14.12.3. Appropriate restoration of the surface for cuts parallel to the traffic flow may include the entire resurfacing of the entire street section with necessary grinding and an asphalt concrete cap of a minimum thickness of one inch from the curb to the center of the street or nearest lane divider for the entire length of the cut plus 10 feet on each end. (Ord. No. 2003-1196, 8/26/03)

14.12.250 City’s Right To Restore Surface. If the applicant shall have failed to restore the surface of the street or public place to its original and proper condition, upon expiration of the time fixed by such permit, or shall otherwise have failed to complete the excavation work

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covered by such permit, or shall have failed to maintain the site of the excavation work in the
same or better condition as it was prior to the excavation work for a period of one (1) year after
permanent completion of the work and open to public traffic, the Director, at his discretion, shall
have the right to do all work and things necessary to restore the street or public place and to
complete the excavation work and to restore the street or public place. The applicant shall be
liable for the actual cost of the restoration and an additional thirty percent (30%) of such cost,
for general overhead and administrative expenses. The City shall have a cause of action for all
such cost and the thirty percent (30%) override and for all fees, expenses and amounts paid out
and due for such work. Payment of the amount due the City shall be applied to any funds the
applicant has deposit with the City. The City shall also enforce its rights under the applicant’s
surety bond. (Ord. No. 2003-1196, 8/26/03)

14.12.260 Clean Up. As the excavation work progresses, all streets, public places and
private properties shall be maintained free of all rubbish, excess earth, rock and other debris
resulting from such work. All clean-up operations at the location of such excavation shall be
accomplished at the expense of the applicant and shall be completed to the satisfaction of the
Director. Water trucks are prohibited from washing streets under new storm water pollution
prevention programs. Street sweepers or some other means of dry pickup must be used. From
time to time as may be ordered by the Director, and in any event, immediately after the
completion of said work, the applicant shall, at his or its own expense, clean up and remove all
refuse and unused materials of any kind resulting from said work and, upon failure to do so
within twenty-four (24) hours after having been notified to do so by the Director, said work may
be done by the Director and the rest thereof charged to the applicant. The applicant shall also
be liable for the cost thereof plus an additional thirty percent (30%) of such cost, for general
overhead and administrative expenses under the applicant’s surety bond. (Ord. No. 2003-1196,
8/26/03)

14.12.270 Permanent Completion of Work. The applicant shall prosecute with
diligence and to the satisfaction of the Director; all first phase excavation work covered by the
permit and shall promptly complete such first phase excavation work restoring the street or
public place as near as possible to its original condition not later than forty-eight (48) hours after
the original cut, unless extended by the Director. The permanent completion of the excavation
work shall be completed not later than thirty (30) calendar days after the original street cut.
(Ord. No. 2003-1196, 8/26/03)

14.12.280 Emergency Work. If, in his judgment, the Director determines traffic
conditions, the safety or convenience of the traveling public, or the public interest require that
the excavation work be performed as emergency work, the Director shall have full authority to
order that the applicant’s labor, equipment, materials and facilities be employed twenty-four (24)
hours a day, or at specific time periods during a day, such that work may be completed as soon
as possible with as few conflicts and inconvenience to the public as possible. Nothing in this
Chapter shall prevent excavation for emergency repairs to utility service connections or other
work that is necessary for the immediate protection of life or property, provided a permit is
applied for within 36 hours following the commencement of work. (Ord. No. 2003-1196, 8/26/03)

14.12.290 Public Service Companies. All persons operating public utilities or other
companies in the City either under regulation of the State Public Utilities Commission or under
franchise, license, or permit granted by the City, and having the right, either by general or
special permission to enter upon streets and open and excavate pavements, sidewalks, trails,
or disturb the surface thereof by excavation or other work, shall be subject to the requirements
of this Chapter. (Ord. No. 2003-1196, 8/26/03)
14.12.300 Maintenance of Drawings. Every person owning, using, controlling or having an interest in substructures under the surface of any public place, used for the purpose of supplying or conveying gas, electricity, communication, impulse, water, steam, ammonia, wastewater, gasoline or oil in the City shall keep on file appropriate plans and as-built drawings to show location of such facilities. (Ord. No. 2003-1196, 8/26/03)

14.12.310 Enforcement. The Director shall have the authority to promulgate and cause to be enforced such Rules and Regulations as are reasonably required to provide for the matters governed by this part and to supplement the same and to provide for the enforcement of this part. Violation of said rules and regulations shall constitute a violation of this part and be considered a misdemeanor. (Ord. No. 2003-1196, 8/26/03)

14.12.320 Penalty. Any person violating or failing to comply with any provision of this Chapter or committing an act declared to be unlawful by this Chapter shall be punishable by a fine not exceeding one thousand dollars ($1,000.00) or imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court. The City may deduct any fine imposed pursuant to this section from deposit funds submitted pursuant to section (14.12.150). Each day any violation of this Chapter on each and every day that the violation persists shall continue shall constitute a separate offense. (Ord. No. 2003-1196, 8/26/03)

14.12.330 Liability of City. This Ordinance shall not be construed as imposing upon the City or any official or employee any liability or responsibility for damages to any person injured by the performance of any work for which a permit is issued hereunder. Nor shall the City, or any official of the City, or any employee of the City, thereof be deemed to have assumed any such liability or responsibility, by reason of inspections authorized hereunder, the issuance of any permit, or the approval of any work. (Ord. No. 2003-1196, 8/26/03)

A. BACKFILL WITHIN THE ULTIMATE PAVED AREAS:

1. Material for use as backfill shall have a sand equivalent of not less than twenty (20). The percentage composition by weight as determined by laboratory sieves shall conform to the following grading:

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<thead>
<tr>
<th>Sieve Sizes</th>
<th>Percentage Passing Sieves</th>
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<tbody>
<tr>
<td>3&quot;</td>
<td>90-100</td>
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<tr>
<td>No. 4</td>
<td>35-100</td>
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<tr>
<td>No. 30</td>
<td>20-100</td>
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Excess excavated material shall be disposed of at an approved disposal site. Backfill material shall be placed in horizontal, uniform layers not exceeding eight (8) inches in thickness, before compaction, and shall be brought up uniformly. Backfill material within the pipe zone shall be compacted to a relative compaction rate as determined by the requirements of the affected utility.

2. The restoration of the surface shall consist of “Hot Mix” asphalt concrete placed on compacted crushed aggregate base within a “T” style, saw cut and over excavated section (see figure 14.12-1). The asphalt concrete shall be placed at least one (1) inch thicker than the existing street section, but in no case less than six (6) inches thick, and a minimum of six (6) inches wider than the trench on each side. The crushed aggregate base shall be at least as thick as in the existing street, but in no case less than six (6) inches. The upper portion of the trench fill from the pipe zone to the surface, including the asphalt concrete and the crushed aggregate base, shall be compacted to a relative compaction of no less than ninety-five (95) percent. The complete restoration to the street pavement shall be neat, straight and smooth with feathered edges.

B. BACKFILL WITHIN THE ULTIMATE RIGHT OF WAY (ROW) AREAS:

The backfill material may consist of material from the excavation that is free of stones or lumps exceeding two (2) inches and is free of vegetative or other unsatisfactory matter. The backfill shall be brought up uniformly and shall be compacted to ninety-five (95) percent of relative density. The backfill shall match the existing or proposed profile grade, as determined by the Director. When the material from excavation is unsuitable for use as backfill, it shall be disposed of and replaced with material meeting the above requirements of A.1. Excess material shall be disposed of at an approved disposal site.
Existing pavement shall be cut with a concrete saw in a square or rectangular section and removed so as not to tear, bulge or displace the adjacent pavement. Edges shall be clean and vertical. All cuts shall be parallel or perpendicular to the street centerline where possible.

Temporary bituminous resurfacing shall have a minimum thickness of two inches (2") at streets, driveways and parking areas. Sidewalks shall have a minimum one-inch (1") thickness.

The upper portion above the pipe zone of any trench or excavation within the ultimate paved areas shall be compacted to a minimum ninety-five percent (95%) of relative density. This requirement applies to backfill, aggregate base and asphalt concrete.

Permanent resurfacing shall include asphalt concrete in a thickness one inch (1") greater than existing but in no case less than six inches (6") in residential, commercial and arterial roads and compacted class II aggregate base in a thickness equal to existing but in no case less than six inches (6").

A binder or asphalt emulsion tack shall be applied to all contact surfaces prior to resurfacing. All resurfacing shall be sealed as directed by the Public Works Inspector. If the existing surface is chip sealed, chip sealing shall be applied to permanent resurfacing.

The requirements for narrow rockwheel-style trenches may be different than those described above. Please see the Public Works Inspector to discuss slurry or alternate options for narrow trench backfill and resurfacing requirements.
NOTE: At the option of the Public Works Director, wherever relative density is specified, it shall be determined by California Test Methods No. 216, 231 or 304, or by ASTM's No. D1556, D1557, D2922 or D3017.

Figure 14.12-2

- Existing pavement shall be cut with a concrete saw in a square or rectangular section and removed so as not to tear, bulge or displace the adjacent pavement. Edges shall be clean and vertical. All cuts shall be parallel or perpendicular to the street centerline where possible.

- Temporary bituminous resurfacing shall have a minimum thickness of two inches (2") at streets, driveways and parking areas. Sidewalks shall have a minimum one inch (1") thickness.

- The upper portion above the pipe zone of any trench or excavation within the ultimate paved areas shall be compacted to a minimum ninety-five percent (95%) of relative density. This requirement applies to backfill, aggregate base and asphalt concrete.

- Permanent resurfacing shall include asphalt concrete in a thickness one inch (1") greater than existing but in no case less than six inches (6") in residential, commercial and arterial roads and compacted class II aggregate base in a thickness equal to existing but in no case less than six inches (6").

- New asphalt overlay of one inch (1") shall extend the full width of the street and fifty feet (50') from each end of the trench cut ground and feathered in where it meets existing asphalt or curb.

- A binder or asphalt emulsion tack shall be applied to all contact surfaces prior to resurfacing. All resurfacing shall be sealed as directed by the Public Works Inspector. If the existing surface is chip sealed, chip sealing shall be applied to permanent resurfacing.
**NOTE:** At the option of the Public Works Director, wherever relative density is specified, it shall be determined by California Test Methods No. 216, 231 or 304, or by ASTM's No. D1556, D1557, D2922 or D3017.

**Figure 14.12-3**

- Existing pavement shall be cut with a concrete saw in a square or rectangular section and removed so as not to tear, bulge or displace the adjacent pavement. Edges shall be clean and vertical. All cuts shall be parallel or perpendicular to the street centerline where possible.

- Temporary bituminous resurfacing shall have a minimum thickness of two inches (2") at streets, driveways and parking areas. Sidewalks shall have a minimum one inch (1") thickness.

- The upper portion above the pipe zone of any trench or excavation within the ultimate paved areas shall be compacted to a minimum ninety five percent (95%) of relative density. This requirement applies to backfill, aggregate base and asphalt concrete.

- Permanent resurfacing shall include asphalt concrete in a thickness one inch (1") greater than existing but in no case less than six inches (6") in residential, commercial and arterial roads and compacted class II aggregate base in a thickness equal to existing but in no case less than six inches (6").

- New asphalt overlay of one inch (1") shall extend the full width of the lane and ten feet (10') from each end of the trench cut ground and feathered in where it meets existing asphalt or curb.

- A binder or asphalt emulsion tack shall be applied to all contact surfaces prior to resurfacing. All resurfacing shall be sealed as directed by the Public Works Director.
Inspector. If the existing surface is chip sealed, chip sealing shall be applied to permanent resurfacing.

NOTE: At the option of the Public Works Director, wherever relative density is specified, it shall be determined by California Test Methods No. 216, 231 or 304, or by ASTM's No. D1556, D1557, D2922 or D3017.

(Ord. No. 2003-1196, 8/26/03)
CHAPTER 14.15

STORM WATER MANAGEMENT AND DISCHARGE CONTROL

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14.15.010 Definitions. For purposes of this Chapter, the following words shall have the meanings set out in this section:

Authorized Enforcement Official means any designee of the City Manager who is authorized to enforce the provisions of this Chapter. (Ord. No. 2008-1302, 4-8-08)

Best Management Practices (BMPs) means the schedule of activities, prohibitions of practices, maintenance procedures, prevention and control measures and other management practices to prevent or reduce to the Maximum Extent Practicable the pollution of the waters of the United States. BMPs also include, but are not limited to, treatment requirements, operating procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage. (Ord. No. 2008-1302, 4-8-08)

City Manager means the City Manager of the City of his authorized representative or designee. (Ord. No. 2008-1302, 4-8-08)

Development means any land development, construction, alteration or improvement of real property pursuant to discretionary or ministerial permits issued by the City. (Ord. No. 2008-1302, 4-8-08)

Discharger means any person or entity engaged in activities or operations or owning facilities or property that will or may result in pollutants entering storm water, the storm water conveyance system or receiving waters, and the owners of real property upon which such activities or facilities are located, provided, however, that a local government or public authority is
not a discharger as to activities conducted by others on public rights-of-way. (Ord. No. 2008-1302, 4-8-08)

**Illegal Connection** means any unpermitted or undocumented physical connection to the storm water conveyance system or receiving waters which has not been approved by the City, or which drains or conveys illegal discharges either directly or indirectly into the storm water conveyance system, or a permitted and/or authorized pipe, facility or other device which conveys illegal discharges. (Ord. No. 2008-1302, 4-8-08)

**Illegal Discharge** means any discharge to the storm water conveyance system or receiving waters that is not composed entirely of storm water including, but not limited to, sewage, discharges of wash water resulting from the hosing or cleaning of gas stations, auto repair garages or other types of automotive services facilities; discharges resulting from the cleaning, repair or maintenance of any type of equipment, machinery or facility including motor vehicles, cement-related equipment and port-a-potty servicing; discharges of wash water from mobile operations such as mobile automobile washing, steam cleaning, power washing and carpet cleaning; discharges of wash water from the cleaning or hosing of impervious surfaces in municipal, industrial, commercial and residential areas including parking lots, streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating and drinking areas; discharge of runoff from material storage areas containing chemicals, fuels, grease, oil or other hazardous materials; discharges of pool or fountain water containing chlorine, biocides or other chemicals; discharges of pool or fountain filter backwash water; discharges of sediment, pet waste, vegetation clippings or other landscape or construction-related wastes; discharges of food-related wastes (e.g., grease, fish processing and restaurant kitchen mat and trash bin wash water); and discharges that require a NPDES permit that has not been issued or has not been acknowledged by the discharger to be applicable. Discharges regulated under an applicable NPDES permit or Storm Water Pollution Prevention Plan (SWPPP) are illegal discharges for the purpose of this Chapter unless such NPDES permit has been issued and compliance with all applicable NPDES permit and SWPPP conditions are maintained. Provided, however, that the following discharges shall not be considered illegal discharges provided they do not cause or contribute to violations of water quality standards: water line flushing and other discharges from potable water sources, irrigation water, diverted stream flows, rising ground waters, infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains (not including active groundwater dewatering systems), water from crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from emergency fire fighting activities, and waters not otherwise containing pollutants or wastes as defined in California Water Code Section 13050(d) and California Health and Safety Code Section 25117. (Ord. No. 2008-1302, 4-8-08)

**Jurisdictional Urban Runoff Management** Plan (JURMP) means the comprehensive program developed by the City for reduction and elimination of pollutants from its storm drain system, consisting of the following components: Municipal (Existing Development); Industrial (Existing Development); Commercial (Existing Development); Residential (Existing Development); Land Use Planning for New Development and Redevelopment; Construction; Illicit Discharges Detection and Elimination; Education Component; Public Participation Component; Assessment of JURMP Effectiveness, and Fiscal Analysis. (Ord. No. 2002-1163, 1-14-03)

**Maximum Extent Practicable (MEP)** means the technology based standard established by Congress in the Clean Water Act, Section 402(p)(3)(B)(iii), that municipal dischargers of urban runoff must meet. MEP generally emphasizes pollution prevention and source control BMPs as primary mechanisms in combination with treatment methods that collectively are effective and not
cost prohibitive, with the major emphasis on effectiveness. In order to determine if a BMP is effective and has achieved the MEP standard, the following factors shall be considered: the BMP must effectively address a pollutant or pollutant source of concern; the BMP must be in compliance with all applicable storm water regulations and other environmental regulations; the BMP should have public support; the cost of implementing the BMP should have a reasonable relationship to the pollution control benefits to be achieved; and the BMP must be technically feasible considering soils, geography, water resources and other available resources. (Ord. No. 2008-1302, 4-8-08)

NPDES Permit or National Pollution Discharge Elimination System Permit means a permit issued by the Regional Water Quality Control Board or the State Water Resources Control Board pursuant to Chapter 5.5, Division 7 of the California Water Code, or any other "permit" as defined in 40 C.F.R. Section 122.2, to control discharges from point sources to waters of the United States.

Pollutant means any pollutant as defined in 40 CFR Section 122.2 or any waste as defined in California Water Code Section 13050(d).

Premises means any real property or portion thereof, including any buildings or portions of building located on such real property.

Redevelopment means any construction alteration or improvement of an already developed site that will increase the total impervious surface area of that site, or that involves activities that could expose contaminants to rainfall. Redevelopment can include, but is not limited to, the expansion of building footprints, the addition or replacement of a structure, exterior construction and remodeling, replacement of existing impervious surfaces that are not part of a routine maintenance activity, and other activities that create additional impervious surface. (Ord. No. 2008-1302, 4-8-08)

Storm Water (or Stormwater) means storm water runoff, snow melt runoff, and surface runoff and drainage. (Ord. No. 2008-1302, 4-8-08)

Storm Water Conveyance System means those municipal facilities within the City by which storm water may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, catch basins, natural and artificial channels, aqueducts, canyons, stream beds, gullies, curbs, gutters, ditches, natural and artificial channels or storm drains.

Storm Water Program Manager means the administrator of the City's storm water management program as designated by the City Manager. (Ord. No. 2008-1302, 4-8-08)

Storm Water Pollution Prevention Plan (SWPPP) means a document which meets the requirements for a SWPPP set forth in the statewide General Construction Storm Water Permit or the statewide General Industrial Storm Water Permit. A SWPPP submitted to the City must describe the BMPs to be implemented and other steps to be taken by the discharger to meet the requirements of this Chapter. (Ord. No. 2008-1302, 4-8-08)

Stormwater Standards Manual (SSM) means the manual that sets for the permanent Best Management Practices (BMPs) adopted by the City for development and redevelopment projects, as well as the procedures and criteria for the selection, implementation and maintenance of the same. (Ord. No. 2008-1302, 4-8-08)
**Wet Season** means October 1 through April 30 of each year.  

**14.15.020 Responsibility for Administration.** This Chapter shall be administered by the City Manager and the Storm Water Program Manager.  

**14.15.030 Illegal Discharges Prohibited.** The discharge of illegal discharges to the storm water conveyance system is prohibited, except that the following discharges are exempt from the prohibition set forth above: 

(a) Any discharge regulated under a NPDES permit issued to the discharger and administered by the State of California pursuant to Chapter 5.5, Division 7 of the California Water Code, provided that the discharger is in compliance with all requirements of the permit and other applicable laws and regulations.  

(b) Any discharge which the City Manager or designee and the Regional Water Quality Control Board determine are necessary for the protection of the public health and safety.  

**14.15.040 Illegal Connections.** It is prohibited to establish, use, maintain, or continue illegal connections to the storm water conveyance system.  

**14.15.050 Reduction of Pollutants in Storm Water.** Any person engaged in activities that will or may result in pollutants entering the storm water conveyance system is a discharger under this Chapter 14.15 and shall implement BMPs in accordance with the JURMP or Stormwater Standards Manual to prevent and reduce such pollutants to the maximum extent practicable. The following requirements shall apply: 

(a) General Prohibitions. The following discharges are prohibited and shall constitute a violation of this Chapter:  

(1) Discharges into the storm water conveyance system in a manner causing, or threatening to cause, a condition of pollution, contamination or nuisance (as defined in California Water Code § 13050) in waters of the state.  

(2) Discharges into the storm water conveyance system containing pollutants that have not been reduced to the maximum extent practicable.  

(3) Post-development runoff from new development or significant redevelopment that has not been reduced to the maximum extent practicable.  

(b) Industrial, Commercial and Business Related Activities. All owners or operators of premises where pollutants from industrial, commercial and business related activities may enter the storm water conveyance system shall implement BMPs in accordance with the JURMP to reduce any such pollutants generated from the premises to the maximum extent practicable. Examples of industrial, commercial and business related activities include, but are not limited to, maintenance, repair, storage, manufacturing, assembly, equipment operations, vehicle loading, fueling, landscaping, pest control, waste treatment and disposal, vehicle washing, pool and fountain cleaning, cement mixing, painting and/or cleanup procedures. The City Manager or designee may require the owner or operator of
the premises to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) which describes the on site program activities which the owner or operator will take to eliminate or reduce to the maximum extent practicable, pollutant discharges to the storm water conveyance system. The SWPPP shall include, but not be limited to, the following site information: (Ord. No. 2008-1302, 4-8-08)

(1) An inventory of all materials/wastes that are handled on premises and have a reasonable potential to impact storm water quality.

(2) A description of measures taken which will reduce the possibility or likelihood of accidental spillage resulting from equipment failure or employee error.

(3) A description of on-site control/response equipment and procedures to prevent contaminants from entering the storm water conveyance system.

(4) A site map indicating all building structures, materials and waste storage areas, outdoor equipment storage areas, vehicle service areas, paved areas, areas of existing and potential erosion, storm drains inlets, and point(s) of discharge to a municipal storm water conveyance system or receiving waters. The site map shall include an estimate of the size of the facility and the facility’s impervious area.

(5) A documented Employee Training Program for all persons responsible for implementing the SWPPP. The Employee Training Program shall include, but is not limited to, the following topics:

   a) Laws, regulations, and local ordinances associated with storm water pollution prevention, and an overview of the potential impacts of polluted storm water on the receiving waters of the San Diego region.

   b) Proper handling of all materials and wastes to prevent spillage.

   c) Mitigation of spills including spill response, contaminant and cleanup procedures.

   d) Visual monitoring of all effluent streams to ensure that no illegal discharges enter the storm water conveyance system. (Ord. No. 2008-1302, 4-8-08)

   e) Discussion of the differences between the storm water conveyance system and the sanitary sewer system.

   f) Identification of all on-site connections to the storm water conveyance system.

   g) Preventive maintenance and good housekeeping procedures.

   h) Material management practices employed by the facility to reduce or eliminate pollutant contact with storm water discharge.

A documented employee training program prepared pursuant to any NPDES permit shall meet the definition of an Employee Training Program for the purposes of this Chapter.
Failure to comply with any SWPPP prepared pursuant to this Chapter or pursuant to a State NPDES Construction or NPDES Industrial Activity Permit shall constitute a violation of this Chapter. (Ord. No. 2001-1123, 11-27-01)

(c) Best Management Practices for Construction Activities. Any person performing construction work in the City shall prevent, to the maximum extent practicable, pollutants from entering the storm water conveyance system by complying with applicable provisions of the Standard Specifications for Public Works Construction manual, the JURMP and the General Construction Activity Storm Water NPDES permit issued by the State Water Resources Control Board. The City may establish controls on the volume and rate of storm water runoff from new development and redevelopment as may be appropriate to minimize the discharge and transport of pollutants. Any person or entity performing construction activities in the City and any owners of land on which construction activity is performed shall implement BMPs to the maximum extent practicable during all construction activities, including the following BMPs and other measures: (Ord. No. 2008-1302, 4-8-08)

1. Erosion prevention measures;
2. Seasonal restrictions on grading including, but not limited to, minimizing grading during the wet season;
3. Stabilization of slopes;
4. Phased grading;
5. Permanent revegetation or landscaping as early as feasible;
6. General site management BMP’s, and;
7. Retention and proper management of sediment and other construction pollutants on site.

An Authorized Enforcement Official may prepare, maintain and disseminate guidance documents identifying pollution prevention and control practices for construction activities and other activities that have been determined by the Public Works Director or the Authorized Enforcement Official to be effective and practicable in specified circumstances. An Authorized Enforcement Official may take any such guidance into account when determining whether any practice proposed in a grading plan, a SWPPP or any other submittal is a BMP that will prevent or control pollution to the maximum extent practicable. (Ord. No. 2001-1123, 11-27-01)

d) Best Management Practices for Development and Redevelopment. Any person or entity that is developing or redeveloping a site in the City shall prevent, to the maximum extent practicable, pollutants from entering the storm water conveyance system by complying with applicable provisions of the Stormwater Standards Manual. No landowner or development or redevelopment project proponent shall receive any City discretionary or ministerial permit or approval unless such project meets the requirements set forth in the Stormwater Standards Manual. The City may establish controls on the volume and rate of storm water runoff from new developments and redevelopments as may be appropriate to minimize the discharge and transport of pollutants. The following BMPs and other measures, per the Stormwater Standards Manual, are required of all development and redevelopment projects within the City: (Ord. No. 2008-1302, 4-8-08)
(1) Preservation of natural hydrologic features;
(2) Preservation of riparian buffers and corridors;
(3) Design, construction and maintenance of all low impact development site design and source control BMPs; and
(4) For Priority Projects as defined in the Stormwater Standards Manual, design, construction and maintenance of treatment control BMPs that meet the criteria of the Stormwater Standards Manual.

(e) Best Management Practices for Residential Development. All City residents shall prevent, to the maximum extent practicable, pollutants from entering the storm water conveyance system through common residential uses of property in the City by implementing the BMP’s set forth in the JURMP which include, but are not limited to, automobile maintenance and repair, automobile washing, automobile parking, home and garden care activities and product use (e.g. pesticides, herbicides and fertilizers), disposal of household hazardous waste (e.g. paints and cleaning products) and disposal of pet waste. (Ord. No. 2008-1302, 4-8-08)

(f) Littering: No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet catch basin, conduit or other drainage structures, business place, or upon any public or private real property, except as allowed by applicable solid waste ordinances.

The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real property in the City in front of which there is a paved sidewalk shall maintain the sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from the sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on the real property as required for the disposal of garbage.

No person shall throw or deposit litter in any fountain, pond, lake, stream or any other body of water in the City.

(g) Standard for Parking Lots and Similar Structures: Persons owning or operating a parking lot or impervious surfaces used for similar purposes shall clean those structures thoroughly as is necessary to prevent the discharge of pollutants to the storm water conveyance system to the maximum extent practicable. Such cleaning shall occur not less than once prior to each wet season. Sweepings or cleaning residue from parking lots or impervious surfaces shall not be swept or otherwise made or allowed to go into the gutter or roadway.

(h) Compliance with NPDES Storm Water Permits: Each industrial discharger, discharger associated with construction activity, or other discharger subject to any NPDES storm water permit addressing such discharges shall comply with, and undertake all other activities required by any storm water permit applicable to such discharges, including but not limited to, the State Water Resources Control Board, statewide General Industrial and General Construction Activity Storm Water Permits, and the Regional Water Quality Control Board, San Diego Region General De-Watering Permits (Orders No. 91-10 and 90-31). Each discharger identified in an individual NPDES permit relating to storm water discharges shall comply with and undertake all activities required by such permit.
(i) Compliance with Adopted SSM, Adoption of SSM and JURMP: All BMPs referenced in and/or required by this Section 14.15.050 shall be at least as stringent as those set forth in the then-current version of the SSM adopted by resolution of the City Council. The SSM and the JURMP, also adopted by resolution of the City Council, may be amended from time to time in the same manner. (Ord. No. 2008-1302, 4-8-08)

14.15.060 Watercourse Protection: Every person owning real property through which a watercourse passes, or such person’s lessee or tenant, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, and other obstacles which would pollute, contaminate, or significantly retard the flow of water through the watercourse; shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse; and shall not remove healthy bank vegetation beyond that actually necessary for maintenance, which shall be accomplished in a manner that minimizes the vulnerability of the watercourse to erosion.

Except as permitted pursuant to a written permit from the California Department of Fish and Game or other appropriate State or Federal Agency, no person shall commit or cause to be committed any of the following acts:

(a) Discharge pollutants into or connect any pipe or channel to a watercourse;

(b) Modify the natural flow of water in a watercourse;

(c) Carry out developments within thirty feet of the center line of any creek or twenty feet of the top of a bank, whichever is the greater distance from the top of the bank;

(d) Deposit in, plant in, or remove any material from a watercourse including its banks, except as required by necessary maintenance;

(e) Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or

(f) Place any loose or unconsolidated material along the side of or within a watercourse or so close to the side as to cause a diversion of the flow, or to cause a probability of such material being carried away by storm waters passing through such a watercourse.

14.15.070 Inspection and Enforcement.

(a) Authority to Inspect. During normal and reasonable hours of operation, any Authorized Enforcement Official shall have the authority to make an inspection to enforce the provisions of this Chapter, and to ascertain whether the purposes of this Chapter are being met. An inspection may be made after the Authorized Enforcement Official has presented proper credentials and the owner and/or occupant authorizes entry. If the Authorized Enforcement Official is unable to locate the owner or other persons having charge or control of the premises, or the owner and/or occupant refuses the request for entry, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining entry. (Ord. No. 2008-1302, 4-8-08)

After obtaining legal entry, the Authorized Enforcement Official may:

(1) Inspect the premises.
(2) Carry out any sampling activities necessary to enforce this Chapter, including taking samples from the property of any person or from any vehicle that the Authorized Enforcement Official reasonably believes is currently, or has in the past, caused or contributed to causing an illegal discharge to the storm water conveyance system. Upon request, split samples shall be given to the person from whose property or vehicle the samples were obtained. (Ord. No. 2008-1302, 4-8-08)

(3) Stop and inspect any vehicle reasonably suspected of causing or contributing to an illegal discharge to the storm water conveyance system when accompanied by a law enforcement officer in a clearly marked vehicle. (Ord. No. 2008-1302, 4-8-08)

(4) Conduct tests, analyses and evaluations to determine whether a discharge into the storm water conveyance system is an illegal discharge or whether the requirements of this Chapter are met. (Ord. No. 2008-1302, 4-8-08)

(5) Photograph any effluent stream, material or waste, material or waste container, container label, vehicle, waste treatment process, waste disposal site, or condition contributing to storm water pollution and constituting a violation of this Chapter found during an inspection.

(6) Review and obtain a copy of the Storm Water Pollution Prevention Plan prepared by an owner and/or occupant or facility operator, if such a plan has been required.

(7) Require the owner and/or occupant or facility operator to retain evidence for a period not to exceed 30 days.

(8) Review and obtain copies of all storm water monitoring data complied by the owner and/or occupant or facility operator, if such monitoring is required.

Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Chapter, including but not limited to random sampling and/or sampling in areas with evidence of storm water pollution, illegal discharges, or similar factors. (Ord. No. 2008-1302, 4-8-08)

(b) Inspection Procedures. During the inspection, the Authorized Enforcement Official shall comply with all reasonable security, safety and sanitation measures. In addition, the Authorized Enforcement Official shall comply with reasonable precautionary measures specified by the owner and/or occupant or facility operator.

At the conclusion of the inspection, and prior to leaving the site, the Authorized Enforcement Official will review with the owner and/or occupant or facility operator each of the violations noted by the Authorized Enforcement Official and the necessity for any corrective actions. A report listing any violation found during the inspection shall be prepared by the Authorized Enforcement Official and shall be kept on file in the enforcement agency. A copy of the report shall be provided to the owner and/or occupant or facility operator, or left at the premises if no person is available. If corrections are needed, the owner and/or occupant or facility operator shall implement a plan of corrective action based on a written plan of correction, submitted to the enforcement agency, which
states the actions to be taken and the expected dates of completion. Failure to implement the plan of correction constitutes a violation of this Chapter.

(c) Authority to Sample and Establish Sampling Devices. The City shall have the right to establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Authorized Enforcement Official may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on.

(d) Notification of Spills. As soon as any person who is responsible for emergency response for, or in charge of, any premises or facility has knowledge of any confirmed or unconfirmed significant release of materials, pollutants or waste which may result in pollutants or illegal discharges entering the storm water conveyance system, such person shall take all necessary steps to ensure the containment and minimize the damages of such release, provided that such steps do not violate applicable health and safety regulations and/or facility hazardous materials handling procedures and policies. Such person shall notify the County Department of Health Services' Environmental Health Services' Hazardous Materials Management Division, and any other appropriate agency, of the occurrence within 24 hours of the incident's occurrence. (Ord. No. 2008-1302, 4-8-08)

(e) Requirement to Test, Monitor or Mitigate.

(1) The City Manager or designee may require that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution, or illegal discharges to the storm water conveyance system, undertake such monitoring activities, including physical and chemical monitoring and/or analyses, and furnish reports as the City Manager or designee may specify if the person, or facility owner, or operator fails to eliminate illegal discharges after receiving a written notice by the enforcement agency, or the City manager or designee has documented repeated violations of this Chapter which may have contributed to storm water pollution. Specific monitoring requirements shall bear a reasonable relationship to the types of pollutants that may be generated by the person's activities or the facility's operations. If the City Manager or designee has evidence that a pollutant is originating from a specific premises, then the City Manager or designee may require monitoring for that pollutant regardless of whether the pollutant may be generated by routine activities or operations. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analyses and/or reports requested. (Ord. No. 2008-1302, 4-8-08)

(2) Any persons required to monitor pursuant to subsection 14.15.070(e)(1) shall implement a storm water monitoring program to include, at a minimum:
   a) Routine visual monitoring for dry weather flows.
   b) Routine visual monitoring for spills which may pollute storm water runoff.
c) A monitoring log including monitoring date, potential pollution sources and a description of the mitigation measures taken to eliminate any potential pollution sources.

(3) The City Manager or designee, in cooperation with local waste water programs, may require a person, or facility owner or operator, to install or implement storm water pollution reduction or control measures, including but not limited to, process modification to reduce the generation of pollutants or a pretreatment program approved by the Regional Water Quality Control Board and/or the City if:  (Ord. No. 2008-1302, 4-8-08)

a) the person, or facility owner or operator, fails to eliminate illegal discharges after receiving a written notice by the enforcement agency, or

b) the person, or facility owner or operator, fails to implement a storm water pollution prevention plan, as required by the enforcement agency; or

c) the enforcement agency has documented repeated violations of this Chapter which may have contributed to storm water pollution. 

(4) A person, or facility owner or operator, may discontinue sampling and analyses required pursuant to this Chapter if pollutants are not detected in significant quantities after two consecutive sampling events. If testing, monitoring, or mitigation required pursuant to this Chapter are deemed no longer necessary by the City Manager or designee, then any or all of the above requirements will be discontinued. (Ord. No. 2008-1302, 4-8-08)

(5) A storm water monitoring program prepared and implemented pursuant to any NPDES permit shall meet the requirements of a monitoring program for the purposes of this Chapter.

14.15.080 Violations of this Chapter. The violation of any provision of this Chapter, or failure to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor; except notwithstanding any other provisions of this Chapter, any such violation constituting a misdemeanor under this Chapter may, in the discretion of the City be charged and prosecuted as an infraction. Penalties, fines and procedures for violations shall be in accordance with Chapter 1.12 of this Code. Additionally, violations of this Chapter are deemed adverse and detrimental to the public health, safety and welfare and, therefore, constitute a public nuisance. The assistance of a law enforcement officer may be enlisted to arrest violators as provided in the California Penal Code and/or to issue a citation and notice to appear. (Ord. No. 2008-1302, 4-8-08)

14.15.085 Violations of Federal or State Requirements or City Grading Permits. Any violation of an applicable federal or state-issued storm water permit, or any failure to conform to an applicable SWPPP prepared pursuant to such permit or pursuant to this Chapter, or any failure to comply with storm water-related provisions of a City-issued grading permit or of a grading plan prepared to secure such a permit, is a violation of this Chapter.

14.15.090. Acts Potentially Resulting in Violation of Federal Clean Water Act and/or Porter Cologne-Act. Any person who violates any provision of this Chapter, any provision of any permit issued pursuant to this Chapter, or who discharges pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the Federal Clean
Water Act and/or Porter-Cologne Act and may be subject to the sanctions of those Acts including civil and criminal liability. Any enforcement action authorized under this Article should also include notice to the violator of such potential liability.

**14.15.100 Civil Actions.** In addition to prosecution of any violations of this Chapter as criminal offenses, and any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City. There is no requirement that administrative enforcement procedures be pursued before such actions are filed. In any such action, the City may seek, without limitation, and the Court shall grant, as appropriate, any or all of the following remedies: *(Ord. No. 2008-1302, 4-8-08)*

(a) Injunctive relief;

(b) Assessment of the violator for the costs of any investigation, inspection or monitoring survey which led to the establishment of the violation, and for the reasonable cost of preparing and bringing legal action under this subsection.

(c) Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation, including costs associated with monitoring and establishing storm water discharge pollution control systems and/or implementing and/or enforcing the provisions of this Chapter. *(Ord. No. 2008-1302, 4-8-08)*

(d) Compensatory damages, including, but not limited to, those associated with loss of, or destruction to, water quality, wildlife, fish and aquatic life. *(Ord. No. 2008-1302, 4-8-08)*

(e) A maximum civil penalty of $2,500 per violation of this Chapter for each day during which any violation of any provision of this Chapter is committed, continued, permitted or maintained by such person(s). *(Ord. No. 2001-1123, 11-27-01)*

**14.15.110 Cease and Desist Orders.** When an Authorized Enforcement Official finds that a discharge has taken place or is likely to take place in violation of this Chapter, the Authorized Enforcement Official may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: a) comply with the requirement, b) comply with time schedule for compliance, and/or c) take appropriate remedial or preventative action to prevent the violation from recurring. If it is determined by an Authorized Enforcement Officer that the public interest requires the posting of a bond or other security to assure the violation is corrected, such bond or security may be required by the Authorized Enforcement Official. *(Ord. No. 2008-1302, 4-8-08)*

**14.15.120 Notice and Order to Clean, Test or Abate.** Whenever an Authorized Enforcement Official finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of real estate, or upon any parcel of real estate or grounds, which may result in an increase in pollutants entering the storm water conveyance system, the Authorized Enforcement Official may issue orders and give written notice to test, abate and/or remove such oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or other material, in any manner that the Authorized Enforcement Official may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice. *(Ord. No. 2008-1302, 4-8-08)*

**14.15.130 Public Nuisance Abatement.** If a public nuisance is determined to exist under Section 14.15.080 or if actions ordered by an Authorized Enforcement Official under Sections 14.15.110 and 14.15.120 are not performed, the City may abate the public nuisance using the
nuisance abatement procedures set forth in Chapter 10.04 of this Code. (Ord. No. 2001-1123, 11-27-01)

14.15.140 Stop Work Orders. Whenever any work is being done contrary to the provisions of this Chapter, or other laws implemented through enforcement of this Chapter, an Authorized Enforcement Official may order the work stopped by notice in writing served on any person engaged in doing or causing such work to be done, and any such person shall immediately stop such work until authorized by the Authorized Enforcement Official to proceed with the work. (Ord. No. 2008-1302, 4-8-08)

14.15.150 Permit Suspension or Revocation. Violations of this Chapter may be grounds for permit and/or other City license suspension or revocation in accordance with applicable sections of the San Marcos Municipal Code. (Ord. No. 2008-1302, 4-8-08)

14.15.160 Storm Water Management Fee; Failure to Pay a Violation. Each residential and business waste and recycling account in the City shall pay a storm water management fee, in an amount determined by the City Council, which fee shall be collected through the bi-monthly billing of the City’s refuse collection contractor. Failure to pay the storm water management fee shall be unlawful and shall constitute a violation of this Chapter. (Ord. No. 2001-1123, 11-27-01)

14.15.170 Other Acts and Omissions Constituting Violations of this Chapter. In addition to the violations identified in Sections 14.15.010 through 15.15.060 of this Chapter, the following acts and omissions constitute violations of this Chapter, whether committed by a discharger or by another person or entity: (Ord. No. 2008-1302, 4-8-08)

(a) Causing, permitting, aiding or abetting non-compliance. Causing, permitting, aiding or abetting non-compliance with any provision of this Chapter shall constitute a violation of this Chapter.

(b) Concealment, Misrepresentation and False Statements. Any falsification or misrepresentation made to the City or the Authorized Enforcement Official concerning compliance with this Chapter, including, but not limited to, any misrepresentation in a voluntary disclosure, any submission of a report that omits required material facts without disclosing such omission, and any withholding of information required to be submitted to the City or pursuant to this Chapter, whether or not the intent of such withholding is to delay City enforcement action, is a violation of this Chapter.

(c) Failure to Promptly Correct Non-Compliance. Violations of this Chapter must be corrected within the time period specified by an Authorized Enforcement Official. Each day or part thereof in excess of that period during which action necessary to correct a violation is not initiated and diligently pursued shall constitute a separate violation of this Chapter. Notwithstanding the granting of any period of time to the discharger to correct the damage resulting from his non-compliance, such discharger shall remain liable for some or all of any fines or penalties imposed pursuant to this Chapter, or by the RWQCB.

(d) Failure to Comply With City Permits and SWPPPs. Any failure to conform to an applicable Storm Water Pollution Prevention Plan (SWPPP) prepared pursuant to this Chapter, any failure to comply with storm water-related provisions of a City-issued grading permit or grading plan prepared to secure such a permit, and any failure to comply with storm water related provisions in any other City permit or approval is also a violation of this Chapter. For purposes of this Chapter, a permit provision or condition of approval is “storm water-related” if compliance with
the provision or condition would have the effect of preventing or reducing contamination of storm water or of moderating run-off flows or rates of velocities, whether or not the provision or condition was initially imposed to promote those outcomes.

**14.15.180 Remedies Not Exclusive.** Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided in this Chapter shall be cumulative and not exclusive. *(Ord. No. 2008-1302, 4-8-08)*
CHAPTER 14.16

STREET AND SIDEWALK CONSTRUCTION

Sections:

14.16.010 Scope of Regulations
14.16.020 Permit Required
14.16.030 Residential Driveway Permit
14.16.040 Application for Permit
14.16.050 Plans Required with Application
14.16.060 Applicant for Concrete Box
14.16.070 Work to be Full Length of Street
14.16.080 Permit Fee
14.16.090 Engineering and/or Inspection Fee
14.16.100 Refund or Deficiency Payment
14.16.110 Relocation Costs
14.16.120 Deposit for Resetting Stakes
14.16.130 Refund upon Revocation
14.16.140 Work to Commence in Sixty Days
14.16.150 Revocation for Delay
14.16.160 Work must Conform to Permit
14.16.170 Lines and Grades Obtained from Director of Public Services
14.16.180 Performance According to Plans and Specifications - Inspections
14.16.190 Subsequent Change in Plans and Specifications
14.16.200 Request for Director of Public Services Before Work Begins
14.16.210 Approval of Concrete Forms
14.16.220 Warning Lights
14.16.230 Removal of Debris
14.16.240 Notification of Completion of Work
14.16.250 Certificate of Acceptance
14.16.260 Permittee's Responsibility
14.16.270 Defective Work and Materials
14.16.280 Default of Permittee
14.16.290 Public Nuisance
14.16.300 Capital Improvement Project Expense Reimbursement

14.16.010 Scope of Regulations. The provisions of this chapter apply only to permits for the laying, constructing, reconstructing, or repairing of curbs, sidewalks, gutters, driveways, highway surfaces, retaining walls, storm drains, culverts, or other appurtenant highway structures.

14.16.020 Permit Required. No person shall construct or repair any curb, sidewalk, gutter, driveway, roadway surface, retaining wall, storm drain or culvert or other work of any nature in, over, along, across or through any highway, or cause the same to be done, without first obtaining from the Director a permit to do so.

14.16.030 Residential Driveway Permit. No person shall construct, improve or repair any residential driveway in, over, along, across or through any highway, or cause the same to be done, without first obtaining a permit to do so pursuant to Chapter 13.08.
14.16.040 Application for Permit. Application for a permit required by this chapter shall be made in accordance with Chapter 14.04. The application shall specify:

(a) The location, nature, and extent of the work to be performed;

(b) The materials to be used;

(c) Such other information as the Director may require.

14.16.050 Plans Required with Application. If in the opinion of the Director the work proposed to be done requires the making of plans or the setting of stakes, or both, the Director may require the application to be accompanied by the necessary plans, which plans shall be prepared by a competent engineer.

14.16.060 Applicant for Concrete Box. Where the structure, driveway, curb, sidewalk or gutter is to be constructed of concrete, the applicant shall be a person licensed by the State to perform the work described in the application, and he must perform the work or the work must be performed under his immediate supervision.

14.16.070 Work to be Full Length of Street. If, in the opinion of the Director, the construction of any length of curb or sidewalk less than the full length of a street between street intersections would create a condition hazardous to the traveling public using the street upon which it is proposed to install the curb or sidewalk, he may refuse to issue a permit for the construction of curb or sidewalk for any length less than the full length of said street between intersecting streets.

14.16.080 Permit Fee. Every person applying for a permit required by this chapter shall at the time of making application for the permit pay an issuance fee of fifteen dollars.

14.16.090 Engineering and/or Inspection Fee. An applicant for a permit to construct any work, except curbs, walks, gutters or highway surfaces, shall, in addition to the issuance fee, pay or make a deposit for an engineering or inspection fee or engineering and inspection fee as follows:

(a) An amount estimated by the Director to be equal to twice the actual cost of all necessary engineering and inspection;

(b) An applicant for a permit to construct a driveway with surfacing other than dirt, gravel or decomposed rock, shall, in addition to the issuance fee, pay an engineering and/or inspection deposit of sixty dollars minimum.

14.16.100 Refund or Deficiency Payment.

(a) Where the deposit has been made under subsection (a) and (b) of Section 14.16.090, the Director shall deduct from the deposit the amount of the issuance fee and the actual cost to the county of the required engineering and inspection. If such cost and fee is less than the deposit, the difference shall be refunded to the person making the deposit in the same manner as provided by law for the repayment of trust monies.

(b) If the cost, plus the issuance fee, exceeds the deposit, the permittee shall pay the excess to the City. If he does not so pay within fifteen days, the City may recover such sum in any court of competent jurisdiction. Until such amount is paid, further permits shall not be issued to such permittee.
**14.16.110  Relocation Costs.** If so required by the Director, the permittee shall make proper arrangements for, and bear the cost of relocating any structure, public utility, tree or shrub, where such relocation is made necessary by the proposed work for which a permit is issued. The Director may elect to do the necessary relocation. In such case the permittee shall deposit with the Director a sum of money estimated by him to be sufficient to pay the cost thereof. After such relocation, a refund shall be paid to, or a deficiency shall be paid by, the permittee as provided in Section 14.16.100.

**14.16.120  Deposit for Resetting Stakes.** If any stakes set for any work covered by this chapter are disturbed or destroyed and it becomes necessary to set additional stakes, the permittee shall deposit a sum estimated by the Director to be sufficient to pay the cost of setting such additional stakes. The Director shall set the additional stakes. After such setting, a refund shall be paid to, or a deficiency shall be paid by, the permittee as provided in Section 14.16.100.

**14.16.130  Refund upon Revocation.** When a permit has been revoked by the Director, the permittee may obtain a refund of any unused fee paid or unused deposit made. No part of any issuance fee may be refunded.

**14.16.140  Work to Commence in Sixty Days.** Every permittee shall commence the proposed work within sixty days after the granting of the permit and thereafter prosecute the work in a continuous, diligent, and workmanlike manner to completion.

**14.16.150  Revocation for Delay.** Unless in his opinion a good and sufficient reason exists for the failure of the permittee to comply with the provisions of Section 14.16.140, the Director may revoke the permit.

**14.16.160  Work must Conform to Permit.** Every person who performs any work covered by this chapter in an amount greater than, or in any way different from or contrary to the terms of any permit issued therefor, is guilty of an infraction.

**14.16.170  Lines and Grades Obtained from Director.** Before a permittee performs any work regulated by this chapter he shall obtain from the Director the lines and grades therefor.

**14.16.180  Performance According to Plans and Specifications--Inspections.**

(a) The permittee shall perform all work in accordance with the plans, if plans are made, and the specifications entitled "The Standard Specifications, Road Department of the County of San Diego," on file with the Director, and, further, to the satisfaction of the Director.

(b) The Director may waive inspection, if he believes such inspection is not necessary for the best interests of the City; provided, however, any such waiver shall be in writing.

**14.16.190  Subsequent Change in Plans and Specifications.** No change in any plans, if plans are made, or specifications shall be made unless approved in writing by the Director.

**14.16.200  Request for Director before Works Begins.** Not less than twenty-four hours before the commencement of any work regulated by this chapter, the permittee shall apply in writing to the Director for an inspector therefor. In such application he shall specify the day and hour when, the location at which, the work will be commenced.

**14.16.210  Approval of Concrete Forms.** No concrete shall be poured or placed until the Director has approved in writing the forms into which the concrete is to be poured or placed.
14.16.220 Warning Lights. A permittee shall place and maintain at each end of the work and not more than fifty feet apart along the side thereof, unless otherwise directed by the Director, from sunset of each day until sunrise of the following day, until the work is entirely completed, flares or red warning lights. He shall also place and maintain barriers not less than three feet high at each end of the work until the work is completed to the entire satisfaction of the Director.

14.16.230 Removal of Debris. A permittee shall remove all material and debris:

(a) Where new work is covered with earth, in accordance with the terms of the specifications attached to the permit;

(b) In all other cases within three days.

14.16.240 Notification of Completion of Work. Whenever any permittee has completed any work for which a permit has been granted, he shall so notify the Director in writing.

14.16.250 Certificate of Acceptance. If the Director by survey or by inspection or both ascertains that the work has been completed according to the requirements of the permit, issued therefor and all of the provisions of this title, he shall issue, if requested so to do by the permittee, a certificate of acceptance which shall contain a statement of the location, nature, and extent of the work performed under the permit.

14.16.260 Permittee’s Responsibility. The inspection, or approval, or acceptance of work or materials shall not relieve the permittee of any of his obligations to perform and compete the work according to the permit, the plans, if plans are made, and the specifications referred to in Sections 14.16.180 and 14.16.190.

14.16.270 Defective Work and Materials. Upon order of the Director, any work or material which does not conform to the permit, the plans, if plans are made, and the specifications referred to in Sections 14.16.180 and 14.16.190 shall be removed and replaced so as to conform to said plans and specifications, notwithstanding that such work or material has been previously inspected, or approved, or accepted by the Director.

14.16.280 Default of Permittee. By applying for and obtaining a permit pursuant to this title, the permittee agrees with the City that in the event the permittee fails to comply promptly with the terms of the permit and perform and complete the work according to the plans, if any, and the specifications referred to in Sections 14.16.180 and 14.16.190, or fails to comply with any other provisions of this title, the City may elect to perform and complete the work, in which event the permittee shall pay to the City upon demand of the Director and prior to actual performance and completion of the work by the City or its contractor, the cost of performing and completing the work according to such permit, the plans, if any, and the specifications either by the use of the City's forces or by an independent contractor, whichever method the Director deems appropriate, and in the event the permittee fails to pay such cost to the City upon demand, the City may bring an action in a court of competent jurisdiction to recover such cost together with reasonable attorneys' fees.

14.16.290 Public Nuisance. Any work performed contrary to the permit, the plans, if plans are made, and the specifications referred to in Sections 14.16.180 and 14.16.190 is declared to be a public nuisance, and upon order of the City Council, the City Attorney shall immediately initiate proceedings necessary for the abatement, enjoinderment, and removal thereof in the manner provided by law.
14.16.300  **Capital Improvement Project Expense Reimbursement.** The requirement of reimbursement to the City for Capital Improvement Program projects shall occur in accordance with Chapter 17.54.  *(Ord. No. 2003-1194, 7/22/03)*
CHAPTER 14.20

PLANTING, TRIMMING AND REMOVAL OF TREES AND SHRUBS

ARTICLE I. TRIMMING OR REMOVAL OF TREES, HEDGES, AND SHRUBS

Sections:

14.20.010 Permit Required
14.20.020 Application for Permit
14.20.030 Issuance of Permit - Denial of Permit
14.20.040 Removal or Trimming by City

ARTICLE II. PLANTING OF TREES, HEDGES, AND SHRUBS

14.20.050 Permit Required
14.20.060 Application for Permit

ARTICLE I. PLANTING, TRIMMING OR REMOVAL OF TREES OR SHRUBS ON PUBLIC PROPERTY

14.20.010 Permit Required. No person shall trim, break, deface, destroy, burn or remove any tree, hedge or large shrub growing on any public property or public right-of-way unless authorized to do so in writing by the Director or the City Council.

14.20.020 Application for Permit. Any person desiring to remove any tree, hedge or large shrub from any public property or public right-of-way shall file an application with the Director.

14.20.030 Issuance of Permit—Denial of Permit.

(a) The Director may issue a written permit authorizing the removal of a specific tree, hedge or large shrub on public property or a public right-of-way upon such terms and conditions as is deemed appropriate by the Director to provide protection to persons and property, or he may deny such permit.

(b) Any person removing a live tree pursuant to a permit issued by the Director shall, within 30 days following removal of such live tree, plant another tree of a type and in a location specified in the permit. The requirement of replanting another tree may be waived by the Director where the requirement would impose an unreasonable hardship.

14.20.040 Removal or Trimming by City.

(a) If the Director deems that the trimming, pruning or removal of any tree, hedge or shrub within a City highway is necessary for the protection of the traveling public or public property, the Director shall subject to the availability of funds, personnel and equipment, cause such tree to be trimmed, pruned or removed to provide such protection.

(b) On application of any person to whom there has been issued a permit to trim, prune or remove a tree, hedge or shrub from a City highway, the Director may trim, prune or remove such tree, hedge or shrub described in such permit provided the cost thereof is paid by
the permittee and provided there shall first be deposited with the Director a sum determined to be
the estimated cost of such work. All such deposits shall be placed in a trust fund. Following
completion of the work the Director shall determine actual cost of the work and transfer that por-
town of the deposit to the appropriate City fund and return the balance to the depositor. Should
the original deposit be insufficient to cover the actual cost of the work the permittee shall be liable
to the City for the unpaid balance and shall promptly pay such amount to the City upon demand of
the Director.

ARTICLE II. PLANTING OF TREES, HEDGES, AND SHRUBS

14.20.050 Permit Required. No person shall plant any tree, hedge or shrub upon or
within any City highway, public highway or public property within the City unless authorized in
writing to do so by the Director, or by the City Council.

14.20.060 Application for Permit. Any person desiring to plant any tree, hedge or shrub
within any public or City highway shall file an application with the Director.

(a) No permit for the planting of a tree, shrub or hedge within any public or City
highway shall be issued by the Director unless the species of the tree, shrub or hedge to be
planted is approved by the Director. The permit for the planting of a tree, shrub or hedge may be
issued upon such terms and conditions as the Director determines appropriate to protect persons
and property or may be denied.
CHAPTER 14.24

UNDERGROUND UTILITY FACILITIES

Sections:

14.24.010 Definitions
14.24.020 Establishment of Underground Utility Districts; Hearing; Resolution Directing Removal of Overhead Facilities
14.24.030 Unlawful Failure to Remove Overhead Facilities
14.24.040 Facilities to Which this Chapter is Inapplicable; Exception
14.24.050 Notice of City Council Action Creating District
14.24.070 Duty of Property Owners with Respect to Underground Installation; action by the City upon Failure of the Property Owner to Act; Assessment of Costs
14.24.080 Duties of the City
14.24.090 Extensions of Time

14.24.010 Definitions. As used in this chapter, the following terms shall have the meanings ascribed to them in this section:

(a) **Commission** shall mean the Public Utilities Commission of the State.

(b) **Poles, overhead wires and associated overhead structures** shall mean poles, tower, supports, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, communication circuits, appliances, attachments and appurtenances located above ground within a district and used or useful in supplying electric, communication or similar or associated service.

(c) **Underground utility district or district** shall mean that area in the city within which poles, overhead wires and associated overhead structures are prohibited as such area is described in a resolution adopted pursuant to the provisions of this chapter.

(d) **Utility** shall mean all persons supplying electric, communication or similar or associated service by means of electrical materials or devices.

14.24.020 Establishment of Underground Utility Districts; Hearing; Resolution Directing Removal of Overhead Facilities

(a) The City Council may from time to time call public hearings to ascertain whether the public health, safety or welfare requires the removal of poles, overhead wires and associated overhead structures within designated areas of the city and the underground installation of wires and facilities for supplying electric, communication or similar or associated service. The City Clerk shall notify all affected property owners as shown on the last equalized assessment roll and utilities concerned by mail of the time and place of such hearings at least ten (10) days prior to the date thereof. Each hearing shall be open to the public and may be continued from time to time. At each such hearing, all persons interested shall be given an opportunity to be heard. The decision of the City Council shall be final and conclusive.
(b) If, after any public hearing held pursuant to subsection (a), the City Council finds that the public health, safety or welfare requires the removal of poles, overhead wires and associated structures and such an underground installation within a designated area, the City Council shall, by resolution, declare such designated area an underground utility district and order such removal and underground installation. The resolution shall include a description of the area comprising the district and shall fix the time within which such removal and underground installation shall be accomplished and within which affected property owners must be ready to receive underground service. A reasonable time shall be allowed for the removal and the underground installation, having due regard for the availability of labor, materials, and equipment necessary for such removal and for the installation of such underground facilities as may be occasioned thereby. Immediately following the adoption of the resolution, the City Clerk shall cause a certified copy of such resolution to be recorded in the office of the County Recorder.

14.24.030 Unlawful Failure to Remove Overhead Facilities. Whenever the City Council creates an underground utility district and orders the removal of poles, overhead wires and associated overhead structures therein as provided in this chapter, it shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue, employ or operate poles, overhead wires and associated overhead structures in the district after the date when the overhead facilities are required to be removed by the resolution, except as the overhead facilities may be required to furnish service to an owner or occupant of the underground work necessary for such owner or occupant to continue to receive utility service as provided in this chapter, and for such reasonable time required to remove the facilities after the work has been performed and except as otherwise provided in this chapter.

14.24.040 Facilities to which this Chapter is Inapplicable; Exception.

(a) Notwithstanding the provisions of this chapter, overhead facilities may be installed and maintained for a period not to exceed twenty (20) days, without authority of the City Council in order to provide emergency service. The City Council may deem appropriate, in cases of unusual circumstances, without discrimination as to any person or utility, to erect, construct, install, maintain, use or operate poles, overhead wires and associated overhead structures.

(b) This chapter and any resolution adopted pursuant to this chapter shall not, unless otherwise provided in such resolution, apply to the following types of facilities:

(1) Any municipal facilities or equipment installed under the supervision and to the satisfaction of the City Engineer;

(2) Poles or electroliers used exclusively for street lighting;

(3) Overhead wires, exclusive of supporting structures, crossing any portion of a district within which overhead wires have been prohibited or connecting to buildings on the perimeter of a district, when such wires originate in an area from which poles, overhead wires and associated overhead structures are not prohibited

(4) Poles, overhead wires and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of thirty-four thousand five hundred (34,500) volts;

(5) Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street;
(6) Antennas, associated equipment and supporting structures used by a utility for furnishing communication services;

(7) Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, and concealed ducts;

(8) Temporary poles, overhead wires and associated overhead structures used or to be used in conjunction with construction projects.

**14.24.050 Notice of City Council Action of Creating District.**

(a) Within ten (10) days after the effective date of a resolution adopted pursuant to this chapter requiring the underground installation of utilities facilities, the City Clerk shall notify all affected utilities and all persons owning real property within the district created by the resolution of the adoption thereof. The City Clerk shall further notify such affected property owners of the necessity that, if they or any person occupying such property desire to continue to receive electric, communication or similar or associated service, they or such occupant shall provide all necessary facility changes on their premises so as to receive such services from the lines of the supplying utility or utilities at a new location, subject to applicable rules, regulations and tariffs of the respective utility or utilities on file with the commission.

(b) Notification by the City Clerk, as required by subsection (a), shall be made by mailing a copy of the resolution adopted pursuant to this chapter, together with a copy of this chapter, to affected property owners as such are shown on the last equalized assessment roll and to the affected utilities.

**14.24.060 Duty of Utility Companies in Underground Construction.** If underground construction is necessary to provide utility service within a district created by any resolution adopted pursuant to this chapter, the supplying utility shall furnish that portion of the conduits, conductors and associated equipment required to be furnished by it under its applicable rules, regulations and tariffs on file with the commission.

**14.24.070 Duty of Property Owners with Respect to Underground Installations; Action by the City upon Failure of the Property Owner to Act; Assessment of Costs.**

(a) Each person owning, operating, leasing, occupying or renting a building or structure within a district created pursuant to this chapter shall perform construction and provide that portion of the service connection on his property between the facilities required by this chapter to be furnished by the utility company and the termination facility on or within the building or structure being served, all in accordance with applicable rules, regulations and tariffs of the respective utility or utilities on file with commission.

(b) In the event any person owning, operating, leasing, occupying or renting said property does not comply with the provisions of subsection (a) of this section within the time provided therefor in the resolution enacted pursuant to this chapter establishing a district, the City Engineer shall proceed pursuant to either of the following alternatives:
Alternative One: The City Engineer shall post written notice on the property being served, shall give notice in writing to the person in possession of such premises and a notice in writing to the owner thereof as shown on the last equalized assessment roll, to provide the required underground facilities within ten (10) days after receipt and posting of the notice. Thirty (30) days after the posting and giving of notice as provided in this paragraph, the City Engineer shall have the authority to order the disconnection and removal of any and all overhead service wires and associated facilities supplying utility service to the property.

Alternative Two:

a) The City Engineer shall give notice in writing to the person in possession of the premises, and a notice in writing to the owner thereof as shown on the last equalized assessment roll, to provide the required underground facilities within ten (10) days after receipt of the notice.

b) The notice to provide the required underground facilities may be given either by personal service or by mail. In case of service by mail on either of such persons, the notice shall be deposited in the United States mail in a sealed envelope with postage prepaid, addressed to the person in possession of the premises at the premises and the notice shall be addressed to the owner thereof as such owner's name and last known address appear on the last equalized assessment roll and, when no address appears, to "General Delivery, City of San Marcos." If notice is given by mail, the notice shall be deemed to have been received by the person to whom it has been sent within forty-eight (48) hours after the mailing thereof. If notice is given by mail to either the owner or occupant of the premises, the City Engineer shall within forty-eight (48) hours after the mailing of the notice, cause a copy thereof, printed on a card not less than eight (8) inches by ten (10) inches in size, to be posted in a conspicuous place on the premises.

c) The notice given by the City Engineer to provide the required underground facilities shall particularly specify what work is required to be done and shall state that if the work is not completed within thirty (30) days after receipt of the notice, the City Engineer shall provide such required underground facilities, in which case the cost and expense thereof will be assessed against the property benefited and become a lien on the property.

d) If, upon the expiration of the thirty (30) day period, the required underground facilities have not been provided, the City Engineer shall forthwith proceed to do the work; however, if the premises are unoccupied and no electric or communications services are being furnished thereto, the City Engineer shall, in lieu of providing the required underground facilities, have the authority to order the disconnection and removal of any and all overhead service wires and associated facilities supplying utility service to the property. Upon completion of the work by the City Engineer, he shall file a written report with the City Council setting forth the fact that the required underground facilities have been provided and the cost thereof, together with a legal description of the property against which such cost is to be assessed. The City Council shall thereupon fix a time and place for hearing protests against the assessment of the cost of such work upon such premises, which time shall not be less than ten (10) days thereafter.
(e) The City Engineer shall forthwith, upon the time for hearing such protests having been fixed, give a notice in writing to the person in possession of such premises, and a notice in writing to the owner thereof, in the manner provided in this section for the giving of the notice to provide the required underground facilities, of the time and place that the City Council will pass upon the report and will hear protests against the assessment. The notice shall also set forth the amount of the proposed assessment.

(f) Upon the date and hour set for the hearing of protests, the City Council shall hear and consider the report and all protests, if there are any, and then proceed to affirm, modify or reject the assessment.

(g) If any assessment is not paid within five (5) days after its confirmation by the City Council, the amount of the assessment shall become a lien upon the property against which the assessment is made by the City Engineer, and the City Engineer shall turn over to the assessor and the tax collector a notice of lien on each of the properties on which the assessment has not been paid. The assessor and the tax collector shall add the amount of the assessment to the next regular bill for taxes levied against the premises upon which the assessment has not been paid. The assessment shall be due and payable at the same time as property taxes are due and payable and, if not paid when due and payable, shall bear interest at the rate of six (6) per cent per annum.

14.24.080 Duties of the City. The city shall remove at its own expense all city-owned equipment from all poles required to be removed hereunder in ample time to enable the owner or user of the poles to remove them within the time specified in the resolution adopted pursuant to this chapter.

14.24.090 Extensions of Time. In the event that any act required by this chapter or by a resolution adopted pursuant to this chapter cannot be performed within the time provided on account of a shortage of materials, war, restraint by public authorities, strikes, labor disturbances, civil disobedience or any other circumstances beyond the control of the person upon whom a duty is placed by this chapter to act, then the time within such act shall be accomplished shall be extended for a period equivalent to the time of such limitation.
CHAPTER 14.25
DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION

Sections:

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(Entire Chapter added by Ord. 2008-1299 & 2008-1301; 2/26/08)

14.25.010 Purpose. This Chapter is applicable to all video service providers who are eligible for, and have been awarded, a state video franchise under DIVCA, to provide video services in any portion of the City.

14.25.020 Ordinance Renewal. California Public Utilities Code section 5870(n) includes a sunset provision of this City ordinance “upon the expiration of the state franchise.” This Chapter 14.25 shall terminate upon the expiration of the current State Video Franchise and shall auto renew upon the issuance of a new State Video Franchise.

14.25.030 Rights Reserved. The rights reserved to the City under this Chapter 14.25 are in addition to all other rights of the City whether reserved by this Chapter 14.25 or authorized by other applicable law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.

14.25.040 Compliance with Chapter 14.25. Nothing contained in this Chapter 14.25 shall exempt a State Franchise Holder from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are not inconsistent with this Chapter or DIVCA, or obligations under any franchise previously issued by the City, insofar as those may be enforced under DIVCA.
14.25.050 Definitions. For purposes of this Chapter 14.25, the following terms, phrases, words, and their derivations shall have the meaning given in this chapter. Unless otherwise expressly stated, words not defined in this Chapter 14.25 shall be given the meaning set forth in the Digital Infrastructure and Video Competition Act of 2006, Division 2.5 of the California Public Utilities Code section 5800 et seq. (“DIVCA”). When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and “including” and “include” are not limiting. The word “shall” is always mandatory.

(1) “Access Channel” means any channel on a cable system or video system set aside by a State Franchise Holder for public, educational, or governmental use.

(2) “Applicant” means any person submitting any application required under Division 2.5 of the California Public Utilities Code.

(3) “Applicable law” means all lawfully enacted and applicable Federal, State, and City laws, ordinances, codes, rules, regulations and orders as the same may be amended or adopted from time to time.

(4) “Cable service” means (i) the one-way transmission to subscribers of video programming or other programming services; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(5) “City” means the City of San Marcos.

(6) “City Council” means the governing body of the City of San Marcos, California.

(7) “City Manager” means the city's chief executive officer or any designee thereof.

(8) “Construction,” “operation,” or “repair” and similar formulations of those terms mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of component, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and tree trimming. The term “operation” does not encompass or regulate the provision of services, but refers to activities affecting rights-of-way and other property subject to the jurisdiction of the City.

(9) “DIVCA” means the Digital Infrastructure and Video Competition Act of 2006, Division 2.5 of the California Public Utilities Code section 5800 et seq., as may be amended from time to time.

(10) “Gross Revenues” means all revenues (whether in the form of cash or other consideration) of a State Franchise Holder or its affiliates in any way derived from its operations within the City.

(11) “Incumbent Cable Operator” shall have the same meaning as in DIVCA.

(12) “Network” shall have the same meaning as in DIVCA.

(13) “PEG” or “Public, Educational, and Governmental” shall have the same meaning as in DIVCA.
(14) “Person” means any natural person and all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, business or common law trusts and societies. The term does not include the City.

(16) “Public rights-of-way” shall have the same meaning as in DIVCA.

(17) “State Video Franchise” means a Franchise issued by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in DIVCA, within any portion of the City.

(18) “State Franchise Holder” means a person who holds a State Video Franchise.

(19) “Subscriber” means the City or any person who legally receives any cable service or video service from a State Franchise Holder delivered over that State Franchise Holder’s network.

(20) “Video Service” shall have the same meaning as in DIVCA.

14.25.060 State Video Franchise Fee. For any State Franchise Holder operating within the boundaries of the City, there shall be a state franchise fee paid to the City equal to five percent (5%) of the Gross Revenues of that State Franchise Holder or any affiliate that are subject to a franchise fee under California Public Utilities Code Section 5860.

14.25.070 PEG Fees.

(a) For any State Franchise Holder operating within the boundaries of the City of San Marcos, there shall be a PEG fee paid to the City equal to one percent (1%) of the Gross Revenues of that State Franchise Holder or any affiliate that are subject to a franchise fee under California Public Utilities Code Section 5860.

(b) PEG fees shall be used to support PEG channel facilities consistent with applicable federal and state law.

14.25.080 Payment of Fees. The state franchise fee required pursuant to Section 14.25.060, and the PEG fee required pursuant to Section 14.25.070, shall each be paid to the City quarterly, in a manner consistent with California Public Utilities Code section 5860. The State Franchise Holder shall deliver to the City, by check or other means specified by the City, a payment for the state franchise fee and a separate payment for the PEG fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, containing such information as the City Manager or designee may require consistent with DIVCA. Unless the City Manager or designee provides otherwise, the summary statement shall identify:

(a) revenues received from subscribers, by category, with service revenues broken out by service levels;

(b) any charges to subscribers for which revenues were received, but on which a franchise fee was not paid;

(c) where the fee is paid on an allocated portion of revenues received, the total revenues received; the allocation factor; and how the allocation factor was calculated.
14.25.090 Audit Authority. The City may examine and perform an audit of the business records of a State Franchise Holder to ensure compliance with Sections 14.25.060 and 14.25.070, in a manner consistent with California Public Utilities Code section 5860(i).

14.25.100 Late Payments. In the event a State Franchise Holder fails to make payments required by this chapter on or before the due dates specified in this chapter, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%) or the maximum amount allowed by law, whichever is less.

14.25.110 Lease of City-Owned Network. In the event a State Franchise Holder leases access to a network owned by the City, the City may set a franchise fee for access to the City-owned network separate and apart from the franchise fee charged to State Franchise Holders pursuant to Section 14.25.060, which fee shall otherwise be payable in accordance with the procedures established by this Chapter.

14.25.120 PEG Access Channels (Public, Educational and Governmental Access). State Franchise Holder shall designate no less than three (3) PEG Access Channels for the exclusive use of the City. Such PEG Access Channels shall be under the exclusive management and editorial control of the City and shall not be shared with other cities. The City may designate a representative, such as a non-profit entity, to use and administer to said PEG Access Channels.

14.25.130 Customer Service Standards and Penalties. The holder of a State Video Franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of cable or video service, including, to the extent consistent with California Public Utilities Code section 5900, all existing and subsequently enacted customer service and consumer protection standards established by state and federal law and regulation. All fee charges to Subscribers and users shall be uniform throughout the City’s franchise area.

(a) Verification of Compliance. Upon 15 days’ prior written notice, the City may require a State Franchise Holder to provide a written report demonstrating its compliance with any of the customer service and protection standards specified in this Section 14.25.130. The State Franchise Holder must provide sufficient documentation to enable the City to verify compliance.

(b) Fines. City Manager or designee shall monitor and enforce the compliance of State Franchise Holders with respect to state and federal customer service and protection standards. City Manager or designee will provide the State Franchise Holder written notice of any material breaches of applicable customer and service standards, and will allow the State Franchise Holder 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30 day time period will be subject to the following penalties to be imposed by the City Manager or designee:

1. For the first occurrence of a violation, a fine of $500 shall be imposed for each day the violation remains in effect, not to exceed $1,500 for each violation.
2. For a second violation of the same nature within 12 months, a fine of $1,000 shall be imposed for each day the violation remains in effect, not to exceed $3,000 for each violation.

3. For a third or further violation of the same nature within 12 months, a fine of $2,500 shall be imposed for each day the violation remains in effect, not to exceed $7,500 for each violation.

(c) Appeal of Fines. A State Franchise Holder may appeal a penalty assessed by the City Manager or designee to the City Council within 60 days. After relevant speakers are heard, and any necessary staff reports are submitted, City Council will vote to either uphold or vacate the penalty. City Council's decision on the imposition of a penalty shall be final.

(d) Subscriber Complaints and Disputes. The State Franchise Holder must establish written procedures for receiving, acting upon, and resolving Subscriber complaints without intervention by the City. The State Franchise Holder must file a copy of these procedures with the City. These procedures must include a requirement that the State Franchise Holder respond in writing to any written complaint from the Subscriber within 10 days after receiving the Subscriber complaint.

1. The City has the right to review the State Franchise Holder’s response to any Subscriber complaint.

2. All Subscribers have the right to continue receiving service so long as their financial and other obligations to the State Franchise Holder are honored.

3. A State Franchise Holder shall, at the time of the initial subscription of the Subscriber to the system and annually thereafter, furnish a notice to the Subscriber of their rights to a refund for any loss or interruption of service for 48 hours or more.

14.25.140 Customer Privacy.

(a) A State Franchise Holder shall abide by all customer privacy requirements of Federal and State law. Without limiting the foregoing, at least annually, a State Franchise Holder shall provide notice in the form of a separate, written statement to each Subscriber, which clearly and conspicuously informs the Subscriber of:

1. the nature of personally identifiable information collected or to be collected with respect to the Subscriber and the nature of the use of such information; and

2. the nature, frequency and purpose of any disclosure, which may be made of such information, including the identification of the types of persons to whom the disclosure may be made.

(b) Revealing Subscriber Preferences. A State Franchise Holder shall not reveal individual Subscriber preferences, viewing habits, beliefs, philosophy, creeds or religious beliefs to any third person, firm, agency, governmental unit or investigating agency without court authority or prior written consent of the Subscriber.
(c) **Parental Control Lock.** The State Franchise Holder shall provide Subscribers, upon request, with a parental locking devise or digital code that permits inhibiting certain channels.

### 14.25.150 City Response to State Video Franchise Applications.

(a) Each State Franchise Holder or applicant for a state franchise to provide video or cable service within the boundaries of the City of San Marcos must concurrently provide complete copies to the City of any notice, application or amendments to applications filed with the PUC. One complete copy must be provided to the City Clerk, and one complete copy to the City Manager of the City of San Marcos.

(b) City Manager will provide any appropriate comments to the PUC regarding any notice, application or amendment to an application for a State Video Franchise.

### 14.25.160 Permits.

(a) Prior to commencing any work on public property or in a right-of-way, a State Franchise Holder shall apply for and obtain a permit from the City Manager. In connection with the permitting of work on private property, the State Franchise Holder must also obtain the written permission of the property owner prior to obtaining a permit from the City Manager. Failure to obtain the written permission of the property owner shall be grounds for denial of a work permit by the City Manager. A permit application is complete when the State Franchise Holder has complied with all applicable laws and regulations, including, but not limited to, all applicable requirements of Division 13 of the California Public Resources Code section 21000, et seq. (the California Environmental Quality Act).

(b) The City Manager shall either approve or deny a State Franchise Holder's application for any permit upon such terms and conditions as is deemed appropriate by the City Manager to provide protection to persons and property.

(c) If the City Manager denies a State Franchise Holder's application for a permit, the City Manager shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.

(d) A State Franchise Holder that has been denied a permit by final decision of the City Manager may appeal the denial to the City Council in accordance with Chapter 2.14 of the City Code of Ordinances.

(e) The issuance of a permit is not a franchise, and does not grant any vested rights in any location in the Public rights-of-way, or in any particular manner of placement within the rights-of-way. Without limitation, a permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, upon reasonable notice to the permittee.


(a) A State Franchise Holder shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different or additional poles, conduits or other facilities whether on public property or on privately owned property unless and
until first securing the written approval of the City Manager, or on private property of any third party without the additional written permission of the owner. Whenever the State Franchise Holder shall not utilize existing poles, conduits and other facilities, or whenever existing conduits and other facilities shall be located beneath the surface of the streets, or whenever the City shall undertake a program designed to cause all conduits and other facilities to be located beneath the surface of the streets in any area or throughout the City, in the exercise of its police power or pursuant to the terms hereof, upon reasonable notice to grantee, any such conduits or other facilities of the State Franchise Holder shall be constructed, installed, placed or replaced beneath the surface of the streets. Any construction, installation, placement, replacement or changes which may be so required shall be made at the expense of State Franchise Holder whose costs shall be determined as in the case of public utilities.

(b) All transmission lines, equipment and structure shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times, shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair.

(c) Any and all Public rights-of-way, public property, or private property that is disturbed or damaged during the upgrade, rebuild, repair, replacement, relocation, operation, maintenance, or construction of any transmission lines, equipment or structure by State Franchise Holder or its agent, shall be repaired, replaced and restored, in a good workmanlike, timely manner, to substantially the same condition as immediately prior to the disturbance (including appropriate landscape restoration).

(d) Work by or on behalf of a State Franchise Holder concerning, installation, maintenance, replacement or removal of any transmission lines, equipment or structure, or any part thereof, shall be publicized by the State Franchise Holder, at its cost, in the manner and at the times the City Manager periodically may direct.

(e) In those areas of the City where the transmission or distribution facilities of the respective public utilities providing telephone, communication and electric services are underground or hereafter are placed underground, each State Franchise Holder shall likewise construct, operate and maintain all of its network facilities underground. The term “underground” includes a partial underground system; provided, that upon obtaining the written approval of the City Manager, passive devices, power supplies and other equipment in the grantee's network may be placed in appropriate housings upon the surface of the ground, subject to applicable provisions of the City code, regulations, and practices.

(f) A State Franchise Holder, at its expense, shall protect, support, temporarily disconnect, relocate or remove any network property of the State Franchise Holder when, in the opinion of the City Manager, the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks or any other type of structure or improvements by governmental agencies whether acting in a governmental or proprietary capacity, or any other structure of public improvement, including but not limited to, movement of buildings, urban renewal development and any general program under which the City shall undertake to cause all such properties to be located beneath the surface of the ground. The State Franchise Holder shall in all cases have the privilege, subject to the corresponding obligations, to abandon any network property in
place, as herein provided. Nothing hereunder shall be deemed a taking of the property of the State Franchise Holder, and the grantee shall be entitled to no surcharge by reason of anything hereunder.

(g) Upon the failure, refusal or neglect of the State Franchise Holder to cause any work or other act required by law or hereunder to be properly complete in, on, over or under any street within any time prescribed therefor, or upon notice given, where no time is prescribed, the City Manager may cause such work or other act to be completed in whole or in part, and upon so doing, shall submit to grantee an itemized statement of the costs thereof. The grantee shall, within thirty (30) days after receipt of such statement, pay to the City the entire amount thereof.

(h) In the event that the use of any part of the State Franchise Holder's network is discontinued for any reason for a continuous period of thirty (30) days, without prior written notice to and approval by the City; or any part of such network has been installed in any street or other area without complying with the requirements hereof; then the State Franchise Holder shall, at the option of the City, and at the expense of the State Franchise Holder and at no expense to the City, and upon demand of the City, promptly remove from any streets or other area any such network property, and the State Franchise Holder shall promptly restore the street or other area from which such property has been removed to such condition as the City Manager may prescribe. The City Council may, upon written application therefor by the State Franchise Holder, approve the abandonment of any of such property in place by the State Franchise Holder and under such terms and conditions as the City Council may prescribe. Upon abandonment of any such network property in place, the State Franchise Holder shall cause to be executed, acknowledged and delivered to the City such instruments as the City attorney shall prescribe and approve, transferring and conveying the ownership of such property to the City.

14.25.180 Emergency Alert Systems. Each State Franchise Holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the State Franchise Holder's network.

14.25.190 Interconnection for PEG Programming. Each State Franchise Holder, and each Incumbent Cable Operator, shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under California Public Utilities Code Section 5870(h). Each State Franchise Holder and Incumbent Cable Operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a State Franchise Holder and an Incumbent Cable Operator cannot reach a mutually acceptable interconnection agreement, the City may require the Incumbent Cable Operator to allow the State Franchise Holder to interconnect its network with the Incumbent Cable Operator's network at a technically feasible point on the State Franchise Holder's network as identified by the State Franchise Holder. If no technically feasible point for interconnection is available, each State Franchise Holder will make an interconnection available to each channel originator providing PEG programming to an Incumbent Cable Operator, and will provide the facilities necessary for the interconnection. The cost of any interconnection will be borne by the State Franchise Holder requesting the interconnection unless otherwise agreed to by the State Franchise Holder and the Incumbent Cable Operator.
15.04.010 Purpose. The formation and establishment of a municipally owned utility for the provision of electricity and natural gas services pursuant to City of San Marcos Resolution 2000-5500 is hereby codified, having been confirmed and ratified as of August 22, 2000. Pursuant to City Council action on October 9, 2001, “The Discovery Valley Utility” was adopted as the name of the municipal utility, and such name is incorporated into such codification effort. The City Manager or his designee is authorized to take all necessary and/or additional steps to provide for the operation and maintenance of the Discovery Valley Utility as directed by the City Council following a hearing. (Ord. No. 2002-1133, 2-12-02)

15.04.020 Definitions. As used herein the term: (Ord. No. 2002-1133, 2-12-02)

(a) Discovery Valley Utility or municipal utility shall mean the municipally owned natural gas and electricity utility of the City of San Marcos having the power and authority to provide electricity and natural gas services.

(b) Discovery Valley Utility Fund shall mean the fund created and established for the municipal utility, which shall be accounted for separately from those of the City of San Marcos and/or any of its subsidiary agencies, into which all revenues or income generated by or on behalf of the municipal utility shall be deposited, and from which all disbursements, distributions and/or payments shall be made in accordance with contracts made or entered into by the municipal utility.
CHAPTER 15.08

DISCOVERY VALLEY UTILITY

Sections:

15.08.010 Definitions
15.08.020 Discovery Valley Utility
15.08.030 Board of Directors
15.08.040 Organization of the Board
15.08.050 Organization of the Utility
15.08.060 Powers and Duties of the Board
15.08.070 General Provisions

15.08.010 Definitions. As used herein the term: (Ord. No. 2002-1142, 5-28-02)

(a) Utility means the Discovery Valley Utility established pursuant to Section 15.08.020 of this Chapter.

(b) Board means the Board of Directors of the Utility referred to in Section 15.08.030, which shall be the governing body of the Utility.

(c) Directors means the representatives of the Utility appointed to the Board pursuant to Section 15.08.030.

(d) Executive Director means the Executive Director of the Utility appointed pursuant to Section 15.08.030.

(e) Secretary means the Secretary of the Utility appointed pursuant to Section 15.08.040 (e).

(f) Treasurer means the Treasurer of the Utility appointed pursuant to Section 15.08.050 (c).

15.08.020 Discovery Valley Utility. There is hereby created a public entity to be known as the “Discovery Valley Utility” for the City of San Marcos, which shall be responsible for the planning, development, production, purchase and transmission of all electricity and natural gas and other utility-related services, by the City. (Ord. No. 2004-1228, 5-25-04)

15.08.030 Board of Directors. The Utility shall be administered by a Board of Directors consisting of five (5) Directors, unless and until such number is changed by amendment of this code. The members of the City Council of the City, as such members may change from time to time, shall constitute the Directors of the Utility. The Board shall be called the “Board of Directors of the Discovery Valley Utility.” The Board shall have exclusive jurisdiction, control, and policy-making responsibility of the Utility. All voting power of the Utility shall reside in the Board. The Board shall have all powers and duties possessed by the City to construct, acquire, expand and operate the utility; and to do any and all acts or things that are necessary, convenient, or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, economic and business-like administration of the utility. The Board shall operate as a unit of City government,
except as otherwise provided in this chapter. The Board may sue or be sued in its own name. All damage claims arising from the operations of the Board and Utility shall be the responsibility of and be liquidated by the Board from the appropriate funds of the respective utility systems of the Utility. (Ord. No. 2002-1142, 5-28-02)

15.08.040 Organization of the Board. (Ord. No. 2002-1142, 5-28-02)

(a) Regular Meetings. The Board shall establish a schedule of its regular meetings. The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Board and a copy of such resolution shall be filed with the City of San Marcos.

(b) Special Meetings. Special Meetings of the Board may be called in accordance with the provisions of section 54956 of the California Government Code.

(c) Call, Notice and conduct of Meetings. All meetings of the Board, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (section 54950 et seq. of the California Government Code).

(d) Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director and the City.

(e) Compensation. Directors shall be compensated for their service by an amount established from time to time by resolution of the City Council. Directors may be reimbursed for expenses incurred in carrying out their duties. The compensation level established by the City Council is exclusive of any amount payable to each member of the Board as reimbursement for actual necessary expenses incurred in the performance of the official duties for the Utility.

(f) Officers: Chairperson, Vice-Chairperson, Executive Director and Secretary. The Board by majority vote shall elect from among its members a Chairperson who shall preside over the meeting or the Board, and a Vice-Chairperson who shall act for the Chairperson during absences. Election of officers shall be held at the first regular meeting at which all members are present following the appointment of a new Board member, but not later than the second meeting following the appointment. At the first regular meeting of the Board on May 14, 2002 Director Rozmus was elected as Chairperson and Director Thibadeau was elected as Vice-Chairperson. The City Clerk of the City shall be the Secretary of the Board. The City Manager of the City shall be the Executive Director of the Utility. The officers shall perform the duties normal to said offices. The Chairperson or the Executive Director shall sign all contracts on behalf of the Utility, unless a resolution of the Board shall provide otherwise, and shall perform such other duties as may be imposed by the Board. The Vice-Chairperson shall perform all of the Chairperson’s duties in the absence of the Chairperson. The Secretary shall countersign all contracts signed by the Chairperson or Executive Director on behalf of the Utility, unless a resolution of the Board shall provide otherwise, perform such other duties as may be imposed by the Board. The Executive Director shall administer the day-to-day operations of the Utility.

(g) Voting. Each Director shall have one vote.
(h) **Quorum; Required Votes; Approvals.** Directors holding a majority of the votes shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. The affirmative votes of at least a majority of the Directors present at any meeting at which a quorum is present shall be required to take any action by the Board.

(i) **Public Access.** Meetings and documents of the Board are open and available to the public. Where materials and/or discussions pertain to such issues as utility personnel, property acquisition or disposal, and potential and actual litigation, or to power supply proposals, negotiations, or contracts, executive sessions or privacy exclusions may be employed.

(j) **Errors and omissions.** The Utility shall hold harmless and indemnify its Directors, agents and employees to the full extent permitted by law, including, but not limited to, all liabilities, expenses, and losses incurred by its Directors, agents, and employees in connection with acts of error or omissions, other than willful violations of laws, expense, all related claims and suits.

15.08.050 **Organization of the Utility.** (Ord. No. 2002-1142, 5-28-02)

(a) **Divisions.** Within the Utility there may be separate divisions for the natural gas, electricity and other utility operations. Separate funds and accounts shall be kept for each division as required by the uniform systems of accounts for natural gas, electricity and other utilities, as promulgated by the Public Utilities Commission of the State or the Federal Energy Regulatory Commission.

(b) **Policy.** The Board shall establish an annual budget and written policies governing utility operations to cover such areas as employees’ duties, customer rates, service rules and termination procedures, expenditures or funds, long-range planning, and other appropriate activities.

(c) **Treasurer.** The Treasurer of the City is hereby designated as the Treasurer of the Utility. The Treasurer shall be the depositary, shall have custody of all the accounts, funds and money of the Utility from whatever source, and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Utility. As provided in section 15.08.060(m), the Treasurer shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Utility.

(d) **Officers in Charge of Records, Funds and Accounts.** The Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Utility and all records of the Utility relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Utility.

(e) **Board Attorney.** The City Attorney shall be the Board Attorney of the Utility who shall perform such duties as may be prescribed by the Board. Such Board Attorney may be paid reasonable compensation for the services rendered.

(f) **Other contracts.** The Board shall have the power by resolution to employ such other consultants and independent contractors as may be necessary for the operation of the Utility upon receipt of recommendations by the Executive Director.
15.08.060 Powers and Duties of the Board. (Ord. No. 2002-1142, 5-28-02)

(a) Real estate and contracts. The Board, in the efficient and economical operation of the Utility, both inside and outside City limits as state law permits, may:

(1) sell its products and services to public and private corporations and to other consumers; (2) construct and operate plants and operate transmission lines and other facilities; (3) purchase real estate and franchises; and (4) enter into all contracts, leases, and agreements in furtherance thereof. (Ord. No. 2004-1228, 5-25-04)

(b) Extensions of services. The Board may adopt regulations governing extensions of service of the Utility both inside and outside City limits. The regulations shall provide the conditions under which the extensions shall be made to render them compensatory and shall provide that each extension project shall, when completed, become the property of the City whether on public or private property. The Board may provide for refunds where advances by the person benefited are necessary to make extensions compensatory.

(c) Joint Operations with others. The Board may enter into contracts and agreements with any public or private corporation or any individual, both inside and outside the boundaries of the City and state: (1) for the joint use of property belonging either to the Utility or to the other contracting party or jointly to both parties; and (2) for the joint acquisition of real and personal property, rights and franchises, and the joint financing, construction, and operation of plants, buildings, transmission lines, and other facilities.

(d) Eminent domain. The Board may enter upon any land or water for the purpose of making surveys and may exercise the right of eminent domain in like manner as the City and to the same extent as the City, when the Board determines that public necessity or convenience requires such action.

(e) Use of thoroughfares for utility installations. The Board may use the ground over, under, or along any road, railway, highway, street, sidewalk, thoroughfare, alley, or waterway in the operations of the Utility, but shall in all cases subject to the applicable General regulations of the City and state cause the surface of the public way to be restored to its usual condition.

(f) Rates. The Board shall fix rates to be charged for natural gas, electricity and other utility services rendered by the Utility. Rates shall be competitive, fair, reasonable, cost-based, compensatory, and with no undue preference or discrimination. The Board may require reasonable deposits as security for the payment of charges for utility services and may provide for the return of the deposits when satisfactory consumer credit has been established.

(g) Authorization for expenditures. No money shall be drawn from the funds of the Utility nor shall any obligation for the expenditure of money be incurred except in conformity with authorization by the Board. No claim against the Utility shall be paid unless evidenced by a voucher approved by the Executive Director or by some other employee to be designated by the Executive Director.

Supplement No. 9-1994 Code
(h) **Use of utility funds.** All utility revenue shall be directed to the provision of utility services and not applied to the General fund of the City, unless the transfer of revenues constitutes a payment in lieu of taxes. Any shared utility/City funds or services shall be accounted for directly and explicitly.

(i) **Bond issues and other indebtedness.** Subject to applicable state laws, the Board may authorize the issuance and sale of revenue bonds or other types of indebtedness necessary to finance the acquisition, construction, improvement, and extension of the utility facilities owned by the City or Utility, including facilities owned or operated jointly with others. Use of General Obligation bonds may entail approval by the City Council or the electorate.

(j) **Short-term indebtedness.** The Board may borrow money up to and not exceeding $25,000,000 for periods not to exceed five (5) years and may issue negotiable notes, payable from the revenues of the Utility or a division thereof, as evidence of the indebtedness. The action of the Board may be by resolutions, which may be adopted at the same meetings at which the resolutions are introduced and shall take effect immediately upon adoption. The Board will limit short-term borrowing to capital expenditures, which have a measurable life/schedule of depreciation. The Board will not engage in short-term borrowing to fund utility operational expenses, except to address very brief and minor cash flow consideration.

(k) **Public information expenditures.** The Board may authorize reasonable expenditures to acquaint the public with the policies, operations, programs, and plans of the Utility.

(l) **Investment of surplus funds.** The Treasurer may invest surplus funds of the Utility in securities that are safe and authorized by bond resolution, by state investment regulations, or other specific action by the Board.

(m) **Accounting, finance, budget and planning reports.** The Executive Director, in addition to the reports and accounting the Utility may otherwise be required by law to make, shall furnish to the Board and City Council its annual financial report which shall include a balance sheet and statement of operations, showing the financial condition of the Utility and each separate division, prepared according to Generally accepted public utility accounting principles. The funds and accounts of the Utility shall be audited annually by a certified public accountant, and shall be open to public inspection. The Executive Director shall also annually prepare a budget forecast for the ensuing year and furnish a copy to the Board and the Council. If the budget requires payments to or from the General fund of the City, it shall be submitted to the Council in a manner prescribed by the charter for the use of such funds. The Executive Director will also submit to the Board and the City Council information concerning long-range power supply arrangements, capital improvement projects, and other programs that may have an impact on the City.

15.080.070 **General Provisions.** (Ord. No. 2002-1142, 5-28-02)

(a) **Enforcement by Utility.** The Utility is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this chapter.

(b) **Severability.** Should any part, term or provision of this chapter be decided by any court or competent jurisdiction to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Supplement No. 7-1994 Code
(c) **Effective date of chapter.** For the purpose of the creation, appointment, qualification, and organization of the Board, and for all other purposes, this chapter shall take effect 30 days from and after its passage.
TITLE 16
MOBILEHOMES AND MOBILEHOME PARKS

CHAPTERS:

16.04 Park Rules and Regulations
16.08 Use and Storage of Trailers
16.12 Mobilehome Park Conversions
16.16 Mobilehome Rent Review Commission
16.20 Sale of Mobilehome Parks
16.24 Mobilehome Installation Regulations
16.28 Temporary Rental of Mobilehomes in Mobilehome Parks

CHAPTER 16.04
PARK RULES AND REGULATIONS

SECTIONS:

16.04.10 Authority
16.04.20 Definitions
16.04.30 Park Area
16.04.40 Signs
16.04.50 Requirements Applicable to All Parks
16.04.60 Operating Permit Fee
16.04.70 Park Rules and Regulations

16.04.010 Authority. The rules and regulations set forth in this chapter are adopted pursuant to the authority of Section 18300 of the Health and Safety Code.

16.04.020 Definitions. The following terms and conditions shall have the meaning ascribed to them in Chapter 1 of Part 2.1 of Division 13 of the Health and Safety Code (commencing with Section 18200): lot, mobilehome park, recreational vehicle, travel trailer, and travel trailer park.

16.04.030 Park Area. Each mobilehome park, recreational trailer park and travel trailer park established after the effective date of this section shall contain a minimum of five (5) acres of land; provided, however, that a park may be operated as a smaller parcel if application for a permit was made on or before May 19, 1969, and a permit was issued by an agency having jurisdiction over such parks and actual construction of the park was begun prior to July 19, 1969. The land shall be properly graded to provide for adequate drainage and freedom from standing pools of water.

16.04.040 Signs. Every mobilehome park shall be identified as such by a sign displaying the name of the park, which sign shall be clearly visible and readable from the road, street or highway upon which the mobilehome park fronts.

16.04.050 Requirements applicable to all parks. The rules and regulations set forth in this chapter applicable to a mobilehome park are equally applicable to a recreational trailer park and travel trailer parks.

16.04.060 Operating Permit Fee. The fee for any operating permit issued by the Building Official shall be the annual operating permit fee established by Section 18502 of the Health and Safety Code.
16.04.070 Park Rules and Regulations.

a) **Intent.** This ordinance provides for review and approval of any change, addition, deletion or modification of Park Rules and Regulations affecting the residents of a Mobilehome Park within the City of San Marcos, prior to implementation thereof by a Park Owner.

b) **Committee.** The residents of each Mobilehome Park shall provide through their homeowner representative group, by election or appointment, a "Park Rules and Regulations Committee" that will be responsible for reviewing, negotiating and approving or rejecting any change, addition, deletion or modification proposed by the Park Owner to the Park Rules and Regulations.

c) **Review.** No Park Owner shall change, add to, delete or modify the Park Rules and Regulations affecting the residents of a Mobilehome Park unless and until any such change, addition, deletion or modification shall have first been submitted to, reviewed and approved by the Park Rules and Regulations Committee. The term "Park Owner" shall not include any resident-owned mobilehome park.

d) **Appeal.** In the event that a majority of the members of the "Park Rules and Regulations Committee" does not approve all or part of a proposed change, addition, deletion or modification of the Park Rules and Regulations, a Park Owner shall have the right to appeal by petition to all residents of the Mobilehome Park to seek such approval. Any rejection of a proposed change, addition, deletion or modification may be reversed by a petition bearing the signatures of a majority of the residents of the subject Mobilehome Park approving the proposed change, addition, deletion or modification.

e) **Initial Review.** An initial review of existing Park Rules and Regulations shall be performed jointly by the "Park Rules and Regulations Committee" and the Park Owner within 90 days of the effective date of this Ordinance. The purpose shall be to allow for reasonable review and modifications, as well as establish a baseline for all subsequent changes, additions, deletions or modifications to the said rules.

f) **Declaration.** The adoption and enforcement of this Mobilehome Park Rules and Regulations Protection Ordinance is a matter of local concern and is declared to be a municipal affair. *(Ord. No. 96-1007, 11-6-96)*
Chapter 16.08

USE AND STORAGE OF TRAILERS

ARTICLE I: GENERAL PROVISIONS

SECTIONS:

16.08.010 Trailer Coaches Regulated
16.08.020 Trailer and Coach Defined
16.08.030 Zoning Ordinance Prevails
16.08.040 Nonconforming Trailer Coaches Must Conform
16.08.050 Violation
16.08.060 Building Official to Enforce

ARTICLE II: PERMITTED USES

16.08.070 Storage Allowed Without Permit
16.08.080 Uses Allowed With Permit

ARTICLE III: TRAILER COACH USE PERMITS

16.08.090 Uses and Period for Which Permit may be Issued
16.08.100 Application for Permit or Extension of Permit
16.08.110 Mandatory Conditions
16.08.120 Discretionary Conditions
16.08.130 Expiration of Permit; Extension

ARTICLE IV: REVOCATION OR SUSPENSION

16.08.140 Grounds for Revocation or Suspension
16.08.150 Notice of Revocation or Suspension
16.08.160 Hearing before Building Official
16.08.170 Order of Revocation or Suspension

ARTICLE V: TRAILER ROUNDUPS

16.08.180 Trailer Roundup Defined
16.08.190 Trailer Roundups Regulated
16.08.200 Trailer Roundups for which Permits may be Used
16.08.210 Application and Fee
16.08.220 Mandatory Conditions
16.08.230 Discretionary Conditions
16.08.240 Revocation

Article I: General Provisions

16.08.010 Trailer Coaches Regulated. No person shall use, occupy or store any trailer coach in the city except as provided in this chapter; provided, however, that this chapter shall not apply to use, occupancy or storage of trailer coaches in any incidental camping area, mobile home park, recreational trailer park or camping area, temporary trailer park or travel trailer park.
subject to Part 2.1 (commencing with Section 18200) of Division 8 of the Health and Safety Code (the Mobile Home Park Act) or in any labor camp subject to Chapter 4 (commencing with Section 2610), Part 9, Division 2 of the Labor Code or in any supervised public park, public campground or picnic ground owned, operated and maintained by the federal government, the State of California or any agency or political subdivision of the state.

16.08.020 **Trailer and Coach Defined.** The term "trailer coach" as used in this chapter shall mean any vehicle, with or without motive power, designed or used for human occupancy for residential, recreational, industrial, professional or commercial purposes and shall include camp car, mobile home, recreational vehicle and travel trailer as said terms are defined in Part 2.1 of Division 8 of the Health and Safety Code.

16.08.030 **Zoning Ordinance Prevails.** The provisions of this chapter shall not authorize the use, occupancy or storage of a trailer coach contrary to the provisions of Title 20 of this Code, the zoning ordinance.

16.08.040 **Nonconforming Trailer Coaches must Conform.** The use, occupancy or storage of a trailer coach which was lawful on the effective date of this chapter but which does not conform to the requirements thereof may be continued until, but not after January 1, 1971. Any change in the use, occupancy or storage of a trailer coach shall conform to all of the requirements of this chapter.

16.08.050 **Violation.** Any person using, occupying or storing a trailer coach contrary to the provisions of this chapter or contrary to the provisions of any permit issued pursuant to this chapter is guilty of a misdemeanor and shall be punishable in accordance with the provisions of section 1.12.010. Any trailer coach so used, occupied or stored is declared to be a public nuisance.

16.08.060 **Building Official to Enforce.** It shall be the duty of the Building Official to enforce the provisions of this chapter.

**Article II: Permitted Uses**

16.08.070 **Storage Allowed without Permit.**

(a) Trailer coaches may be stored only as follows:

(1) Within an enclosed building

(2) On a lot or parcel of property on which there exists a lawfully established and maintained dwelling which is occupied by the owner of the stored trailer coach.

(3) On a lot or parcel on which there is conducted lawfully operated business for the sale, rental, storage or repair of trailer coaches and such storage is incidental to the operation of the business.

(b) No stored trailer coach shall be used or occupied and all water, gas, electric and sewer lines shall be and remain disconnected from the trailer coach at all times it is stored except that a stored trailer coach may be connected to the foregoing utilities for a forty-eight hour period for the purpose of maintenance and repairs or for servicing prior to or upon the return from travel.
16.08.080 Uses Allowed with Permit. No person shall use or occupy a trailer coach in the city except when authorized by and in accordance with a valid unexpired trailer coach use permit issued by the Building Official pursuant to the provisions of this chapter; provided, however, that no trailer coach use permit shall be required for the temporary use of a trailer coach while participating in a trailer roundup for which a permit has been issued by the Building Official pursuant to the provisions of this chapter.

Article III: Trailer Coach Use Permits

16.08.090 Uses and Period for which Permit may be Issued. The Building Official may issue trailer coach permits authorizing the use or occupancy of trailer coaches for the purposes and periods of time hereafter specified.

(a) For temporary construction offices on or adjacent to the site on which a building or construction project is being diligently prosecuted. Such permit may be issued for a period not to exceed two (2) years and shall expire upon the expiration of the building permit for the building or construction project or such earlier date as may be specified in the permit.

(b) For a temporary real estate sales office on or adjacent to any subdivision within which ten (10) or more dwelling units are being constructed or have been constructed within the preceding one year. Such permit may be issued for a period not to exceed one year and shall expire six (6) months after completion or construction of the dwelling units in the subdivision or such earlier date as may be specified in the permit.

(c) For a temporary business office incidental to the operation of the business of storing, repairing or sale of trailers on a lot or parcel on which no building is located. Such permit may be issued for a period not to exceed one year and shall expire on the date specified in the permit.

(d) For a temporary business office incidental and located on a site on which a temporary carnival, circus, amusement center, Christmas tree sales or similar temporary or seasonal business is being lawfully conducted. Such permit may be issued for a period not to exceed three (3) months and shall expire at such time as the business for which it is issued terminates or at such earlier date as may be specified in the permit.

(e) For a temporary business office for a financial institution or public utility which is required, as a condition of a franchise granted by the United States, the state or a public agency, to maintain a place of business at a location at which no permanent structure suitable for the purpose is available. Such permit shall be issued for a period not to exceed two (2) years.

(f) For a temporary business office or sale facility on or adjacent to a site on which construction of a permanent business office or sales facility for the use of the permittee is being diligently prosecuted. Such permit may be issued for a period not to exceed two (2) years and shall expire upon completion of the construction of the permanent business office or sales facility or at such earlier date as may be specified in the permit.

(g) For a temporary dwelling for security personnel on or adjacent to any site on which construction of a major residential, commercial, industrial or public works project is being diligently prosecuted and for which such security personnel are employed. Such permit may be issued for a period not to exceed two (2) years and shall expire upon completion of the construction project or at such earlier date as may be specified in the permit.
(h) For a temporary dwelling for security personnel on any site on which construction of a residential, commercial, industrial or public works project has been completed and for which such security personnel are employed pending construction of a permanent dwelling facilities for such security personnel. Such permit may be issued for a period not to exceed six (6) months and shall expire on the date specified in the permit.

(i) For a temporary dwelling for the permittee and his family on land owned by the permittee and on which the permittee is diligently prosecuting the construction of the first permanent dwelling. Such permit may be issued for a period not to exceed one year and shall expire upon completion of the construction of the dwelling or at such earlier date as may be specified in the permit.

(j) For a temporary dwelling to accommodate visiting relatives for a period not to exceed thirty (30) calendar days in any calendar year on land owned or leased by the host and on which there is located a permanent dwelling occupied by the host. Such permit may be issued for a period not to exceed thirty (30) days and shall expire on the date specified in the permit.

16.08.100 Application for Permit or Extension of Permit. Any person desiring a trailer coach use permit or extension of such permit shall file with the Building Official a written application on a form provided by the Building Official. The application shall be accompanied by such supplementary information as may be required by the health officer. At the time of filing such application, the applicant shall pay an application fee of ten dollars ($10.00), which fee shall not be refundable.

16.08.110 Mandatory Conditions. Every trailer coach use permit shall be issued subject to the following conditions:

(a) That the trailer coach comply with the requirements of Section 18050 of the Health and Safety Code applicable to mobile homes.

(b) That no accessory building, structure or external appurtenance used or designed to be used incidental to the use or occupancy of the trailer coach shall be erected, constructed or maintained on the site on which the trailer coach is located; provided, however, that an awning which complies with the requirements of the regulations issued pursuant to Section 18053 of the Health and Safety Code may be attached to the trailer coach.

(c) That the trailer coach be connected to a sewage disposal system which complies with the requirements of the regulations issued pursuant to Section 18054 of the Health and Safety Code; provided, however, that if such a system is not available on the site, and sanitary facilities deemed adequate by the health officer are located within two hundred (200) feet of the location of the trailer coach and are available to the user or occupant of the trailer coach, the permit may be issued subject to the condition that the trailer coach may be used or occupied without being connected to a sewage disposal system so long as such facilities remain available to the user or occupant of the trailer coach.

(d) That the trailer coach shall not be permanently connected to any water, gas or electricity source or to any sewer system or sewage disposal facility, but may be temporarily connected to such utility source or sewage system or facility in a manner approved by the Building Official.
(e) That the trailer coach shall be placed and maintained only at such location on the lot or site as is designated on a plot plan which has been approved by the Building Official.

(f) That the trailer coach not be used in any manner which would violate state law, the San Marcos Municipal Code or Title 20 of this Code, the zoning ordinance.

16.08.120  Discretionary Conditions. The Building Official may, in his discretion, issue a permit subject to such additional conditions as he deems necessary to ensure that the use or occupancy of the trailer coach is restricted to that authorized by the permit and that such use and occupancy will conform to state law, the San Marcos Municipal Code and Title 20 of this Code, the zoning ordinance.

16.08.130  Expiration of Permits: Extension. A permit issued pursuant to this chapter shall expire on the date therein specified which date shall be fixed by the Building Official subject to the limitations specified above in this Article and in consideration of the intended use of the trailer coach.

Any trailer coach use permit issued by the Building Official pursuant to this chapter, except a permit for use as a dwelling to accommodate visiting relatives, may be extended by the Building Official for good cause for a period not to exceed six (6) months.

Article IV: Revocation or Suspension

16.08.140  Grounds for Revocation or Suspension. Failure of any permittee to comply with any conditions of his trailer coach permit shall constitute grounds for revocation of the permit pursuant to the procedural provisions of this chapter. Whenever grounds for revocation exist, the Building Official may revoke the permit or, at his discretion, may suspend the permit for a period of time which, in his opinion, is adequate to allow the permittee to make corrections necessary to comply with the conditions of the permit. If the permit is suspended and the permittee has not complied with all conditions of the permit by the end of the period of suspension the building officer may revoke the permit.

16.08.150  Notice of Revocation or Suspension. Whenever the Building Official determines that the conditions of a permit are being violated, he shall notify the permittee. Such notice may be served by mailing to the address given on the application for permit or by posting on the property on which the trailer coach is located. The notice shall be in writing and shall contain the following information:

(a) A statement of the condition which is being violated.

(b) A statement that the permit will be revoked or suspended, as the case may be, effective ten (10) days from the date of the notice.

(c) If the permit is to be suspended, a statement of the period of the suspension.

(d) A statement that the permittee may, within ten (10) days of the date of the notice, request a hearing before the Building Official on the question of whether or not the conditions of the permit have been violated.

16.08.160  Hearing before Building Official. If the permittee requests a hearing, the Building Official shall fix a time and place for a hearing and notify the permittee. If such a request is made, the Building Official shall take no further action prior to the hearing to suspend or revoke the permit. At the time and place of the hearing, the permittee may
appear and be heard on the question of whether the conditions of the permit were violated.

16.08.170 **Order of Revocation or Suspension.** If no request for a hearing is received, the Building Official may revoke or suspend the permit on the date of revocation or suspension specified in the notice of revocation or suspension. If a hearing is requested and, at the conclusion of the hearing the Building Official determines that grounds for revocation or suspension exist, he may revoke or suspend the permit forthwith. In either case, an order of revocation or suspension shall be mailed to the permittee at the address shown on the application for the permit or posted on the property on which the trailer coach is located.

**Article V: Trailer Roundups**

16.08.180 **Trailer Roundup Defined.** The term "trailer roundup" as used in this chapter shall mean the temporary assemblage of two (2) or more trailer coaches which is organized, sponsored or sanctioned by a club, group or association, one of the purposes of which is the promotion of such affairs.

16.08.190 **Trailer Roundups Regulated.** No person shall promote, establish, operate, or knowingly participate in any trailer roundup which is not in compliance with the requirements of this chapter.

16.08.200 **Trailer Roundups for which Permits may be Issued.** The Building Official may issue a permit for the operation of a trailer roundup for a period not to exceed ten (10) days. No such permit shall be issued unless the building officer determines that:

(a) An application for the permit has been submitted by a club, group or association organized for the purpose of promoting trailer roundups.

(b) The owner or lessee of the property on which the trailer roundup is to be held has consented to the submission of the application for permit.

(c) The applicant has shown that the trailer roundup will be so operated that it will not adversely affect the health or safety of participants or the public and will not interfere with the enjoyment of neighboring properties by the occupants thereof.

(d) The trailer roundup will not violate any provision of Title 20 of this Code, the zoning ordinance.

16.08.210 **Application and Fee.** Any club, group or organization desiring a trailer roundup permit shall file with the Building Official a written application on a form provided by the Building Official. The application shall be accompanied by such supplementary information as may be required by the Building Official. At the time of filing such application, the applicant shall pay an application fee of twenty-five dollars ($25.00), which fee shall not be refundable.

16.08.220 **Mandatory Conditions.** Every trailer roundup permit shall be issued subject to the following conditions:

(a) That no accessory building, structure or external appurtenance used or designed to be used incidental to the use or occupancy of a trailer coach shall be erected,
constructed or maintained on the site on which any trailer coach is located; provided, however, that an awning which complies with the requirements of the regulations issued pursuant to Section 18053 of the Health and Safety Code may be attached to a trailer coach.

(b) That every trailer coach participating in the roundup be connected to a sewage disposal system which complies with the requirements of the regulations issued pursuant to Section 18054 of the Health and Safety Code; provided, however, that if such a system is not available on the site, and sanitary facilities deemed adequate by the health officer are located within two hundred (200) feet of the location of every trailer coach participating in the roundup and are available to the user or occupant of each such trailer coach, the permit may be issued subject to the condition that each trailer coach participating in the roundup must be used or occupied without being connected to a sewage disposal system.

(c) That no trailer coach participating in the roundup shall be permanently connected to any water, gas or electricity source or to any sewer system or sewage disposal facility, but may be temporarily connected to such utility source or sewage system or facility in a manner approved by the Building Official.

(d) That each trailer coach participating in the roundup shall be placed and maintained only at such location on the lot or site as is designated on a plot plan which has been approved by the Building Official.

(e) That the trailer roundup not be conducted in any manner which would violate state law, the San Marcos Municipal Code or Title 20 of this Code, the zoning ordinance.

16.08.230 Discretionary Conditions. The Building Official may, in his discretion, issue a permit subject to such additional conditions as he deems necessary to ensure that the trailer roundup will not constitute a public or private nuisance and will conform to state law, the San Marcos City Code and Title 19 of this Code, the zoning ordinance.

16.08.240 Revocation. The Building Official may revoke any trailer roundup permit for failure of the permittee to comply with any condition of the permit. Such revocation shall become effective when notice of the revocation is served upon the permittee or posted at the place where the trailer roundup is to be or is being held.
Chapter 16.12

MOBILE HOME PARK CONVERSIONS

Sections:

16.12.010 Scope of Chapter
16.12.020 Intent of Chapter
16.12.030 Requirements
16.12.040 Procedures for Review
16.12.050 Factors for Consideration
16.12.060 Conditions

16.12.010 Scope of Article. Unrestricted conversion of mobile home parks to other uses diminishes the mobile home stock and space availability. The protection of tenants and potential purchasers of mobile homes warrants the implementation of certain regulatory safeguards. The city recognizes the need to insure that the private sector exercises its responsibilities to provide varied housing choices and opportunities and that city participation in this responsibility is necessary.

16.12.020 Intent of Article. The intent of this chapter is to insure that mobile home park opportunities are available to residents of San Marcos, and to insure that mobile home park conversions provide for the health, safety and general welfare of the community.


(a) Use of a property as mobile home park shall not be terminated for the purpose of conversion to another land use until application for mobile home park conversion has been made to the Planning Department and approval by the Planning Commission or City Council, or appeal, has been received.

(b) No building permit shall be issued on property occupied by a mobile home park at the effective date of this chapter [July 12, 1979] or hereinafter for uses other than those associated with the mobile home park use and allowed under the special use permit, until approval under section 16.12.030 (a) has been received.

(c) Applications for mobile home park conversion shall be made to the Planning Department and in addition to the complete application, along with a $300.00 filing fee, the following information is required:

1. Plans indicating what use the conversion is intended to be.

2. Time table for conversion of the park.

3. If proposed conversion is to a use not consistent with the underlying zone, the applicant shall file concurrently, a specific plan zone reclassification.

4. Total spaces within the park, number of spaces occupied, length of time each space has been occupied by present tenant, monthly rate currently charged.

5. Environmental assessment form.

(a) Within ninety (90) days following the submittal of an application, the matter shall be set for public hearing before the Planning Commission.

(b) The Planning Commission within thirty (30) days after the close of the public hearing shall render a decision on whether or not the conversion shall be approved, based upon the factors for consideration set forth in section 16.12.050.

(c) The decision of the Planning Commission may be appealed to the City Council by the filing of a letter requesting appeal of the Planning Commission decision within eleven (11) days after the decision of the Planning Commission has been filed in the office of the Planning Commission. Such an appeal shall be in writing and shall specify where there was error in the decision of the Planning Commission with regard to the required findings.

(d) Within sixty (60) days following the filing of said appeal, the City Council shall hold a public hearing on the matter and within thirty (30) days following the close of that hearing, the City Council shall render a decision on the conversion. The City Council shall not grant a conversion denied by the Planning Commission, except upon order of the city council passed by not less than a four-fifths (4/5) vote of all members thereof.

16.12.050 Factors for Consideration. In reviewing a request for a mobile home park conversion, the planning commission and City Council shall, at a minimum, take the following factors into consideration when rendering a decision:

(a) There exists sufficient mobile home space availability within the north county branch of the Superior Court geographic area to accommodate the displaced mobile homes.

(b) The conversion will not result in the displacement of low-income individuals or households who cannot afford rents charged in other parks.

(c) That the age, type and style of mobile home within the park proposed for conversion would be accepted into other parks within the geographic area.

(d) If the conversion is to another residential use, the mobile home park residents have first opportunity to occupy these units and the construction schedule will not result in long-term displacement.

(e) The proposed conversion is consistent with the San Marcos General Plan.

(f) The proposed conversion is pursuant to the public health, safety and welfare.

(g) The conversion will not result in a shortage of housing opportunities and choices within the City of San Marcos.

16.12.060 Conditions. In the approval of a mobile home park conversion, the city may attach conditions deemed reasonable in order to mitigate the impacts associated with the conversion. Such conditions shall not be limited to, but may include the following:

(a) Partial payment for relocation of mobile homes to another park.
(b) If the land occupied by the park is to be sold, the tenants be given the first right of refusal accepting the offer of the seller for the purchase of the park and all the improvements.

(c) The tenants be given the option of a long-term lease of the land and purchase of the improvements.

(d) The city may attach an effective date upon their approval of the conversion. Said date will provide sufficient time for the relocation of the mobile homes to their parks. Said time limit shall, at a minimum, be one year.

(e) If the mobile homes cannot be relocated to parks in the area, the applicant may be required to purchase said mobile homes at fair market value, determined by an independent appraiser with mobile home expertise.
CHAPTER 16.16  
MOBILE HOME RENT REVIEW COMMISSION  

SECTIONS:

16.16.010  Findings
16.16.020  Definitions
16.16.030  Applicability
16.16.040  Commission Established; Compensation of Members
16.16.050  Powers of the Commission
16.16.055  Notice of Rent Increase
16.16.060  Initiation of Proceedings
16.16.070  Commission Review
16.16.080  Annual Adjustment
16.16.085  Exceptions to Annual Adjustment Restriction
16.16.090  Adjustments to Fees and Charges
16.16.100  Repeal and Amendment
16.16.110  Required Notices
16.16.120  Discrimination Prohibited

16.16.010  Findings.  Since the mid 1970's there has existed within the City of San Marcos and surrounding communities, a shortage of rental space for the location of mobilehomes. Due to the continuing shortage of available mobilehome rental spaces, there continues to be very low vacancy rates within mobilehome parks creating an inequitable market situation between mobilehome park owners and the tenants thereof. Prior to the enactment of regulations controlling space rent increase, space rents had been rising for several years and were being increased in amounts and at frequencies that caused serious concern, anguish, and stress among a substantial number of San Marcos residents living in mobilehome parks.

Finding alternative rental sites for the relocation of mobilehomes have been and continue to be difficult due to the shortage of vacant rental spaces, the restrictions on the age, size, or style of mobilehomes permitted in many mobilehome parks, and the requirements relating to the installation of mobilehomes, including permits, landscaping and site preparation. Additionally, the cost for moving a mobilehome is substantial and the risk of damage in moving is significant. The result of these conditions has been and continues to be the creation of the great imbalance in the bargaining position of the mobilehome park owners and mobilehome owners in favor of the mobilehome park owners pertaining to the establishment of space rents.

This Council finds and declares it necessary to facilitate and encourage fair bargaining between mobilehome owners and mobilehome park owners in order to achieve mutually satisfactory agreements regarding space rental rates in mobilehome parks. Absent such agreements, this Council further finds and declares it necessary to protect the mobilehome owner and resident from unreasonable space rental increases while at the same time recognizing the need of mobilehome park owners to receive a just and reasonable return on their investments.

16.16.020  Definitions.

(a)  Space Rent.  The consideration, including any bonus, benefits or gratuity demanded or received in connection with the use and occupancy of a mobile home space in a mobilehome park, or for the transfer of a lease for park space, services and
amenities, subletting and security deposits, but exclusive of any amounts paid for the use of the mobile home dwelling unit.

(b) **Mobile Home Park Owner or Owner:** The owner, lessor, operator or manager of a mobile home park within the purview of this chapter.

(c) **Mobile Home Tenant or Tenant:** Any person entitled to occupy a mobile home dwelling unit pursuant to ownership thereof or a rental or lease arrangement with the owner thereof. *“Tenant”* shall represent one mobile home park space without regard to the number of residents residing within the coach.

### 16.16.030 Applicability

Retail pet store for the purpose of adopting and/or selling those animals to the public.

(a) This Chapter shall apply to mobilehome parks containing 10 or more spaces.

(b) Pursuant to California Civil Code Section 798.17, the provisions of this Chapter regulating the amount of rent which a mobilehome park owner may charge for a mobilehome space shall not apply to any tenancy created by a rental agreement which is in excess of 12 months in duration, provided that the rental agreement meets the criteria of Subsection (b) of Section 798.17. A rental agreement of more than 12 months in duration which meets the criteria of Section 798.17(b) is referred to herein as a “qualifying rental agreement.” This exemption shall apply only during the term of the qualifying rental agreement or one or more uninterrupted, continuous extension of the agreement. If a rental agreement expires or is terminated, and no new qualifying rental agreement is entered into, then the last rent charged under the provisions of the previous rental agreement shall be the rent charged for the space; for the purpose of this provisions by the assumption of an existing qualifying rental agreement, a purchaser of a mobilehome shall be deemed to have entered into a qualifying rental agreement. If a space becomes subject to this Chapter by reason of the expiration or termination of a rental agreement, the rent may be adjusted only in accordance with the provisions of this Chapter and only at the time that the non-exempt spaces are adjusted for the park as authorized under the provisions of Section 16.16.080. If a notice of rent increase is given for a space which is exempt by the operation of this Section, but the rent increase will take effect after the expiration of the rental agreement, the tenant shall not be disqualified from executing a petition, unless a new qualifying rental agreement or an extension of the previous qualifying rental agreement is entered into by the tenant.

(c) Pursuant to the terms of the El Dorado Mobilehome Park Long-Term Space Lease and Amendment thereto (El Dorado Long-Term Lease), executed by a majority of the homeowners of the El Dorado Mobilehome Park and the park owners, and the El Dorado Mobilehome Park Regulatory Agreement and Declaration of Restrictive Covenants (El Dorado Regulatory Agreement), approved by the City Council, the provisions of this Chapter shall not apply to the El Dorado Mobilehome Park for a period of fifteen (15) years from the date of recordation of the El Dorado Regulatory Agreement by the City Clerk, or the latest termination date for the El Dorado Long-Term Lease, whichever occurs last, or other date negotiated by the parties with respect to the term provisions under the El Dorado Long-Term Lease. Any future extension and/or
modification of the El Dorado Long-Term Lease does not preclude the El Dorado Mobilehome Park’s exemption under this Section so long as there is no gap in time for any such extension and/or modification. All terms and conditions of the El Dorado Regulatory Agreement will apply to all homeowners and residents of the El Dorado Mobilehome Park, and any dispute resolution provisions required under the El Dorado Regulatory Agreement, including mandatory mediation and arbitration procedures, shall control in the event of a dispute relating to the El Dorado Regulatory Agreement or the financial terms of the El Dorado Long-Term Lease, such as base rent increases, pass-through rent, additional rent increases (i.e. utilities, cable, etc.), rent increases upon sale of a mobilehome, capital repair increases or new capital improvement increases. (Ord. No. 89-812, 3-14-89, 2016-1417, 1-26-2016)

16.16.040 Commission Established; Compensation of Members.

(a) There is hereby created within the City of San Marcos a Mobile Home Rent Review Commission, consisting of the City Council.

(b) The compensation of the members of said Mobile Home Rent Review Commission shall be as established from time to time by Resolution of the City Council. Any City department heads required to attend said meeting shall be compensated at their regular hourly rate and any other City staff members required to attend said meeting shall be compensated by overtime pay, or compensatory time off in accordance with City personnel rules and regulations. (Ord. No. 99-1078, 1/11/2000)

Supplement No. 5 – 1994 Code

Within the limitations provided by law, the Commission shall have the following powers:

(a) To meet as requested by the majority of the City Council of the City of San Marcos or upon the filing of a petition for a review of mobile home park rent increases. All meetings shall be conducted at City Hall. The City Clerk or City Clerk's designate shall act as secretary to the Commission and receive compensation as determined by the City Manager.

(b) To receive, investigate, hold hearings on and pass upon the petitions of the mobile home tenants as set forth in this chapter.

(c) To make or conduct such independent hearings or investigations as may be appropriate to obtain such information as is necessary to carry out their duties.

(d) Upon completion of their hearings and investigations to either approve the existing or proposed rental change, or to adjust the maximum rental rate downward.

(e) To adopt, promulgate, amend and rescind administrative rules to effectuate the purposes and policies of this chapter.

(f) To maintain and keep at City Hall, rent review hearing files and dockets listing the time date and place of hearings, the parties involved, the addresses involved and the final disposition of the hearing.

(g) To issue subpoenas to compel attendance at hearings conducted pursuant to this Chapter. A subpoena issued by the Commission shall be issued in the same manner as provided by State law for the issuance of subpoenas by the City Council, and shall have the same force and effect as a subpoena issued by the City Council to attend hearings which the City Council is authorized by law to conduct. (Ord. No. 89-812, 3-14-89)

(h) To establish rules for the production of evidence, including but not limited to, rules requiring certification of evidence relating to costs, expenses and other economic aspects of park operation or maintenance, or rent by a qualified accountant. (Ord. No. 89-812, 3-14-89)

16.16.055 Notice of Rent Increase.

(a) A mobilehome park owner shall give written notice to the City of a proposed rent increase. The notice shall be given at the same time that the notice of rent increase is given to the tenants. The notice shall be filed with the City Clerk and shall contain the following information: the amount of the current space rents and the amount of separately billed fees or charges, if any; the amount of the proposed increase; the spaces to which the increase applies and the names of the tenants of those spaces; and the date of the last rent increase for the park.

(b) A mobilehome park owner shall provide written notice and verification of the space(s) subject to the space rent increase as set forth in Subsection (a). A hearing to review the space rent increase will not be scheduled until said written notice and verification is received by the City Clerk. (Ord. No. 96-994, 6/11/96)
16.16.060 Initiation of Proceedings.

(a) Filing of petition. Tenants of a mobilehome park may initiate Commission review of a proposed space rent increase by filing with the City Clerk a written petition which complies with the requirements set forth in this subsection. The petition shall:

(1) Be in substantially such form and contain such information as may be required by the Commission.

(2) Contain an attestation of the circulator or circulators of the petition signed under penalty of perjury that the individuals signing the petition were known by the circulator to be tenants of the mobilehome park and that the individuals signed the petition in the presence of the circulator.

(3) Be signed by at least one (1) tenant from each of more than fifty percent (50%) of the mobilehome spaces within the park which would be subject to the space rent increase specified in the notice. Mobilehome spaces, the space rent of which is exempted from the provisions of this Article pursuant to Section 16.16.030(b) shall not be included in the determination of those mobilehome spaces which are subject to the space rent increases nor may tenants thereof sign a petition hereunder.

(4) Be received by the City Clerk during normal business hours no later than thirty (30) days following the receipt by the tenants of the notice of the proposed space rent increase, or within thirty (30) days following the date upon which the mobilehome park becomes subject to the jurisdiction of the City. Normal working hours shall be from 8:00 a.m. until 5:00 p.m., Monday through Friday, except holidays recognized by the City. If the last day for receipt of a petition falls on a Saturday, Sunday, or holiday recognized by the City, the petition may be received during normal business hours on the next succeeding business day.

(b) Initial Review of Petition by City Clerk. Upon receipt of a petition submitted pursuant to subsection (a), the City Clerk shall:

(1) Review the petition to determine whether or not the petition complies with the requirements of subsection (a) (1), (2) and (4).

(2) Reject the petition if it fails to comply with subsections (a) (1), (2) or (4) and, within five (5) business days of receipt of the petition, mail a written notice to the individual submitting the petition of the rejection thereof and the reasons for such rejection.

(3) Accept the petition for filing if the petition complies with subsections (a) (1), (2) and (4) and, within five (5) business days of receipt of the petition, mail a written notice to the park owner informing the owner that:

a) the City Clerk has received a petition;

b) the proposed space rent increased is stayed pursuant to this Chapter;

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16.16.060 - 16.16.070

(c) Determination of Adequacy of Petition. Within ten (10) business days of receipt of a petition and park owner's written notice of proposed rent increase, the City Clerk shall:

(1) Determine if the required number of tenants have signed the petition as specified in subsection (a) hereinafore.

(2) If the required number of tenants have signed the petition, forward the petition to the Commission for the purpose of setting a public hearing pursuant to Sec. 16.16.070.

(3) If the required number of tenants have not signed the petition, reject the petition and mail a written notice to the individual submitting the petition and the park owner informing them that the petition has been rejected and the reason for the rejection, and that the stay of the space rent increase has been terminated.

(Ord. No. 96-994, 6/11/96)

(d) Stay of Space Rent Increase. Unless the City Clerk rejects a petition pursuant to subsection (b) (2), the filing of a petition pursuant to subsection (a) shall automatically stay the space rent increase subject to the petition until the earlier of the following events:

(1) The City Clerk rejects the petition pursuant to subsection (c) (3); or

(2) The Commission makes a final decision regarding the space rent increase pursuant to Sec. 16.16.070.

(e) Removal of Names from Petition. Once a petition has been filed with the City Clerk pursuant to subsection (a), the names of tenants signing the petition may not be withdrawn from the petition.

16.16.070 Commission Review.

(a) Upon receipt from the City Clerk of the petition, the Commission shall schedule a hearing thereon to be conducted no earlier than forty (40) days and no later than sixty (60) days from the date of the Commission's receipt of the petition at a place and time to be set by the Commission. The purpose of the hearing shall be to determine whether or not the rental increase is reasonable. Such a public hearing may be continued from time to time if stipulated to by both parties or at the Commissioner's discretion. If a continuance is ordered at the discretion of the Commission and the mobilehome park owner has objected to such continuance, any increase in space rent granted by the Commission shall be applied retroactive to the proposed effective date of the mobilehome park owner's originally proposed space rent increase as set forth in the mobilehome park owner's notice thereof. The date of receipt of the petition by the Commission shall be the date of the regular City Council meeting at which the petition is presented to the Commission by the City Clerk for the purpose of scheduling the hearing on the petition.  (Ord. No. 96-994, 6/11/96)

(b) All rent review hearings shall be open to the public. All parties to a hearing may have assistance of any attorney or such other person as may be designated by said parties in presenting evidence or in setting forth by argument their position.

(c) In the event that either the petitioner or the respondent should fail to appear at the hearing at the specified time and place, the Commission may hear and review such evidence as may be presented and make such decisions just as if both parties had been present.  Supplement No 2 – 1994 Code
(d) The Commission shall render its final decision by resolution thereof not later than the date of the next regularly scheduled City Council meeting occurring at least seven (7) days from and after the date of the close of the Commission's hearing pertaining to the petition. No space rent increase being reviewed by the Commission shall be imposed until the Commission has rendered its final decision. The parties to the hearing shall be sent a copy of the Commissioner's Resolution containing the Commission's decision which shall include the Commission's findings upon which its decision is based.

(e) Pursuant to the findings, the Commission shall require the mobilehome park owner to:

1. Continue the rental charges as they existed under the former lease or rental arrangement, or,

2. Increase the rental to a rate set by the Commission, or,

3. Allow the rate requested by the park owner to stand.

(f) Any rental or service charge increases which have been collected by a mobilehome park owner pursuant to an increase which is the subject of a petition of hearing and which is later determined by the Commission to have been excessive, shall be either returned to the tenants or credited to future rental charges.

(g) The mobilehome park owner shall bear the burden of proving by a preponderance of the evidence that a proposed space rent increase is reasonable and is necessary to enable the mobilehome park owner to receive a just and reasonable return on his investment. In evaluating a proposed space rent increase the Commission shall consider the following non-exclusive factors in addition to such other factors as the Commission deems relevant:

1) Changes in the mobilehome park owner's gross income from the operation of the mobilehome park;

2) Changes in the reasonable operating expenses relating to the operation of the mobilehome park;

3) Whether the proposed rent increase will result in an increase in net income to the park owner from the operation of the park;

4) Changes in the Consumer Price Index for the time period from the last rent increase;

5) Changes in the services, amenities, maintenance and condition of the mobilehome park and the extent to which the rent increase is necessary to provide the services or amenities or to insure maintenance and good operating condition of the park;

6) The extent to which the rent increase is necessary to pay for capital improvements and the amount of money allocated by the owner to a capital improvement or maintenance fund, along with the park owner's budget for maintenance, care and capital improvements for the park; and
7) The extent to which the landlord receives net income from fees or charges for utilities, or incidental fees or charges for services billed separately from rent. (Ord. No. 89-812, 3-14-89)

(h) A mobilehome park owner has a duty to comply with the terms and conditions of any conditional use permit, special use permit, or other land use approval, or zoning or building ordinance, relating to the amenities, facilities, maintenance, improvements or services to be provided within the mobilehome park by the mobilehome park owner. If the Commission finds that a mobilehome park owner fails to provide or reduces the level of the amenities, facilities, maintenance, improvements or services, as established by any conditional use permit, special use permit or other land use approval or zoning or building ordinance, or if the owner fails to comply with the duties established by Section 798.87 of the California Civil Code, then the Commission may deny a proposed rent increase, decrease the rent, or conditionally approve the rent increase upon such terms and conditions as the Commission deems reasonably necessary to insure compliance with the mobilehome park owner's duties and obligations. (Ord. No. 89-812, 3-14-89)

16.16.080 Annual Adjustment

(a) Except for rental adjustments exempt from this Chapter by operation of Section 16.16.030(b), all space rents in a park shall be adjusted at the same time. A mobilehome park owner shall not increase or adjust space rents more than one time in any twelve consecutive month period.

(b) A mobilehome park owner may give notice of a proposed space rent increase or adjustment during the twelve consecutive month period from the last rent increase or adjustment and the Commission may review the proposed rent increase or adjustment provided that the increase or adjustment shall not become effective during the twelve month period.

(c) A rent increase or adjustment shall include establishing a separate charge or fee for utilities or, a service charge or fee, for services actually rendered, unless the utility or service is an additional utility or service not previously provided, or unless there is a corresponding reduction of the space rent equal to the amount of the fee or charge. A space rent increase or adjustment shall also include the termination of an amenity, utility or service previously rendered.

(d) Subsection (a) of this Section shall not apply to adjustments made pursuant to Section 16.16.090(a).

(e) The amendments to this Section made by Ordinance No. 89-812 are for the purposes of clarification and are declarative of existing law. (Ord. No. 89-812, 3-14-89)

16.16.085 Exceptions to Annual Adjustment Restriction. The provision of Section 16.16.080 prohibiting rent increases or adjustments more than one time in any twelve consecutive month period shall not be construed to prohibit either of the following:

a) A one time rental adjustment of all spaces within a mobilehome park in order to establish an annual rental adjustment date. In establishing an initial annual adjustment date for a mobilehome park, the mobilehome park owner shall confer with the City Clerk in order to distribute the annual adjustment dates for the various parks within the City periodically throughout the year. This subparagraph shall apply only to mobilehome parks
which on the effective date of this Ordinance have had a practice of adjusting space rents within the park at various times during a year. *(Ord. No. 89-817, 5-9-89)*

b) Adjustment to rents which become subject to the provisions of this Chapter by expiration of a rental agreement which operated to exempt the tenancy from the provisions of this Chapter, provided that the adjustment is made at the same time as the adjustment for all the rents within the park subject to this Chapter and further provided that such increase shall be subject to the provisions of Section 16.16.030. *(Ord. No. 89-817, 5-9-89)*

### 16.16.090 Adjustments to Fees and Charges.

(a) Subject to the notice provisions of State law and this Chapter, a mobilehome park owner may, at any time, increase space rent in order to adjust for increases in utility costs or for increases in, or establishment of, governmental special assessments or special taxes levied on the mobilehome park. Subject to the notice provisions of State law and this Chapter, a mobilehome park owner may, at any time, increase charges or fees for utility services where the cost of providing the utility is billed separately and not included in the space rent. The utility costs eligible for an increase pursuant to this Subsection are gas, electricity, water, trash pick-up, sewer and cable television.

(b) If a mobilehome park owner has established separate incidental reasonable charges for services actually rendered, the increases to such incidental fees or charges shall be subject to the provisions of this Chapter relating to increases in space rent; provided, however, that when a new service and corresponding incidental fee or charge are established, the fee or charge may be established at any time not withstanding the provisions of Section 16.16.080 of this Chapter. Any increases to the service fee or charge shall be made at the same time as an increase or adjustment to space rent. It is the intent of this Section that both space rent and other fees and charges, which may lawfully be imposed on the tenants by the mobilehome park owner, shall be adjusted at the same time.

(c) An adjustment to decrease the amount of rent, or of any fee or charge may be made at any time, provided, however, that any later increase from the decreased level shall be subject to this Chapter.

(d) If a flat utility rate is charged from each mobilehome serviced by the utility, and the utility rate for each mobilehome is increased by the utility provider, the space rent for each mobilehome may be adjusted by an amount equal to the increase in the utility rate per mobilehome. If the utility rate is dependent upon the level of use, as in the case of gas or electricity, the mobilehome park owner may adjust the space rent by an amount reasonably necessary to account for the projected increase in the cost of the utility service. The maximum monthly increase in rent or in separate utility charges or fees for any mobilehome may not exceed an amount determined by dividing the projected monthly increase in utility costs for the entire mobilehome park by the total number of mobilehome spaces within the entire park.

(e) The mobilehome park owner may adjust the space rent to account for increases in, or establishment of, a governmental special assessment or special tax on the mobilehome park by an amount reasonably necessary to cover the actual cost to the mobilehome park owner of the assessment or special tax. The maximum space rent increase for any mobilehome shall not exceed the amount determined by dividing the increase in assessment or tax for the entire park by the total number of mobilehome spaces in the park.
Within thirty days after receipt of a notice of a proposed space rent increase or increase in a separate fee or charge, which has been processed pursuant to the provisions of Subsection (a) of this Section, the tenants may file a petition requesting the Commission to review the proposed increase in the same manner as provided for in this Chapter and the regulations of the Commission. The mobilehome park owner shall bear the burden of proving that the proposed increase in space rent or the increase or establishment of a fee or charge complies with the provisions of this Section. *(Ord. No. 89-812, 3-14-89)*

**16.16.100 Repeal and Amendment.**

a) The provisions of this Chapter shall not be repealed except by a majority vote of the qualified electors of the City voting at an election for such purposes.

b) Notwithstanding Subsection a) of this Section, the City Council may amend the provisions of this Chapter after conducting a public hearing, notice of which shall be given 20 days before the hearing by both of the following methods:

1) First class mail to mobilehome park residents and mobilehome park owners;

2) Publication once in a newspaper of general circulation in the City *(Ord. No. 90-865, Approved by vote of the People on 11-8-88)*

**16.16.110 Required Notices.** In addition to the notice required by State law, the mobilehome park owner shall provide the following notices to the persons and in the manner specified in this Section.

(a) A statement of actual cost to the mobilehome park owner of utilities and of services actually provided to the tenants shall be posted in a conspicuous place in an area of the mobilehome park accessible to all tenants.

(b) A notice which conforms to the following language and printed in bold letters of the same type size as the largest type size used in the rental agreement shall be presented to the tenant or prospective tenant at the time of presentation of a rental agreement creating a tenancy with a term greater than twelve months:

"IMPORTANT NOTICE TO HOMEOWNER REGARDING THE PROPOSED RENTAL AGREEMENT FOR __________ MOBILEHOME PARK.

PLEASE TAKE NOTICE THAT THIS RENTAL AGREEMENT CREATES A TENANCY WITH A TERM IN EXCESS OF TWELVE MONTHS. BY SIGNING THIS RENTAL AGREEMENT, YOU ARE EXEMPTING THIS MOBILEHOME SPACE FROM THE PROVISIONS OF THE CITY OF SAN MARCOS MOBILEHOME RENT REVIEW LAW FOR THE TERM OF THIS RENTAL AGREEMENT. THE CITY OF SAN MARCOS MOBILEHOME RENT REVIEW LAW AND THE STATE MOBILEHOME RESIDENCY LAW (CALIFORNIA CIVIL CODE SEC. 798 et seq.) GIVE YOU CERTAIN RIGHTS. BEFORE SIGNING THIS RENTAL AGREEMENT YOU MAY CHOOSE TO SEE A LAWYER. UNDER THE PROVISIONS OF STATE LAW, YOU HAVE A RIGHT TO BE OFFERED A RENTAL AGREEMENT FOR (1) A TERM OF TWELVE MONTHS, OR (2) A
LESSER PERIOD AS YOU MAY REQUEST, OR (3) A LONGER PERIOD AS YOU AND THE MOBILEHOME PARK MANAGEMENT MAY AGREE. YOU HAVE A RIGHT TO REVIEW THIS AGREEMENT FOR 30 DAYS BEFORE ACCEPTING OR REJECTING IT. IF YOU SIGN THE AGREEMENT YOU MAY CANCEL THE AGREEMENT BY NOTIFYING THE PARK MANAGEMENT IN WRITING OF THE CANCELLATION WITHIN 72 HOURS OF YOUR EXECUTION OF THE AGREEMENT. IT IS UNLAWFUL FOR A MOBILEHOME PARK OWNER OR ANY AGENT OR REPRESENTATIVE OF THE OWNER TO DISCRIMINATE AGAINST YOU BECAUSE OF THE EXERCISE OF ANY RIGHTS YOU MAY HAVE UNDER THE CITY OF SAN MARCOS MOBILEHOME RENT REVIEW LAW, OR BECAUSE OF YOUR CHOICE TO ENTER INTO A RENTAL AGREEMENT WHICH IS SUBJECT TO THE PROVISIONS OF THAT LAW."

The notice shall contain a place for the tenant to acknowledge receipt of the notice and shall also contain an acknowledgement signed by park management that the notice has been given to the tenant according to this Section. A copy of the notice executed by park management shall be provided to the tenant. (Ord. No. 89-812, 3-14-89)

16.16.120  Discrimination Prohibited.  It is unlawful for a mobilehome park owner, or any agent or representative of the owner, to discriminate against any tenant because of the tenant's exercise of any rights under this Chapter. It is also unlawful for any mobilehome park owner, or any agent or representative of the owner, to discriminate against any purchaser or prospective purchaser of a mobilehome because of the purchaser's or prospective purchaser's choice to enter into a rental agreement subject to the provisions of this Chapter. (Ord. No. 89-812, 3-14-89)
Chapter 16.20

Sale of Mobilehome Parks

Sections:

16.20.010 Definitions
16.20.020 Mobilehome Park Owner Duty of Notification
16.20.030 Mobilehome Owners Right to Purchase
16.20.040 Exemption
16.20.050 Mobilehome Park Owner Affidavit of Compliance

16.20.010 Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes pertaining to this Chapter 16.20, have the meanings defined herein:

(a) "Mobilehome" shall mean a structure designed for human habitation and being moved on a street or highway under permit pursuant to Section 35790 of the Vehicle Code of the State of California.

(b) "Mobilehome owner" or "homeowner" shall mean a person who has a tenancy in a mobilehome park under a rental agreement.

(c) "Mobilehome park" or "park" is an area of land where nine (9) or more mobilehome sites are rented, or held out for rent, to accommodate mobilehomes used for human habitation.

(d) "Mobilehome park owner" means the owner of a mobilehome park or an agent or representative authorized to act on his behalf in connection with matters relating to a tenancy in the park.

(e) "Rental agreement" is any agreement, either oral or in writing, between the mobilehome park owner and the mobilehome owner establishing the terms and conditions of the mobilehome owner's tenancy.

(f) "Tenancy" is the right of a mobilehome owner to the use of a site within a mobilehome park on which to locate, maintain and occupy a mobilehome, site improvements, and accessory structure for human habitation, including the use of the services and facilities of the park.

(g) "Notify" means the placing of a notice in the United States mail addressed to the mobilehome owners at the mobilehome owners' address within the park or as otherwise known to the park owner. Each such notice shall be deemed to be given upon the deposit of the notice in the United States mail.

(h) "Offer" means any solicitation by the mobilehome park owner to the general public.

16.20.020 Mobilehome Park Owner Duty of Notification.

(a) If a mobilehome park owner offers a mobilehome park for sale, he shall notify the mobilehome owners of his offer, stating the price and terms and conditions within five (5) days of the offering.
(b) If the mobilehome park owner thereafter elects to offer the park at a price lower than the price specified in his notice to the mobilehome owners and/or under different terms and conditions than those specified in such notice, the mobilehome park owner shall notify the mobilehome owners within five (5) days of said changed price or terms and conditions.

(c) If a mobilehome park owner receives a bona fide offer without the solicitation thereof to purchase the park that he intends to consider or make a counter offer to, the mobilehome park owner shall offer to sell the park upon the same price and terms and conditions to the mobilehome owners.

16.20.030 Mobilehome Owners Right to Purchase.

(a) The mobilehome owners shall have the right to purchase the park, provided the mobilehome owners meet the price and terms and conditions of the mobilehome park owner, by executing a contract with the mobilehome park owner within forty-five (45) days, unless agreed to otherwise, from the date of mailing of the notice of the offer. If a contract between the mobilehome park owner and the mobilehome owners is not executed within such forty-five (45) day period, then, unless the mobilehome park owner thereafter elects to submit a counter offer to the noticed offer, at a price lower than the price specified in notice to the mobilehome owners, he has no further obligations under this subsection, and his only obligation shall be as set forth in subsection (b).

(b) If the mobilehome park owner thereafter elects to consider an offer or make a counter offer at a lower price and/or under different terms and conditions than the price or terms and conditions as specified in his notice to the mobilehome owner, the mobilehome owners will have an additional fifteen (15) days to meet the price and terms and conditions of the mobilehome park owner by executing a contract.

16.20.040 Exemption. This Article does not apply to:

(a) Any sale or transfer to a person who would be included within a table of descendant and distribution if the mobilehome park owner were to die interstate.

(b) Any transfer by gift, device or operation of law.

(c) Any transfer by corporation to an affiliate. As used herein, the term "affiliate" means any share holder of the transferring corporations, an corporation or entity owned or controlled, directly or indirectly by any shareholder of the transferring corporation.

(d) Any transfer by a partnership to any of its partners.

(e) Any conveyance of an interest in a mobilehome park incidental to the financing of such mobilehome park.

(f) Any conveyance resulting from the foreclosure of a mortgage, deed of trust, or other instrument encumbering a mobilehome park or any deed given in lieu of such foreclosure.

(g) Any sale or transfer between or among joint tenants or tenants in common owning a mobilehome park.
(h) Any exchange of a mobilehome park for other real property of substantially equivalent value, whether or not such exchange also involves incidental consideration in the form of the payment of cash or other boot.

(i) The purchase of a mobilehome park by a governmental entity under its powers of eminent domain.

16.20.050  Mobilehome Park Owner Affidavit of Compliance.

(a) A mobilehome park owner may at any time record, in the official records of the County where a mobilehome park is situated, an affidavit in which he certifies that:

(1) With reference to an offer by him for the sale of such park, he has complied with the provisions of this Article.

(2) With reference to an offer received by him for the purchase of such park, or with reference to a county offer which he intends to make, or has made, for the sale of such park, he has complied with the provisions of this Article.

(3) Notwithstanding his compliance with the provisions of either Section 16.20.020 or 16.20.030 herein, no contract has been executed for the sale of such park between himself and the mobilehome owners.

(4) The provisions of Sections 16.20.020 and 16.20.030 herein are inapplicable to a particular sale or transfer of such park by him, and compliance with such Sections is not required; or

(5) A particular sale or transfer of such park is exempted from the provisions of this Article.

Any party acquiring an interest in a mobilehome park, and any and all title insurance companies and attorneys preparing, furnishing, or examining any evidence of title, have the absolute right to rely on the truth and accuracy of all statements appearing in such affidavit and are under no obligation to inquire further as to any matter or fact relating to the park owner’s compliance with the provisions herein.

(b) It is the purpose and intention of this Section to preserve the marketability of title to mobilehome parks, and, accordingly, the provisions of this Section shall be liberally construed in order that all persons may rely on the record title to mobilehome parks.
Chapter 16.24

Mobilehome Installation Regulations

Sections:

16.24.010  Purpose
16.24.020  Adaptation of Mobilehome Installation Regulations

16.24.010  Purpose. To establish requirements for mobile home installations reasonably necessary for the protection of life and property and the mobile home occupant, and providing for the issuance of permits and collection of fees therefor.

16.24.020  Adoption of Mobile Home Installation Regulations. There is hereby adopted by reference Division 14, Part 2.1 of the California Health and Safety Code and Title 25, Chapter 2, California Administration Code as the City of San Marcos Mobile Home Installation Regulations.
CHAPTER 16.28
TEMPORARY RENTAL OF MOBILEHOMES
IN MOBILEHOME PARKS

Sections:

16.28.010 Purpose and Intent
16.28.020 Temporary Rental of Mobilehome
16.28.030 Obligations of Renters
16.28.040 Term of Rentals
16.28.050 Severability

16.28.010 Purpose and Intent. Various mobilehome parks prohibit the owner of a mobilehome from renting their mobilehome and subletting the mobilehome space for any period of time. Such rules from time to time impose hardships on owners of mobilehomes who are unable to reside in their mobilehomes but are held liable for the space rental and upkeep of their mobilehome while it is vacant and until the mobilehome can be sold or otherwise re-occupied. It is the intent and purpose of the City Council by enacting this Chapter to alleviate hardships on mobilehome owners who are unable to reside in their mobilehomes by allowing the temporary rental of the mobilehome for a reasonable period of time.

16.28.020 Temporary Rental of Mobilehome. It is unlawful for any person to prohibit an owner of a mobilehome lawfully occupying a space in a mobilehome park from renting that mobilehome under any of the following circumstances:

a) The owner of the mobilehome has resided therein for at least a one year period prior to the vacancy that necessitates renting the mobilehome and is unable to continue to occupy the mobile home either temporarily or permanently by reason of illness.

b) The owner of the mobilehome has resided therein for at least one year prior to an absence from the area which necessitates temporarily renting the mobilehome. "Absence from the area" means establishing a temporary or permanent primary abode for an intended period of at least sixty (60) days.

c) The owner of a mobilehome has resided therein for at least a one year period prior to the vacancy that necessitates renting the mobilehome and can no longer continue to meet the rules of occupancy of a mobilehome park by reason of a change of circumstances which disqualifies the owner from residency under the applicable park rules, (for example, the birth or adoption of a child in an adult only mobilehome park).

d) The owner of a mobilehome has resided therein for at least a one year period prior to the vacancy that necessitates renting the mobilehome and the vacancy results from the consolidation of households by tenants in the park.

e) The owner is an heir of the prior owner, or a person in a fiduciary capacity who has received ownership of, or the possessory rights to, a mobilehome through probate, bankruptcy, or foreclosure, or by reason of the prior owner's death or incapacity and requires time to arrange for the sale of the mobilehome, or to arrange for occupancy of the mobilehome by the owner.
16.28.030 Obligations of Renters. For the purposes of this section the term "Renter" refers to the person or persons who pay rent to the mobilehome owner in exchange for the temporary right to reside within the subject mobilehome (and the related right to occupy the space upon which the mobilehome is located), but not as a co-occupant with the owner. Any renter of a mobilehome must meet all the rules of occupancy of the mobilehome park in which the mobilehome is located with the exception of any rule which directly or indirectly prohibits, in conflict with this section, the temporary rental of a mobilehome for up to one year. Prior to the mobilehome renter’s taking occupancy, that renter and the mobilehome owner shall provide the park owner with:

a) A copy of the mobilehome rental agreement between the owner and the renter;

b) the true names of all intended occupants, their residential phone numbers and their relationship to the renter;

c) business phone numbers for all adult occupants who have such numbers; and

d) an agreement signed by all adult occupants which reads substantially as follows:

I have received copies of the lease between the park owner and the home owner for Space #____ and current park rules for the __________ Mobilehome Park. I have read those documents with care. I believe I understand them. I believe that I qualify for occupancy under those rules and the space rental agreement between the park owner and the home owner (except for provisions restricting or prohibiting subleasing). I agree to abide by those Park Rules and to meet all obligations of that space rental agreement which are relevant to an occupant. I understand that the park owner may directly enforce the space rental agreement (except for the provisions restricting or prohibiting subleasing) against me without giving up any rights against the mobile homeowner.

16.28.040 Term of Rentals. Temporary rentals authorized by this Chapter may not exceed twelve (12) months in any two (2) year period. If the mobilehome owner resumes occupancy of the mobilehome after a rental allowed by Section 16.28.020 A. (2), no other rental may be allowed pursuant to that subsection until 18 months have expired after the mobilehome owner has resumed occupancy.

16.28.050 Severability. If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable. (Ord. No. 92-930, 6-9-92)
TITLE 17

BUILDINGS, CONSTRUCTION, AND RELATED ACTIVITIES

CHAPTERS:

17.02 California Administrative Code
17.04 California Energy Code
17.08 California Building Code
17.12 California Electrical Code
17.16 California Plumbing Code
17.20 California Mechanical Code
17.22 California Residential Code
17.24 Uniform Housing Code
17.26 Uniform Code for Abatement of Dangerous Buildings
17.27 California Historical Building Code
17.28 California Green Building Code Standards
17.29 California Standards Code
17.30 California Existing Building Code
17.32 Building, Construction, & Related Activities
17.36 Park and Recreational Development Construction Unit Fee
17.40 Street Dedication Requirements
17.44 Development Services Fees, Public Facilities Exactions Fees, and/or Costs
17.48 Deleted
17.52 School Fees and Land Dedication
17.54 Requirement of Reimbursement of City Expenditures for Capital Improvement Program Projects
17.56 Reimbursement Districts
17.60 Blasting Operations
17.64 California Fire Code
CHAPTER 17.02

CALIFORNIA ADMINISTRATIVE CODE

SECTIONS:

17.02.010 Adoption

17.02.010 Adoption.

The 2016 California Administrative Code, California Code of Regulations, Title 24, Part 1, published by the International Code Council is hereby adopted by reference and subject to amendments and revisions made by the California Building Standards Commission.

(Ord. No. 2016-1431,10/25/2016)
CHAPTER 17.04

CALIFORNIA ENERGY CODE

SECTIONS:

17.04.010 Adoption

17.04.010 Adoption.

The 2016 California Energy Code, California Code of Regulations, Title 24, Part 6, published by the California Energy Commission is hereby adopted by reference and subject to amendments and revisions by the California Energy Commission.

(Ord. No. 2016-1431, 10/25/2016)
CHAPTER 17.08

CALIFORNIA BUILDING CODE

SECTIONS:

17.08.010 Adoption
17.08.020 Applying New Codes
17.08.030 Moving of Building or Structure
17.08.040 Permit Administration
17.08.050 Footing and Foundation Inspections
17.08.060 Authority to Disconnect
17.08.070 Appeals Board
17.08.080 Construction Hours
17.08.100 Fire Resistance Rating
17.08.130 Minimum Roofing Assemblies Required
17.08.150 Pool Barrier Height
17.08.160 Repairs

17.08.010 Adoption.


B. The City of San Marcos and the San Marcos Fire Protection District has many large hillsides covered with extensive vegetation. The City is also subject to Santa Ana conditions of gusty winds and low humidity that predisposes the hillsides to extreme fire hazard. The City Council specifically finds that these climatic and topographic conditions necessitate greater fire protection than that provided by the 2016 California Building Code. Therefore, this Chapter amends the California Building Code to require more fire resistive construction to lessen the spread of fire in these areas.

17.08.020 Applying New Codes.

Section 102 of the California Building Code is amended to add these sections as follows:

102.7 New Codes to Existing and New Developments.

(a) Projects Under Construction: All residential and nonresidential projects under construction, such as subdivisions, condominiums, retail, office and industrial projects that are under construction may continue under current approvals until completion of the project, including all of the remaining phases and tenant improvements, provided that the approved design remains unchanged. New designs and replacement products shall conform to the new codes after January 1, 2017.

(b) Projects in Plan Check: All projects in plan check have one (1) year to obtain a building permit to be constructed under the 2016 code edition. After January 1, 2017, all applications that expire by limitation (1 year) shall be designed to comply with the 2016 code edition.
(c) **Projects in the Entitlement Process:** Projects in the entitlement process of obtaining approval for site plans, tentative maps, use permits and other land use entitlements, shall obtain a grading permit by December 31, 2016 to be considered for a project in plan check, and have one (1) year to obtain a building permit to be designed and constructed under the 2013 code edition.

(d) **All Other Projects:** All other projects submitted after January 1, 2017 are subject to the 2016 code edition.

**102.8 Moving of Building or Structure.** It shall be unlawful for any person, firm or corporation to move, or cause to be moved, any building or structure into or within the City without first having obtained a permit to do so from the City of San Marcos. At the time of submitting an application for permit to move a building or structure the applicant shall submit a certificate showing freedom from termite infestation for each building or structure to be moved. Moved buildings shall conform to the character of the existing neighborhood architecture and the exterior elevations shall be approved by the Planning Director prior to the issuance of a move permit. Upon filing of the application for permit to move a building or structure, and payment of the permit fee prescribed herein, the City of San Marcos shall cause the building or structure to be inspected and shall prepare a written report which shall be forwarded to the applicant. This report shall indicate the approval or denial by the City and, if approved for moving, shall outline the requirements necessary to make the building or structure conform to the applicable provisions of this Code.

The report of inspection shall remain valid for a period of one hundred eighty days (180) from the date that the building was inspected, and a new report and inspection fee shall be required if a permit is not issued. Upon approval the applicant shall pay the same permit fees applicable to a new building, including public facilities fees, annexation to financing districts, grading permit fees, school fees, utility connection fees and any other permit fee as required. The applicant shall agree, in writing, to make all the required changes within one hundred eighty (180) days after relocation and shall post with the City of San Marcos a faithful performance bond, cash or other security, in an amount equal to the estimated cost of the required reconstruction as determined by an estimate approved by the City. The faithful performance bond shall guarantee that the required changes shall be made, or the building or structure shall be removed or demolished and the site cleared, cleaned and restored to its original condition. In the event of a default on the part of the applicant or owner, the City shall order the surety to complete the required work. If in the judgment of the City, the building or structure at the time of default is not serviceable, the City shall order the surety to remove or demolish the building or structure and to clear, clean and restore the site to its original condition.

**17.08.030 Permit Administration.**

Section 105.2(1) of the California Building Code is amended to read as follows:

One story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet. Similar uses shall not include patios, workshops, garages, habitable spaces or recreational uses.

Section 105.9 Major Remodel Work. The removal and replacement of an existing building or structure, wherein the slab and foundation remain, is considered a new building and subject to the latest adopted construction codes, zoning ordinance and fee schedule as
a new building. Major remodel work, known as tear down and replacement, shall conform to the standards and city regulations in-effect at the time of permit issuance.

Section 105.10 Property Owner Permission. Permit applications that do not list the property or building owner as the applicant shall not be approved for issuance until the applicant submits a letter of permission from the property owner, or owner's agent, that the applicant has the owner's permission to obtain the permit and proceed with the proposed construction.

Section 105.11 Conditions of Approval. Permits shall not be issued for construction on a site until the City of San Marcos determines:

* That all other development permits or approvals required by this Code have been issued;
* That the permit complies with all applicable provisions of this Code; and
* That all grading or public improvements have been satisfactorily completed or installed, or agreed to be installed pursuant to a secured agreement, to allow building permits to be issued.

Permits shall not be issued if the City determines that flooding or geologic conditions at the site may endanger the public safety or welfare.

17.08.050 Footing and Foundation Inspections.

Section 110.3.1 of the California Building Code is amended to read as follows:

Prior to the approval of any foundation inspection the permit holder shall submit a setback certification prepared by a California licensed surveyor that certifies by field measurement that the location of the building meets or exceeds the minimum setback distance as shown on the approved plans. The permit holder shall also submit a certification from a professional engineer or licensed architect that the condition of the soil has been inspected and complies with the soils report and the intent of the design prior to requesting a foundation inspection. A pad elevation certification is required prior to requesting a foundation or underground plumbing inspection.

17.08.060 Authority to Disconnect Service Utilities.

Section 112.3 of the California Building Code is amended to read as follows:

The Building Official, Fire Marshal or their designated representative shall have the authority to disconnect and order the disconnection of utilities, including sewer, water, gas, electricity or other energy sources supplied to any building or structure during an emergency, or when the condition of the building or structure is deemed to be an immediate hazard to life or property. Whenever possible, the City shall notify the serving utility company, the owner or occupant of the building of the disconnection of service. This section shall serve as authorization for utility companies regulated by the Public Utilities Commission to disconnect services when such services are deemed by the City to pose a hazard to life and property.
17.08.070 Board of Appeals.

Section 113.1.1 is added to the California Building Code and amended to read as follows:

The City Council of the City of San Marcos will appoint members to a Board of Appeals and establish rules of procedure for appeals of decisions and interpretations issued by the building official.

17.08.080 Hours of Work.

Section 115 of the California Building Code is amended to include section 115.4 to read as follows:

Hours of Work: Construction related activities authorized under a building permit are restricted to the hours of work as follows:

Monday through Friday – 7:00 a.m. to 6:00 p.m.
Saturdays – 8:00 a.m. to 5:00 p.m.
No work on Sunday or City Holidays

Violations of this Section may result in the suspension of permit for a period of time as determined by the City. The City Manager is authorized to waive or modify the hours of work as necessary.

17.08.100 Fire Resistance Rating.

Section 711.3 of the California Building Code is amended to read as follows:

(a) Exception: Dwelling unit and sleeping unit separations in building types I, II, III, IV and V construction shall have a fire resistive rating of not less than 1-hour in buildings equipped with or without an automatic fire sprinkler system throughout.

17.08.130 Minimum Roofing Assemblies Required.

Sections 1505.2 & 3 of the California Building Code are amended to read as follows:

Class “A” shall be the minimum roofing assembly, including re-roofing, allowed on any building in a hillside or mountainous area of the City of San Marcos.

Class “B” shall be the minimum roofing assembly, including re-roofing, allowed on any building in the City of San Marcos.

Exceptions:

1. Repairs, which do not exceed 50% of the existing roof area, may be of the same materials.
2. Additions not exceeding 50% of the existing roof area may be of the same materials as the existing roof.
3. Patio covers with 50% roofing opening uniformly distributed need not comply with this Section.
17.08.150 Pool Barrier Height.

Section 3109.4.1 of the California Building Code is amended to read as follows:

The top of the barrier shall be at least 60 inches above grade measured on the side of the barrier that faces away from the swimming pool.

17.08.160 Repairs.

Section 3405 of the California Building Code is amended by adding Section 3405.6, which reads as follows:

Scope. Repairs of structural elements shall comply with this section.

Seismic Evaluation and Design. Seismic evaluation and design of an existing building and its components shall be based on the following criteria.

Evaluation and Design Procedures. The seismic evaluation and design shall be based on the following procedures:

1. As specified in Chapter 16 of the latest adopted building code.
2. American Society of Civil Engineers 31, Seismic Evaluation for Existing Building (for evaluation only)
3. American Society of Civil Engineers 41, Seismic Rehabilitation of Existing Buildings
4. The procedures contained in Appendix Chapter A2 and A3 of the International Building Code and Appendix Chapter A1 of the California Existing Building Code shall be permitted to be used as specified in ASCE 41 (mentioned above).

Unsafe Conditions. Regardless of the extent of structural damage, unsafe conditions shall be eliminated.

Change in Occupancy. When a building or portion thereof is subject to a change of occupancy, such that the change results in a higher seismic factor based on Table 1604.5 of the building code, or when a reclassification is proposed with a higher hazard occupancy, the building shall conform to the seismic requirements of the latest adopted building code for a new structure.

(Ord. No. 2016-1431, 10/25/2016)
CHAPTER 17.12

CALIFORNIA ELECTRICAL CODE

SECTIONS:

17.12.010 Adoption
17.12.020 Undergrounding of Service Conductors Required
17.12.050 Phase Arrangement
17.12.090 Nonmetallic-sheathed Cable


Article 230.2 is amended to add 230.2 (F) to read as follows:

When required by the City of San Marcos, new development, redevelopment, additions and remodeling shall be required to underground service conductors fronting the project and service conductors on site shall be undergrounded to the satisfaction of the City. Service conductors are defined as power transmission lines, cable television, telephone, optic fiber cable, low and high voltage supplies of electricity. (See also General Plan, Chapter 2, Land Use Policy 17.3)

17.12.030 Aluminum Wiring.

Article 310.106(B) is amended to read as follows:

Copper wire shall be used for wiring No. 6 and smaller in all installations. Aluminum wiring may be approved by the City for feeder conductors only where adequate measures are taken to prevent oxidation of the aluminum wire. Aluminum conductors of No. 6 or smaller used for branch circuits shall require continuous inspection by an independent testing agency approved by the City for proper torquing of connections and installation of oxidation inhibitor at their termination point as required.

17.12.050 Phase Arrangement.

Article 408-3(e) of the California Electrical Code is amended to read as follows:

The phase arrangement on three-phase buses shall be A, B, C from front to back, top to bottom, or left to right, as viewed from the front of the switchboard or panelboard. The [B]phase shall be that phase having the higher voltage to ground on three phase, 4-wire delta connected services. Other busbar arrangements shall be permitted for additions to existing installations and shall be marked.
17.12.090 Nonmetallic Sheathed Cable.

Article 334.10 of the California Electrical Code is amended to read as follows:

Type NM, Type NMC, and Type NMS cables shall not be used in any building exceeding three (3) stories in height. Type NM, NMC and NMS cable shall not be used in nonresidential buildings and structures unless the cable is listed with insulation that has a minimum rating of 75 degrees Celsius (167 degrees Fahrenheit).

(Ord. No. 2016-1431, 10/25/2016)
17.16.010 Adoption

The 2016 California Plumbing Code, California Code of Regulations, Title 24, Part 5, based on the Uniform Plumbing Code 2015 Edition, Chapters 1 through 16, and Appendices Chapter 1, A, B, D, E, F, I and K and the Installation Standards, copyrighted by the International Association of Plumbing and Mechanical Officials are adopted by reference subject to amendments contained in this Chapter.

17.16.030 Discharge.

Section 811.7 of the California Plumbing Code is amended to read as follows:

(A) It shall be unlawful to install or replace any plumbing equipment, including any automatic or self-regenerating water softener unit, where the operation of such may result in the discharge of saline waste into sewerage facilities, or the discharge of such waste that may pollute any surface or underground stream, watercourse, lake or any body of water.

(B) Plumbing permits are required for Best Management Practices (BMP) devices and other fixtures that convey discharges to the storm drain system.

17.16.040 Storm Water.

Section 1101.1.1 of the California Plumbing Code is amended to read as follows:

It shall be unlawful to discharge any material, directly or indirectly, into the City of San Marcos storm water conveyance system, or to abandon, modify, remove or destroy Best Management Practice devices installed to reduce storm water pollutants in accordance with the City’s Storm Water Management Program and the Permit issued by the Regional Water Quality Control Board, or other Federal or State laws. Modifications to any storm water conveyance system shall be approved by the City prior to modification.

(Ord. No. 2016-1431, 10/25/2016)
CHAPTER 17.20

CALIFORNIA MECHANICAL CODE

SECTIONS:

17.20.010 Adoption
17.20.030 Gas Log in Bedroom

17.20.010 Adoption. The 2016 California Mechanical Code, California Code of Regulations, Title 24, Part 4, based on the Uniform Mechanical Code 2015 Edition, Chapters 1 through 17, including Appendices Chapter 1, A, B and C, copyrighted by the International Association of Plumbing and Mechanical Officials, is adopted by reference subject to the amendments or deletions as set forth in this Chapter.

17.20.030 Gas Log in Bedrooms.

Section 305 of the California Mechanical Code is amended to read as follows:

It shall be unlawful to install a gas log lighter in fireplaces installed in bedrooms, unless the designer submits manufactures data that:

(a) The log lighter is a listed device and approved for bedroom locations, and
(b) The log lighter is equipped with an automatic shutoff device, or gas sensor that activates disconnection, or
(c) The fireplace is direct vented and no free circulation of air is possible between the fireplace and the atmosphere of the bedroom.

(Ord. No. 2016-1431, 10/25/2016)
17.22.010 Adoption


(Ord. No. 2016-1431, 10/25/2016)


CHAPTER 17.24

UNIFORM HOUSING CODE

SECTIONS:

17.24.010 Adoption
17.24.020 Housing Code Violations


17.24.020 Housing Code Violations.

Section 1601 of the Uniform Housing Code is amended to add Section 1601.1 to read as follows:

(a) The property owner shall be financially responsible for the cost of inspection, testing, investigation and administrative charges relating to enforcement actions and complaints regarding the lack of compliance with the Housing Code requirements as determined by the City Manager.

(b) All housing units in the City, including affordable housing units and other income restricted housing units, that are rented or leased in the City of San Marcos that fail to comply with this Code will be reported to the State Franchise Tax Board as substandard housing and may not be subject to any State tax benefit during the period the unit, or units, where not in compliance with this Code as determined by the City.

(Ord. No. 2016-1431, 10/25/2016)
CHAPTER 17.26

UNIFORM CODE FOR ABATEMENT OF DANGEROUS BUILDINGS

SECTIONS:

17.26.010 Adoption
17.26.020 Boarded-Up Building
17.26.030 Maintenance of Paved Surfaces


Section 202 of the Uniform Code for the Abatement of Dangerous Buildings is amended to read as follows:

To provide a just, equitable and practical method, to be cumulative with and in addition to, any other remedy provided by the International Building Code and the Uniform Code for the Abatement of Dangerous Buildings, whereby buildings or structures that are boarded-up, from any cause, endanger the life, limb, health, morals, property, safety, or welfare of the general public or their occupants, shall constitute a public nuisance. Boarded-up buildings shall be rehabilitated or repaired to render the building in compliance with the intended occupancy requirements, or demolished if beyond repair. The City shall determine the time limit for demolition.

The City Manager is authorized to modify or waive this requirement due to special circumstances, including natural disasters, fire damage, flooding, landslides, loss of security or any other reason deemed appropriate.

When allowed, the property owner shall post a cash deposit or surety bond to guarantee rehabilitation or demolition as required by the City. Boarded-up buildings shall be maintained and protected from vandalism at all times.


Section 202 of the Uniform Code for the Abatement of Dangerous Buildings is amended to read as follows:

Driveways, parking lots and roadways paved with concrete or asphalt shall be maintained in a condition free from excessive deterioration and potholes. Excessive deterioration is defined as pieces of pavement that move freely and are not attached to the paved surface. Paved surfaces shall be maintained free of dust, gravel, sand, debris and soil to prevent damage to public and private property. Paved parking lots shall be striped to delineate parking spaces from drive lanes and to identify the parking spaces for the disabled. The City shall determine the width, length and location of parking lot striping. Changes to existing parking lots shall be reviewed and approved by the Development Services Department and work to change the parking lot shall not commence until a plan is approved by the city.
CHAPTER 17.27

CALIFORNIA HISTORICAL BUILDING CODE

SECTIONS:

17.27.010 Adoption

17.27.010 Adoption. The 2016 California Historical Building Code, California Code of Regulations, Title 24, Part 8, Chapters 1 through 10, as published by the International Code Council is adopted by reference.

(Ord. No. 2016-1431, 10/25/2016)
CHAPTER 17.28

CALIFORNIA GREEN BUILDING CODE STANDARDS

SECTIONS:

17.28.010 Adoption

17.28.010 Adoption. The 2016 California Green Building Code Standards, California Code of Regulations, Title 24, Part 11, Chapters 1 through 8, and Appendices A4 and A5, copyright by the California Building Standards Commission is adopted by reference.

(Ord. No. 2016-1431, 10/25/2016)
SECTIONS:

17.29.010 Adoption

17.29.010 Adoption. The 2016 California Standards Code, California Code of Regulations, Title 24, Part 12, copyright by the California Building Standards Commission is adopted by reference.

(Ord. No. 2016-1431,10/25/2016)
CHAPTER 17.30

CALIFORNIA EXISTING BUILDING CODE

SECTIONS:

17.30.010  Adoption


(Ord. No. 2016-1431, 10/25/2016)
CHAPTER 17.32

BUILDING, CONSTRUCTION, & RELATED ACTIVITIES

SECTIONS:

17.32.010 Purpose
17.32.020 Scope
17.32.030 Definitions
17.32.040 Grading Permit Requirements
17.32.045 Exemptions from Permits
17.32.050 Grading Fees
17.32.060 Security
17.32.065 Requirements for Release of Security or Issuance of Building Permits
17.32.070 Existing Hazards
17.32.080 Import and Export Of Earth Material
17.32.085 Removal of Vegetation
17.32.090 Slope Height
17.32.100 Fills
17.32.110 Setbacks
17.32.120 Drainage and Terracing
17.32.130 Permanent Erosion Control
17.32.140 Grading Inspection
17.32.150 Flood Hazard
17.32.160 Completion of Work
17.32.170 Landscape and Irrigation Plan
17.32.180 Grading Operation Restrictions
17.32.185 Depositing Earth, Sand, Gravel, Etc. upon Public or Private Property
17.32.190 Appeals
17.32.200 Violations and Penalties

17.32.010 Purpose. To protect the public health, safety and welfare, preserve property values, and assure quality construction, this Chapter establishes standards regulating the design and construction of building sites and the development of property by grading; regulates the alteration of the ground surface; protects adjacent properties from damage caused by blockage or diversion of waters; requires engineering analysis of expansive soil conditions, slope stability, erosion control and drainage; establishes and administrative procedure for issuance of grading permits; and provides for approval of grading plans and inspection of grading construction.

17.32.020 Scope. This code sets forth rules and regulations to control excavation, grading and earthwork construction, including fills and embankments; establishes the administrative procedure for issuance of permits; and provides for approval of plans and inspection of grading construction.

17.32.030 Definitions. For the purpose of this chapter the following words or phrases shall have the meaning established by this Section.

(a) **As-Graded** is the extent of surface and subsurface conditions and configuration upon completion of grading.

(b) **Bedrock** is naturally occurring, in-place solid rock.
(c) **Bench** means a relatively level step excavated into earth material on which fill is to be placed.

(d) **Borrow** means earth material acquired from an off-site location for use in grading a site.

(e) **Civil Engineer** means a professional engineer registered in the State of California to practice in the field of civil engineering.

(f) **Clearing and Grubbing** means the removal of vegetation (grass, brush, trees, and similar plant types) by mechanical means.

(g) **Compaction** means the densification of a fill by mechanical means.

(h) **Embankment** or **Fill** means a deposit of any earth material by artificial means to a new location, and the condition resulting therefrom, particularly when an unnatural slope is created.

(i) **Engineering Geologist** means a Certified Engineering Geologist, registered by the State of California to practice engineering technology.

(j) **Engineering Geology** means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil work.

(k) **Erosion** means the wearing away of the ground surface as a result of the movement of wind, water, and/or ice.

(l) **Erosion Control System** means any combination of desilting facilities, pipes, channels, culverts, sandbags and erosion protection devices, including effective planting and the maintenance thereof, installed or placed to protect property, watercourses, public facilities, and receiving waters from erosion or from the deposit of sediment or dust.

(m) **Excavation or Cut** means any earth, sand, gravel, rock, or other similar material which is cut into, dug, quarried, uncovered, removed, displaced, relocated or bulldozed by man, and the conditions resulting therefrom.

(n) **Expansive Soil** means any soil with an expansive index greater than twenty (20) as determined by the Expansive Index Tests (U.B.C. Std. 29-32).

(o) **Fault** means a fracture in the earth's crust along which movement has occurred. A **fault** is considered active if movement has occurred within the last ± 11,000 years (Holocene geologic time).

(p) **Finish Grade** means the final grade of a site graded to conform to the approved grading plan.

(q) **Geotechnical Engineer** means a Registered Civil Engineer who holds a valid authorization to practice in the field of soils engineering.

(r) **Geotechnical Report** means a report which contains all appropriate soil engineering, geologic, hydrologic, and seismic information, evaluation, recommendations, and findings. This type report combines both engineering and soil engineering reports.
Grading means any excavating or filling or combination thereof.

Grading Contractor means a contractor licensed by the State of California who specializes in grading work or is otherwise licensed to do grading work.

Gross Stability means the factor of safety against failure of slope material below a surface approximately three (3) to four (4) feet deep measured from and perpendicular to the slope face.

Landscape Architect means a landscape architect, registered by the State of California, who performs professional work in physical land planning and integrated land development, including the design of landscape planting programs.

Private Engineer means a Civil Engineer registered by the State of California, authorized to act for a property owner in doing work covered by this Chapter.

Retaining Wall means a structure designed to resist the lateral displacement of soil or other materials.

Surficial Stability means the factor of safety against failure of the outer three (3) to four (4) feet of slope material measured from and perpendicular to the slope face.

Slope is an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

Soil is naturally occurring superficial deposits overlying bedrock.

Soil Engineering means the application of the principles of soil mechanics in the investigation, evaluation and design of civil works involving the use of earth materials and the inspection and testing of the construction thereof.

"Terrace" is a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

Grading Permit Requirements. It is unlawful for any person to do, or cause to be done on their behalf, any grading except pursuant to a valid grading permit issued by the Administrative Authority pursuant to this Chapter unless the grading is exempted from the requirement for issuance of a grading permit. A separate grading permit is required for each lot or parcel to be graded, except where the grading is for a subdivision and the permit is issued for grading for the design and improvement of all or part of the subdivision.

Application. The provisions of Chapter 17.04 (Uniform Administrative Code) shall apply to the application for grading permits. In addition to other requirements, the application shall state the estimated quantities of work involved, and shall contain such other information and be accompanied by such other reports as may be required by this Section or by Chapter 18.04 relating to Environmental Review.

Responsibilities of Permittee. It shall be the responsibility of the permittee to know the conditions and/or restrictions placed on the grading permit and as outlined in applicable Sections of this Code, and as contained on the approved report(s) and in compliance with any applicable storm water pollution prevention plan (SWPPP) prepared and maintained pursuant to federal or state requirements or a City directive and to insure that his contractors, subcontractors,
employees, agents and consultants are also knowledgeable of the same, and insure that they carry out the proposed work in accordance with the approved plans and specifications and with the requirements of the permit. The permittee shall also be responsible to maintain in an obvious and accessible location on the site, a copy of the permit and grading plans bearing the approval of the Administrative Authority. Failure to carry out the work in accordance with the terms of the grading permit and any applicable SWPPP shall constitute a violation of this Chapter. (Ord. No. 2001-1123, 11/27/01)

(c) **Contractor Qualifications.** Every person doing land development shall meet such qualifications as may be determined by the Administrative Authority to be necessary to protect the public interest. The Administrative Authority may require an application for qualification which shall contain all information necessary to determine the person’s qualifications to do the land development.

All land development work shall be performed by a contractor licensed by the State of California to perform the types of work required by the permit.

(d) **Plans and Specifications.** Unless otherwise waived by the Administrative Authority for minor projects, each application for a grading permit shall be accompanied by five sets of plans and specifications and supporting data consisting of a hydrology report and geotechnical report as determined necessary by the Administrative Authority. The plans and specifications shall be prepared and signed by a licensed Civil Engineer in the State of California.

(e) **Information on Plans and in Specifications.** Plans shall be drawn to an engineering scale upon substantial mylar and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that all grading will conform to the provisions of this Chapter and all relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall state the location of the work including a legal description and assessor's parcel number, the name and address of the owner of the property, and the person by whom the plans were prepared.

The plans shall include the following information:

1. General vicinity of the site where the grading is to be done.
2. Property limits and accurate contours of existing ground and details of terrain and area drainage.
3. Limiting dimensions, elevations or finish contours to be achieved by the grading, and proposed drainage channels and related construction.
4. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with or as part of, the proposed work together with a map showing the drainage area and the estimated run-off of the area served by any drains.
5. Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners which are within fifteen (15) feet of the property or which may be affected by the proposed grading operations.
6. The location of top and toe of all cuts and fills.
(7) The location of all "daylight" lines.

(8) The amount in cubic yardage of all excavations and fills and import materials.

(9) The location of the disposal site for excess material, if any, along with the proposed haul route, if the disposal site is not located on the property.

(10) Intended land use.

(11) Information demonstrating to the satisfaction of the Administrative Authority that the applicant is and will satisfy the requirements of Chapter 14.15 of this Code and, in particular, that the applicant will implement the best management practices specified in Section 14.15.050(c) to the maximum extent practicable during the grading process. (Ord. No. 2001-1123, 11/27/01)

(12) The name, seal (with expiration date) and signature of the licensed professional responsible for the grading plan.

(f) Geotechnical Report. The geotechnical report required by Subsection b) shall comprise the following two parts:

(1) Soils Engineering, prepared by a geotechnical engineer and containing data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures when necessary, and opinions and recommendations covering adequacy of sites to be developed by the proposed grading.

(2) Engineering Geology, prepared by an Engineering Geologist and containing adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading.

Recommendations in the report and approved by the Administrative Authority shall be incorporated in the grading plans or specifications. Slope stability analyses shall accompany soil engineering reports for all slopes steeper than 2:1 and for all slopes exceeding forty (40) feet in height, regardless of the slope ratio. The geotechnical engineer shall consider both gross and surficial stability of the slope and provide a written statement approving the slope stability.

The report shall be prepared under the supervision of a licensed geotechnical engineer and Engineering Geologist whose seals of certification shall be stamped on the title sheet of said report.
Hydrology and Hydraulics Study. The hydrology and hydraulics study required by Subsection (b) shall conform to the requirements of the San Diego County Flood Control District for all matters pertaining to storm water damage, and shall show all charts, formulas and data used for the preparation of the study.

The report shall be prepared under the supervision of a licensed Civil Engineer whose seal of certification shall be stamped on the title sheet of said report.

Issuance. If the Administrative Authority finds that the application for a grading permit has been properly filed and that all of the required information has been submitted, and any required environmental review of the project has been completed, the Administrative Authority shall issue or conditionally issue a grading permit. If after issuance of the permit the Administrative Authority determines that there are weather-generated problems not considered at the time the permit was issued, the Administrative Authority may require that grading operations and project designs be modified to remedy those problems.

Denial of a Permit. A grading permit shall not be issued if the Administrative Authority finds any of the following conditions to exist:

1. Hazards. The Administrative Authority shall not issue a grading permit in any case where the work as proposed by the applicant is likely to adversely affect the stability of adjoining property or result in the deposition of debris on any public way or interfere with any existing drainage course or be in an area determined to be subject to geological hazard. If it can be shown to the satisfaction of the Administrative Authority that the hazard can be mitigated to an insignificant level by the construction of retaining structures, buttress fills, drainage devices, or by other means, the Administrative Authority may issue the permit with the condition that such work be performed.

2. Land Use. The Administrative Authority shall not issue a grading permit for work on a site unless the proposed uses shown on the grading plan for the site will comply with all provisions of the Zoning and Subdivision Titles of this Code.

3. Environmental Constraints. Environmental review of the project has not been completed. No grading permit shall be issued for grading of natural slopes with an inclination of 25% or more, or for wetlands, or bluffs, unless the Planning Commission has found that such grading is necessary to permit a reasonable economic use of the property. Any application for grading on slopes with an inclination of 25% or more shall contain information showing;

   a. The need for the grading in order to permit a reasonable economic use of the property;

   b. That the grading is the minimum necessary to permit a reasonable economic use of the property; and

   c. That the proposed grading will be accomplished without substantial harm to the environment.

4. Pollutant Discharges. The Administrative Authority shall not issue a grading permit for work on a site where the applicant has not demonstrated that
it will implement the best management practices specified in Code Section 14.15.050(c) to ensure that pollutants from the grading site will be reduced to the maximum extent practicable.  (Ord. No. 2001-1123, 11/27/01)

(j) **Time Period.** A grading permit shall be valid for the time period established for the validity of permits pursuant to the Administrative Code, and may be extended as provided in that Code.

(k) **Other Agency Requirements.** Issuance of a grading permit does not relieve a permittee of the responsibility of obtaining other permits or licenses that may be required by City Ordinances or by other State or local agencies with jurisdiction over the project.

(l) **Vesting of Rights.** Issuance of a grading permit shall not vest rights to the issuance of building permits.

17.32.045  Exemptions from Permits.

(a) The following types of grading shall be exempt from the requirement for the issuance of a grading permit:

(1) An excavation below finish grade authorized by a valid building permit approved and issued by the Administrative Authority, for basements, footings or foundations for buildings, mobile homes, swimming pools, septic tanks, leach lines, or other subsurface structures or facilities installed on terrain with grades less than five horizontal to one vertical and located five feet from the top of all slopes and on a site previously graded pursuant to a valid permit. Any embankment constructed with the excess material from the excavation exempted by this Section must either be disposed of under an approved grading permit, or be disposed of on-site without creating embankments more than five feet in unsupported height, and not obstructing or changing the course of natural or man-made drainage courses.

(2) Cemetery Graves.

(3) Refuse disposal sites controlled by other regulations.

(4) Excavations for wells or tunnels or utilities.

(5) Exploratory excavations done under the direction of soil engineers or engineering geologists and approved in writing by the Administrative Authority.

(6) An excavation which:

(a) is less than two (2) feet in depth, or

(b) which does not create a cut slope greater than five (5) feet in height and steeper than one and one-half horizontal to one vertical.

(7) A fill less than one (1) foot in depth and placed on natural terrain with a slope flatter than five horizontal to one vertical, or less than two (2) feet in
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depth, not intended to support structures, and which does not exceed fifty (50) cubic yards on any one lot and does not obstruct or change an existing natural or man-made drainage course.

8) Any excavation or fill directly necessary for construction within the public right-of-way as shown on Improvement Plans approved by the Administrative Authority.

(b) Notwithstanding Subsection (a) of this Section all grading within the flood plain established pursuant to the Safety Overlay Zone (Chapter 20.76 of this Code) requires a permit issued by the Administrative Authority.

17.32.050 Grading Fees.

(a) **Plan Review Fees.** When a plan or other data are required to be submitted, a plan review fee in an amount established by City Council resolution shall be paid at the time of submitting plans and specifications for review. For excavation and fill in the same site, the fee shall be based on the volume of excavation or fill, whichever is greater, in addition to a percentage of estimated costs for on site drainage and retaining structures, erosion control and landscaping. Additional fees will be assessed for plan checks in excess of three; also, construction changes requiring plan checking will be assessed as set forth in the aforementioned resolution. Separate review fees shall apply for reports and studies that require extensive staff checking; i.e., areas within flood plain and/or areas of critical soil conditions, as set forth in the resolution.

(b) **Grading Permit Fees.** Prior to the issuance of a grading permit a fee in an amount established by City Council resolution shall be paid to the Administrative Authority. Additional inspection fees, in an amount established by City Council resolution, may be required when any revisions are made to a permitted plan necessitating additional site visits by city representatives. The fee for a grading permit authorizing grading on a site additional to that being done under a valid permit shall be the difference between the fee paid for the original permit and the fee which would be collected for the entire project.

(c) **Additional Fee for Work Commenced Prior to Issuance of Valid Permit.** Where grading requiring a permit is started or done before issuance of a permit, the fees for the permit shall be doubled. Payment of such double fee shall not relieve any person from fully complying with the requirements of this Chapter in the execution of the work nor from liability for any other penalties prescribed herein. The fee required by this Subsection shall not be construed as a penalty but is added to defray the expenses incurred in the enforcement of the provisions of this Chapter.

17.32.060 Security.

(a) There is imposed upon each grading permittee the following conditions:

(1) To comply with the provisions of this Chapter or other applicable laws and ordinances relating to grading.

(2) To comply with all terms and conditions of the permit for excavation and fill to the satisfaction of the Administrative Authority.

(3) To complete all of the work contemplated under the permit within the time limit specified in the permit or failing to complete the work to do all work necessary to put the property into a safe condition satisfactory to the Administrative Authority. The
Administrative Authority may, for sufficient cause, extend the time specified in the permit, but no such extension shall release the surety upon the bond. These obligations shall be secured as provided in this Section.

(b) A permit shall not be issued unless the permittee first posts with the Administrative Authority one or more of the following securities in a total amount determined by the Administrative Authority to be necessary to secure the obligations under the permit including but not limited to the obligation to install erosion control devices or systems, the construction of drainage and protective devices and any corrective work necessary to remove and eliminate engineering and geological hazards, to repair public ways or to put the graded property into a condition which will not injure the public health, safety or welfare:

(1) A bond, in a form prescribed by the City Attorney, executed by the permittee and a corporate surety authorized to do business in the state as a surety and to issue bonds in the amount required by this Section;

(2) A deposit either with the City or a responsible escrow agent or trust company selected by the City of cash or negotiable bonds of the kind approved for securing deposits of its public monies;

(3) An irrevocable letter or instrument of credit, in a form approved by the City Attorney, from one or more responsible financial institutions regulated by the Federal or State government and authorized to do business in this state and approved by the Finance Director, pledging that the funds are available and guaranteed for payment on demand by the City. As grading progresses, the Administrative Authority may reduce the amount of the security to the extent that he determines that the hazard or danger created by the work does not justify the full amount. No security shall be required when the Administrative Authority determines that the proposed grading will not adversely affect the subject property or adjacent property or existing or proposed structures thereon, and will not create, cause, or precipitate a geological, flood, drainage, erosion, siltation, or other adverse environmental impact if, for any reason, the proposed project or grading is not completed. On development where progressive individual grading projects or several concurrent projects are being constructed by one owner or permittee, a continuing bond or single letter of credit may be provided which will cover all such projects; the amount thereof shall be determined by the Administrative Authority.

(c) Each security shall be valid upon the date of filing and shall remain valid and in full force and effect until the work has been completed to the satisfaction of the Administrative Authority in accordance with the terms and conditions of the permit. Upon satisfactory completion of the work and compliance of all the terms and conditions of the grading permit, the Administrative Authority may release the grading security and notify the surety or financial institution of such release.

(d) Whenever the Administrative Authority finds or determines that a default has occurred in the performance of any requirement of a condition of a permit issued hereunder, written notice thereof shall be given to the principal and to the surety on the bond. Such notice shall specify the work to be done, the estimated cost thereof and the period of time deemed by the Administrative Authority to be reasonably necessary for the completion of such work. After receipt of such notice, the surety shall, within the time specified, cause or require the work to be performed, or failing therein, shall pay over to the Administrative Authority the estimated cost of doing the work as set forth in the notice. Upon receipt of such monies, the Administrative Authority shall cause the required work to be performed and completed. When the grading permit obligations are
secured by an escrow deposit or letter of credit, notice to the financial institution or escrow agent shall be given in the manner provided in this Section for giving of notice to the surety except that the authorization for the security to perform or cause the work to be performed shall not apply and the escrow agent or financial institution shall forthwith pay the security amount to the City.

(e) A substitute bond or letter of credit may be filed in place of any above-mentioned bond or letter of credit, and the Administrative Authority may accept the same if it is suitable to insure completion of the work remaining to be performed and in proper form and substance, and the bond or letter of credit for which it is substituted may be exonerated if the Administrative Authority finds that the conditions of such bond or letter of credit for which a substitute has been filed have been satisfied and that no default exists as to the performance upon which the bond or letter of credit is conditioned.

(f) The Administrative Authority may require that up to ten percent of any security be submitted in the form of a cash deposit. The cash deposit may be utilized by the City to insure that adequate safeguards for the prevention of erosion and sedimentation are in place when needed.

17.32.065 Requirements for Release of Security or Issuance of Building Permits.

(a) Requirements Prior to Release of Security. Prior to the release of bonds, the following requirements shall be met:

1. **Private Engineer.** The private engineer shall be responsible for all surveying work necessary for proper construction of the drainage and grading facilities. The engineer shall inspect the site to insure that the embankment and cut slopes are placed at their proper line and grade. The engineer shall, prior to the release of a security, provide a written statement that in his or her professional opinion, all work incorporated in the grading and drainage plans, authorized under the grading permit to include grading, drainage and construction of appurtenant structures, has been completed to the lines and grades in substantial conformance with the approved plans, or any approved revisions thereto.

2. **Geotechnical Engineer.** The Geotechnical Engineer shall be responsible for the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes and the design of buttress fills, where required, incorporating data supplied by the Engineering Geologist. He, or she, shall prior to the release of a security, provide a written statement that in his or her professional opinion all work incorporated in the grading plan authorized under the permit and soils/compaction report has been constructed in accordance with the approved plans and revisions thereto.

3. **Landscape Architect.** All landscaping work shall be designed under the supervision of a Landscape Architect. However, a Registered Civil Engineer or Registered Architect, at the discretion of the Administrative Authority, may be responsible for the inspection of all landscaping and irrigation required per the grading permit and plans if it is in conjunction with a project he or she has been contracted to do. He or she shall, prior to the release of a security, provide a written statement that in his or her professional opinion all work incorporated in the landscape and irrigation plans authorized under the permit has been constructed in accordance with the approved plans and revisions thereto.
(b) **Requirements Prior to Building Permits.** Prior to the issuance of building permits for any given lot or lots, the private engineer shall submit a statement as evidence that rough grading for land development has been completed within standard tolerance in accordance with the approved plans, and that all embankments and cut slopes and pad sizing are as shown on the approved plans. The Geotechnical Engineer will submit a statement that all fills, under his or her direction, have been compacted to at least ninety (90) percent maximum density, and all street, and parking lot base courses have been compacted to at least ninety five (95) percent maximum density. In cases where a grading permit is not required pursuant to Section 17.32.045 as site or plot plan showing the grading to be done shall be submitted as part of the building plan and application for building permit.

(c) **Notification of Noncompliance.** If, in the course of fulfilling his responsibility under this Chapter, the supervising grading engineer or geotechnical engineer finds that the work is not being done in conformance with this Chapter or the plans approved by the administrative Authority, or in accordance with acceptable practices, he or she shall immediately notify the person in charge of the grading work and the Administrative Authority, in writing, of the nonconformity and of the corrective measures to be taken.

(d) **Violation.** It is a violation of this Chapter for any person to verify that the grading-related work has been satisfactorily completed in accordance with this Chapter, if such work is subsequently found to be in noncompliance with the approved design or code requirement at the time of verification.

**17.32.070 Existing Hazards.** Whenever the Administrative Authority determines that any existing excavation or fill on private property has become a hazard to or endangers persons or property, or adversely affects the safety of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of said property, shall upon written notice from the Administrative Authority within the period specified in the notice obtain a grading permit and repair, remove or grade the excavation or fill to eliminate the hazard and bring the excavation or fill into conformance with the requirements of this Code.

**17.32.080 Import and Export of Earth Material/Stockpiling.**

(a) If the grading project includes the movement of earth material to or from the site in an amount considered substantial by the Administrative Authority, the permittee shall submit the haul route for review and approval by the City Engineer. The City engineer may suggest alternate routes or special requirements in consideration of the possible impact on the adjacent community environment or effect on the public right-of-way itself, which the Administrative Authority shall prescribe as a condition of the grading permit. The haul route shall be approved prior to issuance of a grading permit.

(b) Where excavation or embankment material is imported or exported from one grading site to another over public streets, whether or not either site is otherwise subject to grading permit requirements, the Administrative Authority may specify the route to be used in transporting the materials upon public streets. Deviation from this designated haul route shall constitute a violation of the conditions of the permit issued under this Code. The route, if any, shall be specified by written note on the permit document.
(c) The Administrative Authority may specify load limits when, in the opinion of the Authority, the standard load capacity of vehicles used in such hauling would cause excessive damage to streets on the designated route. Any grading or hauling contractor moving earth materials in violation of this Chapter shall be financially responsible for any damage to the public streets done by the hauling vehicles, and shall pay to the City the cost, as determined by the Administrative Authority, of repairing the damage.

(d) The applicant shall also be required to notify the Administrative Authority at least 24 hours before hauling is to commence. The Administrative Authority may require traffic control devices to be provided by the permittee as may be reasonably necessary to protect the health, safety, and general welfare of the public.

(e) The permit may specify other conditions which the Administrative Authority determines are necessary to minimize a disruption in normal traffic activities and public inconvenience on the public streets.

(f) Vehicle Code Section 23112(b) forbids the placing, dumping, or depositing of dirt and rocks on the public streets or any portion of the public right of way. No person engaged in hauling materials under a permit issued pursuant to this Chapter shall deposit dirt or debris on the public streets by any means, including but not limited to, spillage from the bed of a truck or other vehicle or the dropping of debris collected on the wheels of the haul vehicle. The permittee, or person on whose behalf the grading is done if different than the permittee, shall be responsible for the complete removal of dirt, rocks or debris from the street, if spilled, dumped, or deposited on a public street as a result of the grading or hauling action. If the permittee fails to remove completely such spillage, and it is necessary for the City to cause such removal to be made, the permittee and the person on whose behalf the grading is done, shall be jointly and severally liable to pay the City the full cost of the removal work. A cash deposit, bond or other security may be required to insure the clean-up of public streets, and/or repair of any damage to streets resulting from hauling.

(g) Where an excess of five thousand (5,000) cubic yards of earth per site project is moved on public roadways from or to the site of an earth grading operation then either water or dust palliative or both must be applied to the transported material to alleviate or prevent excessive dust resulting from the loading or transportation of earth from or to the project site on public roadways.

(h) Access roads to the premises shall be only at points designated on the approved grading plan. The last fifty (50) feet of the access road, as it approaches the intersection with the public roadway, shall have a grade not to exceed three (3) percent. There must be a three hundred (300) foot clear, unobstructed sight distance to the intersection from both the public roadway and the access road. If the three (3) per cent grade or three hundred (300) foot sight distance cannot be obtained, flagmen shall be posted in accordance with the requirements of the Administrative Authority. A stop sign conforming to the requirements of the California Vehicle Code shall be posted at the entrance of the access road to the public roadway. Advance warning signs and traffic control and safety devices shall be posted on the public roadway in the vicinity of the access intersection as required by the current American Public Works Association "Traffic Control Manual". The size, shape, color, number, spacing, and other details of all such signs and devices shall conform to the standards contained therein and in the current State Department of Transportation "Traffic Manual". The advance warning signs and/or other devices shall be covered or removed when the access intersection is not in use.

(i) **Stockpiling.** The Administrative Authority may approve a request for temporary stockpiling of material after review of the applicant's grading plan and stockpile plan. As a
condition of approval of a stockpiling permit the permittee shall post an appropriate security in an amount determined by the Administrative Authority to secure the removal or appropriate permanent compaction of the stockpiled material as may be required by the Administrative Authority. Not less than ten (10) percent of the security shall be in the form of a cash deposit.

17.32.085 Removal of Vegetation.

(a) Clearing and grubbing of vegetation done in preparation for land development shall not be undertaken until all discretionary approvals for the land development project have been issued and a grading permit for the project has been obtained. "Clearing and grubbing" means the removal of any and all types of vegetation, roots, stumps, or other plant material and the clearing and breaking up of the surface of land by digging. This Section shall not prohibit routine landscape maintenance, the removal of dead or diseased trees or shrubs, or the removal of vegetation upon the order of the Fire Marshal in order to eliminate a potential fire hazard, or for the abatement of weeds.

(b) No person shall undertake any grading or clearing and grubbing operations on previously undisturbed land, land covered by native vegetation, or upon land which had not been used for agricultural purposes for five years immediately prior to the institution of the grading operation for the purpose of conducting agricultural activities unless a permit therefore has been issued by the Administrative Authority. A permit may be issued by the Administrative Authority if it determines that the agricultural operation will not cause damage to any environmentally sensitive areas and not cause the elimination of any significant wildlife habitat or riparian area. In order to prevent erosion and protect sensitive lands a grading permit issued in accordance with the provisions of this Chapter is required for any agricultural grading except that for agricultural grading of land which has been previously graded and used for agricultural purposes for five years the Administrative Authority may waive the requirement for a permit.

17.32.090 Slope Height.

(a) The total height for all cut and fill slopes shall not exceed twenty (20) feet in height, including crib walls and retaining walls, unless a variance is obtained as provided for hereinafter:

(1) Variances shall be judged in accordance with the grading variance standard criteria approved by resolution of the City Council.

(2) Variances in conformance within the adopted guidelines may be approved by the City Manager.

(3) Applications for grading variances not in accordance with the guidelines, appeals from the decision of the City Manager or applications referred to the Planning Commission by the City Manager shall be processed as variances in accordance with Chapter 20.96 of this Code.

(b) When such approval to exceed the height limitation has been granted, one or more drainage terraces may be required by the City Engineer on all slopes having a vertical height of fifteen (15) feet or more. (Ord. No. 96-1003, 12-10-96)

(c) Such terraces shall be at least six (6) feet wide for privately maintained terraces and a minimum ten (10) feet wide for publicly maintained terraces, and shall conform to City standards. (Ord. No. 96-1003, 12-10-96)
17.32.100 Fills.

(a) **General.** Unless otherwise recommended and approved by the Administrative Authority in the approved soils engineering report, fills shall conform to the provisions of this section.

In the absence of an approved soils engineering report these provisions may be waived by the Administrative Authority for minor fills not intended to support structures.

For the placement of fills and grading of fill slopes, including grading requirements for oversize rock **FIGURE NO. 1** may be used for reference to the following:

**Zone A.** Shall be 15 feet measured horizontally from face of slope and five (5) feet minimum measured vertically from finished grade. In public rights-of-way and easements, Zone A shall be ten (10) feet minimum or must extend three (3) feet below the deepest utility, whichever is greater. Zone A must consist of compacted soil only (no rock fragments over 12 inches in maximum dimension), must be in conformance with Section 300-4 of the Standard Specifications and shall contain at least 40% soil sizes passing the 1/4-inch sieve.

**Zone B.** Oversize rocks greater than two (2) feet in minimum dimension must be windrowed. Rocks shall be placed in excavations in well compacted soil conforming to Zone A. Approved granular soil (SE greater than 30) must be flooded in the windows to completely fill the voids around and beneath rocks. All windrows must be parallel and may be placed either parallel or perpendicular to face of slope depending on site geometry. All rock placement, fill placement and flooding of approved granular fill must be continuously observed by the Geotechnical Engineer.

(b) **Fill location.** Fill slopes shall not be constructed on natural slopes steeper than three to one.

(c) **Preparation of Ground.** The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, topsoil and other unsuitable materials, scarifying to provide a bond with the new fill and, where slopes are steeper than five to one and the height is greater than five (5) feet, by benching into sound bedrock or other competent material as determined by the Geotechnical Engineer. The bench under the toe of a fill on a slope steeper than five to one shall be at least ten (10) feet wide. The area beyond the toe of fill shall be sloped for sheet overflow or a paved drain shall be provided. Where fill is to be placed over a cut, the bench under the toe of fill shall be at least ten (10) feet wide, but the cut must be made before placing fill and approved by the Geotechnical Engineer and Engineering Geologist as a suitable foundation for fill. Unsuitable soil is soil which, in the opinion of the Administrative Authority, is not competent to support other soil or fill, to support structures or to satisfactorily perform the other functions for which the soil is intended.

(d) **Fill Material.** Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the Administrative Authority, no rock or similar irreducible material with a maximum dimension greater than 12 inches shall be buried or placed in fills.

**EXCEPTION:** The Administrative Authority may permit placement of larger rock when the rock disposal areas are delineated on the grading plan complying with the Zone B criteria.
(e) **Expansive Soils.** Areas intended or designed to support buildings: Expansive soil (expansion index of 20 or greater) shall not be placed within four (4) feet of the finish grade in these building areas, unless special design considerations are addressed in a soils/geotechnical report approved by the Administrative Authority.

(f) **Compaction.** All fills shall be compacted to a minimum of 90 percent of maximum density as determined by U.B.C. (Uniform Building Code) Standard No. 70-1. Field density shall be determined in accordance with U.B.C. Standard No. 70-2 or equivalent as approved by the Administrative Authority.

(g) **Slope.** The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two horizontal to one vertical.

17.32.110 **Setbacks.**

(a) **General.** The Setbacks and other restrictions specified by this section are minimum and may be increased by the Administrative Authority or by the recommendation of a Civil Engineer, Geotechnical Engineer or Engineering Geologist in a report proposed pursuant to this Chapter, if necessary for safety and stability or to prevent damage to adjacent properties from deposition or erosion or to provide access for slope maintenance and drainage. Retaining walls may be used to reduce the required setbacks when approved by the Administrative Authority.

(b) **Setbacks from Property Lines.** The tops of cuts and toes and fill slopes shall be set back from buildings and the outer boundaries of the permit area, including slope right areas and easements, in accordance with **FIGURE NO. 2.** A letter of permission from the effected and adjacent property owners shall be required for any grading directly adjacent to or within properties outside the permit area.

(c) **Design Standards for Setbacks.** Setbacks between graded slopes (cut or fill) and structures shall be provided in accordance with **FIGURE NO. 2.**

(d) **Lot Line Location.** Unless extreme conditions of topography prevail, subdivisions shall be designed so that all lot lines shall be located at the top of banks.

17.32.120 **Drainage and Terracing**

(a) **General.** Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this Section.

(b) **Terrace.** Terraces shall be at least six (6) feet wide for privately maintained terraces and a minimum of ten (10) feet wide for publicly maintained terraces and shall conform to City standards.(**Ord. No. 96-1003, 12-10-96**)

(c) **Subsurface Drainage.** Cut and fill slopes shall be provided with subsurface drainage as necessary for stability.

(d) **Disposal.** All drainage facilities shall be designed to carry waters to the nearest practicable drainage way approved by the Administrative Authority and/or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive down-drains, rip-rap, or other devices.

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Building pads shall have a drainage gradient of two percent toward approved drainage facilities.

**EXCEPTION:** The gradient from the building pad may be one percent if all of the following conditions exist throughout the permit area:

1. No proposed fills are greater than ten (10) feet in maximum depth.
2. No proposed finish cut or fill slope faces have a vertical height in excess of ten (10) feet.
3. No existing slope faces, which have a slope face steeper than 10 horizontally to one (1) vertically have a vertical height in excess of ten (10) feet.
4. No expansive soil is left in the top four (4) feet of the pad area.

(e) **Interceptor Drains.** Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a drainage path greater than 40 feet measured horizontally. Interceptor drains shall be paved with a minimum of three (3) inches of concrete or gunite and reinforced. They shall conform to the San Diego County Regional Standard Drawings. The slope of drain shall be a minimum of 1% or as approved by the Administrative Authority.

(f) **Drainage Easements.**

1. **Private Easements.** Permanent private easements shall be required for all drainage ways where the continuous functioning of the drainage way is essential to the protection and use of property other than the lot on which the drainage way is located. They shall be recorded and a covenant or deed restriction shall be drawn placing the responsibility for the maintenance of the drainage ways on the owner of record of each lot on which said easements are located. Each private easement shall be a minimum of ten (10) feet.

2. **Public Easements.** A permanent public drainage easement shall be granted to the City over and around any permanent drainage structure 36" in diameter or larger or equivalent concrete open channel, or where the drainage structure is intended to carry public water, or when required by the Administrative Authority. The minimum width of public drainage easement shall be twenty (20) feet; any right-of-way in excess of twenty (20) feet shall be contingent upon depth of cover criteria as set forth by the Administrative Authority. Said easement, including easements for access to drainage easements shall be monumented, improved and fenced as required by the Administrative Authority.

(g) **Improvement Plans.** Improvement plans shall be prepared to the satisfaction of the Administrative Authority for all construction of public drainage systems as defined above. Fees for plan check and inspection shall be in accordance with current Engineering Division fee schedules.

**17.32.130 Permanent Erosion Control**

(a) **Slopes.** The faces of cut and fill slopes shall be prepared and maintained to control against erosion. This control shall consist of effective planting. The protection for the slopes shall be installed as soon as practical and prior to calling for final approval. The permittee shall maintain slope stabilization until it is well established and all stabilization has been assured.
Irrigation systems shall be required for perpetual maintenance of the plant life used for slope stabilization. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, such protection may be omitted at the option of the Administrative Authority.

(b) **Other Devices.** Where necessary, check dams, cribbing, rip-rap or other devices or methods shall be employed to control erosion and provide safety.

(c) **Erosion Control Plan.** Three sets of erosion control plans are required for all applications and shall be submitted along with the grading plans. When erosion or sediment discharge may adversely affect the effectiveness of downstream drainage conditions or structures, or adversely affects adjacent properties after completion of rough grading operations the applicant may be required to submit an additional sediment control plan or plan for the construction of an erosion control system.

(d) **Information on Erosion Control Plans.** The plan shall include:

1. A twenty-four (24) hour telephone number of the person responsible for performing emergency erosion control work.
2. The signature, seal and expiration date of the licensed professional who prepared the erosion control plan.
3. All temporary and permanent desilting and erosion protection structures, devices and facilities necessary to protect adjacent property from sediment deposition.
4. The streets and drainage devices that will be completed and paved and a schedule for their completion.
5. The placement of gravel or sandbags, slope planting, or other measures to control erosion from all slopes above and adjacent to roads open to the public.
6. An access plan showing how access will be provided to maintain desilting facilities during wet weather.
7. Such other information as the Administrative Authority deems necessary based upon the scale, location, extent, topography and other matters relating to the grading.

(e) **Erosion Control System.** The Erosion Control System shall conform to the following minimum requirements:

1. Desilting facilities shall be provided at drainage outlets from the graded site.
2. Desilting basins shall be designed to provide a desilting capacity capable of containing the anticipated run-off for a period of time adequate to allow settlement of suspended particles.
3. Desilting basins shall be constructed around the perimeter of projects, whenever feasible, to provide access for maintenance purposes from paved roads during wet weather.
4. Desilting basins constructed of compacted earth shall be compacted to a relative compaction of 90 percent of maximum density. A soil engineering report including the
type of field testing performed, location and results of testing prepared by the soil engineer shall be submitted to the Administrative Authority for approval upon completion of the desilting basins.

(5) Equipment and workers for emergency work shall be made available at all times during the rainy season. Necessary materials shall be available on-site and stockpiled at convenient locations to facilitate rapid construction of temporary devices when rain is imminent.

(6) The erosion control provisions shall take into account drainage patterns during the current and future phases of grading throughout the rainy season.

(7) All removable protection devices shown shall be in place at the end of each working day when the five (5) day rain probability forecast exceeds forty (40%) percent.

(8) Graded areas around the tract perimeter must drain away from the face of slopes at the conclusion of each working day.

(f) **Erosion Control Maintenance.** The following minimum erosion control maintenance requirements shall be included in each Erosion Control Plan and are a condition of each grading permit:

(1) After each rainstorm, silt and debris shall be removed from check berms and desilting basins and the basins pumped dry.

(2) After each rainstorm, the performance of the erosion control system shall be evaluated and revised and repaired as necessary.

(3) Devices shall not be removed or modified without the approval of the Administrative Authority.

(4) The permittee and the permittee's contractor shall be responsible and shall take necessary precautions to prevent public trespass onto areas where impounded water creates a hazardous condition.

(5) Paved streets, sidewalks, and other improvements shall be maintained in a neat and clean condition, free of loose soil, construction debris, and trash. Street sweeping or other equally effective means shall be used on a regular basis to control erosion. Watering shall not be used to clean streets except for fine material not otherwise removed by sweeping or other mechanical means.

(6) The permittee and the contractor who constructed the erosion control devices shall be responsible for inspection and modification of the devices, as necessary, during the rainy season. The contractor, permittee, or project owner shall be responsible for continual maintenance of the devices during the rainy season. In the event of failure or refusal by the contractor, permittee, or project owner to properly maintain the devices, the Administrative Authority may cause emergency maintenance work to be done to protect adjacent private and public property. The cost shall be charged to the owner, and shall include an initial mobilization cost plus the cost of doing the work. In the event the Administrative Authority must cause emergency maintenance work to be done, he may revoke the grading permit by giving written notice of the revocation to the permittee. The permit shall not be renewed until an erosion control system approved by the Administrative Authority.
Authority is installed, and the cost of emergency work is paid to the city by the contractor or other responsible party.

17.32.140 Grading Inspection.

(a) **General.** All grading operations for which a permit is required shall be subject to inspection by the Administrative Authority. When required by the Administrative Authority, special inspection of grading operations and special testing shall be performed in accordance with the provisions of Section 306 of the Uniform Building Code and progress reports shall be submitted to the Administrative Authority.

(b) **Grading Designation.** All grading in excess of 5000 cubic yards shall be performed in accordance with an approved grading plan prepared by a Civil Engineer, and shall be designated as "engineered grading." Grading involving less than 5000 cubic yards shall be designated "regular grading" unless the permittee, with the approval of the Administrative Authority, chooses to have the grading performed as "engineered grading."

(c) **Engineered Grading Requirements.** For engineered grading, it shall be the responsibility of the Civil Engineer who prepares the approved grading plan to incorporate all recommendations from the soils engineering and engineering geology reports into the grading plan. He also shall be responsible for the professional inspection and approval of the grading within his area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade and drainage of the development area. The Civil Engineer shall act as the coordinating agent in the event the need arises for liaison between the other professionals, utilities, the contractor and the Administrative Authority. The Civil Engineer also shall be responsible for the preparation of revised plans and the submission of as-graded grading plans upon completion of the work. The grading contractor shall submit in a form prescribed by the Administrative Authority a statement of compliance to said as-built plan.

Geotechnical engineering and engineering geology reports shall be required as specified in Section 17.32.040. During grading all necessary reports, compaction data and soil engineering and engineering geology recommendations shall be submitted to the Civil Engineer and the Administrative Authority by the Geotechnical Engineer and the Engineering Geologist.

The Geotechnical Engineer's area of responsibility shall include, but not be limited to, the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes and the design of buttress fills, where required, incorporating data supplied by the Engineering Geologist.

The Engineering Geologist's area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters and the need for subdrains or other groundwater drainage devices. He or she shall report his or her findings to the Geotechnical Engineer and the Civil Engineer for engineering analysis.

The Administrative Authority shall inspect the project at the various stages of the work requiring approval and at any more frequent intervals necessary to determine that adequate control is being exercised by the professional consultants.

(d) **Regular Grading Requirements.** The Administrative Authority will require testing and may require inspection and testing by an approved testing agency.

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The testing agency's responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills.

(e) **Notification of Noncompliance.** If, in the course of fulfilling his or her responsibility under this Chapter, the Civil Engineer, the Geotechnical Engineer, the Engineering Geologist or the testing agency of record is changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of his or her technical competence for approval upon completion of the work.

(f) **Transfer of Responsibility.** If the Civil Engineer, Geotechnical Engineer, Engineering Geologist, Landscape Architect, the testing agency, or the grading contractor of record are changed during the course of the work, the work shall be stopped until:

1. The owner submits a letter of notification verifying the change of the responsible professional; and
2. The new responsible professional submits in writing that he has reviewed all prior reports and/or plans (specified by date and title) and work performed by the prior responsible professional and that he concurs with the findings, conclusions, and recommendations, and is satisfied with the work performed. He must state that he assumes all responsibility within his purview as of a specified date.

All exceptions to paragraphs (1) and (2) above must be approved by the Administrative Authority.

Where clearly indicated that the firm, not the individual professional, is the contracting party, the designated engineer, architect or geologist may be reassigned and another individual of comparable professional accreditation within the firm may assume responsibility, without complying with the requirements of paragraph (1) and (2) above.

17.32.150 Flood Hazard.

(a) **Grading Permit Denial.** If, in the opinion of the Administrative Authority, the land area upon which grading is proposed is subject to flood hazard to the extent that corrective measures will not eliminate or substantially reduce the hazard to persons or property, such grading permit shall be denied.

(b) **Minimum Building Site Elevation with Delineated Flood Plain.** If determined by the Administrative Authority that the proposed grading for a building site is within an identified flood plain of the City, it shall be required that the applicant for grading permit shall conform to the requirements of the Flood Damage Prevention Overlay Zone (Chapter 20.76 of this Code) and design the site pad such that the finish grade elevations shall not be less than two (2) feet above the base flood elevation or as determined by the Administrative Authority. *(Ord. No. 2006-1270, 9-12-06)*

17.32.160 Completion of Work.

(a) **Final Reports.** Upon completion of the rough grading work and at the final completion of the work the Administrative Authority may require the following reports and drawings and supplements thereto:
(1) An as-graded grading plan prepared by the Civil Engineer including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface and subsurface drainage facilities. He or she shall provide certification that the work was done in accordance with the final approved grading plan.

(2) A soil grading report prepared by the Geotechnical Engineer including locations and elevations of field density tests, summaries of field and laboratory tests and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the geotechnical engineering investigation report. He or she shall provide approval as to the adequacy of the site for the intended use.

(3) A geologic grading report prepared by the Engineering Geologist including final description of the geology of the site including any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. He or she shall provide approval as to the adequacy of the site for the intended use as affected by geologic factors.

(4) **Slope stabilization.** Certification of slope stabilization shall be made by a Geotechnical Engineer or a licensed Landscape Architect, when required by the Administrative Authority. Where necessary due to factors beyond the control of the developer, temporary postponement of the installation of a slope stabilization may be permitted by the Administrative Authority as an exception to the above required certification provided that a secured agreement or other assurance acceptable to the City assuring repair of slopes and related damage, and installation of stabilization work within a satisfactory specified time is first executed by the permittee.

(b) **Notification of Completion.** The permittee or his/her agent shall notify the Administrative Authority when the grading operation is ready for final inspection. Final approval shall not be given until all work including installation of all drainage facilities and their protective devices and all erosion control measures have been completed in accordance with the final approved grading plan and the required reports have been submitted.

17.32.170 **Landscape and Irrigation Plan.** The Landscape and Irrigation Plan required by this Section shall include landscaping, erosion control, and irrigation facilities, and shall be prepared by a landscape architect or qualified landscape company when approved the Administrative Authority.

(a) The construction of a single family home on an individual lot with no graded slopes does not require the submission of a landscape plan unless specific landscape requirements were made as a condition for approval. Single family units must still conform to any applicable Sections of the City Code and Ordinances pertaining to landscaping prior to occupancy. Generally, the requirements are limited to slope and parkway plantings. The landscaper should refer to the provisions of the San Marcos Municipal Code relating to Zoning and subdivisions for additional requirements which may apply.

(b) Landscape plans shall be required for, but not limited to the following development:

- Commercial
- Grading Permits
- Grading Slopes
- Industrial
(c) The plan shall conform to good, accepted standard procedures and requirements with special consideration for soil conditions encountered within the project area. The plan shall include detailed specifications for the preparation of the existing soils or for the application of topsoil to the slopes to encourage vigorous growth. The landscape architect shall be responsible for all inspections to insure conformance with the plans. Prior to final acceptance by the City, the landscape architect shall approve in writing to the Administrative Authority that the contractor's work is in conformance with the landscape plans and that all individual plants show vigorous established growth typical of their species. Irrigation systems shall be pressure tested prior to backfilling and after completion, and shall show evidence of proper functioning prior to acceptance by the City. Such systems shall not be accepted by the City until plant growth is established and maintenance responsibilities have been accepted by the appropriate party.

(d) The City Council may, by resolution, adopt a landscape guidelines manual to provide for plans, programs and standards for landscaping, fire suppression, open space easement maintenance, erosion control, planting and irrigation. Upon adoption, the contents of that manual shall be part of the requirements of this Chapter. Any permits issued pursuant to this Chapter or any development approved pursuant to the Subdivision and Zoning Ordinance shall comply with the provisions of that manual.

(e) All projects approved with landscaped areas, slopes or open spaces which are to be maintained by the City either through a Maintenance District or as public property, will conform to the following guidelines:

1. **Terracing or Benches of Slopes.** Landscaped slopes to be publicly maintained may be required to have one or more ten (10) foot wide bench as deemed necessary by the City Engineer to provide access for maintenance. *(Ord. No. 96-1003, 12-10-96)*

2. **Other Graded Access.** All public maintained landscaped or open space areas will have graded access roads from public maintained streets. All slopes will have graded access to the bottom of the slope. Slopes of sufficient height (over 15 or 20 feet) to require benches will have access roads at both the bottom and the top. If a public street is at either of these locations, it would serve as one access road.

3. **Irrigation Systems.** The irrigation system should be installed and inspected per standard specifications established by the Administrative Authority and shall be guaranteed for a period of one year with a warranty bond supplied by the developer.

4. **Plant Establishment.** A thirty (30) day plant establishment period shall be strictly enforced and will not begin until all other work is completed and accepted by the approval authority. The performance and labor and materials bonds will be retained until the expiration of this period. Trees and shrubs will be guaranteed for a period of one year and the cost of replacement shall be covered in the one year warranty bond required for the irrigation system.

5. **Maintenance and Irrigation Schedules and Estimated Annual Costs.** Prior to commencement of the plant establishment period, the developer shall be required to submit detailed maintenance and irrigation schedules and a detailed estimate of the anticipated annual costs for maintenance and utilities.
17.32.180 Grading Operation Restrictions. Permits and plans issued pursuant to this Chapter shall include provisions that the permittee, his or her agent, contractor(s) and employees, shall not conduct any grading, excavation or other related forms of earth movement during any times or days other than listed herein:

(a) Grading, excavation, blasting or other related earth movements or equipment warm-up and repair creating noise is hereby restricted to the hours of 7:00 a.m. to 4:30 p.m., Monday through Friday.

(b) Grading, excavation or other related earth movement is hereby forbidden during any hours on Saturdays, Sundays and City Holidays.

(c) The Administrative Authority may authorize grading at other hours and other days specified in cases of urgent necessity or in the interest of public health and safety.

17.32.185 Depositing Earth, Sand, Gravel, Etc., Upon Public or Private Property.

(a) No person shall dump, move or place any earth, sand, gravel, rock, stone or other graded, filled or excavated material, or leave any bank, slope or other excavated surface unprotected so as to cause any of such materials to be deposited upon or to roll, blow or wash upon or over the premises of another without the express consent of the owner of each such premises to affected, or upon or over any public property, place or way. Such consent shall be in writing and in a form acceptable to the Administrative Authority.

(b) No person shall, when hauling any earth, sand, gravel, rock, stone or other excavated material over any place, allow such materials to blow or spill over and upon such street, alley or place or adjacent private property.

(c) When, due to a violation of Subsection a) of this Section, any earth, sand, gravel, rock, stone, or other excavated material is caused to be deposited upon or to roll, flow or wash upon any public place or way, the person responsible therefor shall cause the same to be removed from such public place of way within twelve (12) hours. In the event it is not removed, the Administrative Authority shall cause such removal and the cost of such removal by the Administrative Authority shall be paid to the City by the person who failed to so remove the material.

17.32.190 Appeals. An applicant may appeal the denial by the Administrative Authority, or the conditions of approval of, an application for a permit to the City Council within ten (10) working days after such decision. Appeals shall be in writing and shall state the specific nature of the appeal. Appeals shall be filed with the City Clerk.
17.32.200 Violations and Penalties.

(a) **False Statements in Applications, Plans, and Construction.** No person who prepares or signs any application, plans or drawings shall willfully make any false statement or furnish false data therein or thereon.

(b) Any grading commenced or done contrary to the provisions of this Chapter, or other violation of this Chapter, shall be, and the same is determined to be, a public nuisance. Upon request of the Administrative Authority, the City Attorney is authorized to commence necessary proceedings for the abatement of any such public nuisance in the manner provided by law. Any failure, refusal or neglect to obtain a permit as required by this Chapter shall be prima facie evidence of the fact that a public nuisance has been committed in connection with any grading commenced or done contrary to the provisions of this Chapter.

(c) **Violation of Federal or State Requirements.** Any violation of an applicable federal or state-issued Storm Water Permit, or any failure to conform to an applicable storm water pollution prevention plan (SWPPP) prepared pursuant to such permit, or any failure to comply with storm water-related provisions of a grading permit or of a grading plan prepared to secure such a permit, is a violation of this Chapter. (Ord. No. 2001-1123, 11/27/01)

(d) It shall be unlawful for any person, firm, or corporation to violate any provisions of this Chapter. Any person, firm, or corporation violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and shall be punishable in accordance with the provisions of Section 1.12.010 of the San Marcos Municipal Code; and each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Chapter is committed, continued, or permitted. In the event that grading is commenced without a permit, the Administrative Authority shall cause such work to be stopped until a permit is obtained. The permit fee, in such instance, shall then be double that which would normally be required. The payment of such double fee shall not relieve any person from fully complying with the requirements of this Chapter and the performance of the work. Such fee shall not be construed to be a penalty, but for enforcement of the provisions of this Chapter in such cases.

(e) **Civil Actions.** In addition to any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, without limitation, and the Court shall grant, as appropriate, any or all of the following actions: (Ord. No. 2001-1123, 11/27/01)

1. Injunctive relief.

2. Assessment of the violator for the costs of any investigation, inspection or monitoring which led to the establishment of the violation, and for the reasonable cost of preparing and bringing legal action under this subsection.

3. Costs incurred in placing or removing soils to correct the violation, as well as costs to correct or terminate the adverse effects resulting from the violation.

4. Compensatory damages.

5. A maximum civil penalty of $2,500 per violation of this Chapter for each day which any violation of any provision of this Chapter is committed, continued, permitted or maintained by such person(s).
CHAPTER 17.36

PARK AND RECREATIONAL DEVELOPMENT
CONSTRUCTION UNIT FEE

SECTIONS:

17.36.010 Purpose
17.36.020 Definitions
17.36.030 Payment of Fee
17.36.040 Time of Payment
17.36.050 Use of Fees

17.36.010 Purpose. The continued increase in the development of dwelling units in the City of San Marcos, with the attendant increase in the population of the City, has created a need for the planning, acquisition, improvement, expansion and operation of public parks, playgrounds, recreational facilities to serve the increasing population of the City, and a need for additional revenues with which to finance such public facilities.

It is the intent of the City Council that each builder of each dwelling unit to be constructed within the City of San Marcos shall, prior to the construction, pay a fee as described herein. The payment of said fee is required and assessed pursuant to the taxing power of the city and is solely for the purpose of producing revenue. Further, it is the intent of the Council that all revenue generated by the payment of said fee shall be used for the acquisition, improvement, development and operation of park or recreational facilities.

17.36.020 Definitions. As used herein the term:

(a) Person shall mean every individual, partnership, firm or corporation that is to construct or is to be responsible for the construction of a dwelling unit, or every individual partnership, firm or corporation that is to construct, or is to be responsible for the construction of, a dwelling unit through the services of an employee, agent or independent contractor.

(b) Dwelling Unit shall mean each single family dwelling, each pad for a mobile home or trailer, and each unit of an apartment, duplex, or multiple-dwelling structure, designed as a separate habitation for one or more persons.

17.36.030 Payment of Fee. Every person constructing any dwelling unit in the City of San Marcos shall pay to the City the applicable fee as adopted by Resolution by the City Council.

17.36.040 Time of Payment. The applicable fee as described in this chapter shall be due and payable upon issuance of a building permit by the City for the construction of any dwelling unit. Fees paid pursuant to the terms of this chapter shall be paid one time only. Any fee paid pursuant to the terms of the chapter shall be refunded by the City in the event that the building permit is not used for such construction. For subdivisions, the date of City Council approval of the tentative subdivision map shall be used for determining the amount of fee due.

17.36.050 Use of Fees. All fees collected shall be used solely for the acquisition, improvement and development and operation of park or recreational facilities. Said facilities shall be located and operated to reasonably meet the recreational needs of the increased population of the City and particularly the recreational needs of the occupants of those dwelling units.
CHAPTER 17.40

STREET DEDICATION REQUIREMENTS

SECTIONS:

17.40.010 Street Dedication and Improvement Requirements
    When Dedication and Improvements Required
17.40.020 Exceptions
17.40.030 Dedication procedure
17.40.040 Improvement Procedure
17.40.050 Lots Affected By Street Widening
17.40.060 Dedication and Improvement Standards
17.40.070 Appeal

17.40.010 Street Dedication And Improvement Requirements When Dedication And Improvements Required. No building or structure shall be erected, reconstructed, structurally altered or enlarged and no building permit shall be issued therefor, on any lot or parcel of land if such lot or parcel abuts or is bisected by a dedicated street or proposed street shown on the General Plan Circulation Element and Master Street Plan or required by the Planning Commission and/or City Council without satisfying the following requirements. Any portion of said described streets lying within or adjacent to such lots must be dedicated and improved so as to meet the standards for such public street provided in Section 17.40.060, or such dedication and improvement must be assured to the satisfaction of the Administrative Authority.

(a) The maximum area of land required to be so dedicated shall not exceed twenty-five per cent of the area of any lot or parcel of land which was of record on the effective date of this section in the San Diego County Recorder's Office. In no event shall such dedication reduce the lot below a width of sixty (60) feet or an area of six thousand square feet.

(b) No buildings or structures shall be erected on any such lot after the effective date of this section within the dedication required by section 17.40.060.

17.40.020 Exceptions.

The provisions of Section 17.40.060 shall not apply to the following construction:

(a) Additions and accessory building incidental to a residential building legally existing on the lot, provided no additional dwelling units are created.

(b) Constructing of a single family dwelling on a single family residential lot; in such case full width street dedication shall be required as per Section 17.40.030.

(c) Agricultural zoned structures that are specifically for Agricultural use and not suitable for primary use as a place of work or residence by humans. In such case only full width street dedication shall be required as per Section 17.40.030.

(d) Additions, accessory building, and tenant improvements incidental to a non-residential building existing on the lot on the effective date of this chapter, provided that the total cumulative assessed valuation as determined by the Administrative Authority of all such additions and accessory building shall not exceed twenty thousand dollars ($20,000.00).
(e) Any portion of the public improvement construction cost that exceeds the assessed valuation of the land and private improvements thereon.

(f) Partial or interim improvements may be required in all above cases where no improvements presently exist or where improvements are necessary for the health, safety, or welfare of the public. In such case, any required deposit or bond amount may be reduced accordingly.

**17.40.030 Dedication procedure.**

(a) Any person required to dedicate land by the provisions of this chapter shall make such dedication, properly executed by all parties of interest including beneficiaries and trustees in deeds of trust as shown on a current title report furnished by the applicant. Such offer shall be on a form approved by the City Attorney, with a description of the land to be dedicated approved by the Administrative Authority, and be in such terms as to be binding on the owner, his heirs, assigns or successors in interest.

(b) For purposes of this chapter, dedication shall be considered as satisfactorily assured when the Administrative Authority accepts for processing the provided dedication. When said Administrative Authority accepts and City Council approves the dedication the Building Division shall be notified.

(c) When improvements are to be deferred for a period of time, the deed shall be in the form of an offer of dedication which shall be recorded and remain open indefinitely, to be accepted for public dedication at the option and convenience of the City.

**17.40.040 Improvement Procedure.**

(a) Any person required to make public improvements by the provisions of this chapter shall either make and complete the same to the satisfaction of the Administrative Authority, or post a cash deposit, or a letter of credit satisfactory to the Administrative Authority, or shall file a request with City Council for acceptance of a surety bond, in lieu thereof. The Administrative Authority shall provide the City Council with an estimate for completing all of the improvements required based on information provided by the applicant's engineer and approved by the Administrative Authority. It is the intent of the City to require, in all cases, the public improvements to be constructed at the time of the construction of the private facilities. Only in unusual cases as determined by the Administrative Authority, or the City Council will security for improvements to be constructed in the future be accepted in lieu of immediate construction of the public improvements.

(b) For purpose of this chapter, such improvements shall be considered as satisfactorily assured when the Administrative Authority accepts the improvements or a cash deposit or letter of credit, or the City Council accepts a bond which guarantees completion of said work, in an amount acceptable to the Administrative Authority, and the Building Division shall be notified.

**17.40.050 Lots Affected By Street Widening.** On a lot or parcel which is affected by street widening or offers of dedication required by the provisions of this chapter, all areas, yards, setbacks, locations for new buildings or structures or additions to buildings or structures shall be measured and calculated from the new or future lot lines being created by said widening or offer of dedication.
17.40.060 Dedication and Improvement Standards.

(a) All streets shall be constructed and improved in accordance with the standards indicated on the San Marcos General Plan Circulation Element and Master Street Plan and City of San Marcos Street Design Criteria and in accordance with City standard plans and specifications as approved by the City Council. The developer of property shall bear the expense of all grading and shall construct curb, gutter, sidewalk, paving, utility undergrounding or relocation, and drainage structures, where required by the Administrative Authority. The street shall be constructed to half width or two lane width, whichever is wider, by developer of R-I residential or agricultural property on one side of a road. Commercial, office/professional, multiple residential, industrial or similar developments on one side of a road should construct a half width road section with medians, where required by the Circulation Element and City Street Design Criteria, plus one minimum 12 foot lane width on the other side of the road and adequate transitions constructed to ultimate structural section. The full width of right-of-way including that required for transitions as required by the Circulation Element and Master Street Plan and San Marcos Street Design Criteria should be dedicated or cause to be dedicated to the City as a condition of final subdivision or building permit approval. Transverse drainage structures will be constructed on a similar basis. When City assistance is requested, the property developer shall make his request to the Administrative Authority for a determination.

(b) Street improvements shall be designed and constructed to provide an adequate design speed and a Level of Service "C" at full development of adjoining property plus existing traffic volume projected into the future 20 years after completion of the improvements.

(c) Whenever uncertainty exists as to the proper application of the provisions of this chapter in the matter of street improvement, the Administrative Authority shall determine their application in conformance with the intent of this chapter.

(d) The Administrative Authority may approve and allow such variations and deviations from the aforesaid requirements as determined to be necessary by the conditions of the terrain and the existing improvements contiguous to the property involved or to assure public safety.

(e) No part of this Section is intended to limit the City's authority to require additional improvements based on a subdivision, a Specific Plan, a Conditional Use Permit, an Environmental Impact Report, or other City requirement.

17.40.070 Appeal.

(a) Any aggrieved person may appeal any determination of the Administrative Authority in connection with the administration and enforcement of the provisions of this chapter to the City Manager. Further appeal shall be to the City Council if believed to be necessary.

(b) The City Council may make such modifications in the requirements of this chapter or the determination of the City Manager thereunder. The City Manager or City Council shall determine which modification may be required in order to prevent any undue hardship under the facts of each individual case. No such modification shall be granted unless it is in conformity with the spirit and intent of this chapter.
17.44.010 Purpose. The continued development of real property located within the City’s jurisdictional boundaries with various uses that include, but are not limited to, single family dwelling units, multi-family dwelling units, agricultural uses, commercial uses, industrial uses, manufacturing uses, office and professional uses, recreational uses, religious uses and storage uses, has resulted in (i) an increased demand on existing public services, facilities and infrastructure; (ii) the need for expansion of public services, facilities and infrastructure, and/or (iii) the need for the installation of new public services, facilities and infrastructure. To meet such health and safety needs, and in accordance with Government Code Section 66000, et seq., it is the intent of the City Council that each applicant for a grading, construction, building and/or development permit or entitlement shall, prior to the issuance of such permit or entitlement, pay the fees described hereafter. The funds generated by the payment of fees described herein shall be deposited by the City into separate funds or accounts that have been established for such purposes.

17.44.020 Definitions. For the purposes of this Chapter 17.44, the following words or phrases shall be construed as defined below, unless from the context it appears that a different meaning is intended.

(a) Building shall mean any structure or tenant improvement built for the support, shelter and/or enclosure of persons, goods, chattels, animals and/or property of any kind.

(b) Building Permit shall mean a permit required by and issued pursuant to the Uniform Building Code as adopted by the City.

(c) Development Entitlement shall mean a permit, approval, license or other evidence of permission processed, issued and/or granted by the City for any grading, construction, building and/or other development activity.

(d) Development Services shall mean the Development Services Department of the City of San Marcos and its various Divisions, including Building, Planning, as well as such related services as may be provided by other City Departments such as Administration, Engineering, Community Services, Finance, Public Works, the Fire Protection District, and the Sheriff’s Department. (Ord. No. 2014-1389, 3/11/14)
(e) **Development Services Fees** shall mean the fees charged by the City to recover administration overhead and costs associated with the processing of grading, construction, building and/or development entitlements by the Development Services Department of the City of San Marcos and its various Divisions, including Building, Engineering, Planning, and Landscape Maintenance, as well as the administrative overhead and costs associated with such related services as may be provided by Administration, Community Services, Finance, Public Works, the Fire Protection District, and the Sheriff's Department, including the CPI annual adjustment factor for such fees adopted pursuant to Resolution 2001-5777.

(f) **Dwelling Unit** shall mean each single family residential dwelling, second unit (granny flat), each pad for a mobilehome or trailer, and each unit of an apartment, duplex or multiple dwelling structure, designed as a separate habitation for one or more persons.

(g) **Person** shall mean every individual, partnership, firm or corporation that is to construct, reconstruct, develop or redevelop, or is to be responsible for the construction, reconstruction, development or redevelopment of a dwelling, greenhouse, commercial, office or industrial structure, as well as those which may do so through the services of an employee, agent, and/or independent contractor.

(h) **Public Facilities or Facilities** shall mean facilities, infrastructure, improvements, equipment, improved and/or unimproved real property and/or interests therein that are used, operated and/or otherwise held for general municipal purposes or on behalf of the citizens of the City. Such facilities, infrastructure, equipment and real property interests shall include, but shall not be limited to, streets, highways, curbs, gutters, sidewalks, traffic controls, bridges, over-crossings, street interchanges, flood control and other storm water facilities, lighting facilities, active or passive open space and/or parks, and/or appurtenances of the same.

(i) **Public Facilities Fees** shall mean the exactions and fees charged by the City pursuant to Ordinance 90-856, as amended by Resolution 91-3889 and Resolution 99-5197, and as may be further amended in future.

17.44.030 **Development Services Fees, Exemptions and Adjustments.** In addition to the conditions and improvement requirements that are imposed upon grading, construction, building and/or development entitlements, Development Services Fees, or applicable components thereof, shall be paid with respect to each such application that is submitted to the City. A schedule of Development Services Fees, including the CPI annual adjustment factor for such fees, has been adopted pursuant to Resolution No. 2001-5777. The amount of the Development Services Fees, and each component thereof, shall be set from time to time by Resolution of the City Council. To ascertain the applicable Development Services Fees and the amount of the same, the applicant shall obtain the then-current schedule from the Development Services Department and consult said schedule each time an application for a grading, construction, building and/or development entitlement application is submitted to the City. The City Manager is authorized to review Development Services Fees and to make adjustments to and exemptions from the imposition of Development Services fees, or any portion thereof, by reason of economic hardship and/or benefit to the City. Appeal to the City Council from the determination of the City Manager with respect to adjustments to and/or waivers of Development Services Fees shall be made in writing and submitted to the City Clerk within ten (10) days of the issuance of the City Manager's written determination. Development Services Fee protests shall comply with the provisions Government Code Section 66020, and any amendments thereto.
17.44.040  Time of Payment of Development Services Fees. The applicable components of the Development Services Fees shall be due and payable upon submission to the City of any application for a grading, construction, building and/or development permit or entitlement by any person, or at the time of permit issuance, as specified by the City. With respect to the payment of hourly rates and/or consultant services associated with certain components of Development Services Fees, the City may require a reasonable amount to be deposited at the initial submission of the application, with additional amounts to be submitted to the City at the direction of the Development Services Department as the deposit amount is drawn down.

17.44.050  Use of Development Services Fees. Development Services Fees shall be deposited and used to reimburse the City for administrative overhead and costs associated with the processing of grading, construction, building and/or development entitlements by the Development Services Department of the City of San Marcos and its various Divisions, including Building and Planning, as well as the administrative overhead and costs associated with such related services as may be provided by Engineering, Administration, Community Services, Finance, Public Works, the Fire Protection District, and the Sheriff’s Department. (Ord. No. 2014-1389, 3/11/14)

17.44.060  Public Facilities Fees, Exemptions and Adjustments. In addition to the conditions and improvement requirements that are imposed upon grading, construction, building and/or development entitlements, and in addition to the payment of Development Services Fees as provided in this Chapter 17.44, Public Facilities Fees and the appropriate components thereof shall be paid with respect to each such application that is submitted to the City. Public Facilities Fees consist of those components set forth in Ordinance 90-856, as amended and/or supplemented by Resolution 91-3889 and Resolution 99-5197, as such Ordinance and Resolutions may be further amended in future by the City Council. The components of the Public Facilities Fees shall include, but shall not be limited to, the following: Circulation Element Streets; Flood Control and Habitat Replacement; Parks; State Route 78 and Interchange Improvements; Geographic Information System. The amount of such Public Facilities Fees, and each component thereof, shall be set from time to time by Resolution of the City Council in accordance with Government Code Section 66000, et seq. The City Manager’s authority to make adjustments to and/or exemptions from the imposition of Public Facilities Fees, or any portion thereof, shall be limited to those situations and circumstances set forth in Ordinance 2003-1203, Section 14. Appeal to the City Council from the determination of the City Manager with respect to adjustments to and/or waivers of Public Facilities Fees shall be made in writing and submitted to the City Clerk within ten (10) days of the issuance of the City Manager’s written determination. Public Facilities Fee protests shall comply with the provisions Government Code Section 66020, and any amendments thereto. (Ord. No. 2003-1203, 10/28/03)

17.44.070  Time of Payment of Public Facilities Fees. The applicable Public Facilities Fees components shall be due and payable upon the issuance by the City of a building permit for the construction of any dwelling unit, greenhouse or other structure for agricultural use, commercial structure, industrial structure, manufacturing structure, office or professional structure, recreational structure, religious structure or storage structure. With regard to subdivisions, the date of issuance of the building permits, rather than the date of filing of the tentative map, shall be used in the calculation to determine the amount of Public Facilities Fees.

17.44.080  Fee Deferral Program for Public Facilities Fees. The payment of Public Facilities Fees for construction of new residential, commercial or industrial unit(s) may be deferred, and collection thereof by the responsible City agency, department, official or employee delayed, until immediately prior to the release of electrical services for residential, commercial, industrial units. An application for the deferral of public facilities fees, as specified in Section 17.44.060 of this
Chapter, must be filed in writing, on forms prescribed from time to time by the City Manager or his/her designee and must be filed with the Building Department by or before the issuance of the first building permit for the construction project in question. This application will also include a deferral agreement as explained in Section 17.44.076.

A. An application will be approved by the Building Division Director or his/her designee, within fifteen (15) days of its submittal, unless it is found and determined that one or more of the following factors exist:

   1. The application is deemed incomplete.
   2. The applicant and the owner of the property have not properly executed the deferral agreement.
   3. The applicant has not provided security for the payment of the fees to be deferred as provided in subsection 17.44.090.

(Ord. No. 2014-1389, 3/11/14)

17.44.090 Deferral Agreements. As a condition of the deferment of payment of any Public Facilities Fees pursuant to this Chapter, and prior to and as a condition of issuance of the building permit, the property owner, and, if applicable, the lessee if the lessee’s interest appears of record, must execute a contract to pay the entirety of the deferred Public Facilities Fees prior to release of the electrical services by the City. As part of the City’s approval of an application, the owner of the affected real property must enter into a deferral agreement with the City in a form satisfactory to the City Attorney and approved by the City Manager or his/her designee. Such agreement shall, at a minimum, be site specific and provide for the enforcement of the provisions of this Chapter. Only one (1) agreement shall be entered into with respect to each project in its entirety, whether or not the applicant for the Public Facilities Fee deferral is the same for multiple projects. Authority to execute such agreements on behalf of the City is hereby delegated to the Building Division Director.

The obligation to pay the Public Facilities Fees shall inure to the benefit of and be enforceable by the City. The agreement must contain a legal description of the affected property, must be executed in recordable form and recorded in the Office of the County Recorder of San Diego. From the date of recordation, said fee deferral agreement shall constitute a lien for the payment of the deferred Public Facilities Fees, which lien shall be enforceable against the affected property. The agreement shall be recorded in the grantor-grantee index in the name of the City of San Marcos as grantee and in the name of the property owner or lessee as grantor.

The Public Facilities Fees shall be calculated based on the Fee Schedule in effect at the time of payment. In the event that any or all of the above mentioned Public Facilities Fees are reviewed and increased by an action of the City Council, if the applicant has executed an agreement deferring their respective Public Facilities Fee payments to the City, the applicant is required to and must pay the increased amount of the Public Facilities Fee(s) in question. The applicant may at any time during the deferral period choose to pay their Public Facilities Fees, and must do so prior to the release of electrical services for the property. (Ord. No. 2014-1389, 3/11/14)

17.44.100 Time of Payment for Deferred Fees and Release. No electrical services release will be issued to a project with an approved deferral agreement unless the full amount of any deferred Public Facilities Fees has been paid in full in accordance with Section 17.44.080.

Upon receipt and clearance of full payment of the deferral obligation, the City will record a release of the obligation in the Office of the County Recorder of San Diego County, which release will include a legal description of the property. A certificate of occupancy will be issued for affected
projects and properties only after the City’s lien is released and recorded. (Ord. No. 2014-1389, 3/11/14)

17.44.110 Use of Public Facilities Fees. The Public Facilities Fees shall be utilized to design, engineer, develop and construct Public Facilities. (Ord. No. 2014-1389, 3/11/14)

17.44.120 Other Exactions and Fees (CFDs, ADs, etc.). In addition to the exactions, fees and costs set forth in this Chapter 17.44, the City may condition the issuance of a grading, construction, building and/or development entitlement, or its agreement to provide public services, upon the participation of the real property in question in a community facilities, assessment or service district organized and adopted by the City in accordance with local, state and/or federal regulations, statutes and or case law, or, if such district has not yet been organized and adopted but the need for which has been identified, upon the execution of an irrevocable offer to annex into such district upon formation of the same. Such districts may include, but are not limited to, those organized pursuant to the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, the Landscaping and Lighting Act of 1972, the Benefit Assessment Act of 1982, the Parking and Business Improvement Area Law of 1989, the Mello-Roos Community Facilities District Act, and other districts formed pursuant to the City’s authority as a charter city or otherwise provided for by applicable statutes or regulations. (Ord. No. 2014-1389, 3/11/14)

17.44.130 Insufficiency of Funds. If payment of an exaction, fee and/or cost referenced in this Chapter 17.44 is made by means of a check or checks that are rejected by the applicable financial institutions for insufficiency of funds, all processing of the application or submittal in question shall cease, and shall not be recommenced unless and until such exaction, fee and/or cost, plus any applicable late fee or processing charge imposed by the Finance Department, is paid in full in cash or by cashier’s check. Any payments shall be applied first toward reduction or elimination of the late fees or processing charges and then to the exaction, fee and/or cost in question. (Ord. No. 2014-1389, 3/11/14)
CHAPTER 17.48

DELETED

(Ord. 2002-1162, 1/14/03)
CHAPTER 17.52

SCHOOL FEES AND LAND DEDICATION

SECTIONS:

17.52.010 Purpose and Intent
17.52.020 Definitions
17.52.030 General Provisions
17.52.040 Findings of Overcrowded Attendance Areas
17.52.050 Requirements, Standards, and Procedures
17.52.060 Uses and Limitations of Uses of Land and Fees

17.52.010 Purpose and Intent. This chapter is intended to implement the school facilities dedication and fees legislation in the City of San Marcos and to provide authority whereby the City-affected school districts and applicants for land development approvals may undertake such reasonable steps as are necessary to alleviate the overcrowding of school facilities.

17.52.020 Definitions.

(a) Conditions of Overcrowding. "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of such school as determined by the governing body of the school district and concurred with by the City Council.

(b) Decision-making Body. "Decision-making body" means the City Council of the City of San Marcos.

(c) Dwelling Unit. "Dwelling unit" means a building or a portion thereof, or a mobile home, designed for residential occupation by one person or a group of two (2) or more persons living together as a domestic unit.

(d) Reasonable Methods for Mitigating Conditions of Overcrowding. "Reasonable methods for mitigating conditions of overcrowding" shall include, but not be limited to, agreements between a subdivider or the developer of residential developments and the affected school district whereby temporary use buildings will be leased to or for the benefit of the school district or temporary use buildings owned by the school district will be used.

(e) Residential Development. "Residential development" means a project containing residential dwellings, including mobile homes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units. Residential development includes, but is not limited to:

(1) A privately proposed amendment to the City General Plan which would allow an increase in authorized residential density and where no further discretionary action for residential development need be taken by a decision-making body prior to application for a building permit;

(2) A privately proposed specific plan or amendment to a specific plan which would allow an increase in authorized residential density;
(3) A tentative or final subdivision map or parcel map;

(4) A special use permit for residential purposes;

(5) An ordinance rezoning property to a residential use or to a more intense residential use; or

(6) Any other discretionary permit for residential use,

(7) Building permit.

17.52.030 General Provisions.

(a) **Citation.** This chapter shall be known and may be cited as the "School Facilities Dedication and Fee Ordinance."

(b) **Authority.** This chapter is adopted pursuant to the provisions of chapter 4.7 (commencing with section 65970) of Division 1 of title 7 of the Government Code. (SB 201).

(c) **Regulations.** The City Council may from time to time, by resolution, issue regulations to provide for the administration and collection of fees of this chapter.

(d) **Findings.** The City Council of the City of San Marcos finds and declares as follows:

(1) Adequate school facilities should be available for children residing in new residential developments.

(2) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.

(3) Frequently, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.

(4) New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated in a reasonable period of time without City involvement as provided for under existing state law.

(5) That, for the above reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in San Marcos.

(e) **General Plan.** The San Marcos General Plan provides for the location of public schools. Interim school facilities to be constructed from fees paid or land required to be dedicated hereunder, or both, shall be consistent with the City General Plan.

17.52.040 Findings of Overcrowded Attendance Areas.

(a) **School District Findings.** If the governing body of the affected School Districts serving the residents of the City make findings supported by clear and convincing evidence that:

(1) Conditions of overcrowding exist in one or more attendance areas that include incorporated territory within the affected district which will impair the normal functioning of educational programs, including the reasons for the existence of such conditions; and
(2) That all reasonable methods, within established school district policies, of mitigating conditions of overcrowding have been evaluated and no feasible method, as determined by the affected school district, for reducing such conditions exist.

The governing body of the school district shall notify the City Council. A notice of findings sent to the City shall specify the mitigation measures considered by the school district. If the City Council occurs in such findings, the provisions of this Chapter shall be applicable to all official actions taken on residential development applications by a decision-making body.

(b) Notice of Findings Requirements. Any notice of findings sent by a school district to the City shall specify:

(1) The findings listed in Section 17.52.040.

(2) The mitigation measures and methods, including those listed in Section 17.52.040(a)(2) considered by the affected school district and any determination made concerning them by the district. Other mitigation measures may include, but are not limited to:

a) Any other agreements entered into by the affected school district which would alleviate conditions of overcrowding caused by new residential development.

b) The use of relocatable structures, student transportation and/or school boundary realignments.

c) The use of available bond or state loan revenues, to the extent authorized by law.

d) The use of funds which could be available from the sale of surplus school district real property and funds available from other appropriate sources, as determined by the respective governing bodies of the affected school districts.

(3) The precise geographic boundaries of the overcrowded attendance area or areas.

(4) Such other information as may be required by the City Council.

(c) Restriction on Approval of Residential Development/City Council Findings. Within any attendance area of a school district where it has been determined pursuant to Section 17.52.040(A) that conditions of overcrowding exist, no decision-making body shall approve an application for a residential development within such area unless such decision making body makes one of the following findings:

(1) That action will be taken pursuant to this chapter to provide dedications of land and/or fees or some other provisions has been mutually agreed upon by the applicant for a residential development and the school district to mitigate the conditions of overcrowding within that attendance area; or

(2) That there are specific overriding fiscal, economic, social or environmental factors which in the judgment of the decision-making body would benefit the City, thereby justifying the approval of a residential development otherwise subject to the provisions of this chapter.
17.52.050 Requirements, Standards and Procedures.

(a) **Requirement of Fees and/or Dedications.** For the purpose of establishing an interim method of providing classroom facilities where overcrowding conditions exist as determined pursuant to section 17.52.040(a), the City may require, as a condition to the approval of a residential development, the dedication of land, the payment of fees in lieu thereof, or a combination of both, as determined by the decision-making body during the hearings and other proceedings on specific residential development applications falling within their respective jurisdiction. Prior to imposition of the fees and/or dedications of land, it shall be necessary for the decision making body acting on the application to make the following findings:

1. The City General Plan provides for the location of public schools.
2. The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary, junior high or high school classroom and related facilities as defined by the governing body of the district.
3. The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary, junior high or high school facilities and shall be reasonably related and limited to the need for schools caused by the development.
4. The facilities to be constructed, purchased, leased or rented from such fees or the land to be dedicated or both is consistent with the City General Plan.

(b) **Payment of Fees in Smaller Subdivisions.** Only the payment of fees shall be required in subdivisions containing fifty (50) parcels or less.

(c) **Standards for Land Dedication and Fees.** The standards for the amount of dedicated land or fees to be required shall be established by the governing body of the San Marcos Unified School District where a determination has been made pursuant to section 17.52.040 that conditions of overcrowding exist. Such standards and facts supporting them shall be transmitted to the City Council. If the City Council concurs in such standards they shall, until revised, be used by decision-making bodies in situations where dedications of land and/or fees are required as a condition to the approval of a residential development. Nothing herein shall prevent the City Council from establishing and using standards other than those established by the school district in the event the City Council is unable to concur in those transmitted by the district.

(d) **Filing Application for Residential Development.** At the time of filing an application for approval of a residential development located within an attendance area where the findings required by section 17.52.040(a) have been made, the applicant shall, as part of such filing, indicate whether it prefers to dedicate land for interim school facilities, to pay a fee in lieu thereof, or do a combination of these. If the applicant prefers to dedicate land, it shall suggest the specific land.

(e) **Notification to School Districts.** For the purpose of advising the school district of proposed residential development which may affect them, the Administrative Authority shall upon receipt of an application therefor and no later than thirty (30) days prior to consideration of the application, notify the school district of any request submitted to the City for approval of any residential development within the jurisdiction of that district.
(f) **Decision Factors.** Upon receipt of the notification required by section 17.52.050(e), the governing board of the affected school district shall within fifteen (15) days of receipt determine whether to require a dedication of land within the development, payment of a fee in lieu thereof, or a combination of both. The school district shall then transmit the determination to the Administrative Authority for submission to the appropriate decision-making body for concurrence. If the decision-making body concurs in such determination, it may at the time of its consideration of a residential development application impose such requirements. In their respective actions regarding this determination, the school district and the decision-making body shall consider the following factors:

1. Whether lands offered for dedication will be consistent with the City General Plan;
2. Whether the lands offered for dedication meet the criteria established in Education Code section 39000 et seq.;
3. The topography, soils, soil stability, drainage, access, location and general utility of land in the development available for dedication;
4. Whether the location and amount of lands proposed to be dedicated or the amount of fees to be paid, or both, will bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and will be reasonably related and limited to the need for schools caused by the development;
5. If only a subdivision is proposed, whether it will contain fifty (50) parcels or less.

Nothing herein shall prevent a decision-making body from imposing requirements other than those transmitted by the school district in the event that a decision-making body is unable to concur in the district's determination hereunder.

(g) **School District Schedule.** Following the action by a decision-making body to require dedication of land or the payment of fees, or both, the Administrative Authority shall notify each school district affected thereby. The governing body of the school district shall then submit a schedule specifying how it will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when such facilities will be available. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the City Council and the reasons for the modifications.

(h) **Land Dedication.** When land is to be dedicated, it shall be offered for dedication to the affected school district. Land dedicated and deemed no longer needed by the school district upon approval of the City Council shall be disposed of in the manner prescribed by Section 66478 of the Subdivision Map Act.

(i) **Fee Payment.** If the payment of a fee is required, such payment or the pro rata amount thereof shall be made to the Administrative Authority at the time a building permit within the residential development is approved and issued.

(j) **Fees Held in Trust.** Fees paid under this chapter shall be held in trust by the City. Such fees plus accrued interest less a reasonable service and handling charge of no more than the accrued interest shall be transferred quarterly to the school district operating schools within the attendance area for which the fees were collected.
17.52.060 Uses and Limitations of Uses of Land and Fees.

(a) **Use of Land and Fees.** All land or fees, or both, collected pursuant to this chapter and transferred to a school district shall be used only by the district for the purpose of providing interim elementary or high school classroom and related facilities.

(b) **Fee Fund Records and Reports.** Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the City Council on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased or constructed during the previous fiscal year. In addition, the report shall specify attendance areas which will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed more frequently at the request of the City Council.

(c) **Termination of Dedication and Fee Requirements.** When it is determined by the City Council that conditions of overcrowding no longer exist in an attendance area, decision-making bodies shall cease levying any fee or requiring the dedication of any land for that area pursuant to this chapter. Action under this chapter shall not affect the validity of conditions already imposed for levy of fees and dedications of land, and such conditions shall remain binding.
CHAPTER 17.54

REQUIREMENT OF REIMBURSEMENT OF CITY EXPENDITURES FOR CAPITAL IMPROVEMENT PROGRAM PROJECTS

SECTIONS:

17.54.010 Purpose
17.54.020 Preparation of Reimbursement Plan
17.54.030 Public Hearing
17.54.040 Procedure for Reimbursement
17.54.050 Recording of Resolution and Payment
17.54.060 Waiver of Payment in Full

17.54.010 Purpose. In accordance with the freedom afforded to charter cities generally and by the Charter of the City of San Marcos, the City, the San Marcos Redevelopment Agency or both may in the best interests of the City and from time to time determine to advance the timing of the construction of necessary public facilities that would otherwise be constructed as the development of certain parcels occurs as a condition of approval of such development. The purpose of this chapter is to establish a mechanism by which the costs of the advanced construction of such public facilities incurred by the City, the San Marcos Redevelopment Agency or both may be reimbursed by the owners of those parcels that would otherwise have been responsible for financing and/or constructing such public facilities as a condition of approval of the development of such parcels,

17.54.020 Preparation of Reimbursement Plan. Whenever a Capital Improvement Program (CIP) project for the advanced construction of public facilities, including, but not limited to, street improvements, such as curbs, gutters, sidewalks, street lights and pavement, storm drainage facilities, public sanitary sewer facilities, grading, traffic signals and appurtenances thereof, is proposed to be undertaken or has been undertaken by the City of San Marcos or the San Marcos Redevelopment Agency, for the betterment of area residents, businesses and/or property owners, the City Engineer may, at any time before or after final inspection and acceptance of the improvements by the City, determine the estimated or final cost of such public facilities, the boundary of the area of all parcels that should be responsible for defraying that portion of the cost of construction of such CIP project related to the development or redevelopment of such parcels (each, an “Obligated Parcel”), and the allocation of the costs of such construction to the Obligated Parcels pursuant to the provisions of this Chapter 17.54.

In furtherance of the foregoing, the City Engineer will prepare a reimbursement plan that will include the following:

(a) A legal description or list of the Assessor’s Parcel Numbers of all proposed Obligated Parcels;

(b) A detailed plat showing the precise locations of all of the public facilities constructed as part of the CIP project and complete dimensions (including frontage) of all proposed Obligated Parcels;

(c) A reimbursement schedule to include a list of all proposed Obligated Parcels with current Tax Assessor’s parcel number, owner’s name, property’s street address, and the acreage of proposed Obligated Parcels and a proposed reimbursement fee (Ord. No. 2008-1310, 8/12/08):
(d) A report identifying the burden which the development of each proposed Obligated Parcel in accordance with its zoning and general plan designation will impose upon the public facilities constructed as part of such CIP project and the extent to which the development of such proposed Obligated Parcel will contribute to the need for such public facilities;

(e) The detailed estimated or final cost of the design and construction of such public facilities;

(f) A detailed description of the method of reimbursement fee allocation;

(g) An explanation of how there is a reasonable relationship between the reimbursement fee’s use and Obligated Parcels on which the fee is proposed to be imposed;

(h) An explanation of how there is a reasonable relationship between the need for the public facility and the Obligated Parcels on which the reimbursement fee is proposed to be imposed; and

(i) An explanation of how there is a reasonable relationship between the amount of the reimbursement fee and the cost of the public facility or facilities or portion of the public facility attributable to the development of the Obligated Parcels on which the reimbursement fee is proposed to be imposed

17.54.030 Public Hearing. The City Council shall hold a public hearing to determine the boundaries of the area containing the Obligated Parcels and the reimbursement fee that shall be allocated to Obligated Parcels. This reimbursement fee shall only be established if the City Council can make the following findings:

(1) The purpose of the reimbursement fee.

(2) The use to which the reimbursement fee is to be put.

(3) Determine how there is a reasonable relationship between the reimbursement fee’s use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the reimbursement fee is imposed.

(5) Determine how there is a reasonable relationship between the amount of the reimbursement fee and the cost of the public facility or portion of the public facility attributable to the development on which the reimbursement fee is imposed.

The City Engineer shall report on the reasonableness of the cost of the construction of the public improvements, and the City Council may reduce the reimbursement fee if found to be unreasonable. The hearing may be conducted before or after actual completion of the improvements.

At the conclusion of the public hearing, the City Council shall adopt a resolution approving, conditionally approving or denying the reimbursement plan and the reimbursement fee. If the reimbursement fee is to bear interest as permitted pursuant to Section 17.54.040 below, the resolution shall state the rate of interest applicable to the reimbursement fee. The resolution shall attach as an exhibit thereto a copy of the reimbursement plan as adopted by the Council and shall set forth the method of reimbursement fee allocation as approved by the Council.

(Ord. No. 2008-1310, 8/12/08)
If a reimbursement fee is approved based upon the estimated cost of the construction of the applicable public facilities, the City Engineer shall, upon the determination of the final costs of such construction, report such final costs to the City Council. If such final costs are less than the estimated costs on which the reimbursement fee was based, the reimbursement fee shall be recalculated based upon such final costs.

17.54.040 Procedure for Reimbursement. Any person who files an application for a “development project” as such term is defined in Government Code Section 66000(a) within twenty (20) years from the date the reimbursement fee is in effect, shall pay the reimbursement fee prior to the issuance of the first of any applicable development entitlement. However, the reimbursement fee shall not be required if the building permit is for improving an existing single-family residential home, and the improvements will not change or intensify the residential land use. The reimbursement fee shall not be applicable to any property that has already been subject to the same fee or a fee for the same improvements under the City’s Public Facilities Financing plan as provided in Municipal Code chapter 20.12.

Any reimbursement fee paid within the twenty (20) year period set forth in this section shall include the principal fee plus interest from the date the reimbursement fee was in effect. Said interest shall not exceed five (5) percent per year. Upon payment of said fee, the City Clerk shall record with the county recorder a notice satisfactory to the City Attorney that said fee has been paid on said parcel.

17.54.050 Recording of Resolution and Payment. The resolution of the City Council shall be recorded in the Office of the Recorder of San Diego County. The reimbursement fee shall become a lien upon the property against which it is allocated and shall be payable as set forth in section 17.54.040 above as a condition of approval of development review for the property, or any portion thereof, to the order of the agency to be reimbursed, to be deposited in the appropriate fund according to the nature of the public facilities for which the payment is made.

17.54.060 Waiver of Payment in Full. Notwithstanding any other provisions of this chapter to the contrary, the City and/or the San Marcos Redevelopment Agency may waive payment in full or in part of the reimbursement fee upon finding that such waiver would promote the prompt implementation of, and would not otherwise be inconsistent with, the redevelopment plan.

(Ord. No. 2008-1310, 8/12/08)
CHAPTER 17.56
REIMBURSEMENT DISTRICTS

SECTIONS:

17.56.010 Purpose
17.56.020 Proposed District
17.56.030 Formation
17.56.040 Establishment
17.56.050 Eligibility of Charge
17.56.060 Procedure for Reimbursement
17.56.070 Recordation of District
17.56.080 Trust Fund

17.56.010 Purpose. Whenever a public street and/or drainage channel has been proposed for improvement and the costs thereof are immediately payable by only a portion of the owners of real property which directly and specially benefits from such public improvements, the City Engineer may, upon the application of one or more of the property owners currently paying the costs of such improvements, initiate proceedings to determine the estimated cost of such improvements, the boundary of the area of all property directly and specially benefiting from such public improvements, and the allocation of the estimated costs to the various parcels based upon the direct and special benefit received by such parcels.

Following completion of the above determinations, the City Engineer shall file a report with the City Council, which report shall contain his estimates of the cost of such improvements, the boundary area as described above. The City Council shall thereafter set a public hearing for the purpose of considering the establishment of a reimbursement district pursuant to the provisions of this chapter.

17.56.020 Proposed District. Following the City Council action to set a public hearing, the City Clerk shall mail notices to the owners of all property located within the boundaries of the proposed reimbursement district. Such notices shall be mailed not less than ten (10) days prior to the date set for the City Council hearing. Such notice shall contain the following.

(a) The date, time and place of the City Council hearing.

(b) State there is on file in the office of the City Engineer, a map of the boundaries of the proposed reimbursement district, which is available for review.

(c) A description of the improvements which are proposed to be subject to reimbursement.

(d) The proposed reimbursement charge to be levied against the owner.

17.56.030 Formation. The City Council shall hold a public hearing to consider the formation of the reimbursement district. At such hearing, the City Council shall consider all evidence and testimony regarding the reasonableness of the costs for the public improvements, the boundaries of the proposed reimbursement district, and the allocation of the reimbursement costs among the properties benefited.

Any interested person, including owners of property proposed to be included within the reimbursement district, may appear at the public hearing and be heard on any or all of the issues specified in the preceding paragraph.
17.56.040 Establishment. Upon closing the public hearing, the City Council may deny, modify and approve, or approve the recommendations of the City Engineer pertaining to the eligibility of the improvement costs for reimbursement, the boundaries of the reimbursement district and the allocation of the reimbursement costs. Should the City Council either approve or modify and approve the City Engineer's recommendations, the City Council shall adopt a resolution establishing a reimbursement district. This resolution shall include:

(a) A description of the public improvements, the costs of which are subject to reimbursement.

(b) Reference to a map or plan on file in the Office of the City Engineer showing the approximate location of the improvements and the boundaries of the reimbursement district.

(c) A complete list of all properties within the reimbursement district containing for each parcel:

   (1) The name and address of each owner of record as shown on the latest equalized assessment roll;

   (2) The assessor's parcel number; and

   (3) The reimbursement cost allocated to the parcel.

The City Clerk shall cause a copy of this ordinance to be recorded in the Office of the County Recorder.

Once the allocation of the reimbursement cost has been approved by the approval of such a resolution, the resolution shall constitute a statement of the reimbursement charges due from the owners of the various parcels of property as their share of the costs of the public street and/or drainage channel improvements.

17.56.050 Eligibility of Charge. Following completion of the construction of the improvements, the owner or owners initially financing the cost of such construction shall submit invoices to the City Engineer representing the costs of construction. All such invoices must be submitted to the City Engineer no later than sixty (60) calendar days following acceptance of the improvements by the City. Costs represented by invoices received beyond this period of time shall not be eligible for reimbursement.

Following the receipt of such invoices, the City Engineer shall review the invoices and shall determine whether or not the costs represented thereby are reasonable and customary costs of the work performed. If, in the opinion of the City Engineer, the costs represented by the invoices are higher than that which are customary and reasonable for such improvements, the City Engineer may deny reimbursement for that portion of such costs deemed to be excessive.

In the event that the total amount of the actual costs incurred by the owners in the construction of the improvements exceeds the estimated costs, the owners shall not be entitled to reimbursement for such excess cost. The reimbursement charges shall be reduced for each property owner on a pro-rata basis.

17.56.060 Procedure for Reimbursement. If during the fifteen (15) year period following the formation of the reimbursement district, any person either files a final subdivision map or a parcel map for property included within an established reimbursement district, and the reimbursement
charge for such property has not previously been paid, the reimbursement charge plus interest thereon shall be paid prior to the approval of the final map or parcel map. If, during the fifteen (15) year period following the formation of a reimbursement district, any person files an application for a building permit on a lot located within such reimbursement district, and the reimbursement charge for such lot has not previously been paid, the reimbursement charge plus interest thereon shall be paid in accordance with such terms and conditions as the City Council may establish in the resolution establishing the reimbursement district.

Any reimbursement charge established hereunder shall accrue interest from the date of adoption of the resolution establishing the reimbursement district at the percentage rate compounded annually equal to the City's average return on investments since the date of establishment of the reimbursement district.

17.56.070 Recordation of district. Recordation of the resolution establishing the reimbursement district shall create a lien on each benefitted property. The lien will be for the principal amount of the reimbursement charge, plus interest. The lien will become due and payable upon the sale of any affected lot, unless the reimbursement charge for such lot has been previously paid to the City.

17.56.080 Trust Fund. All monies collected under the provisions of this chapter shall be deposited by the Treasurer of the City into a public street and drainage channel improvement trust fund. The Treasurer shall refund to the person or persons who initially paid for the construction of such improvements for which the reimbursement charges were collected, or of their assignees, within sixty (60) days of collection of all monies so collected. The Treasurer may, however, retain five percent (5%) of all such monies to defray the expenses incurred in administering the trust fund.
CHAPTER 17.60

BLASTING OPERATIONS

SECTIONS:

17.60.010 Blasting Operation
17.60.020 Definitions
17.60.030 Certificate of Authorization
17.60.040 Prerequisites
17.60.050 Certificate of Authorization - Repository and Renewal
17.60.060 Blasting Operations Procedures
17.60.070 Complaints Regarding Blasting Operations
17.60.080 Fee Structure
17.60.090 Fire Department Conditions
17.60.100 Penalty Provisions
17.60.110 Applicability to Projects
17.60.120 Exceptions of Applicability, Public Utilities and Quarry Operations
17.60.130 Applicability Date

17.60.010 Blasting Operations. This chapter is adopted to provide local control of blasting operations complimentary to the Uniform Fire Code. The particular purpose is to define hours of operation and notification and inspection process to protect nearby residents and residences from damage or injury due to blasting.

17.60.020 Definitions. For the purpose of this chapter, the following words and phrases shall have the following definitions:

(a) City: The City of San Marcos.

(b) Building Director: The City of San Marcos Director of Building and Safety.

(c) Fire Chief: The Chief of the San Marcos Fire Protection District (SMFPD).

(d) Approved Blaster: A blaster who has been approved by the Fire Chief and the Building Director to conduct blasting operations in the City of San Marcos and who has been placed on the list of approved blasters.

(e) Blaster: Any person, corporation, contractor or other entity who uses, ignites, or sets off an explosive device or material.

(f) Blasting Operations: The use of an explosive device or explosive materials to destroy, modify, obliterate, or remove any obstruction of any kind from a piece of property.

(g) Minor Blasting: Any blasting operation associated with trenching operations, digging holes for utility poles, and other small operations using the Scale of Fifty formula.

(h) Major Blasting: Any other type of blasting operation.
(i) **Certification of Authorization**: A writing or document issued by the San Marcos Building Director accompanied by an Operations Permit issued by the San Marcos Fire Protection District wherein the City of San Marcos under the terms and conditions specified in the certificate and permit.

(j) **Certificate of Insurance**: A writing or document issued by an insurance company authorized to do business in the state of California stating that the insurance company has issued a policy of liability insurance covering property damage and bodily injuries resulting from blasting operations occurring in the City of San Marcos.

(k) **Explosive Permit**: A writing or document issued by the San Diego County Sheriff's Department pursuant to Section 12000, et seq. of the California Health and Safety Code and the San Marcos Fire Protection District Ordinance adopting the Uniform Fire Code and specifically that Article contained therein regulating Explosives and Blasting Agents, allowing blasting with explosives and blasting agents to be done by permittee under the conditions specified therein, unless otherwise established by specific provisions of this ordinance.

17.60.030 **Certificate of Authorization**. All blasting operations within the City of San Marcos are prohibited unless a Certificate of Authorization is first obtained from the San Marcos Building Director and an Operations Permit issued by the Fire Chief.

17.60.040 **Prerequisites**. No certificate of Authorization shall be granted or obtained unless the prerequisite conditions listed below are complied with and proof provided to the satisfaction of the City.

(a) The blaster shall obtain an Explosives Permit from the San Diego County Sheriff's Department and a copy thereof shall be placed on file with the City Building Department and Fire Department.

(b) The blaster shall obtain a City Blaster's license issued by the City Clerk and a copy thereof shall be placed on file with the Fire Chief. Exception: businesses which comply with the franchise requirements of the City of San Marcos.

(c) The property owner/developer or general contractor shall obtain liability insurance covering the blaster's activities in the minimum amount of $1,000,000 for property damage and $1,000,000 for bodily injury. The City and the Fire District shall be named as co-insured or additional insured for all blasting operations within the city limits. The property owner/developer or general contractor shall file a copy of the Certificate of Insurance with the City Clerk and the Clerk of the Fire District. The blaster shall have liability insurance, property damage, and bodily injury in the amount of $500,000 each. A copy of the Certificate of Insurance of the blaster shall also be filed with the City Clerk and the Clerk of the Fire District by the property owner/developer or general contractor.

(d) The blaster's qualifications and performance record shall be reviewed by the Fire Chief and Building Director. Approval and placement on the list of approved blasters shall be based upon a review of the blaster's qualifications, past safety record, and history of satisfactory job performance. Failure on the part of the blaster to comply with the terms and conditions under which approval is granted may result in suspension from the list of approved blasters for a period not exceeding one year.
17.60.050 Certificate of Authorization - Repository and Renewal.

(a) The Certificate of Authorization shall be accompanied by an Operations Permit issued by the San Marcos Fire Protection District and a copy shall be kept on file with the City Building Division, 105 West Richmar Avenue. A copy of the Certificate of Authorization and the Operations Permit shall be retained by the general contractor or property owner/developer and by the blaster and shall be available at the job site for public or official inspection at all times during blasting operations.

(b) The Certificate of Authorization shall expire in thirty (30) days if no blasting operations are conducted within that period and must be renewed before any blasting operations are continued or resumed, but in no instance shall the term exceed the period covered by a valid City license.

17.60.060 Blasting Operations Procedures. The blaster shall conform with the following procedures during blasting operations.

(a) The blaster shall notify the Building Division and the Fire Department no less than 12 hours prior to any blasting at the location or locations of the blasting, number of blasts or explosions, type of explosives to be used, and scheduled time blasting will begin, and name of contractor and Certificate of Authorization date.

(b) The general contractor or property owner/developer shall give reasonable notice in writing at the time of issuance of a building permit, grading permit or encroachment license to all residences or businesses within 600 feet of any potential blast location. The notice shall be in a form approved by the Building Director. Any resident or business receiving such notice may request of the Building Director that a notice of impending blasting be given by the blaster at the time of the 12 hour advance notice given to the Building Director. The general contractor or property owner/developer shall make all reasonable efforts to contact any and all parties requesting the second notice.

(c) The blaster shall file a written certification with the Building Director certifying that the general notice required by Section 17.60.060(b) has been given. The certificate shall include addresses and date(s) of notification. A copy shall be retained on file at the Building Division.

(d) Inspections of all structures within 300 feet of the blast site shall be made before blasting operations. The persons inspecting shall obtain the permission of the building owner to conduct an inspection. The inspections shall be done by a registered structural engineer employed by the blaster or project contractor. The inspection shall be only for the purpose of determining the existence of any visible or reasonably recognizable pre-existing defects or damages in any structure. Inspection refusal shall be at the discretion of the property owner.

(e) The structural engineer shall file a written report identifying all findings of the inspections with the Building Division. The report shall be signed by the engineer and countersigned by the contractor/developer or his agent receiving the report.

(f) The blaster shall confirm with the Building Division and Fire Department scheduled blasts no less than one hour prior to the scheduled blast.

(g) The blaster shall permit Fire Department personnel to inspect the blast site and blast materials or explosives at any reasonable time prior to any blasting. The general contractor and blaster shall request and arrange 12 hours in advance of the blast to have a Fire Department official present during the blast. The Fire Department shall, whenever possible and practicable, assign a Department member to be present to observe the blast.
(h) Blasting shall only be permitted between the hours of 9:00 a.m. and 4:00 p.m. during any weekday, Monday through Friday, exclusive of City recognized holidays unless special circumstances warrant another time or day and special approval is granted by the Building Director and Fire Chief.

(i) Possession, storage, transportation and use of explosives and blasting agents shall be in accordance with the Uniform Fire Code as adopted by Ordinance of the San Marcos Fire Protection District.

17.60.070 Complaints Regarding Blasting Operations. All complaints regarding blasting operations shall be filed with the Building Division.

17.60.080 Fee Structure.

(a) Blaster License and Site Approval and Inspection Fee. The Blaster License fee shall be paid annually as established by Resolution. The annual San Marcos Fire Protection District Operations Permit fee shall be collected by the City Clerk in conjunction with the collection of the City License in the amount established by the San Marcos Fire Protection District. Such funds as are collected for the San Marcos Fire Protection District shall be disbursed to that agency quarterly.

(b) Certificate of Authorization. Each Certificate of Authorization issued by the Building Director pertaining to individual, scheduled blasting occurrences shall require payment of a fee in an amount established by Resolution, to cover incidental and administrative expenses.

17.60.090 Fire Department Conditions. The Fire Chief may impose such additional conditions and procedures as it deems are reasonably necessary to protect the public health and safety based upon the peculiar and individual facts and circumstances of a particular blasting operation and in keeping with provisions of the Uniform Fire Code. The Fire Department should provide the blaster with any additional conditions or procedures in writing and the blaster shall comply with those requirements until such time as the Fire Department is satisfied they are no longer required and cancels the additional requirements.

17.60.100 Penalty Provisions.

(a) It shall be unlawful and a violation of this code for any person, firm, corporation, blaster, contractor or otherwise to provide false or misleading information or documentation to the City of San Marcos or to the San Marcos Fire Protection District during any phase of the permit process or blasting operations.

(b) Any person, firm, corporation, blaster, contractor, property owner or other violating or causing the violation of any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punishable in accordance with the provisions of Section 1.12.020.

(c) In addition to the penalties provided in Paragraph b) of this section, any condition caused or permitted to exist in violation of the provisions of this chapter shall be deemed a public nuisance, and may be, by the City, abated as such or remedied in any court of competent jurisdiction and in any manner provided by law.

17.60.110 Applicability to Projects. This chapter shall apply to any project or construction where a grading permit is required unless the blast is determined to be a minor blast in which case the inspection requirements of this chapter shall not apply. Those persons or entities
conducting **major blasting** shall comply with all the requirements of this chapter. The Fire Chief and Building Director shall determine if the blast is minor by using the blast effects scale and formula referred to as the "Scale of Fifty" formula (see Scaled Distance Table Supra).

**SCALED DISTANCE TABLE**

DISTANCE is the actual distance in feet to the nearest man-made structure.

WEIGHT is the maximum weight of explosives to be used on a single delay in pounds.

<table>
<thead>
<tr>
<th>Distance in feet</th>
<th>Weight Scaled 50</th>
<th>Distance in feet</th>
<th>Weight Scaled 50</th>
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<tbody>
<tr>
<td>5* - 10</td>
<td>1/8</td>
<td>300</td>
<td>34</td>
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<tr>
<td>11 - 15</td>
<td>1/4</td>
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<td>16 - 20</td>
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<td>21 - 25</td>
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</table>

*Less than (5) feet the total charge should not exceed 1/8 lb.

For distances not in the table, use whichever formula is required in your operation:

\[
\text{Weight} - \frac{(\text{Distance})^2}{50}
\]

Scaled distance \((D_s)\) is defined as:

\[
D_s = \text{D} \cdot W
\]

Where \(D\) is the actual distance in feet and \(W\) is the weight of explosives in pounds per delay period of eight (8) milliseconds or greater.
17.60.120 Exceptions of Applicability; Public Utilities and Quarry Operations. Regulations established herewith shall apply with the following exceptions:

Certificates of Authorization shall be issued to cover a 12 Month period rather than on a per occurrence basis. Notification requirements shall apply to each occurrence of major blasting as otherwise provided.

17.60.130 Applicability Date. This chapter shall apply only to projects for which Certificate of Authorization to blast are obtained on or after the effective date of this Ordinance. Certificates of Authorization issued prior to that date shall be subject only to such regulations as were in effect at the time the certificate was issued.
CHAPTER 17.64
CALIFORNIA FIRE CODE

SECTIONS:
17.64.010 Intent and Purpose
17.64.020 Adoption of Community Zones Hazard Map Designating Fire Hazard Severity Zones
17.64.030 Adoption of Uniform Codes
17.64.040 Reserved
17.64.050 Class IIIA Liquids
17.64.060 Establishment of Limits of Districts in which Storage of Flammable or Combustible Liquids in Outside above Ground Tanks is to be Prohibited
17.64.065 Exceptions to the Prohibition of Above-Ground Storage of Flammable or Combustible Liquid
17.64.070 Establishment of Limits in which Bulk Storage of Liquid Petroleum Gases is to be Restricted
17.64.080 Establishment of Limits of Districts in which storage of Explosives & Blasting Agents is to be Prohibited
17.64.090 Occupancy Approval
17.64.100 Cost Recovery
17.64.110 Permit Fees
17.64.120 Access Road Width
17.64.130 Fire Hydrant Requirements
17.64.140 Fire Hydrant Spacing
17.64.150 Reserved
17.64.160 Water Storage Tanks
17.64.170 Plan Review and Inspection Fees
17.64.180 Automatic Fire Extinguishing System
17.64.190 Automatic Fire Extinguishing Systems - Commercial
17.64.200 Automatic Fire Extinguishing Systems - Residential
17.64.210 Mid-Rise Building
17.64.220 Dumping of Waste Material
17.64.230 Tanks for Gravity Discharge
17.64.240 Fire Safety Guides
17.64.250 Hazardous Materials Report Forms
17.64.260 Fireworks
17.64.270 Appeals
17.64.280 New Materials, Processes or Occupancies which may require Permits
17.64.285 Green Waste Recycling, Mulching, Composting Operations and Storage
17.64.290 Penalties

17.64.010 Intent and Purpose. It is the intention of the Legislative Body of the San Marcos Fire Department to adopt the building standards of this Chapter which are more restrictive standards relating to fire protection and panic safety than those contained in the California and International Fire Codes and related standards and that the standards of this Chapter are reasonably necessary because of local climatic, geological or topographical conditions. It is the further intention of the Legislative Body of the San Marcos Fire Department and San Marcos Fire Protection District to establish uniform regulations applicable to all of the territory within the joint boundaries of the City and the District. To that end, the San Marcos Fire Protection District Board has adopted the provisions of this Chapter by reference. (Ord. No. 2014-1385, 1/28/14)
17.64.020 Adoption of Community Zones Hazard Map Designating Fire Hazard Severity Zones. The City of San Marcos and the San Marcos Fire Protection District have designated those areas identified on the Community Zones Hazard Map as fire hazard severity zones in their jurisdictions pursuant to Section 51179 of the California Government Code. The Community Zones Hazard Map supplements the information provided by the state Wildland Urban Interface Map adopted by the City and the District under Section 17.64.200(5) to establish fire protection standards in urban wildland interface regions, and both maps can be simultaneously effective. (Ord. No. 2016-1429, 10/11/2016)

(a) Amendments to Cal Fire’s Recommended Map. The City has retained wildfire management consultants to provide a comprehensive assessment of fire hazard areas throughout the jurisdictions of the City and the District and develop the Community Zones Hazard Map, which classifies certain areas as either more or less restrictive than the recommendations provided by the California Department of Forestry and Fire Protection. Any amendments to the state’s map are based on technical findings of the GIS consultants to demonstrate that Cal Fire’s recommendations do not specifically consider development, at risk values, or hazard mitigation throughout the City and District, or apply localized knowledge of wildfire areas to more accurately manage the fire hazard in those areas.

(b) Classification of Fire Hazard Severity Zones. Areas within the Community Zones Hazard Map are classified as either “extreme,” “very high,” “moderate,” or “low” severity fire hazard zones depending on the severity of fire hazard expected to prevail in those particular areas. These classifications also assist the City and the District in identifying proper fire mitigation measures to minimize the loss of life, property, and resources in those areas.

(c) City Resident and Property Owner Requirements. All City residents and property owners whose property is located within a designated fire hazard zone as identified by the Community Zones Hazard Map or the State Wildland-Urban Interface Map, are required to comply with the defensible space and building maintenance requirements of Chapter 7A of the California Building Code, in addition to all other federal, state, and local laws, requirements and standards currently enforced under the San Marcos Municipal Code, regardless of the location of their property or the fire hazard severity zone classification designated by the Community Hazard Zones Map. (Ord. No. 2016-1429, 10/11/2016)

(d) Display of Community Hazard Zones Map. The Community Hazard Severity Zones Map has been duly noticed and posted as required by law, and is available for public viewing at the office of the City Clerk.
17.64.030 Adoption of International Codes.

(a) The California Fire Code published by the California Building Standards Commission, 2016 Edition, including Appendices I & N inclusive; the National Fire Protection Association Standards 13, 13-D and 13-R; not less than one copy of which are on file in the office of the Fire Chief and not less than one copy of which are on file in the office of the City Clerk of the City of San Marcos, are adopted by reference as the California Fire Code for the San Marcos Fire Department subject to the deletions, modifications, or amendments set forth in this Chapter. *(Ord. No. 2014-1385, 1/28/14, Ord. No. 2016-1429, 10/11/2016)*


(c) Whenever the following words or phrases are used in this Chapter or in any of the Codes or Standards adopted by this Chapter they shall have the meaning ascribed in this subsection unless it is apparent from the context that a different meaning is intended:

1. **Aerated Static Pile** means a composting process that uses an air distribution system to either blow or draw air through a pile of organic matter. Little or no pile agitation or turning is performed.

2. **Chief of the Bureau of Fire Prevention** means the Fire Marshal of the San Marcos Fire Department.

3. **Chipping and Grinding** means an activity that mechanically reduces the size of organic matter.

4. **Compost Operation** means an operation conducted for the purpose of reducing green waste by one or more processes to achieve a composted product.

5. **District** means the San Marcos Fire Department and its constituent agencies.

6. **Fire Chief** means the Fire Chief/Fire Administrator of the San Marcos Fire Department or Designated Representative.

7. **Green Waste** includes, but shall not be limited to, yard trimmings, plant waste, manure, untreated wood wastes, paper products, and natural fiber products.

8. **Hogged Materials** means mill waste consisting primarily of hogged bark but may include a mixture of bark, chips, or other by-product from trees and vegetation.

9. **Jurisdiction or Jurisdictional Limits** means the boundaries of the City of San Marcos.
(10) **Mid-Rise Building** is any building having four stories or more in height, while being 75 feet (22.860 mm) or less in height and not defined as a high-rise by section 202 of the California Building Code. Measurement will be from the underside of the roof or floor above topmost space that can be occupied to the lowest fire apparatus access road level.

(11) **Mulching** means the process by which mixed green waste is mechanically reduced in size for the purpose of making compost.

(12) **Static Pile** means a composting process that is similar to the aerated static pile except that the air source may or may not be controlled.

(13) **Windrow Composting Process** means the process by which compostable material is placed in elongated piles. The piles or windrows are aerated and/or mechanically turned on a periodic basis.

(14) **Wood Chips** means wood chips of various tree and plant species used in chipping and grinding operations.

### 17.64.040 (Reserved) (Repealed in its entirety by Ordinance 99-1068)

### 17.64.050 When provisions are made for Class IIIA liquids in Section 5704, 5705, 5706.2305, 2306 and 2310 the provisions shall apply to all Class III liquids.  (Ord. No. 2014-1385, 1/28/14)

### 17.64.060 Establishment of Limits of Districts in which Storage of Flammable or Combustible Liquids in Outside Aboveground Containers is to be Prohibited. The limits referred to in Sections 5704.1 and 5706.2.4.4 of the California Fire Code in which above-ground flammable or combustible liquid tanks is prohibited are hereby established as the Jurisdictional Limits of the San Marcos Fire Department.  (Ord. No. 2014-1385, 1/28/14)

### 17.64.065 Exceptions to the Prohibition of Aboveground Storage of Flammable or Combustible Liquid. Exceptions to the prohibition of aboveground storage of flammable or combustible liquids referred to in Section 5704.1 and 5706.2.4.4 of the California Fire Code shall include the following: (Ord. No. 2014-1385, 1/28/14)

1. 10,000 gallons maximum temporary aboveground storage tanks shall be permitted for private use on remote construction sites, earth-moving projects, gravel pits, or borrow pits.

2. Crankcase drainings may be stored in specially constructed aboveground tanks, approved by the Fire Chief, with a maximum capacity of 550 gallons.

3. With the Fire Chief's approval, Class I and II liquids may be stored above ground outside of building in specially designed, approved, and listed containers which have features incorporated into their design which mitigate concerns for exposure to heat, ignition sources, and mechanical damage. Containers must be installed and used in accordance with their listing, and provisions must be made for leak and spill containment. Storage in such tanks on any site shall not exceed 1,000 gallons for Class I or 2,000 gallons for Class II liquids.
The Fire Chief may disapprove the installation of such containers when, in his or her opinion, their use presents a risk of life or property. In no case shall such storage be permitted on residential property.

Bulk plants or terminals as described in Section 5706.4 of the California Fire Code are prohibited within the Jurisdiction. (Ord. No. 2014-1385, 1/28/14)

17.64.070 Establishment of Limits in which Bulk Storage of Liquid Petroleum Gases (LPG) is to be Restricted. The limits referred to in Section 6104.2 and Section 6104.4 of the California Fire Code, in which bulk storage of liquefied petroleum gas is restricted, are hereby established as follows: (Ord. No. 2014-1385, 1/28/14)

- In any commercial or residential zone
- In those areas where LPG bulk storage is allowed

17.64.080 Establishment of Limits of Districts in which Storage of Explosives and Blasting Agents is to be Prohibited. The limits referred to in Section 5601 of the California Fire Code in which storage of explosives and blasting agents is prohibited are hereby established as the Jurisdictional Limits of the San Marcos Fire Department. (Ord. No. 2014-1385, 1/28/14)

17.64.090 Occupancy Approval. Section 104.1.1 is added to the California Fire Code to read as follows:

Occupancy Approval. The Building Official shall not issue a Certificate of Occupancy without the approval of the Fire Department.

17.64.100 Cost Recovery. Section 104.12 is added to the California Fire Code to read as follows:

(a) **Purpose.** The purpose of this section is to establish authority to obtain reimbursement from responsible individuals for the expenses of any emergency response by the San Marcos Fire Department to protect the public from fire or hazardous substances.

(b) **Reimbursement Required.** In accordance with the Health and Safety Code, Section 13000 et seq., an individual who acts negligently or in violation of the law and thereby requires the Jurisdiction to provide an emergency response to a danger posed by a fire or hazardous substance shall reimburse the agency for the costs incurred.

(c) In accordance with Government Code, Sections 53150 through 53159, any individual who is under the influence of an alcoholic beverage or any drug or the combined influence of an alcoholic beverage or any drug, and whose negligent operation of a motor vehicle, boat or vessel, or civil aircraft, caused by that influence proximately causes any incident and thereby requires the agency to provide an emergency response shall reimburse the agency for the cost incurred. Additionally, any person who intentionally, knowingly, and willfully enters into any area that is closed or has been closed to the public by competent authority for any reason, or an area that a reasonable person under the circumstances should have known was closed to the public, is liable for the expenses of an emergency response required to search for or rescue that person,
or if the person was operating a vehicle, any of his or her passengers, plus the expenses for the removal of any inoperable vehicle. Posting a sign, placing a barricade, a restraining or retaining wall, roping off an area, or any other device is sufficient indication that an area is closed to the public due to danger of injury, for the public's safety, or for any other reason. A person who drives a vehicle on a public street or highway that is temporarily covered by a rise in water level, including groundwater or overflow of water, and that is barricaded by any of the means described above, because of flooding, is liable for the expenses of any emergency response that is required to remove from the public street or highway, the driver, or any passenger in the vehicle that has become inoperable on the public street or highway, or the vehicle that has become inoperable on the public street or highway. Unless otherwise provided by law, this section shall apply to all persons, regardless of whether the person is on foot, or is operating a motor vehicle, bicycle, vessel, watercraft, raft, snowmobile, all-terrain vehicle, or any other boat or vehicle of any description. A person who was attempting to rescue another person or an animal shall not be liable for expenses of an emergency response under this section.

(d) As used in this section, expenses of an emergency response means those reasonable and necessary costs incurred for an appropriate emergency response to an incident and includes the costs of providing police, firefighting, search and rescue, and emergency medical services at the scene of the incident, as well as the salaries of the personnel responding to the incident.

(e) **Enforcement Expense Recovery.** The City Council may adopt or amend an ordinance to impose a fee for recovery of expenses incurred as a result of activities undertaken pursuant to enforcing the fire prevention provisions of this Code.

17.64.110 Permit Fees. Section 105.6.is added to the California Fire Code to read as follows:

A schedule of fees charged for permits and inspections required pursuant to this Chapter shall be established and amended from time to time by resolution of the City Council. A copy of same shall be placed on file with the City Clerk.

17.64.120 Access Road Width. Section of 503.2.1 of the California Fire Code is amended to read as follows:

**Width:** The unobstructed width of a fire apparatus roadway shall not be less than 24 feet, with an unobstructed vertical clearance of not less than 13 feet 6 inches.

**Exception:**

(a) A fire access roadway providing access to no more than two single family dwellings shall be not less than 16 feet in width. (Ord. No. 2016-1429, 10/11/2016)

(b) Fire access roadways divided by gated entrance with card reader, guard station, or center median which resulted in separated lanes of one-way traffic shall be 12 feet wide per lane. Where an adequate turn radius to accommodate fire apparatus cannot be provided, the lane width shall be widened as necessary to accommodate access. (Ord. No. 2016-1429, 10/11/2016)
17.64.130 Fire Hydrant Requirements. Section 507.5.1 of the California Fire Code is amended by adding subsection 507.5.1.1 thereto, to read as follows:

507.5.1.1 Type Required. The Fire Chief shall designate the type and number of fire appliances to be installed and maintained in and upon all buildings and premises in the Jurisdiction. This shall be done according to the relative severity of probable fire, including the rapidity with which it may spread. Such appliances shall be of a type suitable for the probable class of fire associated with such building or premises and shall have approval of the Fire Chief.

17.64.140 Fire Hydrants. Section 507.5 of the California Fire Code is amended to read as follows:

The fire code official may require a fire hydrant to have any combination of 4 inch and 2 ½ inch outlets with National Standard Threads.

17.64.150 Reserved

17.64.160 Water Storage Tanks. Section 507.2 of the California Fire Code is amended by the addition of Table 507.2 the requirements of which may, at the discretion of the Fire Chief, apply when required fire flow for single family dwellings must be supplied by private water tanks due to the unavailability of water mains. (Ord. No. 2011-1341, 1/25/11, Ord. No. 2016-1429, 10/11/2016)

Sec. 507.2.2 Water tanks. Water tanks for private residential fire protection, when authorized by the fire code official, shall comply with Table 507.2.2 and installed in accordance with NFPA 22. Water tanks for commercial fire protection, when authorized by the fire code official, shall be sized utilizing nationally-recognized standards.

<table>
<thead>
<tr>
<th>Building Square Feet</th>
<th>Gallons Per Minute Water Flow</th>
<th>Capacity Gallons</th>
<th>Duration Minutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 1,500</td>
<td>250</td>
<td>5,000</td>
<td>20</td>
</tr>
<tr>
<td>Over 1,500</td>
<td>250</td>
<td>10,000</td>
<td>40</td>
</tr>
</tbody>
</table>

When the exposure distance is one hundred feet (100') or less from an adjacent property, or where additional hazards or higher fire flow exists, the required water storage may be modified by the fire code official.

1. Tank bottom elevation shall be equal to or higher than the fire department connection on the premises. Regardless of domestic use, all tanks shall be equipped with a device that will ensure that the tank contains the designated amount of water for fire flow duration as determined by the FAHJ. Tank size may be increased to serve multiple structures on a single parcel.

2. Supply outlet shall be at least 4 inches in diameter from the base of the tank to the point of outlet at the fire department connection. The fire department connection shall have an
approved means of controlling water flow. The fire department connection shall be at least one 4-inch National Standard Thread (male), reduced to one 2½ inch National Standard Thread (male). Additional outlets may be required.

3. Location of fire department outlet shall be shown on the plot plan when submitted to the FAHJ. Consideration will be given to topography, elevations, and distance from structures, driveway access, prevailing winds, etc.

4. The outlet shall be located along a fire apparatus access roadway and shall not be closer than 50 feet or further than 150 feet from the structure.

5. All exposed tank supply pipes shall be of an alloy or other material listed for above ground use. Adequate support shall be provided.

6. Water storage tanks shall be constructed from materials allowed by NFPA 22 and installed per manufacturer recommendations.

7. The fire code official may require any necessary information to be submitted on a plot plan for approval.

8. Vessels previously used for products other than water shall not be allowed.

9. The bottom of the water storage tank shall be level with or above the building pad.

**17.64.170 Plan Review and Inspection Fees.** Section 901.2 of the California Fire Code is amended by the addition of paragraph 2 to read as follows:

Fees for Plans reviewed and inspections conducted by the Fire Department shall be charged as set forth in a resolution adopted and amended from time to time by the City Council. A copy of same shall be placed on file with the City Clerk.

**17.64.180 Automatic Fire Extinguishing System.** Section 903.2 of the California Fire Code is amended to read as follows:

An automatic fire extinguishing system shall be installed in occupancies and at locations as set forth in section 903.2 and listed in 17.64.190 and 17.64.200.

**17.64.190 Automatic Fire Extinguishing Systems - Commercial.** Section 903.2 of the California Fire Code is amended to read as follows:

(1) An automatic fire extinguishing system shall be installed in all Group A, B, E, F M & S, commercial buildings hereafter constructed when the square footage exceeds 5,000 square feet or 34 feet in height. (Ord. No. 2016-1429, 10/11/2016)
(2) An automatic fire extinguishing system shall be installed when Fire Department travel time exceeds five (5) minutes from the closest fire station to any building. (Time tests will be conducted by the Fire Department based on established testing procedures). (Ord. No. 2016-1429, 10/11/2016)

17.64.200 Automatic Fire Extinguishing Systems – Residential. Section 903.2 of the California Fire Code is amended by expanding its applicability to Group R-2 and R-3 occupancies. (Ord. No. 2016-1429, 10/11/2016)

(1) A listed electric waterflow bell shall be provided for new Multi-family dwelling units, this includes apartments, condominiums and townhomes. (Ord. No. 2016-1429, 10/11/2016)

(2) An exterior fire sprinkler shall be installed on covered exterior balconies of new Multi-family dwelling units, this includes apartments, condominiums and townhomes. (Ord. No. 2016-1429, 10/11/2016)

(3) An approved 300 psi pressure gauge shall be permanently installed at the riser. (Ord. No. 2016-1429, 10/11/2016)

17.64.210 Mid-Rise Buildings

In addition to other applicable provisions of this code, other laws and regulations, and any policies of the chief, the provisions of this article apply to every newly constructed mid-rise building, of any type construction, or any mid-rise building which undergoes a complete renovation that requires the complete vacancy of the building to complete the renovation.

Exceptions: The following structures, while defined as mid-rise buildings, will not be subject to the provisions of this article:

1. Buildings used exclusively as open parking garage.
2. Buildings where all floors above the fourth floor (16,764 mm) level are used exclusively as open parking garage.
3. Buildings such as power plants, lookout towers, steeples, grain houses, and similar structures with non-continuous human occupancy, when so determined by the chief.

Building Access. Building access must be provided and approved by the chief.

Automatic Fire Sprinklers/Standpipes. Every mid-rise building must be protected throughout by an automatic fire sprinkler system that is designed and installed in conformance with latest adopted Edition of NFPA 13 and in accordance with the following:

1. Shut-off valves and a water flow alarm device must be provided for each floor. Each shut-off valve and flow device must be electronically supervised.

2. Every mid-rise building must be provided with a class I standpipe system that is interconnected with the fire sprinkler system. The system must consist of 2 1/2-inch hose valves that must be located in each stair enclosure, on every floor level.
Two hose outlets must also be located on the roof, outside of each stair shaft enclosure that penetrates the roof. The standpipe system must be designed, installed, and tested in accordance with NFPA 14.

3. Fire Department standpipe connections and valves serving the floor must be within the vestibule and located in a manner so as not to obstruct egress when hose lines are connected and charged.

**Smoke Detection.** Smoke detectors must be provided in accordance with this section. Smoke detectors must be connected to an automatic fire alarm system installed in accordance with the latest Edition of NFPA 72. The actuation of any detector required by this section will operate the emergency voice alarm signaling system and will place into operation all equipment necessary to prevent the circulation of smoke through air return and exhaust ductwork. Smoke detectors must be located as follows:

1. In every mechanical equipment, electrical, transformer, telephone equipment, unmanned computer equipment, elevator machinery or similar room and in all elevator lobbies. Elevator lobby detectors must be connected to an alarm verification zone or be listed as a releasing device.

2. In the main return-air and exhaust-air plenum of each air-conditioning system. Such device must be located in a serviceable area downstream of the last duct inlet.

3. At each connection to a vertical duct or riser serving two or more stories from a return-air duct or plenum of an air conditioning system. In Group R, Division 1 and 2 Occupancies, an approved smoke detector may be used in each return-air riser carrying not more than 5,000 cubic feet per minute and serving not more than 10 air inlet openings.

4. For Group R, Division 1 and 2 Occupancies, in all corridors serving as a means of egress for an occupant load for 10 or more.

**Fire Alarm System.** An approved and listed, automatic and manual, fully addressable and electronically supervised fire alarm system must be provided in conformance with this code and California Building Code.

**Emergency Voice Alarm Signaling System.** The operation of any automatic fire detector or water flow device must automatically sound an alert tone followed by a pre-recorded voice instruction giving appropriate information and direction on a general or selective basis to the following terminal areas:

1. Elevators.
2. Elevator lobbies.
3. Corridors.
4. Exit Stairways.
5. Rooms and tenant spaces.
6. Dwelling units.
7. Hotel Guest Rooms.
8. Areas designated as safe refuge within the building.

**Fire Command Center.** A fire command center for fire and life safety department operations must be provided. The location and accessibility of the fire command center must be approved by the fire department. The room must be separated from the remainder of the building by not less than one-hour, fire resistive occupancy separation and be located on an exterior wall, not within building. The room must be a minimum of 96 square feet with a minimum dimension of 8 feet. *(Ord. No. 2016-1429, 10/11/2016)* It must contain the following as a minimum:

1. The voice alarm and public address panels.
2. Fire department communications panel.
3. The fire alarm enunciator panel.
4. Elevator enunciator panel (when Building exceeds 55 feet in height).
5. Status indicators and controls of air handling systems (Stairwell Pressurization).
6. Controls for unlocking stairwell doors.
7. Fire Pump status indicators (if required).
8. Complete building plans set.
9. Work Table.
10. Elevator control switches for switching of emergency power.
11. Electronically supervised central station fire alarm system.

**Annunciation Identification.** Control panels in the central control station must be permanently identified as to function. Water flow, automatic fire detection and manually activated fire alarms, supervisory and trouble signals must be monitored by an approved, UL listed Central Monitoring Station and annunciated in the central control station by means of an audible and visual indicator. For the purposes of annunciation, zoning must be in accordance with the following:

1. When the system serves more than one building, each building must be considered separately.
2. Each floor must be considered a separate zone.
3. When one or more risers serve the same floor, each riser must be considered a separate zone.

**Elevators.** Elevators and elevator lobbies must comply with the provisions of Chapter 30 of the California Building Code and the following:

1. At least one elevator cab must be assigned for fire department use, which must serve all floors of the building. All provisions hereinafter are in reference to said elevator cab(s).

2. The elevator cab must be provided with adequate dimensions to accommodate an ambulance type stretcher in accordance with the provisions of Chapter 30 of California Building Code. *(Ord. No. 2016-1429, 10/11/2016)*

**Fire Department Communication System.** An approved two-way, fire department
communication system designed and installed in accordance with NFPA 72 shall be provided for fire department use per California Building Code, Section 907.2.12.3

Means of Egress

Extent of Enclosure. Stairway enclosures must be continuous and must fully enclose all portions of the stairway. Exit enclosure must exit directly to the exterior of the building or include an exit passageway on the ground floor, leading to the exterior of the building. Each exit enclosure must extend completely through the roof and be provided with a door that leads onto the roof.

Pressurized Enclosures and Stairways. All required stairways and enclosures in a mid-rise building must be pressurized as specified in the California Building Code, Section 909. Pressurized Stairways will be designed to exhaust smoke manually when needed.

Vestibules. Pressurized stairway enclosures, serving mid-rise buildings must be provided with a pressurized entrance vestibule on each floor that complies with the California Building Code, Section 909.

Pressure Differences. The minimum pressure difference within a vestibule must be in accordance with the California Building Code, Section 909.

Locking of Stairway Doors. All stairway doors that are locked to prohibit access from the interior of the stairway must have the capability of being unlocked simultaneously, without unlatching, upon a signal from the fire control room. Upon failure of normal electrical service, or activation of any fire alarm, the locking mechanism must automatically retract to the unlocked position.

A telephone or other two-way communication system connected to an approved emergency service which operates continuously must be provided at not less than every third floor in each required exit stairway vestibule.

Approved signage must be provided in each stairwell vestibule stating doors are locked, on which floor(s) entry may be made, and on which floor(s) a telephone is located. Hardware for locking of stairway vestibule doors must be State Fire Marshal listed and approved by the chief by permit before installation. Stairway doors located between the vestibules and stairway shaft must not be locked.

17.64.220 Dumping of Waste Material. Section 304.1 to the California Fire Code is amended by adding section 304.1.2.1 thereto, to read as follows:

Dumping of waste material as defined in California Penal Code Section 374(b) is prohibited within the Jurisdiction except at an approved landfill. The property owner and person in control of the property shall not permit such material to remain on the site, and shall remove it or cause it to be removed to an approved landfill or State-licensed hazardous materials disposal station, as appropriate. The property owner or person in charge shall take such actions as necessary to prevent recurrent dumping, such as posting the property and fencing the area or barricading the access.
Such fencing or barricading shall not be installed so that fire-fighting access is compromised. After reasonable notice and opportunity for compliance per the California Health and Safety Code is given, the City Council may authorize the Fire Chief to employ a contractor to remove such waste material from the site, and attach actual contractor costs and a reasonable administrative fee. In the event said fees are not collected, a lien will be placed against the property.

**17.64.230 Tanks for Gravity Discharge.** Section 5706.2.5.2 of the California Fire Code is amended to read as follows:  
(Ord. No. 2014-1385, 1/28/14)

Gravity dispensing of Class I and Class II liquids is prohibited. Dispensing devices for flammable and combustible liquids shall be of an approved type. Approved pumps taking suction from the top of the tank shall be used. Flammable or combustible liquids shall not be dispensed by a device that operates through pressure within a storage tank. Air or oxygen shall not be used to pressurize an aboveground tank.

**17.64.240 Fire Safety Guides.** Chapter 49 of the California Fire Code is amended by the addition of Chapter 49, Section 4901.1.1, to read as follows:  
(Ord. No. 2014-1385, 1/28/14)

Chapter 49, Section 4901.1.1

Chapter 49, Section 4901.1 is amended by the addition of a new subsection 4901.1.1 to read as follows:

(6) Comply with the fire clearance standards of the following publications, which are hereby adopted by reference:

1. County of San Diego Wildland Interface Standards adopted pursuant to County Ordinance No. 911 and dated December, 1999. Section 16.1(1) of said Standards is amended to read as follows:

   16.1 General. Persons owning, leasing, controlling, operating or maintaining buildings or structures in, upon or adjoining hazardous fire areas, and persons owning, leasing or controlling land adjacent to such buildings or structures, shall at all times:

   1. Maintain an effective fuel modification zone by removing, clearing or modifying away combustible vegetation and other flammable materials from areas within 150 feet from such buildings or structures. (See exception 3 for fire-resistant construction and other features for approval and/or a reduction of the fuel modification zone) The fuel modification zone may be re-planted with either approved irrigated, fire-resistant planting material or approved non-irrigate, drought-tolerant, fire-resistant plant material. Re-planting of the fuel modification zone may be required for erosion control.

EXCEPTIONS:

1. Single specimens of trees, ornamental shrubbery or similar plants used as ground covers, provided that they do not form a means of rapidly transmitting fire from the native growth to any structure.
2. Grass and other vegetation located more than 30 feet from buildings or structures and less than 18 inches (457 mm) in height above the ground need not be removed where necessary to stabilize the soil and prevent erosion.

3. With the approval of the FAHJ the width of the fuel modification zone may be reduced where fire-resistive structures or other features are constructed however, in no case shall the fuel modification zone be reduced to less than 100 feet. See Section 26 for the minimum requirements of a fire-resistive structure. This exception shall not be construed to allow the FAHJ to require fire resistive construction on existing structures with a fuel modification zone of less than 100 feet.

**Sec. 4907.1.3 Structure Setback from Top of Slope.** Single-story structures shall be setback a minimum 15 feet horizontally from top of slope to the farthest projection from a roof. A single-story structure shall be less than 12 feet above grade. A two-story structure shall be setback a minimum of 30 feet horizontally from top of slope to the farthest projection from a roof. *(Ord. No. 2016-1429, 10/11/2016)*

**Note:** Whenever a conflict exists between the provisions of this Code and the above referenced publications, the more restrictive requirement shall apply.

**17.64.250 Hazardous Materials Report Forms.** Appendix H, Section H 3.2 of the California Fire Code is amended to read as follows:

Hazardous Materials reporting forms currently adopted by the San Diego County Health Department Hazardous Material Management Unit which cover the same topics as forms contained in this Appendix are adopted by reference and take precedence over this Appendix.

**17.64.260 Fireworks.** The sale, discharge, firing or use of all firecrackers, party poppers, bombs, rockets, torpedoes, roman candles, Sky Lanterns or other fireworks or substances designed and intended for pyrotechnic display, and of all firework pistols/cannons, or other appliances using blank cartridges or caps containing chlorate of potash mixture or other mixtures designed to make an explosive sound, is hereby prohibited within the City of San Marcos. The City Council may permit the public display of fireworks by properly qualified individuals or organized bodies under the direct supervision of experts in the handling of fireworks. *(Ord. No. 2014-1385, 1/28/14)*

**17.64.270 Appeals.** Whenever the Fire Chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the Code do not apply or that the true intent and meaning of the Code have been misconstrued or wrongly interpreted, the applicant may appeal the decision of the Fire Chief to the City Manager within 30 days from the date of the decision appealed.

**17.64.280 New Materials, Processes or Occupancies Which May Require Permits.** The Fire Chief and Fire Marshal shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies, which shall require permits, in addition to those now enumerated in this Code. The Fire Marshal shall post such list in a conspicuous place in the Fire Prevention Bureau office and
distribute copies thereof to interested persons.

17.64.285 Green Waste Recycling, Mulching, Composting Operations and Storage.

Recycling facilities shall comply with the following provisions:

(a) All green waste that cannot be processed onsite, such as stumps and fibrous plants, shall be immediately removed from the feedstock, stored in roll off containers or bins and removed from the facility on a weekly basis. All plastic bags shall be removed prior to shredding material.

(b) Permit Required - A permit shall be obtained from the San Marcos Fire Department prior to engaging in the operation and storing of processed wood chips, hogged material, fines, compost and raw product in association with yard waste and recycling facilities where the likelihood exists that spontaneous combustion could occur and present a threat from fire or hazardous substances to the welfare and public safety as determined by the Fire Department. The permit shall continue until revoked or for such period of time as may be designated by the Fire Department. Permits shall not be transferable and any change in use, occupancy, operation or ownership shall require a new permit.

(c) Operational Plans - The following operational and activity plans will be required prior to operation:

1. Fire Suppression and Prevention Plan. A Fire Suppression and Prevention Plan shall be required and shall include, but not be limited to, the following:

   Access for fire fighting, equipment and personnel water system (including adequate storage for fire flow), material handling equipment, diversion plan, dispersal areas, emergency response plan, and security. The storage shall be in a manner designed to prevent fires, and other requirements as deemed necessary by the Fire Department.

2. Emergency Fire Plan. All fires shall be reported to the fire department. The owner or operator shall develop a plan for monitoring, controlling and extinguishing spot fires and submit a plan for Fire Department review prior to approval.

3. Fire Dispersal Area Plan. The plan shall include a method for dispersal for larger fires. The operator shall develop a fire dispersal area for spreading burning product waste. This area is to be used to break up and scatter piles of burning product in all directions for fire extinguishment.

4. Emergency Operator Callback Response Plan. The operator shall provide an emergency response plan meeting the following criteria: The response time shall be within one hour of a fire or Fire Department request for the following equipment staffed with skilled operators, bulldozer, loaders and heavy duty equipment necessary to mitigate a fire. Notification shall be for 24 hours a day seven days a week. Notification may occur by pager activation, telephonic contact or other approved means.

5. Incoming Waste Diversion Plan. To prevent stockpiling of material onsite, the
operator shall develop a diversion plan for incoming green waste in the event of equipment failure or other impediments to the timely processing and shipping of green waste.

(d) Fire Access Roadway - A fire access roadway shall be provided with a minimum width based upon material handling equipment requirements, with a surface covering as approved by the Fire Department. In no case shall the fire access roadway be less than 20 feet wide.

(e) Storage Site - Storage sites shall be reasonably level and on all weather surfaces.

(f) Pile Separation - Piles shall be separated from adjacent piles by Fire Department access roadways.

(g) Size of Piles - Pile height, width, and length shall be limited to, and determined by, site material handling equipment requirements and in no case shall the piles exceed 12 feet in height, 100 feet in width and 200 feet in length.

(h) Static Pile Protection - The internal temperature of static piles and windrows shall be taken on a regular basis to monitor conditions within the windrows. Internal pile temperatures shall be taken at a point 2/3 the pile height, 12 to 24 inches from the surface, with a probe-type thermometer, and recorded weekly. Infrared thermometers may be used to monitor for hot spots at the surface once excessive temperatures are discovered. Temperatures above 158 degrees Fahrenheit are known to adversely affect microbial decomposition and are considered excessive. Once windrows exceed 170 degrees Fahrenheit, the windrows shall be reduced in size and monitored daily until temperatures drop below 158 degrees Fahrenheit. Windows shall be visually inspected on a regular basis. Once fires have started in any windrow(s) at a site, this visual inspection shall be a minimum daily requirement and shall continue until the threat of fire is no longer present. All records shall be kept on file at the facility and be made available for inspection. An operational plan indicating procedures and schedules for inspections, monitoring and restricting of excessive internal temperatures in the static piles shall be submitted to the FAHJ for review and approval.

All green waste stockpiles shall be remixed, as necessary, to alleviate any fire due to spontaneous combustion or temperatures above 170 degrees Fahrenheit.

(i) Firefighting Water Supply and Storage.

Public Water Supply: The operators shall provide one or more fire hydrants (400-foot on center) and waterline mains. The water line may be an approved aboveground line with adequate protection against impact, fire flow reaction, supplied from a reliable water supply. Fire flow at the hydrant(s) shall be at least 1000 gallons per minute at 20 psi. For a flow duration of 2 hours.

Private Water Supply: Above ground water storage tanks may, at the discretion of the Fire Marshal, be installed where public supply is not available or adequate or to support a deficient public supply, in order to meet fire flow requirements. Such supply shall consist of a minimum of two 10,000-gallon tanks.
(j) Material Handling Equipment - Approved material-handling equipment shall be available for moving wood chips, hogged material, compost and raw product produced from yard waste and wood fines during firefighting operations. Vehicles used on all piles should be of a type that minimizes compaction. All vehicles operating on or around the piles shall have a Class A extinguisher of a 2-A rating, in addition to the normal Class B units required for the vehicles themselves.

(k) Site Security - Pile storage areas shall be surrounded with approved fencing. Flinches shall be a minimum of 6 feet in height.

(l) Smoking and Open Burning Prohibited - The operator shall prohibit smoking and open flame on the operational site, including smoking within vehicles. Approved signs shall be clearly and prominently posted, and the requirements of same shall be enforced by the operators. No open burning shall be permitted on site.

(m) Combustible Vegetation Control - The operator shall clear within fifty (50) feet of either the raw green waste pile or mulch pile any combustible material, weeds, brush, trees or other vegetation (including mulch) that is, or could become, dry and capable of transmitting fire. Clearance shall be to bare earth or approved all-weather surfacing. Individual live trees within that distance may remain with approval of the FAHJ.

(n) Site Equipment Maintenance-General Safety Rules - Welding operations shall be conducted a minimum of 30 feet from combustible materials, and a fire watch shall be established by operators to operate fire-extinguishing equipment. Refueling and on-site maintenance shall meet the requirements of California Fire Code Section 57 (Flammable and Combustible Liquids). (Ord. No. 2014-1385, 1/28/14)

(o) Security Bond/Financial Commitment for Cost Recovery - A security bond or alternate financial security acceptable to the City Attorney shall be submitted to the FAHJ, the amount of which shall depend on the size of operation and the likely expenses of any emergency response and/or enforcement action by the FAHJ to protect the public from fire or hazardous substances. The security bond/financial commitment shall be returned to the operator upon satisfactory closure of the operation, as approved by the FAHJ.

17.64.290 Penalties. Any violation of the provisions of this Chapter shall constitute a misdemeanor, punishable as provided in Section 1.12.020 Municipal Code (Violation as Misdemeanor) of this Code. (Ord. No. 2014-1385, 1/28/14)
CHAPTERS:

18.04 Environmental Protection

CHAPTER 18.04
ENVIRONMENTAL PROTECTION

SECTIONS:

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18.04.010 Title. This Chapter shall be known as “The City of San Marcos Environmental Protection Ordinance.”

18.04.020 Purpose. This Chapter is intended to provide for enhancement and protection of the environment within the City by establishing principles, objectives, criteria, definitions and procedures for evaluation of the environmental impact of public and private projects in an orderly manner. This Chapter implements the California Environmental Quality Act (hereinafter "CEQA") and the State CEQA guidelines issued pursuant thereto by the Resources Agency. This Chapter provides for the preparation and evaluation of environmental documents and establishes the responsibility of the City and other persons for protecting the environment. This Chapter is adopted pursuant to California Public Resources Code Section 21082.

18.04.030 State Guidelines Incorporated by Reference.

(a) Chapter 3, Division 6, Title 14 of the California Code of Regulations as amended to January 1, 1991, one copy of which is on file in the Office of the City Clerk for public review and inspection, is adopted by reference as the environmental review regulations for the City except for changes, additions, deletions, amendments or supplements contained in this Chapter which shall supersede the provisions of said guidelines.

(b) Article 16 of Chapter 3, Division 6, Title 14 of the California Code of Regulations is not adopted.

18.04.040 General Prohibition.

(a) No decision-making body of the City shall approve or carry out a project as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the environmental effects of the project or unless specific economic, social, or other conditions make the project alternatives or mitigation measures infeasible, and specific findings of overriding considerations have been made.

(b) No permit, license, approval or other entitlement shall be given for any project or for any items listed in Section 18.04.050 nor shall any project be undertaken by the City, until the requirements of this Chapter have been fulfilled.

18.04.050 Application.

(a) This chapter shall apply to all projects in the City approval or other entitlements for any of the following, provided that they are not otherwise exempted:

(1) Zone Change and Zone Code Amendments;

(2) Variances;

(3) Specific plans or precise development plans or amendments thereto;

(4) Common interest developments or conversion of existing projects to common interest developments including but not limited to planned developments; planned unit developments, planned community developments, condominium projects and conversions to condominiums;
(5) Conditional, special, major, or minor use permits;

(6) Community redevelopment plans and redevelopment projects the impact of which was not evaluated in the environmental review for the plan;

(7) Tentative parcel maps;

(8) Drill sites within any oil or water drilling districts.

(9) Tentative subdivision maps;

(10) Grading, excavation, fill and dredging permits;

(11) Site development plans;

(12) Adoption or amendment of a general plan or element thereof;

(13) Any other private activity requiring a City discretionary permit or entitlement, which would have an adverse effect on the environment;

(14) Any permit or approval, including building permits, where the City or its staff exercises discretionary deliberation or judgment in the approval process;

(15) Any permit for removal of significant trees on public land or on public rights-of-way.

(16) Any commercial or industrial project consisting of five thousand (5,000) square feet or more requiring a building permit;

(17) Any alteration or addition to residential, commercial or industrial structures of two thousand five hundred (2,500) square feet or over fifty percent (50%) of the existing development; whichever is less.

(18) Any permit required by the provisions of the Flood Damage Prevention Overlay Zone.

(b) This Article shall not apply to any action excepted or exempted from review under CEQA, the State CEQA guidelines or guidelines adopted by the City Council pursuant to this Chapter. This Chapter shall not apply to activities where the City determines with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

18.04.060 General Responsibilities.

(a) **City Manager.** The City Manager is responsible for the general administration of this Chapter including but not limited to:

(1) Filing any notices, reports or documents permitted or required to be filed pursuant to this Chapter:
(2) Making a determination or doing an act, subject to appeal to the City Council, which this Chapter or CEQA requires the City to make or do, and the person or body required to make the determination or do the act is not otherwise specified in this Chapter;

(3) Preparing or directing the preparation of any environmental impact report, negative declaration or other environmental review document required by this Chapter;

(4) Requiring an applicant for a City entitlement for a private project to submit data and information which the City deems necessary to determine whether the proposed project may have a significant environmental impact, or to prepare a draft environmental impact report for submission to the City subject to the ultimate responsibility of the City for the contents of the report;

(5) Requiring an applicant to pay the cost of special consultants to review or prepare environmental documents, information or data pertaining to a project;

(6) Entering into contracts with special consultants for the provision of environmental review services including, but not limited to, preparation of environmental impact reports;

(7) Consulting with other public agencies which have jurisdiction with respect to a project;

(8) Completing final environmental impact reports either through city staff or through consultants hired by the city the cost of which may be paid by the applicant.

(9) Conducting a scoping meeting whenever it is determined that an environmental impact report is needed for a project.

(a) The City Manager may delegate the responsibilities provided herein to any city department, division, employee or consultant, except that the City Manager shall retain all final decision-making authority vested in the City Manager by this Chapter. The City Manager may call for assistance from any city department, other governmental entity or other person as the Manager determines necessary to execute the duties hereunder. Whenever the term City Manager is used in this Chapter with respect to the performance of acts or duties it shall include reference to any person authorized by the Manager to perform all or part of the acts or duties of the City Manager hereunder.

(b) **Planning Division.** The Planning Division shall be responsible for the acceptance, review, preparation, storage, handling and other matters relating to environmental documents, studies, reports and other material. All environmental documents, studies, reports and other material shall be submitted to the City Manager through the Planning Division. The Planning Division shall review all projects and environmental documents pursuant to this Chapter and make a recommendation thereon to the City Manager.
(c) **Persons Charged with Issuing Permits.** All persons having the responsibility for issuance of any permit for a project as defined herein shall comply with their Article.

(d) **Permit Applicant.** Any person seeking the issuance of a permit, license, approval or entitlement for any project as described herein shall first comply with this Chapter and procedures set forth in the guidelines and shall thereafter construct and maintain the project in reasonable compliance with such permit, license, approval or entitlement. Further, unless otherwise specifically indicated to the contrary in the permit, license, approval or entitlement for the project, the applicant shall be responsible for implementing or carrying out all mitigation measures specified in the environmental review documents for the project.

(e) **City Council.** It is the responsibility of the City Council:

1. For every project for which the Planning Commission or other city official is the final decision-making authority, except for the possibility of appeal, to hold a public hearing on environmental impact reports and on every project the environmental review for which is conducted pursuant to State Public Resource Code Section 21083.3 and to complete the final environmental impact report in compliance with CEQA, the state guidelines and this Title when an appropriate appeal is filed.

2. For projects for which the City Council is the final decision-making body except for the possibility of appeal, to certify that the environmental impact report is completed pursuant to CEQA, the State guidelines and this Title;

3. To hear appeals of decisions make by the City Manager as provided in this Chapter.

(f) **Planning Commission.** It is the responsibility of the Planning Commission:

1. To hold a public hearing on every environmental impact report and on every project requiring an environmental review, pursuant to Section 21083.3 of the State Public Resources Code;

2. For projects for which it or any City official is the final decision-making body except for the possibility of appeal, to certify that the environmental impact report is completed pursuant to CEQA, the State guidelines and this Title;

3. For projects for which the City Council is the final decision-making body, to forward the final environmental impact report to the Council for certification;

4. For projects requiring an environmental impact report, to make the finding of whether or not a proposed project will have a significant effect on the environment.
(g) **Decision-Making Body.** The decision-making body or administrative official having final approval authority over the project shall certify that such decision-making body or administrative official has reviewed and considered the information in the EIR prior to approving the project or, if no EIR is prepared, that the project was processed in compliance with this Code. The decision-making body shall also approve or disapprove negative declarations prior to consideration of the project.

(h) **Department Heads.** All department heads of the City shall cooperate with and assist the City Manager in the performance of the Manager's duties under this Chapter. All department heads shall respond promptly to all requests for information or assistance made by the Manager.

**18.04.070 Determination of Exception and Exemption.**

(a) The City Manager shall determine whether a private project, other than a ministerial project, is excepted or exempted from the requirements of this chapter by Section 18.04.050 (b).

(b) For ministerial projects and projects proposed by the City, the department head with the responsibility for approving or carrying out the project shall determine whether the project is excepted or exempted from the requirements of this Chapter, or shall refer the project to the City Manager for a determination.

(c) The applicant, and any other person who has previously filed a written request for notice regarding a project, shall be notified in writing of the determination made pursuant to subsection (a) or (b). A list (or other document) of the determinations of exemption or exception shall be posted weekly for five business days in a public portion of City Hall.

(d) Notwithstanding that a project may be within an exemption or exception, the City Manager, or other authorized department head, may determine that the project may have a significant effect on the environment for such reasons as scope or scale of the activity, the cumulative impact of the project with successful projects of the same type and in the same area, proximity to a floodplain, proximity to an environmental resource of hazardous or critical concern, or any other reason which in the judgment of the City Manager or appropriate department head may result in an adverse impact on the environment. If such a determination is made, the determination of exemption shall not be issued and the project shall be processed in accordance with this Chapter.

(e) The determination of exemption under this Section may be in the form of a notice of exemption prepared pursuant to Section 18.04.090 of this Code and Section 15062 of the State CEQA Guidelines, but the notice of exemption shall not filed with the County Clerk until authorized under Section 18.04.090.

**18.04.080 Appeals of Determinations on Exceptions or Exemptions.**

(a) The determinations made according to Section 18.04.070 are final unless appealed to the Planning Commission. Appeals shall be filed in writing with the City Clerk within ten calendar days of the expiration of the period for posting, or if no posting is required, within fifteen calendar days from the date of the mailing of the written notice. For the purpose of this Section if written notification is mailed, delivery shall be the date of mailing.
(b) The Planning Commission shall hear the appeal no later than the second regularly scheduled meeting following the filing of the appeal and may approve or disapprove the decision. The decision of the Planning Commission shall be noticed in the manner provided in Section 18.04.070 as appropriate and shall be mailed to the applicant and the appellant. The time for the Planning Commission to hear the appeal may be extended by the Planning Commission for good cause.

(c) Notice of the Planning Commission hearing on appeal shall be given as provided for the noticing of negative declarations and by first class mail to the applicant and the appellant.

(d) The decision of the Planning Commission shall be final.

18.04.090 Notice of Exemption.

(a) When a project qualifies for an exception or exemption and the City approves or determines to carry out the project, the City Manager, or other appropriate department head, may file a notice of exemption with the County Clerk. Such notice shall include a description of the project, the location and the finding that the project is within an exception or exemption and a brief statement of the reasons for the finding. These notices may be filed weekly.

(b) Whenever the City approves an applicant's project, the applicant may file a notice of exemption. The notice of exemption, filed by the applicant, shall contain the information required in Subsection (a) of this Section, together with a certified document issued by the City stating that it has found the project to be exempt. This may be a certified copy of the determination made according to Section 18.04.070 or of the resolution approving the project.

(c) The notices of exemption shall contain the information and be in the form required by State Public Resources Code Section 21151 (b).

18.04.100 Initial Study.

(a) If the project is not exempt or does not qualify for an exception, the City Manager shall conduct an initial study to determine if the project may have a significant effect on the environment. The responsible City department or private applicant for a City entitlement shall submit to the Planning Division a completed environmental impact assessment form as an aid to the determination. The City Manager may require an expanded initial study when necessary to determine whether the project will have a significant effect on the environment. The expanded initial study shall not be used as a substitute for an environmental impact report. After the initial study, expanded initial study and other documents and information requested by the City Manager have been submitted to the satisfaction of the City Manager, the City Manager, with the assistance from the City staff and departments, as appropriate, shall review each initial study along with all information submitted with the application for the project and determine within 30 days whether the project as proposed may involve a significant effect on the environment. The time period for the determination may be extended by mutual agreement of the City Manager and the applicant for an additional 15 days.

(b) Except as otherwise provided by law, if it is determined that a project may have a significant impact on the environment, the City Manager shall prepare, or cause to be prepared, an EIR according to the requirements of this Chapter.
(c) If it is determined that the project will have not significant impact on the environment, the Manager shall prepare a negative declaration.

(d) If significant effects on the environment identified in the initial study can be mitigated so that the project will have no significant effect on the environment, the project applicant may revise or redesign the project to mitigate these effects. If the City Manager finds that the project as revised or redesigned will have no significant impact on the environment, the City Manager may then issue a negative declaration for the project subject to appropriate conditions to assure that no significant impact will result; provided, however, that no step or element of the project, which may have a significant effect on the environment, may be implemented or carried out unless the conditions intended to mitigate that effect have been implemented or carried out. The Manager may require a mitigation monitoring program to be included as part of the redesigned project or negative declaration. The revisions or redesign shall occur prior to public notice of the negative declaration.

(e) The applicant, and any interested party who has requested notice, shall be given written notice of the Manager's determination under this Section. The notification shall be given either by personal delivery or first class mail. The applicant or other interested party, may appeal the Manager's determination to the City Council within ten calendar days after either the personal delivery or mailing of the notice. The hearing shall be processed according to the procedures established in Section 18.04.080 for appeal hearings on determinations of exceptions. The decision of the City Council shall be final.

18.04.110 Consultation During Initial Study. Prior to determining whether a negative declaration or EIR is necessary for a project, the Manager shall consult with responsible agencies. This consultation may be quick and informal. This consultation is additional to the consultation required by Sections 18.04.130 and 18.04.180 regarding consultations prior to completing a negative declaration or draft EIR.

18.04.120 Early Public Notice of Preparation. In order to insure adequate public participation in the environmental process, early public notice of the preparation of negative declarations and EIR's may be given after completion of the initial study but before the completion of the declaration or draft of the EIR. The City Manager may establish guidelines for determining those projects which may require early public notice of preparation. Early notice of preparation may be given in any manner which the City Manager deems appropriate including but not limited to: publication of notice once in a newspaper of general circulation in the area where the project is located; mailing to all persons who have previously requested such notice; mailing to persons living within 500 feet of the project; mailing to responsible agencies or agencies whose jurisdiction borders the city; posting on the property where the project is proposed. All notices under this subsection shall be posted in a public portion of City Hall. This notice is additional to all other notices required under this Chapter. The applicant shall pay the cost of providing the notice under this section.

18.04.130 Negative Declaration.

(a) The City Manager shall prepare a negative declaration if the project qualifies for a negative declaration under the provisions of this Chapter. For private projects the negative declaration shall be completed and ready for approval within 105 days from the date that the
application for the permit, license, approval or entitlement for the project is received and accepted as complete by the City. Notwithstanding anything in this Code to the contrary, an application for a permit, license, approval or entitlement for a project subject to this Chapter shall not be complete (or deemed complete) until an initial study, expanded initial study, and other documents and materials requested by the City Manager with respect to an application have been submitted to the satisfaction of the City Manager. The time for completion of a negative declaration may be extended by the City Manager for good cause and with the consent of the applicant. A negative declaration may be approved after the 105 day period for completion when consideration of approval of the negative declaration is consolidated with consideration of the project.

(b) Notice that a negative declaration has been prepared shall be given to the public at least twenty-one days prior to the final adoption by the decision-making body of the negative declaration and shall also be given to all organizations and individuals who have previously requested such notice. If the negative declaration is submitted to the State Clearinghouse for review, the notice shall be given at least 30 prior days to the final adoption of the negative declaration unless a shorter period for review by the State Clearinghouse has been approved. The notice shall be given in the manner specified in Section 18.04.190. The notice shall contain a brief description of the proposed project and of its location, the address where copies of the negative declaration may be reviewed, a designation of a staff person at the City who may be contacted with respect to the negative declaration, a statement that comments on the negative declaration may be made, the time period during which comments will be received, and the time, place, and date of the public meeting at which the project will be considered if known at the time of the giving of the notice. The notice required by this subsection may be given at the same time and in the same manner as the public notice otherwise required by law for the project provided that the public notice otherwise required by law for the project is given within the time period specified by this section. For projects involving the burning of waste materials, additional notice as specified in Section 21092 (b) of CEQA shall be given.

18.04.140 Appeal of Negative Declaration.

(a) If the decision-making body has the authority under this Code to finally approve or deny a project, the decision of the decision-making body to approve, conditionally approve or disapprove a negative declaration is final unless:

(1) Any interested party files an appeal to the City Council of the project as provided by this code for appeals of projects;

(2) Any interested party appeals to the City Council the approval of the negative declaration in writing filed with the City Clerk within ten days of the decision-making body's approval of the negative declaration.

(b) A fee established according to this Chapter shall be paid to the City Clerk at the time of filing the appeal. If the project has been approved or conditionally approved filing of an appeal of the approval of the negative declaration shall be deemed to be an appeal of the approval or conditional approval of the project and notice of the hearing on the appeal shall be given as provided in City Ordinance for appeals of the projects. If the approval or conditional approval of the project has not been given then the filing of an appeal regarding the negative
declaration shall prevent the approval or conditional approval of the project by the City, or by operation of law, until the appeal is determined. If the appeal is for a project which has not been given approval, the Clerk shall give a notice of hearing on the appeal in the manner specified in Section 18.04.190 not later than ten days prior to the hearing. Such notice shall also be mailed or given to the applicant and the appellant. The City Council shall hear the appeal and may approve, modify or disapprove the decision of the decision-making body. The decision of the City Council is final. For the purpose of this Section, appeal of the decision on the project shall be deemed an appeal of the decision on the negative declaration as well.

18.04.150 Lead Agency.

(a) If the City Manager determines that a project is to be carried out or approved by one or more public agencies in addition to the City, he shall first determine which entity will be the lead agency.

(b) If the City Manager determines that the City is the lead agency, the project shall be processed in accordance with the terms of this Chapter.

(c) If the City Manager determines that another public agency is the lead agency, the environmental documents prepared by such agency shall be considered by the City prior to acting upon or approving the project and the acting or approving authority shall certify as a part of their decision that the information contained therein was reviewed and considered. A project processed in accordance with Subsection (C) hereof shall be deemed to be in compliance with the requirements of this Chapter.

(d) Whenever the City is a responsible agency, the City Manager shall provide the information and responses to the lead agency which the City Manager deems necessary in order to comply with the statutory responsibilities of a responsible agency.

18.04.160 Prior Compliance. If the City Manager determines that an EIR or negative declaration has been certified for a project in connection with some previously issued entitlement, then the prior environmental document shall be sufficient to comply with this Chapter unless subsequent or supplemental review is required pursuant to the provisions of CEQA or the State Guidelines.

18.04.170 Preparation of Environmental Impact Report. Environmental Impact Reports shall be prepared by the City Manager for all City projects. The applicant for the City entitlement for any private project may prepare and submit a preliminary EIR to the City Manager. The City Manager may, but is not required to, adopt the applicant's submittal as the document to be circulated for public review or may use all or any part of the applicant's submittal as a basis for an environmental impact report prepared by or for the City. The City Manager shall not adopt the applicant's submittal as the document to be circulated for review unless prior to the submission of the document the City Manager has conducted a scoping meeting and the submittal addresses all of the issues raised at the scoping meeting. The City Manager may require the applicant to submit additional information necessary for a full and complete report. The City Manager may call for assistance from other departments, other governmental entities and the public as he determines necessary for a full and complete report. As provided in the
provisions of Chapter 2.30 of this Code relating to Purchasing, the City Manager may at the Manager's discretion enter into contracts with private consultants for the preparation of draft EIR's or for the review of environmental documents submitted by applicants. For environmental review or private projects, the cost for such consultants shall be paid by the applicant. The consultant shall not be an employee or affiliate of the applicant.

18.04.180 Responsibilities of City Manager regarding Draft Environmental Impact Reports. The draft EIR shall contain substantially the same information as a final EIR. The City Manager shall consult and obtain comments from other public agencies having jurisdiction by law with respect to the project. The City Manager should also consult with any person having special expertise with respect to any environmental impact involved. The City Manager shall maintain a listing of local, state and federal agencies which have jurisdiction by law with respect to various projects and project locations within the city. A list of local agencies or persons with special expertise or concerns with regard to such projects shall also be maintained. Copies of the draft report may also be submitted for comment to other agencies and persons as the City Manager determines to be necessary to full and complete report. If any public agency or person consulted failed to comment within the time specified by the City for such comment, or within 30 days if no other time is specified, it shall be assumed such agency or person has no comment to make and such fact may be included in the final report. The draft report shall be mailed to the applicant and a copy shall be available to the public at the Planning Division. A copy shall also be furnished to and made available at the City Clerk's office. The public copy shall be available for not less than thirty days after the publication of the notice of completion. The City Manager may, in exceptional cases, extend the period of public availability when such action is necessary for a full and complete report. The City Manager will accept written comments on, or objections to, the draft report during the period of public availability. After the expiration of said period, the City Manager shall prepare, or cause to be prepared, written responses to all comments received during the review period.

18.04.190 Notice of Completion.

(a) As soon as a draft of the EIR is completed, the City Manager shall file a notice of completion with the secretary for the resources agency. At the same time, the notice of completion shall be posted in a public portion of City Hall. In addition, notice of completion shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

(1) Publication once in a newspaper of general circulation in the City;

(2) Posting on an off-site in the area where the project is located;

(3) Direct mailing to owners of property as shown on the latest equalized assessment roll within a radius of five hundred feet of the proposed project.

The City Manager may require any additional notice which the Manager deems necessary for the project and shall assess the cost of the additional notice to the applicant.

(b) The notice of completion shall contain the following information:
(1) The time period during which comments on the draft environmental impact report will be received;

(2) A brief description of the project and of its location;

(3) The address of the place or places where copies of the draft environmental impact report are available for review;

(4) A designation of a staff person of the City who may be contacts regarding the environmental impact report;

(5) A statement that comments on the environmental impact report will be received.

(c) The time period during which comments on a draft environmental impact report will be received shall not be less than 30 days, or not less than 45 days if the draft environmental impact report is submitted to the State Clearinghouse for review unless a shorter time period for review by the State Clearinghouse has not been approved. The time period during which comments will be received shall not be longer than 90 days.

18.04.200 Final Environmental Impact Report. After the expiration of the time period for submission of comments on the draft environmental impact report the City Manager shall prepare or cause the preparation of the final environmental impact report. The final EIR shall include the draft EIR, a section listing the organizations and persons consulted, the comments received either verbatim or in summary, and the response of the City Manager to the significant environmental points raised in the review and consultation process. The response of the City Manager may be in the form of a revision of the draft EIR or an attachment thereto describing the disposition of the significant points raised. The major issues raised when the position of the City Manager is at variance with the comments shall be addressed in detail and the reasons why any specific comments and suggestions were not accepted shall be stated. The City Council may, by resolution, prescribe guidelines in addition to the requirements of this Section for the contents of the final EIR.


(a) The environmental impact report shall be forwarded to the City Manager, who shall set the matter for public hearing by the Planning Commission. Notice of the public hearing shall be given as provided in Section 18.04.220 (a) of this Code. If the hearings on the environmental impact report will be consolidated according to this Chapter with other approvals on the project, the notice required by this Section may be given in the same manner and at the same time as public notice otherwise required for the project. At the hearing, the Commission shall hear staff and public comments on the report, and may refer it back to staff for further investigation, information, analysis, and for the inclusion of additional material if they determine such to be necessary to a full and complete report. The Planning Commission may order that a supplement to the report be prepared if any significant points are raised at the hearing which have not been covered in the report. If a supplement is ordered, the report and
the supplement shall be recirculated for public comment as provided in Section 18.04.190. Formal written responses to comments made during the public hearing on an environmental impact report are not required, but, to the extent practicable, oral responses shall be given by the City Staff or by the City’s consultants before action by the Planning Commission.

(b) For projects for which the Planning Commission or any City Official is the final decision-making body, except for the possibility of appeal, the Planning Commission shall be resolution certify the environmental impact report if it finds that the report has been prepared in compliance with all applicable requirements. If the Planning Commission or a City Official is not the final decision-making body for the project, the Planning Commission shall by resolution make a recommendation to the City Council regarding whether the final environmental impact report has been prepared in compliance with all applicable requirements.

(c) If the Planning Commission or other City Official has the authority under this Code to finally approve or deny a project (except for the possibility of an appeal), the decision of the Planning Commission to certify or not certify a final environmental impact report is final unless:

(1) An applicant or any other interested person appeals the Planning Commission decision to certify or not certify the environmental impact report to the City Council; or

(2) An applicant or any other interested person appeals this decision to approve or deny the project to the City Council.

An appeal shall be filled in writing with the City Clerk within ten days after the action of the Planning Commission from which the appeal is being taken. A fee established according to the Chapter shall be paid to the City Clerk at the time the appeal is filed. Upon the filing of an appeal, the City Clerk shall set the matter for public hearing notice of which shall be given according to Section 18.04.220 (a). The hearing shall be held within thirty days after the date of filing the appeal. Within ten days following the conclusion of the hearing, the City Council shall render its decision on the appeal. The decision of the City Council is final. If an appeal from the decision on the project is filed the hearing required under this section may be noticed and heard at the same time and in the same manner as the hearing of the appeal on the project. If an appeal is filed for a project which has been approved or conditionally approved regarding the environmental impact report shall be deemed to be an appeal of the approval or conditional approval of the project. If a project has not been approved or conditionally approved, the project shall not be approved or conditionally approved by the City, or by operation of law, until the appeal is determined and the environmental impact report is certified.

18.04.220 City Council Hearing.

(a) If the Planning Commission is not the final decision-making authority for a project, or upon an appeal, then upon completion of the Planning Commission hearings, the City Manager shall cause the EIR to be set for public hearing by the City Council. Notice of the public hearing shall be given as follows:
(1) Notice of the hearing shall be mailed or delivered at least ten days prior to the hearing, to the owner of the subject real property, the owner’s duly authorized agent, or to the project applicant. This provision shall apply only to projects for which the City is not the applicant;

(2) Notice of the hearing shall be mailed or delivered at least ten days prior to each local agency expected to provide water, sewage, streets, schools or other essential facilities or services to the project and whose ability to provide those facilities or services may be significantly affected by the project.

(3) Notice of the hearing shall be mailed or delivered at least ten days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within five hundred feet of the real property that is the subject of the hearing. In lieu of utilizing the assessment roll, records of the County Assessor or Tax Collector which contain more recent information than the assessment roll may be used. If the number of owners to whom notice would be mailed or delivered pursuant to this subparagraph is greater than five hundred, in lieu of mailed or delivered notice, the City Manager may permit notice to be given by placing a display advertisement of at least one-eighth page in a newspaper of general circulation within the City at least ten days prior to the hearing.

(4) If the notice is mailed or delivered pursuant to subparagraph (3), the notice shall also either be:

   a) Published pursuant to Government Code Section 6061, in at least one newspaper of general circulation within the City at least ten days prior to the hearing; or

   b) Posted at least ten days prior to the hearing in at least three public places in the City.

(5) The failure of any person or entity to receive notice given pursuant to this Chapter shall not constitute grounds for any court to invalidate the action for which the notice is given. If a decision-making body receives substantial evidence that notice has not been given as required by this Chapter, then the decision-making body may continue the matter for hearing after proper notice has been given.

(6) It is the responsibility of the applicant to provide addressed and stamped envelopes for the mailed notice and to pay the cost of all notice given pursuant to this Section.

(7) If the hearings on the EIR will be consolidated according to this Chapter with public hearings on other approvals of the project, the notice required by this Section may be given in the same manner and at the same time as public notice otherwise required for the project.
(b) At the hearing, the City Council shall hear staff comments on the report, and may refer it back to staff for further investigation, information, analysis, and for the inclusion of additional material if they determine such to be necessary to a full and complete report. The report shall be supplemented to include any significant points raised at the hearing and not covered in the report. If the City Council finds that the report has been completed in compliance with CEQA, the State guidelines and this Chapter, it shall, by motion, so certify.

18.04.230 Consolidation. The Planning Commission or City Council may consolidate a hearing on an EIR or consideration of the negative declaration with any other hearing held in regard to the same project. In such case the Planning Commission or City Council shall review and consider the information contained in the report before taking action on other aspects of the project.

18.04.240 Standard of Review. In considering whether or not to approve a project for which an EIR is required and has been prepared, the City decision-making body with approval authority for the project shall first review and consider the information contained in the report. The report is an informational document prepared to inform the decision makers and the general public of the environmental effects of the projects they propose to carry out or approve. The process is intended to enable the City to:

(a) Evaluate a project to determine whether it may have a significant effect on the environment;

(b) Examine and institute methods of reducing adverse impacts; and

(c) Consider alternatives to the project as proposed. These things must be done prior to approval or disapproval of the project.

An EIR may not be used as an instrument to rationalize approval of a project; nor, do indications of adverse impact, as enunciated in an EIR, require that a project be disapproved. While it is the express policy of the City to give major consideration to preventing environmental damage, it is recognized that the City also has obligations to balance other public objectives including economic and social factors in determining whether and how a project should be approved. In that regard, the decision-making body may balance environmental objectives with economic and social objectives in arriving at a decision. In evaluating whether or not to approve the project, or to grant the permit, license or other entitlement applied for in connection with the report, the decision-making body shall weigh any adverse environmental effects against any positive effects and any benefit to the City and the public which could result from the proposed project. The decision-making body may disapprove a project if it finds that the adverse consequences outweigh the positive aspects of the project. The decision-making body may approve a project if it finds the reverse to be true. The decision-making body may also conditionally approve or modify the project in consideration of the information in the report.
18.04.250 Required Findings - Mitigation Measures.

a) If the EIR for a project identifies one or more significant effects, the project shall not be approved or carried out unless the decision-making body makes one or more of the following written findings or statements for each significant effect. A statement of facts supporting each finding shall also be made.

   (1) Changes or alterations have been required on, or incorporated into, the project and which mitigate or avoid the significant environmental effects as identified on the EIR;

   (2) The mitigation measures are within the responsibility or jurisdiction of another public agency;

   (3) Specific economic, social or other consideration make infeasible mitigation measures or project alternatives.

b) If the project will be approved or carried out and a significant environmental effect will not be reduced to an acceptable level, the decision-making body shall make a statement of overriding considerations which shall be mentioned in the notice of determination and shall include the following written findings or statements:

   (1) The reason which support its action based on the final EIR or other information on the record or a combination of both;

   (2) Any findings or statements required under Subsection A of this Section.

18.04.260 Consideration of Environmental Documents. In considering whether or not to approve a project for which a negative declaration has been processed, a determination of exemption, exception or prior compliance made, or any other environmental document issued which results in an endorsement of compliance pursuant to this Chapter, the decision-making authority shall first review and consider such document and all the information contained therein. The standard of review prescribed in Section 18.04.240 for evaluation of EIRs shall be applied.

18.04.270 Notice of Determination.

a) Within five working days after the City approves or determines to carry out a project or grants a requested entitlement for which a negative declaration or EIR has been prepared, the City Manager shall file a notice of determination with the County Clerk.

b) When a Notice of Determination is returned by the County Clerk after the required posting period, the City Manager may make the notice a part of the project file or may forward the notice to the appropriate custodian of the project file for placement in the file.

c) The notice of determination shall contain the information and be substantially in the form required by State Public Resources Code Section 21152(a).
18.04.280  **Mitigation Measure Monitoring.** Whenever a project is approved subject to mitigation measures, including measures incorporated into the project design or imposed as a condition of approval, the decision-making body shall establish a program to monitor the implementation of the mitigation measures. The cost of the monitoring program is hereby to be imposed as a condition of the approval on the project applicant or on such other person or entity as may be established by conditions of approval of the project. Where the monitoring program requires that monitoring be accomplished by the City, the decision-making body may impose, as a condition of approval of the project, a fee in the amount of the reasonably anticipated costs of the monitoring.

18.04.290  **Review of Lead Agency Environmental Impact Reports.** When a lead agency submits an EIR to the City for comment, it shall be referred to the City Manager. The City Manager is responsible for reviewing the report, preparing appropriate comments and forwarding any such comments to the lead agency within the indicated time limits. The City Manager may consult with and obtain input from any person with knowledge or expertise regarding the matter. As part of the review, the City Manager shall focus on the sufficiency of the EIR in discussing possible impacts upon the environment, ways in which adverse effects might be mitigated, and alternatives to the project, in light of the intent of CEQA to provide decision-makers with useful information about such factors.

18.04.300  **Request for Environmental Documents.** The City Manager shall make EIRs or other environmental documents available for reasonable public inspection. A charge no greater than the actual cost of reproduction and reasonable retrieval time shall be paid by any person requesting copies.

18.04.310  **Retention of Public Comment.** Comments received from other agencies or individuals in the course of the consultation process while preparing an EIR or negative declaration and not otherwise included in a final environmental impact report shall be kept for a reasonable time in the Planning Division file for a project. Comments shall be made available to the public, subject to the same terms as other environment documents. Comments regarding environmental aspects of any project received independently of the environmental review process shall also be considered and kept on file.

18.04.320  **Cost of Reports - Fee Schedule.** The City Council may, by resolution, adopt a fee schedule for the processing of projects subject to this Chapter and for the processing of any report or appeal under this Chapter. The cost of all environmental review, notices, reports, consultants and other actions required by this Chapter shall be borne by the applicant.

18.04.330  **Mailing of Notice on Request - City Clerk.** The City Clerk shall mail, on a continuing basis, copies of all notices of appeal, notices of hearings and other notices resulting from this Chapter to any individual or group who files a written request therefore. Such requests shall be made annually. A fee in an amount established by City Council resolution shall accompany each such request.

18.04.340  **Notices of Other Hearings.** Except as provided in Sections 18.04.210 and 18.04.220, notice of any other public hearing required by this Chapter shall be given by publication once in a newspaper of general circulation at least ten days before the hearing.
18.04.350 Guidelines. The City Council may adopt, by resolution, additional guidelines to aid in the implementation of this title. These guidelines may include, but are not limited to, guidelines for preparation of draft and final EIRs, a form which will solicit sufficient information to allow the City Manager to determine if a project may have a significant effect on the environment, and guidelines for mandatory finds of significant effect. (Ord. No. 91-890, 3-26-91)
CHAPTER 19.04

GENERAL REGULATIONS

Sections:

19.04.010  Title
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19.04.100  Corrections and Amendments
19.04.110  Security for Payment of Taxes and Special Assessments; Release
19.04.120  Designated Remainder Parcel
19.04.130  Consideration of Housing Needs
19.04.140  Covenants for Easement
19.04.010 Title. This Title is adopted to supplement and implement the Subdivision Map Act and may be cited as the "San Marcos Subdivision Ordinance."

19.04.020 Definitions. Words in this Title that are defined in the Subdivision Map Act but not specifically defined in this Chapter shall have the same meaning as is given to them in the Subdivision Map Act. Words in this Title that are defined in Title 20 of this Code but are not specifically defined in this Section shall have the same meaning as established by Title 20. Whenever the following words are used in this Title, they shall have the meaning ascribed to them in this Section:

Adjustment Plat means a plat prepared pursuant to Chapter 19.36 of this Title and certified by the City Engineer as having been approved pursuant to this Title and filed in the office of the City Engineer.

Basis of Bearings means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved by the City Engineer, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).

California Coordinate System means the coordinate system as defined in Sections 8801 and 8819, inclusive, of the California Public Resource Code. The specified zone for San Diego County is "Zone 6" and the official datum is the "North American Datum of 1983".

Bicycle means a device upon which any person may ride, propelled by human power through a belt, chain or gears, and having either two or three wheels in a tandem or tricycle arrangement.

Bicycle Route means the generic term for all facilities that explicitly provide for bicycle travel by a course which is to be traveled.

Cable Televisions Lines means electronic cable, conduit and any other appurtenances thereto which distribute television or other electronic communication signals.

Common Interest Development means any of the developments defined in Section 1351 of the State Civil Code.

Certificate of Compliance means a document describing a unit or contiguous units of real property and stating that the division creating the unit or contiguous units complied with applicable provisions of the Subdivision Map Act and City ordinances enacted pursuant thereto.
**Conditional Certificate of Compliance** means a document describing a unit or contiguous units of real property stating that the unit or contiguous units were not created by a division complying with the Subdivision Map Act or applicable City ordinance and stating the fulfillment and implementation of the conditions set forth therein are required before issuance of building, grading or other construction permits applicable thereto.

**City Engineer** means the person designated by the City Manager to perform the functions of a city engineer.

**City Standards** means those standards and specifications, including standard drawings, as may be adopted from time to time by the City Engineer. The standards shall be on file in the office of the City Clerk and in the Engineering Department.

**City Street System** means the streets owned by the City which have been accepted by the city for purpose of maintenance.

**Final Map** means a map prepared pursuant to Chapter 19.20 of this Title and the Subdivision Map Act which, after approval and recordation, is effective to complete the subdivision of a major subdivision.

**Improvement** means:

(a) Such street work, utilities, and appurtenances to be installed or agreed to be installed by the subdivider on land to be used for public or private streets, highways, ways, bicycle routes, and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic, drainage, flood control, fire protection and sanitation needs as a condition precedent to the approval of a parcel map or final map.

(b) Any other specific improvements or types of improvements, the installation of which, either by the subdivider, by public agencies, by private utilities, by any other entity approved by the City or by a combination thereof, is necessary to ensure conformity to or implementation of the General Plan, any applicable specific plan, any applicable redevelopment plan, and any applicable provision of Title 20 of the Code, including, but not limited to, public facilities and services plan prepared according to Title 20.

**Lot Area** for the purposes of subdivision design means the horizontal area within the boundary lines of a lot exclusive of:

(a) The area of any street right-of-way or road easement;

(b) Any flood control easement of walkway which must be fenced as a condition of approval of the subdivision map on which the lot is shown;

(c) Any portion of the lot which is less than thirty-five feet wide for a distance of fifty feet or more and which is designated or used to provide vehicular or pedestrian access to the part of such lot which is designed for use as a building site; and
(d) Any portion of the lot which is encumbered by a utility easement for the placement of high voltage electrical lines.

**Major Subdivision** means a subdivision of five or more lots.

**Minor Subdivision** means a subdivision of four or fewer lots.

**Notice of Violation** means a recorded document describing a unit or contiguous units of real property, naming the owners thereof, and describing the manner in which the real property has been divided, or has resulted from a division, in violation of the Subdivision Map Act and City ordinances enacted pursuant thereto.

**Parcel Map** means a map prepared pursuant to Chapter 19.32 of this Title and the Subdivision Map Act which, after approval and recordation, is effective to effect the subdivision of a minor subdivision.

**Street** means the entire public right-of-way associated with a state highway, county or city road or street, public road, public street, public alley or other public thoroughfare. Whenever the term "private street" is used, it shall mean a street which is not owned and maintained by the City, County or State. A city street is a street which has been accepted into the City street system and is owned and maintained by the City.

**Subdivider** means a person, firm, corporation, partnership or association who prepares to divide, divides, or causes to be divided real property into a subdivision for himself or for others, except that employees and consultants of such persons or entities, acting in such capacity, are not "Subdividers".

**Subdivision** means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll(s) as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future except for leases of agricultural land for agricultural purposes. Property shall be considered as contiguous units, even if it is separated by roads, streets or utility easement or railroad rights-of-way. "Subdivision" includes a common interest development as defined in Civil Code Section 1351 and condominium projects, community apartment projects, stock cooperative projects of the conversion of existing dwellings to any one of these type projects. Any conveyance of land to a governmental agency, public entity or public utility shall not be considered a division of land for purposes of computing the number of parcels. As used in this Section, "agricultural purposes" means the cultivation of food or fiber or the grazing or pasturing of live stock.

**Subdivision Map Act** means the Subdivision Map Act as set forth in Division 2 of Title 7 of the Government Code of the State commencing with 66410.

**Tentative Map** means a map prepared for the purpose of showing the design and improvement of a proposed major subdivision, and the existing conditions in and around it, filed with the Developmental Services Department for approval or conditional approval by the City precedent to the preparation and filing of a final map.
Tentative Parcel Map means a map prepared for the purpose of showing the design and improvement and proposed minor subdivision, and the existing conditions in and around it, filed with the City Engineer for approval or conditional approval precedent to the preparation and filing of a parcel map, or precedent to waiver of the requirement for a parcel map.

Vesting Tentative Map means a tentative map for a subdivision which conforms with the requirements of Chapter 19.17 and confers upon the subdivider certain rights established by this Title. "Vesting tentative parcel map" means a vesting tentative map prepared in conjunction with a parcel map.

19.04.030 Prohibition. No person shall create a subdivision or common interest development except in accordance with the provisions of the Subdivision Map Act and this Title. All subdivisions and common interest developments shall comply with the applicable provision of Titles 16, 17, 18 and 20 of this Code.


(a) All of the provisions of the Subdivision Map Act, and all of the provisions of this Title apply to subdivisions as defined in the Title, unless a provision of this Title expressly provides differently.

(b) This Title shall be inapplicable to:

(1) The financing or leasing of:

   a) Apartments, offices, stores or similar space within a duplex, multiple dwelling, apartment building, industrial building, commercial building, mobilehome park or trailer park.

   b) Any parcel of land or portion thereof in conjunction with the construction of commercial or industrial buildings on a single parcel, if the project is subject to design and improvement view under other provisions of Title 20 of this Code.

   c) Existing separate commercial or industrial buildings on a single parcel.

(2) Mineral, oil or gas leases.

(3) Land dedicated for cemetery purposes under the Health and Safety Code of the State.

(4) A lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created, provided an adjustment plat for the lot line adjustment is approved by the City Engineer, pursuant to Chapter 19.36 of this Title. The City Engineer shall not impose conditions or exactions on approval of a lot line adjustment except to conform to
the building and zoning requirements contained in Titles 17 and 20, respectively, of this Code, or except to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, tentative parcel map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed or record of survey which shall be recorded.

(5) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(6) Leases of agricultural land for purposes of cultivation of food or fiber or the grazing or pasturing of livestock.

(7) Any separate assessment under California Revenue and Taxation Code Section 2188.7.

(8) Unless a parcel map or final map was approved by the City Council, the conversion of a community apartment project, as defined in Section 11004 of the California Business and Professions Code, to a condominium, as defined in Section 783 of the California Civil Code or a stock cooperative to a condominium provided that the requirements of Government Code Sections 66412(g) or (h), respectively, have been met and the subdivider provides certification that the requirements have been met.

(9) The leasing of, or granting of an easement to, a parcel of land or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of windpowered electrical generating device on the land, if the project is not otherwise subject to discretionary review pursuant to this Code.

(10) The construction, financing or leasing of dwelling units, pursuant to California Government Code Section 65852.1 or second units pursuant to Section 65852.2 of said Code. The sale or transfer of those units, except in conjunction with a sale or transfer of the entire parcel to the same person, but not the leasing of those units, shall be subject to this Title.

(11) The leasing of property within the parking area of a larger project for the purpose of constructing a removable commercial building having a floor area of less than 100 square feet.

19.04.050 Extent of Regulations.

(a) No real property, improved or unimproved, consisting of a single unit, or two or more contiguous units, owned by the same person or persons, shall be divided into two or more lots, including any lot retained by the owner, except in accordance with the provisions of this Title.

(b) No parcel map may be subdivided if it was illegally created unless, as part of the division, the illegality is eliminated. If such elimination is not possible, a notice of violation with respect to the parcel shall be recorded. In no event shall a subdivision be permitted unless the entire legal parcel is subdivided when the owner of any portion of the illegal parcel is the person who owned the property at the same time of the illegal subdivision.
19.04.052 Merger.

(a) This Title shall not apply to the sale, lease or financing of one or more contiguous parcels or units of land which have been created under the provisions of applicable City ordinances regulating the division of real property and the Subdivision Map Act applicable at the time of their creation, even though the contiguous parcels or units are held by the same owner; except that if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size to permit use or development under Title 20 of this Code and the standards established by Subsection (c) of this Section, then those parcels or units shall be merged.

(b) Any parcels or units created prior to January 1, 1979, pursuant to this Title or any predecessor, or which are buildable lots under the provisions of Title 20 of this Code, and which merged pursuant to the Subdivision Map Act and have not been deemed merged pursuant to this Section or any of its predecessors, are exempted from the merger provisions of this Section and those parcels or units shall be deemed unmerged and separate parcels, except that any parcels which merged under the provisions of this Title after January 1, 1989 shall remain merged if the provisions of Subsection (c) (2) f) of this Section are met. Further, any parcels or units which do not conform to the standards established by Subsection (c) of this Section shall be merged.

(c) Contiguous parcels or units of land held by the same owner, on the date that notice of intention to determine status is filed, shall be merged if one of the parcels or units does not conform to the minimum parcel size to permit use or development under Title 20 of this Code and, if all of the following requirements are satisfied:

(1) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(2) With respect to any affected parcel, one or more of the following conditions exist:

a) Comprises less than 5,000 square feet in area at the time of determination of merger.

b) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.

c) Does not meet current standards for sewage disposal and domestic water supply.

d) Does not meet slope stability standards.

e) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.

f) Its development would create health or safety hazards.
g) Is inconsistent with the applicable General Plan and any applicable specific plan, other than minimum lot size or density standards.

(3) Subsection (c)(2) of this Section shall not apply if any of the conditions stated in Subdivision Map Act Section 66451.11 (b)(A)(B)(C)(D) or (E) exist as to the property.

(d) Whenever the City Engineer has knowledge that real property has merged pursuant to this Section, he shall mail by certified mail to the owner of the property as shown on the latest equalized county assessment roll(s), a notice of intention to determine status. The notice of intention shall state: that the affected parcels may be merged pursuant to this Section; that the owner may request, within thirty days from the date of the notice of intention was recorded, a hearing before the City Engineer to present evidence that the property does not meet the standards for merger; that the notice of intention was recorded with the County Recorder on the date the notice of intention was mailed; and that any request for a hearing shall be submitted in writing to the City Engineer and shall contain the name of the owner(s) requesting a hearing and the address(es) where all notices may be mailed to such owner(s). Upon receipt of a request for a hearing, the City Engineer shall set the hearing for a date of receipt of the request. The property owner shall be notified of the hearing by certified mail at the address(es) shown on the written request for the hearing. After the hearing the City Manager shall determine whether the affected property has merged pursuant to this Section. The decision shall be made and notification of the decision shall be mailed to the property owner within five working days of the date of the hearing. If the parcels have merged, the City Engineer shall file a notice of merger with the County Recorder within thirty days from the date of the hearing unless the decision has been appealed as provided in Subsection (e) of this Section. The notice of merger shall specify the name and names of the record owner or owners of the property as shown on the latest equalized county assessment roll(s), and shall particularly describe the real property. If the parcels have not merged, the City Engineer shall record a release of the notice of intention within thirty days from the date of the decision, and shall mail a copy of the release to the owner. If no hearing is requested, the decision shall be made not later than 90 days after the mailing of the notice of the opportunity for a hearing. A hearing on the determination of status may be postponed or continued upon the mutual consent of the City Engineer and the property owner.

(e) If the owner requested a hearing, the decision of the City Engineer may be appealed to the City Council within ten calendar days of the date of mailing of the notice of decision by filing a written appeal with the City Clerk. A fee established by City Council resolution shall be paid at the time of filing the appeal. Upon receipt of an appeal and payment of the fee, the City Clerk shall place the matter on the Council Agenda not less than thirty nor more than sixty days from the date of the appeal. If, after a hearing, the Council grants the appeal, the City Clerk shall record within thirty days with the County Recorder, a release of notice of intention. If the appeal is denied, the City Clerk shall, within thirty days, record a notice of merger with the County Recorder. A copy of either the release or the notice of merger shall be sent to the owner(s).

19.04.054 Unmerger. Any parcel or unit of land which merged pursuant to the provisions of any law prior to January 1, 1984, but for which a notice of merger was not recorded on or before that date, are deemed unmerged if on January 1, 1984 all of the criteria established by California Government Code Section 66451.30(a) are not met and, if none of the conditions of Section 66451.30(b) of that Code exist. Upon request of the owner, the City Engineer determines that a parcel is unmerged pursuant to this Section.
19.04.056 Request for Determination of Merger.

(a) A property owner may request that the City Engineer determine whether property has merged under Section 19.04.052 or are deemed unmerged under Section 19.04.054. A request for determination shall be made in writing and shall be accompanied by any fee established by City Council resolution.

(b) Upon determination that the property has merged, the City Engineer shall issue to the owner and record with the County Recorder a notice of merger.

(c) Upon determination that property is deemed unmerged, the City Engineer shall issue to the owner and record with the County Recorder, a Certificate of Compliance showing each parcel as a separate parcel.

19.04.060 Advisory Agency Designation.

(a) The Planning Commission is the advisory agency as that term is used in the Subdivision Map Act, for major subdivisions. The Planning Commission may prescribe, subject to the approval by City Council resolution, such additional rules and regulations as are necessary or advisable with respect to the form and content of tentative maps required by the Subdivision Map Act or this Title and the data to be furnished with such tentative maps.

(b) The City Engineer is the advisory agency, as that term in used in the Subdivision Map Act, for minor subdivisions, lot line adjustments pursuant to Chapter 19.36 and certificates of compliance. The City Engineer may prescribe, subject to the approval of the City Council by resolution, such additional rules and regulations as are necessary or advisable with respect to the form and content of tentative parcel maps required by this Title.

19.04.070 Environmental Impact Review. All tentative maps and tentative parcel maps shall be subject to environmental review in accordance with the California Environmental Quality Act and Title 18 of this Code. Decisions to approve, conditionally approve or deny any tentative map or tentative parcel map shall be based, among other things, on the information contained in the environmental documents.

19.04.075 Environmental Mitigation Reporting. Whenever environmental mitigation measures are imposed as a condition of a subdivision approval, or are incorporated into the design or improvement of a subdivision, the subdivider shall certify to the Planning Director compliance with the measures before obtaining the final or parcel map for the subdivision. This Section implements Section 21081.6 of the Public Resources Code. Compliance with this Section shall not relieve the subdivider of any other obligation to mitigate environmental impacts of a project. If compliance with the environmental mitigation measures may require continued monitoring and performance after the filing of a final or parcel map, the subdivider, as a precondition to filing the final or parcel map shall submit a monitoring and performance program to the Planning Director for approval.
19.04.080 Soils Reports.

(a) Unless waived pursuant to Subsection (b), a preliminary soils report, prepared by a civil engineer registered in this State and based upon adequate test borings and field investigations, shall be submitted to the City Engineer for every subdivision. The City Engineer shall review the report and may require additional information or reject the report if it is found incomplete, inaccurate or unsatisfactory.

(b) A preliminary soils report may be waived by the City Engineer providing the City Engineer finds that, due to the knowledge of the City, no preliminary analysis is necessary. The City Engineer's findings setting forth the reasons therefore shall be contained in a writing filed with the subdivision application.

(c) If the City has knowledge of, or the preliminary soils report indicates, the presence of critically expansive soils or other soils problems which, if not corrected, would lead to structural defects, a detailed soils investigation of each lot in the subdivision may be required by the City Engineer. Such soils investigation shall be done by a civil engineer registered in this State, who shall recommend the corrective action which is likely to prevent damage to each structure proposed to be constructed in the area where such soil problem exists. A subdivision or portion thereof where such soils problems exist may be approved if the advisory agency determines that the recommended corrective action is likely to prevent structural damage to each structure to be constructed and may condition the issuance of any building permit upon incorporation of the approved map and the recommended corrective action in the construction of each structure.

19.04.090 Reservations.

(a) As a condition of approval of a final or parcel map, the subdivider may be required to reserve sites appropriate in area and location for parks, recreational facilities, fire stations, libraries or other public uses according to the procedural standards and formula contained in this Section.

(b) The requirement for reservation shall be based upon an adopted specific plan or General Plan containing policies and standards for park, recreational facility, fire station, library or other public use facilities. The reserved area must be of such size and shape as to permit the balance of the property within which the reservation is located to develop in an orderly and efficient manner. The amount of land to be reserved shall not make development of the remaining land held by the subdivider economically unfeasible. The reserved area shall conform to the adopted specific plan or General Plan and shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period. The tentative map shall show the manner in which the reserve area will be divided if the area is not acquired within the prescribed period.

(c) The public agency for whose benefit an area has been reserved shall, at the time of approval of the final map or parcel map, enter into a binding agreement to acquire such reserved area within two years after the completion and acceptance of all improvements, unless such period of time is extended by mutual agreement.

(d) The purchase price shall be the market value thereof at the time of the filing of the tentative map plus the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of such reserved area, including interest costs incurred on any loan covering such reserved area.
(e) If the public agency, for whose benefit an area has been reserved, does not enter into such a binding agreement, the reservation of such area shall automatically terminate.

(f) The authority granted by this Section shall not be construed as a limitation or as diminution of any other authority of the City to require dedication, improvement, or fees in lieu of dedication or improvement of any of the uses or facilities listed in this Section.

19.04.095 Subdivisions Containing Potential School Sites. Whenever an area in a development is considered or proposed for a school site the Planning Director shall give written notice of the proposed site to the State Department of Education 40 days before the tentative map or tentative parcel map is submitted to the advisory agency for consideration.

19.04.100 Corrections and Amendments.

(a) Corrections and amendments to final and parcel maps may be accomplished as set forth in the Subdivision Map Act Sections 66469 through 66472 to the extent provided for therein.

(b) Changes in any lot line, parcel line or subdivision boundary line may only be accomplished by recording an approved final or parcel map or by the approval of an adjustment plat to the extent provided for in this Title.

(c) Any other change to a final or parcel map must be accomplished by processing a new tentative map or tentative parcel map.

19.04.110 Security for the Payment of Taxes and Special Assessments: Release. Whenever security is filed with the Board of Supervisors or the Clerk thereof, pursuant to Subdivision Map Act Section 66493, to secure the payment of taxes or special assessments collected as taxes, which are a lien on the property to be subdivided, but not yet payable, the clerk of the board of supervisors, upon notification by the tax collector that the total amount of said taxes or special assessments have been paid in full, may release said security.

19.04.120 Designated Remainder Parcel. When a subdivision, as defined in Section 19.04.020, is of a portion of any unit or units of improved or unimproved land, the subdivider may designate as a remainder parcel that portion which is not divided for the purpose of the sale, lease or financing. A note shall be placed on the final map or parcel map providing that a building permit will not be issued for such parcel until it is further subdivided in accordance with this Title. A designated remainder parcel shall not be counted as a parcel for the purpose of determining whether a parcel map or final map is required. After the filing of a parcel map or final map which establishes a designated remainder parcel, the designated remainder parcel map be sold without any further requirement for filing of a parcel map or final map if a Certificate of Compliance if first processed pursuant to the provisions of Chapter 19.48 of this Code. Prior to the issuance of a Certificate of Compliance or conditional Certificate of Compliance for the sale of a designated remainder parcel the City Engineer shall make a determination under Section 19.16.040 (h) of this Code whether improvements should be required for the designated remainder parcel. The improvement requirements may be imposed as a condition of the Certificate of Compliance. A notice shall be placed on the Certificate of Compliance that a building permit will not be issued for a designated remainder parcel until it is further subdivided in accordance with the provisions of this Title. For the purposes of this Title, a parcel designated as "not a part" shall be deemed to be a designated remainder parcel.
19.04.130 Consideration of Housing Needs. In making decisions pursuant to this Title, the decision maker shall consider the effect of that decision on the housing needs of the region and balance those needs against the public service needs of its residents and available fiscal and environmental resources.

19.04.140 Covenants for Easement.

(a) Whenever, under the provisions of this Code, an easement is necessary or required for parking, ingress, egress, emergency access, fire protection, light and air access, landscaping or open space purposes, the easement may be created by a covenant pursuant to this Section.

(b) At the time of recording of the covenant of easement, all the property benefitted or burdened by the covenant shall be in common ownership. The covenant shall be effective when recorded and shall act as an easement pursuant to Chapter 3 (commencing with Section 801) of Title 2 of Part 2 of Division 2 of the Civil Code except that it shall not merge into any other interest in the real property. Section 1104 of the Civil Code shall be applicable to any conveyance of the affected real property. The covenant of easement shall describe the real property subject to the easement and the real property benefitted by the easement. The covenant of easement shall also identify the approval permit or designation granted which relied upon or required the covenant.

(c) A covenant of easement shall be enforceable by the City, by the owner of the real property benefitted by the covenant and, by the successors in interest to the real property benefitted by the covenant. The covenant of easement shall be recorded in the Office of the County Recorder. The burdens of the covenant shall be binding upon and the benefits of the covenant shall inure to all successors in interest to the real property.

(d) The covenant of easement may be released upon the application of any person after a public hearing by the Planning Commission. Notice of the public hearing shall be given pursuant to Section 65091 of the California Government Code. The Planning Commission may authorize the Planning Director to record a release of the covenant if it determines that the restriction of the property is no longer necessary to achieve the land use goals of the City. An application for release of a covenant shall be accompanied by a fee in an amount as may be set by resolution of the City Council. A covenant of easement may be consolidated with any other application for discretionary approval under this Code.

(e) This Section is adopted pursuant to Article 2.7, commencing with Section 65870 of Chapter 4 of Division 1 of Title 7 of the California Government Code.

19.04.150 Notices. Whenever mailed or other written notice of a hearing decision or other matter is required to be given, the City may require the subdivider to give the notice and to certify the giving of notice by declaration under penalty of perjury.

19.04.160 Hold Harmless. It is a condition of each subdivision approval, or other approval under this Title, that the subdivider or his successor or assigns defend, indemnify and hold harmless the City and its officers, employees and agents from any claim, action or proceeding against the City or any of its officers, employees or agents to attach, set aside, void or annul the subdivision approval or other approval including any claim, action or proceeding based upon the adequacy of the environmental review for the project. The City Clerk shall
promptly notify the subdivider of any claim, action or proceeding. The City shall cooperate fully in the defense of the claim, action or proceeding. Notice under the provision may be given by mail to the subdivider's address as shown on the application unless the subdivider notifies the City Clerk of a different address. Nothing in this Section shall be construed to limit any indemnity or hold harmless clause in any subdivision improvement agreement or other agreement between City and the subdivider.

**19.04.170 Delegation of Duties.** In order to effectively administer and implement this Title, the City Manager, Director of Development Services, Planning Director or City Engineer may delegate administrative or other duties established by this Title to qualified members of the City staff, or to qualified independent contractors of the City. Whenever the terms "City Manager," "Director of Development Services," "Planning Director" or "City Engineer" are used in this Title, the term shall include the person or persons to whom specific responsibilities or administrative duties have been delegated. Responsibilities which require a professional license or certification for performance may be delegated only to a person or persons possessing the license or certification.

**19.04.180 Waiver of Tentative and Final Map for Mobilehome Park Conversions.** Other provisions of this Chapter notwithstanding, the City Council may, by resolution, waive the requirement for a tentative and final map or parcel map for a single-parcel subdivision for the conversion of an existing mobilehome park to tenant owned condominium ownership. Prior to granting such a waiver, the City Council shall make the following findings:

(a) The proposed subdivision shall not result in the displacement from the subject mobilehome park of tenants and/or owners of mobilehomes then located within the subject mobilehome park who do not purchase condominium unit(s) where the mobilehome which they own or within which they reside is located.

(b) The subdivision complies with such requirements then in effect as may have been established by the Subdivision Map Act or this Chapter pertaining to area, improvement and design, flood water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection and other requirements of the Subdivision Map Act of this Chapter.

When two-thirds or more of the owners of mobilehomes who are tenants in the mobilehome park sign a petition of interest for their purchase of the park for conversion the City Council shall waive the requirements for a tentative, final, or parcel map unless it finds:

(a) There are significant design or improvement requirements necessitated by health or safety concerns.

(b) There is a need to perform field surveys of the exterior boundary of the parcel or parcels on the map.

(c) The lot or lots of the park (not the spaces) were not created by a recorded subdivision map.

(d) The conversion would result into additional parcels (but not spaces).
The City Council may, in the resolution granting a waiver hereunder, impose such conditions as the City Council deems necessary to enable the City Council to make the aforementioned findings. The subdivider requesting a waiver as provided for herein shall make application therefore on such forms and may be provided for by the Director of Planning. For subdivisions resulting from a two-thirds petition, the Council shall impose only those conditions authorized by Section 66428(b) of the Map Act.

Upon the grant of a waiver as provided for under this Section, the City Engineer shall prepare a Certificate of Compliance or conditional Certificate of Compliance, as appropriate, for recordation in the Office of the County Recorder for the purpose of documenting the approval of the subdivision. The City Engineer shall not record or release for recordation a conditional Certificate of Compliance prepared pursuant to this Section unless and until the owner or owners of the property to be subdivided have entered into an agreement with the City to provide for the satisfactory completion of all conditions of the Certificate of Compliance and shall have provided improvement security, as appropriate, as provided for in Chapter 5 of the Subdivision Map Act. For subdivisions resulting from a two-thirds petition, improvement requirements shall be the subject of an unsecured improvement agreement prepared by the City Attorney.

Review of Engineering of Land Surveying Conditions. Whenever engineering or land surveying conditions are imposed on a tentative map or tentative parcel map, those conditions and the fulfillment thereof by the subdivider shall be reviewed by the City Engineer to determine compliance with generally accepted engineering or surveying practices.
CHAPTER 19.08

FEES

SECTIONS:

19.08.010  Development Services Fees for Processing, Examination, Review and Inspection, Complete Applications

At the time that an application for any of the following development entitlements is submitted to the City for consideration, filing or review, and in addition to any applicable Public Facilities Financing Fees as delineated in Chapter 17.44, and any applicable fees under Chapter 19.08.050 and/or 19.08.060, below, the applicable components of the Development Services Fees delineated in Title 17, Chapter 17.44 shall be paid to the City when and as described in Chapter 17.44: tentative map, tentative parcel map, vesting tentative map, vesting tentative parcel map, final map, parcel map, extension of any of the foregoing maps, reversion to acreage, Certificate of Compliance, adjustment plat, boundary adjustment and/or lot line adjustment. Applications for such development entitlements shall not be deemed accepted for processing, nor shall they be deemed complete for purposes of calculating the processing time, unless and until the applicable exaction, fee and/or cost has been paid. Further, all construction and installation of improvements shall be subject to plan review and inspection by the City Engineer or other appropriate Department, and the subdivider shall arrange for inspection prior to initiating construction or installation of improvements. The costs to the City for such review, examination and inspection shall be paid as in accordance with the Development Services Fees provisions of Chapter 17.44. Development Services Fee protests shall comply with the provisions Government Code Section 66020, and any amendments thereto.  (Ord. No. 2001-1129, 1-8-02)

19.08.020  Tentative Map Litigation Stay Fee

At the time of filing a request for a stay with the City Engineer, there shall be paid to the City a litigation stay processing fee equal to one-quarter of the fee described in 19.08.010.

19.08.030  Notice Fees

The subdivider shall pay a fee to cover the cost incurred by the City in giving any notice or providing any report required by this Title or the Subdivision Map Act.

19.08.045  Insufficiency of Funds

If payment of a fee is made by check which is later rejected for insufficiency of funds, all processing of the submittal shall cease and shall not be recommended until the fee plus a processing charge in an amount established by City Council resolution is paid in full in cash or by cashier's check.

Supplement No. 7 – 1994 Code
19.08.050 Drainage and Sewer Facilities - Payment of Fees Required. Prior to filing of any final map or parcel map, the subdivider shall pay, or cause to be paid, any fees for defraying the actual or estimated costs of constructing planned drainage facilities for the removal of surface and storm waters from local or neighborhood drainage areas or sanitary sewer facilities for local sanitary sewer areas established pursuant to Subdivision Map Act Section 66483.

19.08.060 Bridge Crossing and Major Thoroughfares.

(a) The purpose of this Section is to make provisions for assessing and collecting fees as a condition of approval of a final map or as a condition of issuing a building permit for the purpose of defraying the actual or estimated costs of constructing bridges or major thoroughfares pursuant to Subdivision Map Act Section 66484.

(b) Whenever the following words are used in this Section, they shall have the following meaning:

Construction means design, acquisition of right-of-way, administration of construction contracts and actual construction.

Major thoroughfare means any roadway as shown on the circulation element of the General Plan whose primary purpose is to carry through traffic and provide a network connecting to the State highway system.

(c) Whenever this Section refers to the circulation element of the General Plan or to the transportation or flood control provisions thereof, it shall mean the circulation element of the General Plan and the transportation and flood control provision thereof, heretofore adopted by the City pursuant to Chapter 3 of Title 7 of the Government Code, together with any additions or amendments thereto hereafter adopted.

(d) Prior to filing a final map which includes land within an area of benefit established pursuant to this Section, the subdivider shall pay, or cause to be paid, any fees established and apportioned to said property pursuant to this Section for the purpose of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways or canyons or constructing major thoroughfares.

(e) Prior to the issuance of a building permit for construction on any property within an area of benefit established pursuant to this Section, the applicant for such permit shall pay, or cause to be paid, any fees established and apportioned pursuant to this Section for the purpose of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, or canyons or constructing major thoroughfares, unless such fees have been paid pursuant to Subsection (d) of this Section.

(f) Notwithstanding the provisions of Subsections (d) and (e) of this Section:

(1) Payment of bridge fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of adoption of the boundaries of the area of benefit.
(2) Payment of major thoroughfare fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction of, any existing major thoroughfares serving the area at the time of the adoption of the area of benefit.

(g) Prior to establishing an area of benefit, a public hearing shall be held by the City Council, at which time the boundaries of the area of benefit, the costs, whether actual or estimated, of the planned bridge and for major thoroughfare improvements, and a fair method of allocation of costs to the area of benefit and fee apportionment, and the fee to be collected, shall be established.

Notice of the public hearing shall be given pursuant to Government Code Section 65091. In addition to the requirements of Government Code Section 65091, such notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost and the method of fee apportionment.

(h) At any time, not later than the hour set for hearing objections to the proposed bridge facility or major thoroughfare, any owner of property to be benefitted by the improvement may file a written protest against the proposed bridge facility or major thoroughfare or against the extent of the area to be benefitted by the improvements or against both of them. Such protests must be in writing and must contain a description of the property in which each signer thereof is interested, sufficient to identify the same and, if the signers are not shown on the latest equalized assessment roll(s) as the owners of such property, must contain or be accompanied by written evidence that such signers are the owners of such property. All such protests shall be delivered to the City Clerk and no other protest or objections shall be considered. Any protests may be withdrawn by the owner’s making the same, in writing, at any time prior to the conclusion of the public hearing.

(i) If there is a written protest filed with the City Clerk by the owners of more than one-half of the area of the property to be benefitted by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefitted, then the proposed proceedings shall be abandoned, and the City Council shall not, for one year from the filing of the written protests, commence or carry on any proceedings for the same improvements under the provisions of this Section.

If any majority protest is directed against only a portion of the improvement, then all further proceedings under the provisions of this Section to construct that portion of the improvement so protested against shall be abandoned and the City Council shall not, for one year from the date of the decision of the City Council on the hearing, commence or carry on any proceedings for that same portion of the improvement under the provisions of this Section; provided, however, that nothing in this Section shall prohibit the City Council within such one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefitted are in favor of going forward with such portion of the improvement acquisition.

(j) If the City Council finds that a majority protest has not been made, they shall make the determinations required by Subsection (g) of this Section and decide whether or not to confirm the area of benefit.
The Council shall announce its decision by resolution, which shall be recorded with the County Recorder. There are hereby authorized and established, fees for the purpose of defraying the actual or estimated cost of constructing the bridge or thoroughfare as described in such resolution as the Council may adopt pursuant to this section. Said fees and the area of benefit to which such fees are apportioned shall be established as set forth in said resolution. Such apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for such property or portions thereof.

(k) Notwithstanding the provision of Subsection (j) of this Section, payment of such fees shall not be required for:

(1) The use, alteration or enlargement of an existing building or structure or the erection of one or more buildings or structures accessory thereto, or both, on the same lot or parcel of land; provided the total value, as determined by the City Engineer, of all such alteration, enlargement or construction completed within any one-year period does not exceed one-half of the current market value, as determined by the City Engineer, of all existing buildings on such lot or parcel of land, and the alteration or enlargement of the building is not such as to change its classification of occupancy as defined in Uniform Building Code Section 501.

(2) The following accessory buildings and structures: private garages, children's playhouses, radio and television receiving antennas, windmills, silos, tank houses, shops, barns, coops and other buildings which are accessory to one-family or two-family dwellings.

(l) Upon application by the subdivider or applicant for a building permit, the City Council may accept consideration in lieu of fees required pursuant to this Section; provided:

(1) The City Council finds, upon recommendation of the City Engineer, that the substitute consideration has a value equal to or greater than the fee; and

(2) The substitute consideration is in a form acceptable to the City Council.
CHAPTER 19.12

MAJOR SUBDIVISIONS - PROCEDURE

SECTIONS:

19.12.010 Tentative Map Required
19.12.015 Application for Processing
19.12.016 Conversion of Mobilehome Parks
19.12.020 Grading Plan
19.12.030 Preliminary Title Report
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19.12.100 Expiration of Tentative Maps
19.12.110 Extension of Tentative Map
19.12.120 Revised Tentative Map
19.12.130 Vesting Tentative Maps

19.12.010 Tentative Map Required.

(a) Any person proposing to create a major subdivision shall file a tentative map pursuant to this Chapter with the Developmental Services Department. The City Council shall not approve a final map unless prior thereto a tentative map of the subdivision shown thereon shall have been filed with and reported on by the Planning Commission. Prior to filing a tentative map, the subdivider or his authorized agent may confer with the Planning Director and the City Engineer regarding the preparation of the map. The rules and regulations adopted pursuant to Section 19.12.015 may make the pre-filing conference mandatory. A proposed tentative map may not be filed unless it conforms to the requirements of this Chapter.

(b) The Development Services Director shall not accept a tentative map for processing or filing unless the Director finds that:

(1) The requirements of Title 18 (Environmental Review) of this Code have been met; and

(2) All approvals required by Title 20 (Zoning) for the project have been given or issued. (Ord. No. 91-903, 10-22-91)

(c) Notwithstanding the provisions of Subsection b), a tentative map may be processed concurrently with documents, permits or approvals required by the provisions of this Code referenced in Subsection b) if the applicant for the tentative map first waives the time limits for processing, approving, conditionally approving, or disapproving the tentative map established by this Title or the Subdivision Map Act to the extent that those time limits may be shorter than the

(d) A tentative map may, but need not be, based on a detailed, accurate final survey of the property.

19.12.015 Application for Processing.

(a) All tentative maps shall be in the form and shall contain and be accompanied by the data specified by this Title or by the rules and regulations approved by the Developmental Services Director and the City Council.

(b) The Developmental Services Director shall not accept a tentative map for processing or filing unless the Developmental Services Director finds that:

(1) The requirements of Title 20 (Zoning) of this Code have been met; and

(2) That all approvals required by Title 20 for the project have been given or issued.

(c) Notwithstanding the provisions of Subsection (b), a tentative map may be processed concurrently with documents, permits or approvals required by the provisions of this Code regarding conversion of mobilehome parks or zoning, if the applicant for the tentative map first waives the time limits for processing, approving, conditionally approving, or disapproving the tentative map established by this Title or the Subdivision Map Act to the extent that those time limits may be shorter than the time period established by Government Code Sections 65950 et seq.

19.12.016 Conversion of Mobilehome Parks. At the time of filing a tentative subdivision map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report specified by Section 19.12.030 of this Code. The subdivider shall make a copy of the report available to each resident of the mobilehome park within fifteen days of the filing of the tentative parcel map. The subdivider may be required to mitigate the adverse impacts of the conversion on the ability of displaced mobilehome park residents to find adequate space in another mobilehome park. (Ord. No. 91-903, 10-22-91)

19.12.020 Grading Plan. A grading plan showing any grading proposed for the creation of building sites within the subdivision, drainage configuration, and for construction or installation of improvements to serve the subdivision shall be filed with each tentative map. The grading plan, together with the original topographical contours, shall be shown on the tentative map or on a separate sheet accompanying the tentative map. This plan shall indicate approximate earthwork volumes of proposed excavation and filling operations. Profile sections showing existing topographical contours along with proposed grading shall be submitted along with the grading plan. The grading plan shall conform to all requirements of Section 17.32.040. The level of detail required may be less than would be required for actual construction but shall be sufficient to permit analysis of all onsite and offsite environmental impacts and mitigation measures including, but not limited to, best management practices. The authority considering an application for a tentative map shall also consider the grading plan, and if the tentative map is approved or conditionally approved, the grading plan submitted under this section shall be marked to identify it as the grading plan that was a basis for approval of the tentative map. Any grading permit obtained pursuant to the Grading Code (Chapter 17.32) for the subdivision shall conform to the grading plan thus marked, and any substantial deviation from this grading plan shall require an amendment to the grading plan under Chapter 17.32. In the event no grading is proposed, a
A statement to that effect shall be filed with the tentative map. (Ord. No. 2001-1123, 11-27-01)

**19.12.030 Preliminary Title Report.** A preliminary title report for the property being subdivided issued not more than six (6) months before the date of filing shall be filed with each tentative map.

**19.12.040 Size of Map.** The size of such tentative map shall be 18 inches by 26 inches and the scale shall not be less than one hundred feet to the inch. When necessary, the size of the tentative map may be larger than 18 inches by 26 inches, but in no event shall such size exceed 24 inches by 36 inches.

**19.12.050 Information on Map.** Each tentative map shall contain the following information:

- (a) Name and address of the owner whose property is proposed to be subdivided and the name and address of the subdivider.
- (b) A statement that the owner(s) has (have) no title or interest in title to property contiguous with or adjacent to the proposed subdivision and that the owner(s) consent to the filing of the tentative map. The statement shall be signed by the owner(s).
- (c) Name and address of registered civil engineer/licensed surveyor who prepared the maps.
- (d) North point, oriented to the top or left side of sheet.
- (e) Scale; vicinity map.
- (f) Date of preparation.
- (g) The location, width and proposed names of all streets within the boundaries of the proposed subdivision and approximate grades thereof.
- (h) Location and width of alleys.
- (i) Name, location and width of adjacent streets.
- (j) Lot lines and approximate dimensions and numbers of each lot.
- (k) Tax Assessor Parcel Number(s) of the property.
- (l) Preliminary soils report information, unless waived pursuant to Section 19.04.080.
- (m) Location and width of watercourses (both natural and man-made), areas subject to inundation from floods and location of structures, irrigation or drainage ditches and other permanent drainage features.
- (n) Contours at two-foot intervals, unless other contour intervals are approved for a map by the City Engineer.
- (o) Location of existing buildings and permanent structures.
- (p) Location of all major vegetation, major rock outcroppings or environmentally
sensitive areas, showing size and type.

(q) Legal description of the exterior boundaries of the subdivisions.

(r) Width and location of all existing or proposed public or private easements.

(s) Classification of lots as to intended residential, commercial, industrial or other uses.

(t) Location of railroads.

(u) Location of radii of curves.

(v) Proposed name and City tract number of the subdivision.

(w) Any proposed phasing by units.

(x) Number of units to be constructed when a common interest development is involved.

(y) Proximity to City boundaries.

(z) Off-site data or information, including contours, existing structures, etc., for a minimum horizontal distance of 100' beyond the boundaries of the subdivision.

(aa) Any other off-site data or information deemed necessary by the Developmental Services Director for the review of the submitted map.

**19.12.060 Supplemental Information.** The tentative map shall show, or be accompanied by, reports and written statements from the subdivider giving essential information regarding the following matters:

(a) Source of water supply.

(b) Type of street improvement and utilities which the subdivider proposes to install, along with the locations of existing and proposed utility facilities.

(c) Proposed method of sewage disposal, including location of facilities.

(d) Proposed storm water sewers or other means of drainage, including the location of such facilities and proposed drainage patterns.

(e) Protective covenants or restrictions to be recorded by the subdivider.

(f) Proposed tree planting.

(g) The names and addresses of all agencies, whether public or private, which will provide fire protection, school, water, sewer, cable and electrical facilities for the property being subdivided.

(h) A public facilities phasing plan consistent with Chapter 20.12 and the plans prepared pursuant to that Chapter.

(a) Whenever a public hearing is required by this Title, notice shall be given as provided in Government Code Section 66451.3. The City Council may, by resolution, establish additional notice requirements.

(b) Failure by any person to receive notice specified in this Section shall not invalidate any action taken pursuant to this Title.

(c) The Director of Developmental Services may require the subdivider to give the notice required by this Section. Whenever the subdivider is required by this Title or the Subdivision Map Act to give any notice, or provide any report or information to any person other than the City, the subdivider shall submit proof, sufficient to allow the Planning Commission or the City Council to find that the notice has been given or the reports or information provided. Such proof may include declarations under penalty of perjury.

19.12.070 Developmental Services Director's Duties.

(a) The Developmental Services Director, or his designee, shall obtain, for the Planning Commission, the recommendation of the Planning Director, City Engineer, Public Works Director and the Fire Chief, or their authorized representatives, with respect to the design of the proposed subdivision and the kind, nature and extent of the proposed improvements. Recommendations may also be obtained from neighboring cities, affected special districts, CalTrans, the Office of Inter-Governmental Management, the State Department of Fish and Game, the Army Corps of Engineers, and any other person affected by, or interested in, the proposed subdivision, if such recommendations are found to be necessary.

(b) Within ten days after the acceptance for filing of a tentative map, the Developmental Services Director shall send notice of filing thereof with information about the location, number of units, density and any other information relevant to school districts to the governing board of any school district, water district, sewer or sanitation district, or fire district within those boundaries the proposed subdivision is located. Such governing board shall make a written report thereon to the City indicating the impact of the proposed subdivision and its recommendations within 20 working days after said notice was mailed, or the governing board shall be deemed to have approved the proposed subdivision.

(c) The Developmental Services Director shall prepare a staff report to the Planning Commission containing recommendations regarding the tentative map. A copy of the staff report and recommendations shall be furnished to the subdivider and to each tenant of the subject property in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project at least three days prior to any hearing or action on such map by the Planning Commission.

(d) The Developmental Services Director shall set the map for public hearing before the Planning Commission.

(e) The Developmental Services Director may delegate the duties under this Section.

19.12.080 Planning Commission Duties. The Planning Commission is authorized and directed to carry out the following actions:
(a) Hold a public hearing on all tentative maps. Any interested person may appear at the hearing and be heard.

(b) Investigate the design and improvements proposed for each subdivision on the tentative map filed with it and at the conclusion of the hearing on the map;

1. Approve, conditionally approve or disapprove the map; or

2. Continue the public hearing or refer the matter back to the staff for further review.

(c) Whenever the Planning Commission approves, conditionally approves or disapproves a tentative map, it shall take such action within 50 days following the certification of the Environmental Impact Report, approval of a negative declaration or determination by the City that the project is exempt from the provisions of the California Environmental Quality Act, and shall announce its decision by resolution. Any decision to approve or conditionally approve a tentative map shall include a description, pursuant to the provisions of this Title, of the kind, nature and extent of any improvements required to be constructed or installed in or to serve the subdivision. Any decision to disapprove a tentative map shall be accompanied by a finding, identifying the requirements or conditions which have not been met or performed. If the Planning Commission fails to act within the required time limit, the tentative map, as filed, shall be deemed approved, insofar as it complies with the applicable requirements of this Code, including, but not limited to, the provisions of this Title and the provisions relating to environmental review, the General Plan, zoning and growth management.

(d) Whenever the Planning Commission approves or conditionally approves a tentative map, it shall also establish, pursuant to the provisions of this Title, the kind, nature and extent of the improvements to be constructed or installed in or to serve the subdivision for which such tentative map if filed along with an appropriate time schedule for construction, installation or other provisions of the facilities. Improvements shall be constructed and installed in accordance with the City standards.

(e) Whenever the Planning Commission approves, or conditionally approves, a tentative map providing for supplemental size of improvements, the establishment of benefit districts, the execution of reimbursement agreements or the setting of any fees under the provisions of Section 19.08.040 of this Code the map shall be filed with the City Clerk and shall be forwarded to the City Council which shall hold a public hearing on the issue of the improvements and fees.

(f) Whenever a tentative map is processed concurrently with a request for a zone change, General Plan amendment or other zoning approval necessary for the development, the decision of the Planning Commission shall be considered a recommendation and the tentative map shall be heard by the City Council pursuant to Section 19.12.090. No appeal shall be necessary or appropriate in order to vest the Council with jurisdiction under this provision. The City Clerk shall notice the tentative map for hearing by the City Council concurrently with the hearing on the zone change, General Plan amendment or other zoning approval.


(a) The subdivider, any tenant of the subject property in the case of a proposed conversion of residential real property to a condominium project, community apartment project or
Any appeal shall be filed with the City Clerk within ten days after the date of the action of the Planning Commission from which the appeal is being taken and shall be accompanied by a filing fee in an amount established by City Council resolution. For the purposes of this Section, the date of the Planning Commission action shall be the date of adoption of a resolution regarding a subdivision, or if the Commission fails to adopt a resolution regarding a subdivision within the time period required by law, for Planning Commission action from the date that the subdivision is deemed approved.

Upon the filing of an appeal, the City Clerk shall set the matter for public hearing on the agenda of the first available Council meeting after the date of the filing of the appeal. For the purposes of this Section, the first available Council meeting is the first meeting at which a legally noticed public hearing can be held. Within ten days following the conclusion of the hearing, the City Council shall render its decision on the appeal. The hearing on an appeal shall be a de novo hearing and the City Council may approve, conditionally approve or deny the subdivision in the Council's discretion. No person shall raise a matter before the City Council which was not raised before the Planning Commission, unless the person can show that the matter is based on new information which was not available at the time of the Planning Commission hearing, or that the person for good cause was unable to raise the matter at the time of the Commission hearing. The decision of the City Council is final.

(b) The decision of the City Council shall be consistent with the provisions of this Code and the Subdivision Map Act and shall be supported by appropriate findings.

(c) If the City Council fails to act on an appeal within the time limits specified in this Section, the appeal shall be deemed denied and the Planning Commission decision shall be deemed to be the decision of the City Council.

(d) Any interested person adversely affected by a decision of the Planning Commission regarding a subdivision which is not subject to appeal, may file a complaint with the City Council concerning that decision. The complaint shall be filed with the City Clerk within ten days after the action of the Planning Commission which is the subject of the complaint. Upon the filing of the complaint, the City Council shall set the matter for hearing. The hearing shall be held within thirty days after the filing of the complaint. The hearing shall be limited to the matters stated in the complaint and to the record of the Planning Commission hearing.

Upon conclusion of the hearing, the City Council shall, within seven days, declare its findings based upon the testimony produced before the Planning Commission. It may sustain, modify, reject or overrule any recommendations or rulings of the Planning Commission and may make any findings which are not inconsistent with the provisions of the Subdivision Map Act or this Title.

(e) In the case of a conversion of residential real property to a common interest development project, notice of each hearing provided for in this Section shall be sent by United States mail to each tenant of the subject property at least three days prior to the hearing. The notice requirement of this paragraph shall be deemed satisfied if the notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2 of the California Government Code, fees may be collected from the subdivider or from person appealing or filing a complaint for expenses incurred under this Section.
**19.12.090 City Council Action.** Whenever the City Council is required to consider a tentative map pursuant to Section 19.12.080 (f) or 19.12.085, they shall consider the matter and shall approve, conditionally approve or disapprove the tentative map within the time limits prescribed by the Subdivision Map Act after the date of the first public hearing set to consider the matter. The City Council shall announce its decision by resolution. Any decision to approve or conditionally approve a tentative map shall include a description, pursuant to the provisions of this Title, of the kind, nature and extent of any improvements required to be constructed or installed in, or to serve the subdivision. Any decision to disapprove a tentative map shall be accompanied by a finding, identifying the requirements or conditions which have not been met or performed. If the City Council fails to act within the required time limit, the recommendations of the Planning Commission regarding the tentative map shall be deemed to be the decision of the City Council in regard thereto.

**19.12.095 Required Findings.**

(a) A tentative map shall not be approved unless the decision-making body finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan, any applicable specific plans and any applicable zoning provisions of this Code and that all zoning approvals and permits required for the project have been given or issued. Approval or conditional approval of a map may be given concurrently with any zoning approval or permit required for the project by this Code.

(b) A tentative map shall not be approved or conditionally approved if the decision-making body finds any of the following:

1. That the proposed map is not consistent with applicable general and specific plans, and with applicable zoning provisions of this Code.

2. That the design and improvements of the proposed subdivision are not consistent with applicable general and specific plans and with applicable land use and zoning provisions of this Code.

3. That the site is not physically suitable for the proposed type of development.

4. That the site is not physically suitable for the proposed density of development.

5. Unless an Environmental Impact Report was prepared in respect to the project and a finding was made pursuant to Section 21081(c) of the Public Resources Code, that specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the Environmental Impact Report.

6. That the design of the subdivision or the type of improvements are likely to cause serious public health problems.
(7) That the design of the subdivision or the type of improvements will conflict with easements of record or easements established by court judgment, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the City Council may approve a map if they find that alternate easements for access or for use will be provided and, that these will be substantially equivalent to ones previously acquired by the public.

(8) That all requirements of the California Environmental Quality Act, as amended, ("CEQA") and the environmental protection provision of this Code, have not been met.

(9) That the proposed map fails to meet or perform any of the requirements or conditions of this Title or the Subdivision Map Act.

(10) In the case of conversions of residential real property to a common interest development, that all required notices and reports to tenants have not been or will not be sent as required by law.

(11) Subject to the exceptions contained in Government Code Section 66474.4, the property is subject to a contract entered into pursuant to the Land Conversion Act of 1965 (Williamson Act) and the parcels resulting from the subdivision would be too small to sustain agricultural use. The determination of ability to sustain agricultural use shall be made according to the provisions to Government Code Section 66474.4.

19.12.100 Expiration of Tentative Maps.

(a) The approval or conditional approval of a tentative map shall expire 24 months from the date the map was approved or conditionally approved unless it is extended pursuant to Section 19.12.110 of this Chapter.

(b) The time period specified in Subsection (a), including any extension thereof, shall not include any period of time during which a development moratorium, as defined in Government Code Section 66452.6, imposed after approval of the tentative map, is in existence; provided, however, that the length of such moratorium does not exceed five years.

(c) The period of time specified in Subsection (a), including any extension thereof granted pursuant to Section 19.12.110, shall not include any period of time during which a lawsuit involving the approval or conditional approval of the tentative map is, or was, pending in a court of competent jurisdiction, if a stay of such time period is approved by the City Council pursuant to this Subsection. An application for a stay must be filed by the subdivider in writing with the Director of Developmental Services within ten days of service on the City of the initial petition or complaint in such lawsuit. The application shall state the reasons for the requested stay and include names and addresses of all parties to the litigation. The Director of Developmental Services shall notify all parties to the litigation of the date when the application will be heard by the City Council. Within forty days after receiving such application, the City Council shall approve or conditionally approve the stay for up to five years or deny the requested stay.

(d) Prior to expiration of the tentative map, a final map conforming to the approved or conditionally approved tentative map may be filed with the City Council for approval if all of the following have been met:
(1) All required certificates or statements on the final map have been signed and, where necessary, acknowledged;

(2) The City Engineer has determined that the final map conforms with the requirements of this Title, the Subdivision Map Act and the tentative map and has so stated on the map; and,

(3) The City Attorney has approved the final map as to form.

(e) The final map shall be deemed final with the City Council on the date which the complete map is received by the City Clerk. Once a timely and complete filing of a final map for approval by the City Council has been made pursuant to this Code, subsequent actions of the City, including, but not limited to, processing, approving or recording may occur after the date of expiration of the tentative map.


(a) A tentative map for which the filing of multiple or "phased" final maps is not authorized may be extended as follows:

(1) The subdivider may request an extension of the approved or conditionally approved tentative map by written application to the Developmental Services Department. The application shall be filed not more than ninety days before the date of expiration as established by Section 19.12.100. The application shall state the reasons for the requested extension.

(2) At any time within sixty days after the expiration of the approved or conditionally approved tentative map for which timely application for extension was filed, the Planning Commission may extend the map for a period or periods not exceeding a total of three years. The determination as to whether an extension for a longer period is warranted shall be made giving consideration to the scope of the project, the previous expenditures made by the subdivider in furtherance of the subdivision, and the effect of the extension of the map on the community. An extension shall not be granted or conditionally granted for the subdivision unless the Planning Commission finds that the design and improvements, including public facilities phasing, of the subdivision are consistent with the General Plan, any applicable specific plan, this Title and the provisions of Title 20 (Zoning) of this Code. When granting or conditionally granting an extension, the Planning Commission shall also find that the subdivider is diligently pursuing those act required to obtain a final map for the subdivision. In granting an extension, the Planning Commission may impose new conditions and may revise existing conditions. The Planning Commission decision to deny or further condition an extension may be appealed by any interested party to the City Council. The appeal shall be filed in writing with the City Clerk within 10 days of the Planning Commission's decision. Denial of an extension shall be at the sole discretion of the Planning Commission and City Council.
(b) A tentative map for which the filing of multiple or "phased" final maps has been authorized, may be extended as follows:

(1) If the subdivider is not subject to a requirement to construct or improve, or finance the construction or improvement of public improvements outside the boundaries or the tentative map, the cost of which is $125,000 or more, as determined at the time of the tentative map approval, then the subdivider may request an extension to the provisions of Subsection (A) of this Section.

(2) When the subdivider is subject to a requirement to construct or improve or finance the construction or improvement of public improvements outside the boundaries of the tentative map, the cost of which is $125,000 or more, as determined at the time the tentative map is approved, then each filing of a final map authorized by Section 19.20.020 (c) of this Code shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date it would otherwise have expired as provided in this Section or the date of the previously filed final map, whichever is later. The total combined time for extensions under this Section and Subsection (b)(1) shall not exceed 10 years from the date of the approval or conditional approval of the tentative map. However, a tentative map for property subject to a development agreement authorized by the State Government Code and City implementing ordinance may be extended for the period of time provided for in the agreement but, not beyond the duration of the agreement.

(3) "Public improvements" include traffic controls, roads, streets, highways, freeways, bridges, over-crossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities. The provisions of this Subsection shall be the sole method for extending maps for which multiple or phased final maps may be filed. Improvements on or abutting the boundaries of the subdivision shall not be considered to be outside the subdivision.

(4) The $125,000 limit established by inspection shall be periodically increased as provided in Section 66452.6 of the Subdivision Map Act.

(c) Extensions of vesting tentative maps shall be governed solely by the provisions of Chapter 19.17 of this Title and by the provisions of Subsection (b)(2) of this Section.

19.12.120 Revised Tentative Map.

(a) Where a subdivider desires to revise or alter a proposed subdivision for which a tentative map has previously been approved, the subdivider may file with the Department of Developmental Services, a revised tentative map subject to payment of the required fees.

(b) A revised tentative map shall conform to the following requirements:

(1) The proposed subdivision shown on such map shall include only one contiguous area consisting of all or a portion of the subdivision shown on the approved tentative map together with such additional land, if any, as the subdivider desires to include.
(2) The map shall contain all of the information required on tentative maps and shall be accompanied by such data as is required to be filed with tentative maps.

(c) A revised tentative map shall be filed within 18 months after the approval of the tentative map by the City Council, or Planning Commission for tentative maps which it is authorized by this Title to approve or conditionally approve or, if an extension of time is granted, within the period specified in such extension.

(d) Upon the filing of a revised tentative map and payment of the prescribed fee, such revised tentative map shall be treated in all respects as an original tentative map and shall be processed, approved, conditionally approved or disapproved in the same manner as a tentative map. Upon approval of a revised tentative map, the subdivider shall have 18 months from the approval or conditional approval of the revised tentative map within which to obtain the final map. Approval of a revised map shall void the prior map.

19.12.130 Vesting Tentative Maps. The vesting tentative map may be filed and processed in the same manner and subject to the same requirements as a tentative map except as provided in this Chapter and Chapter 19.17 of this Title.
19.16.010  Design of Subdivision. All major subdivisions for which a tentative map is required by this Title shall conform to the following design requirements:

(a) Except as approved by the City Engineer, no lot shall include land in more than a single tax code area. A building permit shall not be issued for a lot which includes land in more than one tax code area and a note reflecting such restriction shall be included on the final map.

(b) Every lot shall contain the minimum lot area specified in zoning provisions of this Code for the zone in which the lot is located at the time the final map is submitted to the City Council for its approval; provided, however, if no lot area is established, every lot shall contain a net area of no less than 7500 square feet.

(c) At the time the final map is submitted to the City Council for its approval every lot shall front on a dedicated street or a street offered for dedication unless lots on private streets have been authorized pursuant to the zoning provisions of this Code; except for subdivisions for commercial or industrial purposes where the advisory agency or legislative body may permit lots fronting on private streets or common access easements. Whenever access to lots is provided by private streets or common access easements the subdivider shall establish a method satisfactory to the City Engineer and City Attorney to assure maintenance of the streets or easements.

(d) Every lot shall have a width as specified in the zoning provisions of this Code for the zone in which the lot is located at the time the final map is submitted.
(e) Through lots shall not be allowed unless vehicular access rights are relinquished to one of the abutting streets as approved by the City Engineer.

(f) Unless otherwise authorized by the provisions of Title 20, lot depth shall be at least 90 feet. Lot depth shall be no greater than three times the average width except for minor subdivisions where the proposed lot depth to width ratio is less than that of the existing lot.

(g) Whenever practical, subdivision of residential property abutting prime, major and secondary arterial routes shown on the circulation element of the City General Plan, railroads, transmission lines and open flood-control channels shall be designed so that the lots do not front on nor have access from such right-of-ways.

(h) Whenever practical, side and rear lot lines shall be located along the top of man-made or natural slopes.

(i) Bicycle routes shown on the City's General Plan shall be included in the subdivision when such routes pass through or abuts the subdivision.

Whenever rights-of-way for streets are required to be dedicated in subdivisions containing 200 or more lots, the subdivider shall include bicycle routes when necessary and feasible for the use and safety of the residents.

(j) Consideration shall be given to assuring proper development of abutting properties in the development of the circulation plan.

(k) Each lot shall be designed to connect to the public sanitary sewer system. If a private sewage disposal system is proposed, the necessary permits for a private sewage disposal system for each lot shall be secured before issuance of the final map.

(l) Unless the City Engineer determines that good engineering practice requires otherwise, all City facilities shall be designed to be located with street right-of-way dedicated to the City.

**19.16.015 Design for Passive or Natural Heating Opportunities.** In addition to the requirements of Section 19.16.010, the design of a major subdivision for which a tentative map is required by this Title, shall also provide to the extent feasible for future passive or natural heating or cooling opportunities in the subdivision.

Examples of passive or natural heating opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

Examples of passive or natural cooling opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be divided, and to other design and improvements requirements and, such provisions
shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or structure under applicable planning and zoning in force at the time the tentative map is filed.

The requirements of this Section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.

For the purposes of this Section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, topographical, social and technological factors as the City Council or Planning Commission may determine.

19.16.020 Conformance to Street Plans. All streets shown on a tentative map shall be in substantial conformance to the circulation element of the General Plan and they shall relate to the existing streets in the areas adjoining the subdivision. Such streets shall also conform to any applicable master plans, specific plans or other officially adopted street plans and to City street standards.

19.16.030 Conversion of Mobilehome Park.

(a) At the time of filing a tentative map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a plan specified by Government Code Section 66427.4.

(b) If the provisions of Chapter 20.44 of this Code apply to the mobilehome park, the plan specified in Subsection (a) of this Section shall include the matters specified in Chapter 16.12 of this Code.

(c) In determining the impact of the conversion on displaced mobilehome park residents, the plan shall address the availability of adequate replacement space in mobilehome parks. The subdivider shall make a copy of the plan available to each resident of the mobilehome park at least 15 days prior to the hearing on the map. If Chapter 19.12 applies, the subdivider shall also provide all notices required by Chapter 19.12 of this Code. The Planning Commission or City Council may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park and, shall make all findings required by Section 16.12.050.

(d) When approving or conditionally approving a tentative map for conversion of a mobilehome park, the Planning Commission or the City Council shall do one of the following:

(1) Mitigate any significant adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park by zoning additional land for mobilehome parks.

(2) Find that there is sufficient land zone for mobilehome parks or sufficient space available in other mobilehome parks for the residents who will be displaced.

(3) Require the subdivider to mitigate any adverse impact pursuant to Subsection (c).
(4) Find that the mitigation required by Subsection (d)(1) and (d)(3) are not feasible. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, topographical, social and technological factors.

19.16.040 Dedication.

(a) The subdivider shall offer to dedicate rights-of-way for streets within and adjacent to or fronting the subdivision in accordance with City standards.

(b) No final map shall be approved unless the street or streets providing access to the subdivision are offered for dedication to a city, county or state, whichever has jurisdiction, and the street or streets meet City standards for right-of-way width.

(c) Streets which are proposed on the boundaries of a subdivision shall have a dedicated width of no less than one-half the right-of-way width shown on the General Plan or City street standards, plus twelve feet. Access rights shall be relinquished along the outer edge of the right-of-way. Additional dedication may be required if a median is needed.

(d) Where it has been determined by the City Engineer to be necessary to extend a street beyond the boundaries of a subdivision to provide adequate circulation for residents of the subdivision, the subdivider shall cause the required easements to be dedicated to the City and shall improve the easements in accordance with City standards.

(e) Whenever any land to be subdivided is bounded by an inlet, bay, estuary, lagoon, river or stream, there shall be a street to and along such inlet, bay, estuary, lagoon, river or stream, or adequate public access to and along such boundary shall be provided or be made otherwise available in lieu of such street or any combination as the City Council or Planning Commission may require to ensure compliance with Chapter 4, Article 3.5 of the Subdivision Map Act.

(f) Where a drainage facility or flood-control facility is necessary for the use of lot owners or for the protection of lots, adequate rights-of-way free and clear of all liens and encumbrances, for such drainage facilities or flood-control facilities shall be offered for dedication to the City or to such other public entities as the City Council designates and shall be shown on the map.

(g) Where it is necessary to extend a drainage facility or flood-control facility beyond the boundaries of the subdivision for adequate drainage, or flood-control needs, the required rights-of-way shall be offered for dedication.

(h) Drainage facilities and flood-control facilities within and without the subdivision shall be provided so as to carry storm run-off, both tributary to and originating within the subdivision.
(i) The subdivider shall offer to dedicate land for park purposes, pay fees in lieu thereof, or do a combination of both, pursuant to this Title or pursuant to Title 20.12 and the plans adopted thereto, or both.

(j) The subdivider shall offer to dedicate in accordance with City standards the necessary right-of-way for bicycle routes under the following circumstances:

(1) When such routes, as shown on the City General Plan, pass through or abut the subdivision.

(2) When a subdivider is required to dedicate rights-of-way for streets in a subdivision containing 200 or more lots and the City Council finds that such route is necessary and feasible for the use and safety of the residents.

(k) The subdivider may be required as a condition of approval of the tentative map to dedicate land for elementary school purposes. The requirement shall be subject to the provisions of Section 66478 of the Subdivision Map Act.

(l) Where required, a dedication or offer of dedication of a street shall include a waiver of direct access to such street from any property shown on a final map abutting thereon and, if the dedication is accepted, such waiver shall become effective in accordance with the provisions of the Subdivision Map Act.

19.16.045 Dedication Procedure.

(a) Dedications shall be made according to the following provisions:

(1) Unless otherwise provided herein, and authorized by the City Engineer, all dedications or offers of dedication required by the provisions of this Title or by condition of a subdivision approval, shall be by certificate on the final or parcel map.

(2) An offer of dedication shall be in such terms as to be binding on the owners, his heirs, assigns or successors in interest, and except as provided in Section 66477.2 of this Act, shall continue until such dedication is accepted or the offer is abandoned or otherwise terminated. Any such dedication or offer of dedication shall be free of any lien burden or encumbrance which would interfere with the purposes for which the dedication or offer of dedication is required.

(3) The subdivider shall provide a current preliminary title report or equivalent proof of title satisfactory to the City Engineer.

(4) At the time the authorized agency approves the final or parcel map, it shall also accept, subject to improvement, or reject any offer of dedication. The City Clerk is authorized to act on behalf of the City in rejecting or accepting dedications with respect to minor subdivisions.

(5) At the time of making a dedication or offer of dedication the Subdivider shall either:
(a) Warrant that all property dedicated or offered for dedication is free from hazardous or toxic waste or material, or other environmental contamination of which the subdivider has knowledge or reasonably should have knowledge through ownership of the property or through a reasonable investigation conducted in due diligence to discover the existence of such waste, material or contamination, or

(Ord. No. 91-903, 10-22-91)

(b) If the subdivider cannot make the warranty referred to herein, disclose to the public agency to whom the dedication or offer of dedication is made the nature and extent of any hazardous or toxic waste or material, or environmental contamination of which the subdivider has knowledge or has discovered through an investigation of the subject property and shall submit a plan where by the subdivider will mitigate or remedy any effects of the waste, material or contamination on the property as required by any public agency with jurisdiction over the mitigation or remedying of such effects to the extent necessary to put the subject property into a condition that it may be used for its intended purpose by the public agency to whom it is dedicated or offered for dedication. The agency to which the property is to be dedicated may require the subdivider to complete any mitigation plan, or plan to remedy, before the offer of dedication is accepted. (Ord. No. 91-903, 10-22-91)

(b) The subdivider may file a protest in accordance with Section 66475.4 of the Subdivision Map Act, at the time of the imposition of a dedication requirement or within the time established by this Title for an appeal of a decision. The City Council shall hold a public hearing to determine if the protested requirements is excessive. If the dedication requirement is determined to be excessive, the City Council may require amendment of the tentative subdivision map, redesign of the subdivision, pay just compensation, or delete or modify the dedication found to be excessive. A dedication requirement is excessive to the extent it is not reasonably necessary to meet public needs arising as a result of the subdivision. This Section shall not apply to dedications imposed to mitigate identified adverse environmental impacts on the project or imposed pursuant to the provisions of a specific plan or a plan adopted pursuant to Chapter 20.12 of this Code, or as a condition of a zoning approval. "Dedication" shall have the meaning established by Section 66475.4 of the Subdivision Map Act.

19.16.050 Required Improvements.

(a) No final map shall be approved, whether by the City Council or otherwise, unless the following requirements have been met;

(1) The subdivider shall grade and improve or agree to grade and improve all land dedicated or to be dedicated for streets or other improvements, bicycle routes and all private streets and private easements shown on or required by the tentative map, in accordance with City standards;

(2) The subdivider shall install, or agree to install, all drainage and flood-control structures and facilities as required by the City Engineer, in conformance with City standards of other appropriate agencies as the City Engineer adopts;
(3) The subdivider shall install, or agree to install, fire hydrants and connections of a type and location approved by the San Marcos Fire Chief. Fire hydrant connections, including valves, shall be installed to the rear or back of the sidewalk;

(4) The subdivider shall provide all necessary easements and rights-of-way to accommodate all streets, drainage and flood control structures and facilities and sewer systems extending beyond the boundaries of the subdivision;

(5) The subdivider shall provide for the subdivision to be connected to a domestic water system approved by the City and all water mains shall be of a material subject to the requirements of the water company or agency serving the subdivision. The subdivider shall install, or agree to install, all required water systems necessary to serve the subdivision and that all water lines, appurtenances and service connections shall be constructed or laid prior to paving of streets; and

(6) The subdivider shall install, or agree to install, sewer lines of a type and size approved by the City Engineer to the property line of each lot within the subdivision and all sanitary sewer lines, appurtenances and service connections have been constructed or laid prior to paving or provisions have been made to ensure the construction.

(b) If an offer of dedication of streets delineated on the map is rejected, surfacing in accordance with all applicable City standards shall be required on any street so rejected before occupancy of any lots within the subdivision, unless otherwise determined by the City Council; provided, however, this provision shall not be construed as relieving the subdivider of the obligation of:

(1) Grading such rejected streets to grades and widths required by City standards.

(2) Installing all drainage structures and facilities required by the City Engineer or by the tentative map approval.

(3) Installing water-supply pipelines, fire hydrants and connections as may be required by the City Engineer and Fire Chief.

(c) No surfacing is required on any private street laid out on any parcel map where each parcel shown on such map contains a gross area of twenty acres or more; provided, however, this provision shall not be construed as relieving a subdivider of the obligation of:

(1) Grading such private streets to grades and widths required by City standards.

(2) Installing all drainage structures and facilities required by the City Engineer, which shall conform to City standards.

(3) Installing water supply pipelines, fire hydrants and connections as may be required.
Nothing in this Subsection shall prohibit the City Engineer from requiring surfacing or other measures as will assure all weather access to any parcel or lot prior to any building materials being placed on such parcel or lot.

(d) All new utility distribution facilities, including cable television conduit and lines within the boundaries of any new subdivision or within the half-street abutting a new subdivision shall be placed underground. All existing utility distribution facilities within the boundaries of any new subdivision or within any half-street abutting any new subdivision shall be placed underground except where the City Engineer determines that it is not feasible to place the existing facilities underground with any single half-street section due to the existence of overhead utility services to properties on the opposite sides of that half-street section, or such other reason as the City Engineer deems controlling. In which cases the subdivider shall execute and record a covenant running with the land not to oppose a local improvement district for underground placement of utilities and to pay a fee in an amount estimated by the City Engineer to be the cost of the undergrounding.

In developments where overhead utility distribution facilities are allowed to remain, all new services to existing lots and lots created according to the provisions of this Title shall be installed underground from the nearest utility pole.

The subdivider is responsible for complying with the requirements of this Subsection and he shall make the necessary arrangements with each of the serving utilities, including franchised cable television operators, for the installation of such facilities. Transformers, terminal boxes, meter cabinets, pedestals, concealed ducts and other facilities necessarily appurtenant to such underground utilities and street lighting systems may be placed above ground, subject to approval of the City Engineer as to type and location. The provisions of this Subsection shall not apply to the installation and maintenance of overhead electrical transmission lines in excess of 64,000 volts and long distance and trunk communications facilities. The installation of cable television lines may be waived when, in the opinion of the City Council, no franchised cable television operator is found to be willing and able to install cable television lines in the subdivision. Notwithstanding any such waiver, the installation of cable television conduits is required.

(e) Unless otherwise approved by the City, all utility facilities shall be placed in the street right-of-way or other easement dedicated to the City for utility purposes.

(f) The subdivider shall construct, or cause to be constructed, at his cost, a street lighting system conforming to City standards.

(g) Where the City has adopted a flood-control element or drainage element of the General Plan, any improvements shall conform to such element wherever possible.

(h) The subdivider shall comply, or agree to comply, with all the conditions of approval contained in the resolution approving the tentative map and not otherwise provided for by this Section.

(i) If the improvements are required for a designated remainder parcel, the fulfillment of such requirements by the construction of improvements shall not be required until such time as a building or grading permit for development of the parcel is issued by the City or until such time as the construction of such improvements is required pursuant to an agreement between the subdivider and the City. In the absence of such an agreement, the City Council may require fulfillment of some or all of such construction requirements within a reasonable time following
approval of the final map and prior to the issuance of a building or grading permit for the development of a remainder parcel upon a finding that fulfillment of the construction requirements is necessary for reasons of public health and safety or that the construction is a necessary prerequisite to the orderly development of the surrounding area.

(j) All improvements shall be constructed according to plans prepared by a registered civil engineer and approved by the City Engineer.

19.16.055 Supplemental Improvements - Required.

(a) The subdivider may be required to install improvements for the benefit of the subdivision which may contain supplemental size, capacity, number or length for the benefit of property not within the subdivision as a condition precedent to the approval of a subdivision or parcel map and, thereafter, to dedicated such improvements to the public. However, when such supplemental size, capacity, number or length is solely for the benefit of property not within the subdivision, the City shall enter into an agreement with the subdivider to reimburse the subdivider for that portion of the cost of such improvements equal to the difference between the amount it would have cost the subdivider to install such improvements to serve the subdivision only and the actual cost of such improvements pursuant to the provisions of the Subdivision Map Act, or in the alternative, enter into such other agreement or procedure which will assure that said difference is paid or agreed to be paid by the owners of such other benefitted property.

(b) The City Manager or City Council on appeal shall determine the method for payment of the costs required by a reimbursement agreement which may include, but is not limited to, the establishment and maintenance of local benefit districts for the levy collection of such charge or costs from the property benefitted.

19.16.056 Supplemental Improvements - Reimbursement Agreement - Funding Procedures.

(a) No charge within the area of benefit shall be levied and no local benefit district shall be established unless and until a public hearing held thereon by the body charged with ruling on the tentative map and such body finds that the fee or charge and the area of benefit or local benefit district is reasonably related to the cost of such supplemental improvements and the actual ultimate beneficiaries thereof.

(b) In addition to the notice required by the Government Code Section 66451.3, written notice of the hearing shall be given to the subdivider and to those who own property within the proposed area of benefit as shown on the latest equalized county assessment roll(s), and the potential users of the supplemental improvements insofar as they can be ascertained at the time. Such notices shall be mailed by first class mail, postage prepaid to the City Clerk at least ten days prior to the date established for the hearing. The failure to receive such mailed notice shall not invalidate the proceedings or agreement.

19.16.057 Supplemental Improvements - Drainage, Sewerage, Bridges and Major Thoroughfares. If the City has adopted a local drainage or sanitary sewer plan or map as required for the imposition of fees therefore, or has established an area of benefit for bridges or major thoroughfares as provided in Chapter 19.08 of this Title, the City may impose a reasonable charge on property within the area benefitted and may provide for the collection of said charge as set forth in Chapter 19.08. The City may enter into reimbursement agreements with a subdivider who constructs said facilities, bridges, or thoroughfares and the charges collected by the City, therefore, may be utilized to reimburse the subdivider.
19.16.060 Agreement to Improve. Unless the conditions of the tentative map approval require the subdivider to construct improvements prior to final map approval, the subdivider may elect to agree to construct improvements or to otherwise comply with the requirements of this Title and with the conditions in the resolution approving the tentative map or, if authorized by the City Council, may contract to initiate and consummate special assessment or special taxing district proceedings in lieu of constructing improvements, as provided in Subdivision Map Act Section 66462. If the subdivider consents, or the City Council requires pursuant to Section 19.16.040, the agreement may provide for the improvements for a designated remainder parcel prior to issuance of a building or grading permit for such parcel. In addition, the subdivider shall prepare and deposit with the City Engineer detailed plans and specifications of the improvements to be constructed or the conditions to be met. The plans shall be prepared by a registered civil engineer and approved by the City Engineer. The plans and specifications shall be made a part of any such agreement or contract and of the improvement security securing the same. The agreement shall be in a form approved by the City Attorney. The City Manager is authorized to sign such agreements on behalf of the City.

19.16.070 Improvement Security - Required. The improvement agreement referred to in Section 19.16.060 shall be secured by one of the following:

(a) A bond or bonds by one or more duly authorized corporate sureties substantially in the form prescribed by Subdivision Map Act Sections 66499.1 and 66499.2.

(b) A deposit either with the City or a responsible escrow agent or trust company selected by the City of cash or negotiable bonds of the kind approved for securing deposits of its public monies.

(c) An irrevocable instrument, or instruments, of credit from one or more responsible financial institutions regulated by federal or state government and pledging that the funds are on deposit and guaranteed for payment on demand by the City.

(d) An irrevocable letter of credit, or irrevocable letters of credit, in a form approved by the City Attorney, issued by a financial institution regulated by the federal government or this State and approved by the City Manager. The letter of credit shall be subject to provisions of Section 66495.6 of the Subdivision Map Act.

19.16.080 Improvement Security - Amount. Improvement security shall be in the following amounts:

(a) One hundred percent of the total estimated cost of the improvement or act to be performed conditioned upon the faithful performance of the act or agreement.

(b) Fifty percent of the total estimated cost of the improvement or act to be performed securing payment of the improvement or act to be performed securing payment to the contractor, the subcontractors and to persons furnishing labor, materials or equipment to them for the improvement or the performance of the required act.

(c) Twenty-five percent of the total estimated cost of the improvement or act to be performed to guarantee or warranty the work for a period of one year following completion and acceptance thereof against any defective work or labor done or defective materials furnished.
(d) The improvement security shall also include an additional amount as determined by the City Manager, as necessary to cover the cost and reasonable expenses and fees, including reasonable attorneys fees, which may be incurred by the City in successfully enforcing the obligation secured.

(e) The improvement security shall also secure the faithful performance of any changes or alterations in the work to the extent that such changes or alterations do not exceed ten percent of the original estimated cost of improvement.

(f) Whenever an entity required to furnish security is a California non-profit corporation funded by the United States of America or one of its agencies, or the State of California or one of its agencies, the entity shall not be required to comply with Subsections (a) or (b), provided that the conditions established by Government Code Section 66499.3(c) exist.

19.16.090 Improvement Security - Release. The improvement security required under this Chapter shall be released in the following manner:

(a) Security given for faithful performance of any act or agreement shall be released upon the final completion and acceptance of the required act or work, subject to the provisions of Subsection (b) hereof.

(b) The City Engineer may release a portion of the security in conjunction with the acceptance of the performance of the act or work as it progresses upon application therefore by the subdivider; provided, however, that no such release be for an amount less than twenty-five percent of the total improvement security given for faithful performance of the act or work and, that the security shall not be reduced to an amount less than fifty percent of the total improvement security given for faithful performance until final completion and acceptance of the required act or work. In no event shall the City Engineer authorize a release of the improvement security which would reduce such security to an amount below that required to guarantee the completion of the required act or work and any other obligation imposed by this Title, the Subdivision Map Act or the improvement agreement.

(c) Security given to secure payment to the contractor, his subcontractors and to persons furnishing labor, materials or equipment shall, six months after the completion and acceptance of the act or work, be reduced to an amount equal to an amount of all claims therefore filed and, of which notice has been given to the legislative body plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured thereby. The balance of the security shall be released upon the settlement of all such claims and obligations for which the security was given.

(d) No security given for the guarantee or warranty of work shall be released until the expiration of the guarantee or warranty period thereof.

(e) No security shall be released except as provided in Subsection (a-d), inclusive of this Section or, unless appropriate securities are substituted and approved in the manner provided in this Title.

(f) Partial releases of a security shall be made by a writing signed by the City Engineer. A true copy of the writing shall be dated with the security instrument on file in the office of the City Clerk. The City Clerk may return a security instrument to the person or entity which provided it upon total release of the security provided that the City Clerk retains a true copy of the security instrument along with the release documents.
The City Engineer may establish administrative processing requirements as necessary to ensure implementation of this Section.

**19.16.100 Improvement Security - Forfeiture.** Upon the failure of the subdivider to complete any improvement, or to perform any acts or obligations imposed upon the subdivider, within the time specified or upon the breach of an agreement entered into pursuant to Section 19.16.060, the City Manager may determine that the subdivider is in default and may cause the improvement security, or such portion thereof as is necessary to complete the work or act and any other obligations of the subdivider secured thereby, to be forfeited to the City.

**19.16.110 Off-site Improvements - Acquisition of Property Interests.** Whenever a subdivider is required as a condition of a tentative map to construct or install off-site improvements on property which neither the subdivider nor the City owns, not later than 60 days prior to filing the final map for approval, the subdivider shall provide the city with reports and data, including, but not limited to, an appraisal and title report, to enable the City to commence proceedings pursuant to Title 7 of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property pursuant to Article 3 of said Title. The subdivider shall agree, pursuant to Section 19.16.060, to complete the improvements at such time as the City has a sufficient interest in the property to permit the construction of the improvements. The subdivider shall bear all costs associated with the acquisition of the property interests and the estimated cost thereof shall be secured as provided in Section 19.16.070.

**19.16.120 Design of Common Interest Developments.** If the design of a common interest development is subject to review and approval pursuant to Title 20 of this Code, such review and approval shall be obtained prior to or concurrently with the approval of the tentative map. If the design of a common interest development is not subject to review pursuant to Title 20 of this Code, the tentative map shall be accompanied by a site plan showing the design of the development. The site plan shall be consistent with the provisions of Title 20 and shall be approved, conditionally approved or denied along with the tentative map. Development of the project shall be consistent with the approved or conditionally approved design.
CHAPTER 19.17

VESTING TENTATIVE MAPS

SECTIONS:

19.17.010 Authority
19.17.020 Filing and Processing
19.17.030 Rights Conferred
19.17.040 Consistency with Zoning and General Plan

19.17.010 Authority. This Chapter is enacted pursuant to the authority granted by Chapter 4.5 (commencing with Section 66498.1 of Division 2 of Title 7 of the Government Code of the State of California-Subdivision Map Act) and is intended to implement the provisions of that Chapter.


(a) Whenever this Title requires the filing of a tentative map or a tentative parcel map for a residential development, the subdivider may file a vesting tentative map or vesting tentative parcel map subject to the provisions of this Chapter.

(b) At the time a vesting tentative map is filed, it shall have printed conspicuously on its face, "Vesting Tentative Map." If the map is a vesting tentative parcel map, the words "Vesting Tentative Parcel Map" shall appear conspicuously on its face.

(c) In addition to the other information required by this Title to be shown on, or provided with, a tentative map or tentative parcel map, a vesting tentative map or vesting tentative parcel map, shall show or be accompanied by the following information in a form satisfactory to the City Engineer and Developmental Services Director:

(1) The height, area and location of proposed buildings.

(2) Information on the uses to which the buildings will be put and general architectural renderings of the buildings.

(3) Detailed lines and dimensions.

(4) Detailed design and specifications approved by the City Engineer for all public facilities, including, but not limited to, on-site and off-site sewer, water and drainage facilities; roads including final grades and alignment; and other on-site and off-site improvements.

(5) Detailed geological, drainage, flood-control, soils, traffic or other reports deemed necessary by the City Engineer or Developmental Services Director to permit a complete review of the design and improvements for the subdivision. The subdivider, for subdivisions over five units, shall also submit a fiscal impact report prepared by an independent economic analyst, analyzing the projected impacts the development will have on public facilities and services; the report shall include marketing information and a cost benefit analysis for the project.
(6) Detailed final grading plans showing existing and proposed finishing grades at a maximum of two foot intervals, provided the City Engineer may require lesser intervals if he determines such lesser intervals to be necessary to display the proposed grading in sufficient detail to permit approval of such final grading plans.

(7) Detailed landscape plans.

(8) Detailed environmental information sufficient to permit assessment of all environmental effects of the project including cumulative and long term effects.

(d) Notwithstanding Section 19.12.080 of this Code, all vesting tentative maps, regardless of number of lots, shall be considered by the City Council after a report and recommendation by the Planning Commission.

(e) Notwithstanding Section 19.24.100 of this Code, all vesting tentative maps shall be referred to the Planning Commission for consideration pursuant to the provisions of Section 19.12.080. The decision of the Planning Commission concerning a tentative parcel map shall be final unless the decision is appealed to the City Council pursuant to the provisions of Chapter 19.12 of this Code.

(f) The time for filing a final map for a vesting tentative map shall be extended only by operation of Subsection 19.12.110 (b)(2) of this Code.

(g) Notwithstanding Section 19.24.180 of this Code, the time for filing a parcel map for a vesting tentative parcel map shall not be extended. Failure to file a parcel map within the time period established by Section 19.24.170 of this Code shall terminate all proceedings and no final map or parcel map for all or any part of the property included within the vesting tentative map shall be filed without first processing a new map pursuant to this Title.

(h) A vesting tentative map or vesting tentative parcel map shall not be approved or conditionally approved unless the City Council or Planning Commission, whichever is the final decision-making body, finds on the basis of the studies and reports submitted by the subdivider, that all public facilities necessary to serve the subdivision or mitigate any impacts created by the subdivision, will be available for the entire time that the vesting tentative map or vesting tentative parcel map is valid, plus any time during which the rights conferred by Section 19.17.030 exist.

19.17.030 Rights Conferred.

(a) Approval or conditional approval of a vesting tentative map or vesting tentative parcel map shall confer a right to proceed with the development in substantial compliance with the ordinances, policies and standards as described in Section 66474.2 of the Government Code. However, if Section 66474.2 is repealed, the approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards in effect at the time the vesting tentative map or vesting tentative parcel map was approved or conditionally approved. Any disputes as to whether a development substantially complies with the approved or conditionally approved map, or with the ordinances, policies or standards described in this Subsection, shall be resolved by the City Council, and its determination with respect thereto shall be final.
(b) Notwithstanding Subsection (a), a permit or entitlement for development may be conditionally approved or denied if, at the time of the issuance of the permit or approval or entitlement, it is determined by the issuing authority or the City Council on appeal:

(1) A failure to condition or deny the permit or entitlement would place the residents of the subdivision or the immediate community or both in a condition dangerous to their health or safety or both; or

(2) The condition or denial is required in order to comply with State or Federal law.

(c) The rights conferred by a vesting tentative map or vesting tentative parcel map shall expire if:

(1) A final map or parcel map is not approved prior to the expiration of the vesting tentative map or the vesting tentative parcel map.

(2) The applicant has requested and the City has approved a change in the type, density, area or design of the development unless an amendment to the vesting tentative map or vesting tentative parcel map has been approved.

(d) Upon the filing of a final map or a parcel map for a vesting tentative map or vesting tentative parcel map, the rights conferred by Subsection (a) shall continue for one year. Where several final maps or parcel maps are recorded on various phases of a project covered by a single vesting tentative map or vesting tentative parcel map, this period shall begin for each phase when the final map or parcel map for that phase is recorded.

(e) The time period set forth in Subsection (d), shall be automatically extended by any time used for processing a complete application for a grading permit if such processing exceeds thirty days from the date a complete application is accepted.

(f) A subdivider may apply to the City Council for a one year extension of the rights conferred by Subsection (d) at any time before the time period set forth in Subsection (d) expires. An extension may be granted only if the Council finds that the map still complies with the requirements of this Title and all other ordinances, policies and standards in effect at the time of consideration of such extension. The City Council may approve, conditionally approve or deny any extension in its sole discretion.

(g) If the subdivider submits a complete application for a building permit during the periods of time set forth in Subsections (d) through (f), the rights referred to therein shall continue until the expiration of that building permit or any extension of that permit.

(h) Upon the expiration of the time limits specified in Subsections (a)(d)(e)(f) or (g), all rights conferred by the Section shall cease and the project shall be considered as the same as any subdivision which was not processed pursuant to this Chapter.

(i) Notwithstanding Subsection (a), the amount of any fees which are required to be paid as a condition of the map approval or by operation of any law shall be determined by application of the law or policy in effect at the time the fee is paid. The amounts of the fees are not vested upon approval of the vesting tentative map or tentative parcel map.
19.17.040  Consistency with Zoning and General Plan. No vesting tentative map or vesting tentative parcel map shall be approved if the proposed map or the design or improvement of the proposed development are not consistent with the applicable general or specific plans or with the applicable zoning provisions of this Code. If development of the project for which a vesting tentative map or vesting tentative parcel map requires any permits or approvals pursuant to the zoning provisions of this Code, those permits or approvals shall be processed concurrently with the vesting tentative map or vesting tentative parcel map. A vesting tentative map or vesting tentative parcel map shall not be approved if all other discretionary permits or approvals including, without limitation, improvement plans and final grading plans, have not been approved either prior to or concurrently with approval of the map.
CHAPTER 19.20

FINAL MAP REQUIREMENTS

SECTIONS:

19.20.010 Maps to Conform to Requirements of Subdivision Map Act and Tentative Map
19.20.020 City Council to Approve Maps
19.20.030 Required Offer of Dedication
19.20.040 Grant of Open Space Easement
19.20.050 Final Map Required - Filing of Parcel Map in Lieu of Final Map, When Permitted
19.20.060 Additional Data of Final Subdivision Maps
19.20.065 Non-Title Information
19.20.070 Record of Easements
19.20.080 Survey Data
19.20.090 Lot Numbers
19.20.100 Established Lines
19.20.110 Additional Certificates on Final Subdivision Maps
19.20.115 Notice of Owner's Development Lien
19.20.120 Title Company Certificate and Report
19.20.130 Title Company Subdivision Guarantee
19.20.140 Approval as to Form
19.20.150 Stamping or Printing of Certificates
19.20.160 Soil Reports
19.20.170 Transmittal of Final Map

19.20.010 Maps to Conform to Requirements of Subdivision Map Act and Tentative Map. All final and parcel maps for major subdivisions shall conform to the requirements of the Subdivision Map Act and this Title and also shall conform to the requirements specified in the resolution approving or conditionally approving the tentative map.

19.20.020 City Council to Approve Maps.

(a) The City Council shall not consider a final map unless there is a valid tentative map for the subdivision.

(b) No final map shall be filed in the Office of the County Recorder until approved by the City Council, but such map shall be disapproved only for failure to meet or perform requirements or conditions which were applicable to the subdivision at the time of approval of the tentative map, providing that any such disapproval shall be accompanied by a finding identifying the requirements or conditions which have not been met or performed. The City Council may waive any such failure of the map to meet such requirements and conditions if such failure is a result of technical and inadvertent error which, in the determination of the City Council, does not materially affect the validity of the map.
(c) **Multiple** or **phased** final maps may be filed for portions of the tentative map, provided that the tentative map divides a subdivision into units and each final map or phased final map substantially conforms to one or more of the units and complies with all conditions applicable to the units. The number of final maps or phased final maps which may be filed shall be determined by the decision-making authority at the time of the approval or conditional approval of the tentative map. When dividing a subdivision into units, the decision-making authority shall ensure that the design and improvement of each unit is consistent with the provisions of this Title. If the subdivider is subject to a requirement to construct or improve or finance the construction and improvement of public improvements outside the boundary of the subdivision, the cost of that requirement shall be established at the time the tentative map is approved. If the cost of the off-site public improvements requirement is one hundred thousand dollars or more, it shall be a condition of the tentative map that additional conditions may be placed on the extension of the tentative map which occurs by operation of Section 19.12.110 (b) of this Chapter; and further, it shall be a condition that upon the filing of any multiple final map or phased final map, the Council may modify or eliminate the phasing scheme. Multiple or phased final maps shall be authorized for vesting tentative maps for which off-site improvements are required only if the City Council finds that multiple final maps are necessary to accomplish the subdivision, that all off-site improvements are required as a condition of the zoning for the property or zoning approval for the project, that phasing of the project is consistent with the City’s General Plan and any development management or public facilities ordinances, policies or regulations, and that the subdivision consists of one hundred or more units.

(d) **Interim Final Map.** A subdivider may file an interim final map dividing the property for the purposes of financing only, subject to the following restrictions:

1. The interim final map is authorized by a tentative map approval for the division of the property into ultimate building sites proposed to be developed by the subdivider. The units to be created by the interim final map shall be shown on the tentative map.

2. The tentative map shall be for the development of property pursuant to an approved specific plan.

3. The subdivider shall dedicate or irrevocably offer to dedicate the streets shown on the tentative map so that each unit created by the interim final map has frontage on a street.

4. No grading, building or other permits to develop shall be issued for any unit created by the interim final map until and unless a subsequent final map is filed dividing the property into final lots in substantial compliance with the tentative map. A note containing this restriction shall be placed on the interim final map.

5. The interim final map shall not be construed as operating to extinguish the tentative map or to extend its expiration date by operation of Government Code Section 66452.6.

This Section is intended to accommodate the financing needs of subdividers developing large projects over an extended period of time.

(e) The City Council shall not approve a final map for a subdivision to be created from a conversion of residential real property into a common interest development project unless it finds all of the following:
(1) Each of the tenants of the proposed common interest development project has received written notification of intention to convert at least sixty days prior to the filing of a tentative map. There shall be a further finding that each such tenant and each such person applying for the rental of a unit in such residential real property has or will have received all applicable notices and rights now and hereafter required by this Title or the Subdivision Map Act. In addition, a finding shall be made that each tenant has received ten days written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, and that such report will be available on request. The written notices to tenants required by this subdivision shall be deemed satisfied if such notices comply with the legal requirements for service by mail.

(2) Each of the tenants of the proposed common interest development project, has been, or will be given written notification within ten days of approval of a final map for the proposed conversion.

(3) Each of the tenants of the proposed common interest development project or stock cooperative, has been or will be given one hundred eighty days written notice of intention to termination of tenancy due to the conversion or proposed conversion. The provisions of this subdivision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provisions of services, payment of rent or the obligations imposed by Sections 1941, 1941.1 and 1941.2 of the California Civil Code.

(4) Each of tenants of the proposed common interest development project has been or will be given notice of an exclusive right to contract for the purchase of his or her respective units upon the same terms and conditions that such units will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the Business and Provisions Code, unless the tenant gives prior written notice of his intention not to exercise the right.

(5) The owners of a stock cooperative or community apartment project have voted in favor of such conversion as specified by Section 66452.10 of the State Government Code.

(6) This Section shall not diminish, limit or expand, other than as provided herein, the authority of the City Council to approve or disapprove common interest development projects.

19.20.030 Required Offer of Dedication. As a condition precedent to the approval by the City Council of any final map, all parcels of land shown thereon and intended for any public use shall be offered for dedication for public use except those parcels, other than streets, intended for the exclusive use of the lot owners in the subdivision, their licenses, visitors, tenants and servants.

19.20.040 Grant of Open Space Easement. In the event that a grant of an open space easement is to be made over a portion of the subdivision, the final map shall contain a certificate signed and acknowledged by those parties having any record title interest in the subdivided land granting such open space easement and stating the conditions of the grant.
19.20.050 Final Map Required--Filing of Parcel Map in Lieu of Final Map When Permitted. Unless otherwise provided in this Title, a final subdivision map shall be prepared and filed pursuant to an approved tentative map for every major subdivision. In lieu of filing a final subdivision map, unless otherwise required by the Subdivision Map Act, a parcel map with a form and content in accord with Chapter 19.32 of this Title may be filed pursuant to an approved tentative map when any of the following conditions prevail:

(a) The land before division contains less than five acres, each parcel created by the division abuts upon a public street or highway and no dedications or improvements are required by the City Council.

(b) Each parcel created by this division has a gross area of twenty acres or more and has an approved access to a maintained public street or highway and no dedications or improvements are required by City Council.

(c) The land consists of a parcel or parcels of land having approved access to a public street or highway which comprise part of a tract of land zoned for industrial or commercial development and which has the approval of the City Council.

(d) Each parcel created by the division has a gross area of forty acres or more; or each of which is a quarter section or larger.

(e) The subdivision is for the purpose of converting a rental mobilehome park to a mobilehome park common interest development which conversion has been approved by the City Council.

19.20.060 Additional Data on Final Subdivision Maps. Every final subdivision map shall:

(a) Contain a definite description of the land subdivided by references to recorded deeds, recorded maps and official United States surveys. Reference to tracts, recorded deeds and recorded maps shall be spelled out, worded identically with original records and show the book and page of records or map numbers.

(b) Use the California Coordinate System for its "Basis of Bearings" and express all measured and calculated bearing values in terms of said system. The angle of Grid divergence from a true meridian (Theta or mapping angle), and the North point of said map shall appear on each street thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.

(c) Show the area of all parcels containing one quarter acre or more to the nearest hundredth.

(d) Clearly indicate, by description or a distinctive boundary line, any area subject to flooding at times of high tide or heavy rainfall, and state that such area is subject to flooding at times of high tide or heavy rainfall.

(e) Show a solid line separating all private ways, easements and other rights-of-way not to be accepted as public streets and shown on the map from public streets and clearly designate their nature and the manner in which the right is reserved or granted.
(f) Bear the name and the San Marcos tract number of the subdivision on every sheet of the map.

(g) Indicate the exterior boundary of the land included within the subdivision by distinctive symbols and clearly so designate. The map shall show the definite location of the subdivision, and particularly its relation to surrounding surveys. If the map includes a "designated remainder" parcel or a parcel designated as "not a part," and the gross area of that parcel is five acres or more, that parcel need not be shown on the map and its location need not be indicated as a matter of survey but may be indicated by deed reference to the existing boundaries of the remainder parcel.

(h) Show two measured ties from the boundary of the subject property to existing Horizontal Control station(s) having published in the County of San Diego's Horizontal Control book. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e. Grid Bearings and Grid distances). All other distances shown on the map are to be shown as Ground distances. A combined factor for conversion of Grid-to-Ground distances shall be shown on the map.

If there are not acceptable Horizontal Control stations within one half mile of subject property, then the engineer or land surveyor may make a written request to the Developmental Services Department for additional control stations within the subject area.

The City may provide a coordinated monument (using the North American Datum of 1983) by tying either a section, quarter-section, or rancho or other appropriate land net corner or road centerline which is intervisable with an existing monument in the local control network.

In the event the City is unable to provide an acceptable Horizontal Control station within one half mile of the subject property within 30 days of written request, this requirement may be waived.

None of the above will preclude a person, authorized to practice land surveying, from performing the necessary work to meet the requirements of this Section.

19.20.065 Non-Title Information.

(a) The City Engineer may require that any or all of the following map and survey information be submitted concurrently with the final map: building setback lines, flood or safety hazard zones, seismic lines and setbacks, approximate slope lines, geological mapping, archaeological sites, scenic overlay setbacks or boundaries, noise contour lines from major noise generators in the vicinity, other information which does not affect record title interests, but which may affect development of the site.

(b) If the City Engineer requires any of the information described in Subsection (a) the information shall be placed on an additional map sheet or sheets which shall indicate the relationship of the information to the subdivision. The additional map sheet or sheets shall contain a statement that the additional information is for informational purposes, describing conditions as of the date of filing, and is not intended to affect record title interest. If appropriate, the additional map sheet or sheets shall list the source or sources of the information stated. The additional map sheet or sheets may contain a notation that the additional information is derived from public records or reports, and does not imply the corrections or sufficiency of those records by the preparer of the additional map sheet or sheets.
19.20.070  Record of Easements.

(a) The final map shall show the centerline data, width and side lines of all easements to which the land is subject or to be subjected unless the easement is to be extinguished by the filing of the map pursuant to the State Subdivision Map Act. If the easement is not definitely located on record, a statement as to the easement shall appear on the title sheet.

(b) Easements for storm drains, sewers and other purposes shall be denoted by broken lines.

(c) The easement shall be clearly labeled and identified and, if already of record, proper reference to the records given.

(d) Easements being dedicated shall be so indicated in the certificate of dedication.

(e) Separate easements for utilities (i.e., those where the utilities are to be located other than in a public street right-of-way) shall be designated on the final map as "easements for public utilities."

19.20.080  Survey Data.

(a) The final map shall show the centerlines of all streets, length, tangents, radii and central angles or radial bearings of all curves, the total width of each street, the width of the portion being dedicated and the width of existing dedication and the width of each side of the centerline; also the width or rights-of-way of railroads, flood-control or drainage channels and any other easements existing or being dedicated by the map.

(b) Surveys in connection with subdivision maps prepared pursuant to this Chapter shall be made in accordance with standard practices and principles for land surveying. A traverse of the boundaries of the subdivisions and all lots and blocks shall close. Sufficient data shall be shown to determine readily the bearing and length of each line. The net dimensions of each lot shall be separately stated.

(c) Traverse sheets and work sheets showing the closure of the exterior boundaries and of each irregular block and lot shall be provided.

(d) The final map shall also have indicated thereon the following:

(1) Suitable primary survey control points:

(a) Section corners;

(b) Monuments (existing outside of subdivision).

(2) Location of all permanent monuments within subdivision.

(3) Ties to any City or County boundary lines involved.

(4) Ties to and identification of adjacent subdivisions.

(5) Required certificates.
19.20.090 Lot Numbers.

(a) The lots shall be numbered consecutively, commencing with the number "1", with no omissions or duplications; in case of phased subdivisions of the same tentative map, the numbering may be successively extended from the previous phase of the subdivision.

(b) Each lot shall be shown entirely on one sheet.

19.20.100 Established Lines.

(a) Whenever the City Engineer has established the centerline of a street or alley, such data shall be considered in making the surveys and in preparing the final map, and all monuments found, shall be indicated and proper references made to field books or maps of public record, relating to the monuments. If the points were reset by ties, that fact shall be stated.

(b) The final map shall show City boundaries crossing or adjoining the subdivision clearly designated and tied in.

19.20.110 Additional Certificates on Final Subdivision Maps. In addition to certificates and other material required by the Subdivision Map Act and this Title, every final subdivision map shall bear the following certificates or endorsements:

(a) A certificate by the City Treasurer to the effect that there are no unpaid special assessments of bonds which may be paid in full shown by the records in their offices against the subdivision or any part thereof.

(b) A certificate or statement by the Clerk of the Board of Supervisors that the provisions of Division 2, Title 7 of the Government Code have been complied with regarding deposits for taxes on the property within the subdivision.

(c) Certificates of the County Recorder as to the filing of the map.

(d) A statement by the engineer/surveyor in accordance with Section 66441 of the Subdivision Map Act.

(e) A certificate or statement signed by the City Engineer in accordance with Section 66442 of the Subdivision Map Act.

(f) Endorsement by the City Attorney of approval of the map as to form.

(g) A certificate or statement signed by the City Clerk attesting to the approval of the map by the City Council and their acceptance, acceptance subject to improvement; or rejection, on behalf of the public, of all dedications shown thereon.

(h) An owner's certificate as required by Section 66436 of the Subdivision Map Act which shall bear the signatures of all parties owning any record title interest in the land subdivided except those which have been omitted pursuant to Section 66436 of the Subdivision Map Act. The names of any parties who own interests described in Section 66436 of the Subdivision Map Act and who have not signed the owners' certificate shall be set forth in the owners' certificate,
together with a description of their respective interests and the reasons why they have not signed the certificate. All such signatures of owners and others, whether individuals or corporations, must be properly signed and acknowledged before a notary public. In case a subdivision map is signed by a corporation, a certified copy of the resolution passed by the Board of Directors of such corporation authorizing that action must accompany the map.

(i) Where dedications are required, a certificate offering to dedicate to the City or other appropriate public entity as determined by the City, the interests in real property for specified public purposes in accord with Section 66439 of the Subdivision Map Act. The certificate shall be properly signed and acknowledged before a notary public, and shall be signed by all parties having any record title interest in the real property being subdivided subject to the provisions of Section 66436 of the Subdivision Map Act. In case any dedication or consent shown on a subdivision map is signed by a corporation, a certified copy of the resolution passed by the Board of Directors of such corporation authorizing that action must accompany the final map.

19.20.115 Notice of Owner's Development Lien. When an owner's development lien has been created pursuant to the provisions of Article 2.5, commencing with Section 39327 of Chapter 3 of Part 23 of the California Education Code, on the real property or portion thereof subject to the final map, a notice, as specified in Section 66434.1 of the California Government Code, shall be placed on the face of the final map.

19.20.120 Title Company Certificate and Report. Every final map submitted to the City Council shall bear the certificate of a qualified title company that the parties who executed the owner's certificate required by Section 66436 of the Subdivision Map Act are all the parties having any record title interest in the land subdivided. The certificate shall also indicate the names of the parties owning the interests set forth in Section 66436 of the Subdivision Map Act, together with an description of the interests and the reasons the parties did not execute the owner's certificate. The title company shall, on the date the final map will be transmitted to the County Recorder, present to the County Recorder a letter stating that on said date the names of the parties and the other facts set forth in the title company's certificate were the same as shown by the certificate.

19.20.130 Title Company Subdivision Guarantee. In lieu of the title company certificate required by Section 19.20.120, there may be filed with the City Engineer a subdivision guarantee from a qualified title insurance company which guarantees that the parties named therein are the only parties having any record title interest in the land subdivided. The title company shall, on the date the final map will be transmitted to the County Recorder, present to the County Recorder, pursuant to the requirements of Section 66465 of the Subdivision Map Act, a letter stating that at the time of filing of the final map or parcel map in the Office of the County Recorder, the parties consenting to such filing are all of the parties having a record title interest in the real property being subdivided whose signatures are required by Division 2 of Title 7 of the Government Code, as shown by the records in the Office of the Recorder.

19.20.140 Approval as to Form. All final subdivision maps filed with, or submitted to, the City Council shall be first submitted to the City Attorney and approved as to form.

19.20.150 Stamping or Printing of Certificates. The affidavits, certificates, acknowledgements and approvals required or permitted by this Chapter or the Subdivision Map Act to appear upon maps may be legibly stamped or printed upon the map with opaque ink in
such a manner as will guarantee a permanent record in black upon the tracing cloth or polyester base film. If ink is used in polyester base file, the ink surface shall be coated with suitable substance to assure permanent legibility.

19.20.160 Soil Report. When a soils report, a geological report, or soils and geological reports have been prepared specifically for the subdivision, such fact shall be noted on the final map, together with the date of such report or reports, the name of the engineer making the soils report and geologist making the geologic report or the name of the geo-technical engineer making either, or both, of said reports, and the location where the reports are on file. A copy of the soils and geologic reports shall be filed with the City Engineer and shall be kept on file for public inspection.

19.20.170 Transmittal of Final Map for Filing. After the City Engineer certifies that all applicable requirements of the Subdivision Map Act and this Code have been satisfied and after approval of a final map by the City Council, the City Clerk or the Clerk's designee shall transmit the map to the appropriate County agency pursuant to Government Code Section 66464 for filing with the County Recorder. The map shall be transmitted for recording within 15 working days after approval of the map by the Council.
19.24.010 Minor Subdivision
No person shall create a minor subdivision except by the filing of a parcel map approved pursuant to this Title and the Subdivision Map Act, unless the requirement for a parcel map is waived pursuant to Section 19.24.150. The provisions of this Chapter shall not apply to:

(a) The conveyance, transfer, creation or establishment of an easement for sewer, water or gas pipelines and appurtenances or electrical or telephone poles and lines or conduit and appurtenances.

(b) The leasing of a dwelling on a lot which, together with all contiguous land owned by the same person or persons, has an area of less than twelve thousand square feet.

(c) The conveyance or transfer of land or any interest thereon by or to the United States, State, County, City, school district, special district or public utility.

19.24.020 Tentative Parcel Map Required. Any person proposing to create a minor subdivision pursuant to this Title shall file with the City Engineer a tentative parcel map pursuant to the provisions of this Chapter; provided, however, an adjustment plat may be filed in lieu of
a tentative parcel map pursuant to Section 66450 of the Subdivision Map Act unless prior thereto, a tentative parcel map of the minor subdivision shown thereon shall have been filed with and approved by the City Engineer or, on appeal, by the City Council. When an adjustment plat is authorized, it shall be processed according to Chapter 19.36 of this Title.


(a) A subdivider applying for a minor subdivision plat shall file an application with the City Engineer, together with copies of a tentative parcel map.

(b) The City Engineer shall not accept an application or map for processing unless the City Engineer finds that the parcel map or adjustment plat is consistent with the zoning provisions of this Code and that all approvals and permits required by Title 20 for the project have been given or issued.

(c) Notwithstanding the provisions of Subsection (b), a tentative parcel map may be processed concurrently with documents, permits or approvals required by the zoning provisions of this Code if the applicant first waives the time limits for processing, approving or conditionally approving or disapproving a tentative parcel map or adjustment plat provided by this Title or the Subdivision Map Act if that time period would be shorter than the pre-period established by Government Code Section 65950.

19.24.040 Information to be Filed with Tentative Parcel Map. Such information as may be prescribed by the rules and regulations approved by the City Council pursuant to Section 19.04.060 of this Title and such additional information as the City Engineer may find necessary with respect to any particular case to implement the provisions of this Title shall accompany the tentative parcel map or adjustment plat at the time of submission.

19.24.050 Grading Plan. There shall be filed with each tentative parcel map a grading plan showing graded building site elevations, drainage configurations, and grading proposed for the creation of building sites or for construction or installation of improvements to serve the subdivision. The grading plan, together with the original topography contours, may be shown on the tentative map. The grading plan shall indicate approximate earthwork volumes of proposed excavation and filling operations. Profile sections, taken through the site, showing existing topographical contours along with proposed grading, shall be submitted along with the grading plan. The grading plan shall conform to all requirements of Section 17.32.040. The level of detail required may be less than would be required for actual construction but shall be sufficient to permit analysis of all onsite and offsite environmental impacts and mitigation measures including, but not limited to, best management practices. The authority considering an application for a tentative parcel map shall also consider the grading plan, and if the tentative parcel map is approved or conditionally approved, the grading plan submitted under this section shall be marked to identify it as the grading plan that was a basis for approval of the tentative parcel map. Any grading permit obtained pursuant to the Grading Code (Chapter 17.32) for the subdivision shall conform to the grading plan thus marked, and any substantial deviation from this grading plan shall require an amendment to the grading plan under Chapter 17.32. In the event no grading is proposed, a statement to that effect shall be placed on the tentative parcel map. (Ord. No. 2001-1123, 11-27-01)

19.24.060 Preliminary Title Report. There shall be filed with each tentative parcel map, a current preliminary title report of the property being subdivided or altered.
19.24.070 Replacement Tentative Parcel Map. A replacement tentative parcel map shall be submitted when the City Engineer finds that the number or nature of the changes necessary for approval are such that they cannot be shown clearly or simply on the original tentative parcel map.

19.24.080 Revised Tentative Parcel Map. Where a subdivider desires to revise an approved tentative parcel map, he may file with the City Engineer, prior to the expiration of the approved tentative parcel map, a revised tentative parcel map on payment of the fees specified in Section 19.08.060.

19.24.090 City Engineer - Duties. The City Engineer is authorized and directed to carry out the following duties, concerning applications for tentative parcel maps or adjustment plats:

(a) Obtain the recommendations of other City departments, governmental agencies or special districts as may be deemed appropriate or necessary by the City Engineer in order to carry out the provisions of this Title.

(b) Investigate each tentative parcel map filed pursuant to this Chapter and indicate by written report the kind, nature and extent of improvements required to be installed on or to serve the land to be divided.

(c) Refer the application or tentative parcel map to the Planning Director for a report concerning consistency with the zoning provisions of this Code for any tentative parcel map containing proposed panhandle or flag-shaped lots that do not meet the minimum lot width requirements of the zone, but which may be permitted pursuant to the zoning ordinance. The matter shall be referred to the Planning Commission for decision. The processing of such maps shall be deferred until the Planning Commission has determined whether or not to approve the panhandle lots. If such lots are not approved, the City Engineer shall disapprove the map. If such lots are approved by the Planning Commission, the City Engineer shall continue to process the map in accordance with this Chapter.

(d) Approve, conditionally approve or disapprove tentative parcel maps, and report as provided in this Chapter the approval, conditional approval or disapproval directly to the subdivider.

(e) Waive the requirements for filing and recordation of a parcel map for certain subdivisions as provided for in this Title.

19.24.100 Assignment of Certain Responsibilities to the City Engineer. The responsibilities of the City Council, pursuant to Sections 66437.5, 66474, 66474.1 and 66474.6 of the Subdivision Map Act and the responsibilities of the Planning Commission, pursuant to Section 65402 of the Government Code and Section 19.24.065 of this Code are assigned to the City Engineer with respect to those tentative parcel maps filed pursuant to this Chapter.

19.24.110 Action of the City Engineer. Within ten working days after a tentative parcel map has been filed, the City Engineer shall transmit copies of the map, together with accompanying information, to such public agencies and public and private utilities as the City Engineer determines may be concerned. Each of the public agencies and utilities may, within ten working days after the map has been sent to such agency, forward to the City Engineer a written report of its findings and recommendations thereon.
19.24.115  Notice to Affected Property Owners. Within ten working days after the tentative parcel map has been filed, the City Engineer shall notify, by first class mail, all property owners as shown on the last equalized county assessment roll(s) as owning property located within a radius of five hundred feet of the proposed project that the tentative parcel map has been filed. Each such person may request, in writing, the opportunity to be heard on the tentative parcel map. Such written request must be filed with the City Engineer within fifteen days after the mailing of the notice. Failure to so file shall be deemed a waiver of the rights under this Section. If written request to be heard is filed by any property owner receiving such notice, the property owner shall receive all notices required by Section 19.24.120 and may request or shall be permitted to be heard at a review pursuant thereto. The notice required by this Section shall include a brief description of the project as proposed on the tentative parcel map, and shall inform each property owner of their rights pursuant to this Section. Whenever a tentative parcel map is for the conversion of existing residential real property to a common interest development project, the notice required by this Section shall be sent to all tenants of the project and shall include notification of the tenant's rights to appear and be heard. The failure of any person to receive the notice specified herein shall not invalidate any action taken pursuant to this Title.

19.24.116  Conversion of Mobilehome Parks. At the time of filing a tentative parcel map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report specified by Section 19.16.030. In determining the impact of the conversion on displaced mobilehome park residents, the report shall address the availability of adequate replacement space in mobilehome parks. The subdivider shall make a copy of the report available to each resident of the mobilehome park within fifteen days of the filing of the tentative parcel map. The subdivider shall also provide all notices required by this Code. The City Engineer may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park and shall make all the findings required.

19.24.117  Proof of Notice - Minor Subdivisions. Whenever the subdivider is required by this Title or the Subdivision Map Act, to give any notice or provide any report or information to any person other than the City, the subdivider shall submit proof sufficient to allow the City Engineer to find that the notice has been given or the reports or information provided. Such proof may include declarations under penalty or perjury.

19.24.120  Consideration of Tentative Parcel Map - Notice of Decision.

(a) Within fifty calendar days after a tentative parcel map is filed, the City Engineer shall approve, conditionally approve or disapprove such map. The time limit specified in this paragraph may be extended by mutual consent of the applicant and the City Engineer. If the tentative map is disapproved, the reasons therefore shall be stated in the notice of disapproval.

(b) The City Engineer shall notify the subdivider of his preliminary decision to conditionally approve or disapprove a tentative parcel map, along with the conditions of conditional approval or the reasons for disapproval, within forty days after the tentative parcel map is filed. If the applicant is dissatisfied with such preliminary decision or with any condition pertaining thereto, he may request in writing that such preliminary decision be reviewed. Such request must be received by the City Engineer within ten calendar days after the date of the preliminary decision, but in no case later than forty-nine calendar days after the tentative parcel map is filed.

Upon receipt within the time prescribed of the written request for review of a preliminary decision, the City Engineer shall arrange a time and place for such review, and shall notify the applicant and appropriate City departments and agencies thereof. In the event that a review
cannot be arranged or completed prior to fifty days after the tentative parcel map is filed, the request for review shall be deemed to constitute consent of the applicant to extend for a reasonable period not to exceed ten working days the time limit in which the City Engineer must approve, conditionally approve or disapprove the tentative parcel map. After completion of the review, the City Engineer shall render his final approval, conditional approval or disapproval of the tentative parcel map as provided in this Section.

In the event no written request for review is received within the time prescribed, the preliminary decision shall become final and the subdivider shall be so notified as provided in this Section.

(c) The subdivider shall be informed of the preliminary decision and of the final decision of the City Engineer by written notice. Notice shall be deemed to have been given upon deposit of the notice in the United States mail addressed to the subdivider or applicant with postage thereon prepaid.

19.24.130 Disapproval of Tentative Parcel Map. The City Engineer shall not approve a tentative parcel map under any of the following circumstances:

(a) The land proposed for division is a lot or parcel which was part of a parcel map which was approved or recorded less than two years prior to the filing for approval of the subject tentative parcel map where the total number of lots created by all maps exceeds four.

(b) The land proposed for division is a lot or parcel created illegally, unless the lot or parcel has been approved by the City Engineer or, on appeal, by the City Council and a Certificate of Compliance relative thereto has been filed with the County Recorder.

(c) The subdivision proposes creation of five or more lots.

(d) The City Engineer finds that the tentative parcel map does not meet the requirements of this Code or that all approvals or permits required by this Code for the project has not been given or issued.

(e) The land proposed for division is a lot or parcel that was part of an approved tentative map wherein the parcel map requirement was waived and a Certificate of Compliance has been filed with the County Recorder pursuant to this Title.

(f) The City Engineer makes any of the following findings:

(1) The proposed map is not consistent with applicable general and specific plans and applicable provisions of Title 20.

(2) The design or improvement of the proposed subdivision is not consistent with the applicable provisions of Title 20.

(3) The site is not physically suitable for the type of development.

(4) The site is not physically suitable for the proposed density of development.

(5) The design of the subdivision of the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat; unless an Environmental Impact Report was prepared in
respect to the project and a finding was made pursuant to Section 21081(c) of the Public Resources Code that specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the Environmental Impact Report.

(6) The design of the subdivision or the type of improvements is likely to cause serious public health problems.

(7) The design of the subdivision or the type of improvements will conflict with easements of record or easements established by court judgment, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the City Engineer may approve a map if he finds that alternate easements for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public.

(8) In the case of the conversion of residential real property to a common interest development project, that any of the notices to tenants required by law have not been or will not be given as required by the Subdivision Map Act.

Any decision to disapprove a tentative parcel map shall be accompanied by a finding identifying the requirements imposed by the Subdivision Map Act and this Title or the conditions of approval which have not been met or performed.

(9) Subject to the exceptions contained in Section 66474.4 of the Government Code, that the property is subject to a contract entered into pursuant to the Land Conservation Act of 1965 (Williamson Act) and the parcels resulting from the subdivision would be too small to sustain agricultural use. The determination of ability to sustain agricultural use shall be made according to the provisions of Section 66474.4 of the Government Code.

19.24.140 Appeal to the City Council.

(a) The subdivider may appeal any action of the City Engineer with respect to a tentative parcel map or adjustment plat to the City Council as provided in Section 66452.5 of the Subdivision Map Act. The appeal shall be filed with the City Clerk within 10 days after the action of the City Engineer from which the appeal is being taken.

(b) Any interested person may appeal to the City Council from any decision of the City Engineer made relative to a tentative parcel map or adjustment plat within 10 days after the action of the City Engineer from which the appeal is being taken. Any such applicant shall be entitled to the same notice and rights regarding testimony, as apply to the subdivider under Section 66452.5 of the Subdivision Map Act.

(c) The City Council shall hold a public hearing on the appeal, and notice thereof shall be given as provided in Section 66451.3 of the Subdivision Map Act. Any interested person may appear at such hearing and shall be heard.

(d) The City Council shall hold the hearing and act on the map within the time limits prescribed by the Subdivision Map Act.

(e) Notice of any final decision of the City Engineer pursuant to this Chapter shall be mailed to all property owners as shown on the latest equalized county assessment roll(s) and
persons in possession, if different, within three hundred feet of the proposed project. Such notice shall inform each owner of the appeal rights under this Section.

19.24.150 Waiver of Parcel Map.

(a) Notwithstanding other provisions of this Title, the requirement that a parcel map be prepared, filed with the City Engineer and recorded may be waived, providing a finding is made by the City Engineer or, on appeal, by the City Council, that the proposed subdivision complies with the requirements as to area, improvement and design, flood and water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection and other requirements of the public facilities element of the General Plan and the provisions of Chapter 19.44 of this Title which would otherwise apply to the proposed subdivision.

(b) An applicant for a minor subdivision, pursuant to this Section, shall pay the fee prescribed by Section 19.08.060 for tentative parcel maps and shall file an application and request for parcel map waiver which shall contain sufficient information in the opinion of the City Engineer to enable the City Engineer or, on appeal, the City Council, to make the findings required by this Section. The following types of subdivisions are deemed to comply with the findings required by this Section for waiver of the parcel map unless the City Engineer or, on appeal, the City Council finds, based on substantial evidence that public policy necessitates a parcel map, such map shall not be required for the following:

(1) Short-term leases, terminable by either party on thirty days notice, of a portion of the operating right-of-way of a railroad corporation defined as such by Section 230 of the Public Utilities Code.

(2) Land conveyed to or from a governmental agency, public entity or public utility, or to a subsidiary of a public utility for conveyance to such public utility for rights-of-way.

(c) The following minor subdivisions are deemed to comply with the findings required by this Section for waiver of the parcel map unless dedication improvements are required by the City Engineer, or unless there is evidence to the contrary:

(1) A minor subdivision wherein each resulting lot or parcel contains a gross area of forty acres or more; or each of which is a quarter-quarter section or larger.

(2) A minor subdivision only for the purpose of leasing the lots resulting from such subdivision.

(3) A major subdivision as specified in Section 19.20.050 of this Title.

(d) The processing of any application pursuant to this Section shall be subject to the same time requirements and appeal procedures as are provided in this Title for tentative parcel maps. In any case, where waiver of the parcel map is granted by the City Engineer, or an appeal by the City Council, the City Engineer shall cause to be filed for record with the County Recorder, a Certificate of Compliance pursuant to Chapter 19.48 of this Title.

19.24.160 Expiration of Tentative Parcel Map. The approval of conditional approval of a tentative parcel map shall expire twenty-four months from the date the map was approved or conditionally approved unless it is extended in accord with Section 19.24.180.
The period of time specified in this Section shall not include any period of time during which a water or sewer moratorium, imposed after approval of the tentative parcel map is in existence; provided, however, that the length of such moratorium does not exceed five years.

Once such a moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time the moratorium was imposed; provided, however, that if such remaining time is less than one hundred twenty days, the map shall be valid for one hundred twenty days following the termination of the moratorium. This Section applies to all tentative parcel maps approved or conditionally approved after January 1, 1983; tentative parcel maps approved prior to that date shall expire one year from the date of approval or conditional approval unless extended pursuant to Section 19.24.180.


(a) Within twenty-four months after the approval or conditional approval of the tentative parcel map, or within the period of any extension thereof, the subdivider may file with the City Engineer a parcel map in substantial conformance with the tentative parcel map as approved or conditionally approved and in conformance with the Subdivision Map Act and this Title.

(b) The period of time specified in Subsection (A) shall not include any period of time during which a development moratorium imposed after approval of the tentative parcel map is in existence; provided, however, that the length of such moratorium does not exceed five years. Once such a moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time the moratorium was imposed. However, if the remaining time is less than one hundred twenty days, the map shall be valid for one hundred twenty days following the termination of the moratorium.

(c) The period of time specified in Subsection (A), including any extension thereof, granted pursuant to Section 19.24.180 shall not include any period of time during which a lawsuit involving the approval or conditional approval of the tentative parcel map is or was pending in a court of competent jurisdiction, if a stay of such time period is approved by the City Engineer pursuant to this Subsection. An application for a stay must be filed by the subdivider in writing with the City Engineer within ten days of service of the initial petition or complaint in the lawsuit upon the City. The application shall state the reasons for the requested stay and include names and addresses of all parties to the litigation. The City Engineer shall approve or conditionally approve the stay for up to five years or deny the requested stay.

(d) The expiration of the approved or conditionally approved tentative parcel map shall terminate all proceedings and no parcel map for all or any portion of the real property included in the tentative parcel map shall be filed without first processing a new tentative map or tentative parcel map. Once a timely and complete filing of a parcel map has been made pursuant to this Code subsequent actions of the City including, but not limited to, processing, approving and recording may occur after the expiration of the tentative parcel map.


(a) The subdivider may request an extension of the tentative parcel map approval or conditional approval by written application to the City Engineer. Such application shall be filed at least five days and not more then ninety days before the approval or conditional approval is due to expire.
(b) At any time within ninety days of the expiration of the map, the City Engineer may approve, conditionally approve or deny the requested extension. An extension shall not exceed one year from the original expiration date. Only one such extension may be granted. In granting an extension, the City Engineer may impose new conditions and may revise existing conditions. Any decision by the City Engineer in regard to an extension may be appealed to the City Council in accord with Section 19.24.140.

19.24.190 Vesting Tentative Parcel Map. A vesting tentative parcel map may be filed and processed in the same manner and subject to the same requirements as a tentative parcel map except as provided in Chapter 19.17.
CHAPTER 19.28

MINOR SUBDIVISIONS--REQUIREMENTS

SECTIONS:

19.28.010 Design of Minor Subdivisions
19.28.020 Panhandle-Shaped Lots
19.28.030 Dedication and Access
19.28.040 Waiver of Direct Access to Streets
19.28.050 Dedication Procedure
19.28.060 Required Improvements
19.28.070 Agreement to Improve
19.28.080 Exemption from Improvements
19.28.090 Off-Site Improvements - Acquisition of Property Interests
19.28.100 Monuments and Flagging

19.28.010 Design of Minor Subdivisions. Except as otherwise provided in this Title, all minor subdivisions shall conform to the lot design requirements of Section 19.16.010 of this Title.

19.28.020 Panhandle-Shaped Lots. A panhandle-shaped or flag-shaped lot, if permitted, by Title 20, shall have a minimum frontage of thirty feet on a dedicated public street or publicly dedicated easement accepted by the City. Said minimum frontage shall be twenty feet for each such shaped lot when located back-to-back with another such shaped lot. Panhandles may not serve as access to any lot except the lot of which the panhandle is a part.

Where the panhandle or flag-shaped portion of a lot is adjacent to the same portion of another such lot, the required minimum frontage on such street or easement shall be twenty feet, provided, a joint easement ensuring common access to both such portions is agreed upon by the property owners and recorded.

19.28.030 Dedication and Access. No parcel map filed pursuant to Chapter 19.32 of this Title shall be approved by the City Engineer unless and until the following conditions have been satisfied.

(a) There shall be offered for dedication, pursuant to Section 19.28.050 of this Chapter, right-of-way for streets in accordance with the circulation element of the General Plan, any applicable master plans, specific plans or otherwise officially adopted street plans and the City standards within and adjacent to the boundaries of the land to be subdivided.

(b) Streets which are proposed on the boundaries of a subdivision shall be offered for dedication to a width of no less than one-half the width shown on the circulation element or the City standards plus twelve feet. In the event that the offer of dedication for the streets is to be accepted prior to the final approval of the parcel map, a strip of land one foot wide extending along the outer edge of the land offered for dedication may be required to be offered to the City for street purposes and over which access rights are relinquished.
(c) Offers of dedication for streets which will be accepted before final approval of the parcel map, and which streets are proposed to be terminated at the boundary of the minor subdivision may be required to include a strip of land one foot wide extending across the street at its point of termination at the boundary which shall be portions of the adjacent lots, offered for street purposes and over which access rights are relinquished.

(d) Easements for public utilities and drainage-ways shall be offered for dedication in the manner prescribed by Section 19.28.050 of this Chapter as required by the City Engineer when he determines that such offers of dedication are necessary to serve the subdivision and/or are a reasonable and logical extension of such facilities as exist in the vicinity.

19.28.040 Waiver of Direct Access to Streets. The City Engineer may impose a requirement that any dedication or offer of dedication of a street shall include a waiver of direct access rights to such street from any property shown on a parcel map as abutting thereon, and that if the dedication is accepted, such waiver shall become effective in accordance with the provisions of the waiver of direct access.

19.28.050 Dedication Procedure. Pursuant to Section 66447 of the Subdivision Map Act, all dedications or offers of dedication required by the provisions of this Chapter shall be by separate instrument and shall be completed prior to filing of the parcel map or by certificate on the parcel map as the City Engineer may elect. An offer of dedication shall be in such terms as to be binding on the owner, his heirs, assigns or successors in interest, and except as provided in Subsection (b) of Section 66477.2 of the Subdivision Map Act, shall continue until such dedication is accepted or the offer is abandoned or otherwise terminated. Any such dedication or offer of dedication shall be free of any burden or encumbrance which would interfere with the purposes of which the dedication of offer of dedication is required. The subdivider shall provide a current preliminary title report or equivalent proof of title satisfactory to the City Engineer. The City Engineer is authorized to accept dedications of offers or dedication or to reject such offers on behalf of the City.

19.28.060 Required Improvements.

(a) As a condition precedent to the approval of a parcel map for a minor subdivision, the subdivider shall construct all off-site and on-site improvements in accordance with the requirements applicable to major subdivisions as set forth in Section 19.16.050 of this Title for the parcels being created; provided, however, that requirements for the construction of such off-site and on-site improvements shall be noticed by certificate on the parcel map, in the instrument evidencing the waiver of such parcel map, or by separate instrument and shall be recorded on, concurrently with, or prior to the parcel map or in instrument of waiver of a parcel map being filed for record. (Ord. No. 91-903, 10-22-91)

(b) Fulfillment of such construction requirements shall not be required until, at or after such time as a building or grading permit is issued by the City or at such time as may be provided by an agreement between the subdivider and the City pursuant to Section 19.28.070, except that in the absence of such agreement, the City Engineer may require fulfillment of some or all of such construction requirements within a reasonable time following approval of the parcel map and prior to the issuance of a building or grading permit for the development of a parcel map upon a finding that fulfillment of such construction requirements is necessary for reasons of public health and safety or that the construction is a necessary prerequisite to the orderly development of the surrounding area.
19.28.070 Agreement to Improve. Unless the subdivider elects, with the consent of the City Engineer, to construct the improvements required by Section 19.28.060 prior to approval of the parcel map, the subdivider shall execute an agreement to construct such improvements or to otherwise comply with the requirements of this Title and with the conditions of approval for the tentative parcel map for the subdivision prior to approval of the parcel map. If the subdivider consents, the agreement may provide for the construction of such improvements prior to issuance by the City of a building or grading permit for a parcel within the subdivision. The subdivider shall provide improvement security in accord with Section 19.16.070, 19.16.080, 19.16.090 and 19.16.100 of this Title. In addition, the subdivider shall prepare and deposit with the City Engineer detailed plans and specifications of the improvements to be constructed, and such plans and specifications shall be made a part of any such agreement and of the improvement security. The City Manager is authorized to execute such agreements on behalf of the City.

19.28.080 Exemption from Improvements. Other provisions of this Title to the contrary notwithstanding, the following minor subdivisions shall not be subject to the public improvement or dedication requirements of this Chapter, except insofar as is necessary to comply with the Subdivision Map Act, including Sections 66426 and 66428 thereof:

(a) Any parcel or parcels of land divided into lots or parcels, each of a gross area of forty acres or more; or each of which is a quarter-quarter section or larger.

19.28.090 Off-Site Improvements - Acquisition of Property Interests. Whenever a subdivider is required as a condition of a tentative parcel map to construct or install off-site improvements on property which neither the subdivider nor the City owns, then not later than sixty days prior to filing the parcel map for approval, the subdivider shall provide the City with sufficient information, reports and data including, but not limited to, an appraisal and title report, to enable the City to commence proceedings pursuant to Title 7 of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property pursuant to Article 3 of said Title.

The subdivider shall agree, pursuant to Section 19.28.070 to complete the improvements at such time as the City has a sufficient interest in the property to permit the construction of the improvements. The subdivider shall bear all costs associated with the acquisition of the property interests and the estimated cost thereof shall be secured as provided in Section 19.28.070.

19.28.100 Monuments and Flagging. Every parcel map shall show monuments which shall be set by a licensed surveyor or engineer in accordance with Section 19.16.050 of this Title, provided that monumentation of the exterior boundary of a remainder parcel need not be placed or shown on the parcel map. The monuments shall be set prior to the approval of the map unless the setting thereof is deferred by the City Engineer in accordance with Section 66496 of the State Government Code. The City Engineer is authorized to accept monumentation agreements and securities for parcel maps on behalf of the City.
CHAPTER 19.32

PARCEL MAP REQUIREMENTS

SECTIONS:

19.32.010  Maps to Conform to Requirements of City Engineer and City Council
19.32.020  City Engineer to Approve Parcel Maps
19.32.030  Land Subject to Inundation
19.32.040  Additional Certificates on Parcel Maps
19.32.050  Title Company Subdivision Guarantee
19.32.060  Stamping or Printing of Certificates
19.32.070  Additional Data on Parcel Maps
19.32.080  Transmittal of Parcel Map
19.32.090  Coordinate Ties on Parcel Maps

19.32.010  Maps to Conform to Requirements of City Engineer and City Council. All parcel maps shall conform to the requirements of the Subdivision Map Act and this Chapter and also shall conform to the requirements specified in the report of the City Engineer approving or conditionally approving the tentative parcel map, unless an appeal is made by the subdivider to the City Council and the City Council modifies, rejects or overrules the recommendations of the City Engineer, in which event the map also shall conform to the requirements of the City Engineer as modified by the City Council and the requirements imposed by the City Council.

19.32.020  City Engineer to Approve Parcel Maps. The City Engineer shall not consider a parcel map unless there is a valid tentative parcel map for the subdivision. No parcel map shall be filed in the Office of the County Recorder until approved by the City Engineer, but such map shall be disapproved only for failure to meet or perform requirements of conditions which were applicable to the subdivision at the time of approval of the tentative parcel map, providing that any such disapproval shall be accompanied by a finding identifying the requirements or conditions which have not been met or performed. The City Engineer may waive any failure of the map to meet such requirements and conditions if such failure is a result of a technical and inadvertent error, which in the determination of the City Engineer does not materially affect the validity of the map.

19.32.030  Land Subject to Inundation. Lots or portions of lots shown on a parcel map which are subject to inundation as determined by the City Engineer shall be identified and so labeled.

19.32.040  Additional Certificates on Parcel Maps. In addition to the certificates and other material required by the Subdivision Map Act and this Title, a parcel map shall bear the following certificates:

(a) A certificate by the City Engineer that the map complies with all the provisions of this Title and conforms to the approved tentative parcel map or, in the case of a parcel map for a major subdivision filed pursuant to Section 19.20.050 of this Title, to the approved tentative map.
(b) A certificate by the City Engineer that the map does not appear to be a map of a major subdivision for which a final map is required pursuant to Section 66426 of the Subdivision Map Act.

(c) A certificate as required by Section 19.20.110(i); provided, however, with respect to a division of land into four or fewer parcels where dedications or offers of dedications are not required, the certificate shall be signed and acknowledged by the subdivider only; provided, however, where a subdivider does not have a record title ownership interest in the property to be divided, the City Engineer may require that the subdivider provide him with satisfactory evidence that the persons with record title ownership have consented to the proposed division. For purposes of this Subsection, "record title ownership" shall mean fee title of record unless a leasehold interest is to be divided, in which case "record title ownership" shall mean ownership of record of such leasehold interest; "record title ownership" does not include ownership of mineral rights or other subsurface interests which have been severed from ownership of the surface.

(d) A dedication certificate as required by Section 19.20.110.

(e) An engineer's/surveyor's statement, in accordance with Section 66449(a) of the Subdivision Map Act.

(f) A recorder's certificate or statement, in accordance with Section 66449(b) of the Subdivision Map Act.

(g) A certificate signed by the City Engineer attesting to his acceptance or rejection on behalf of the public of all dedications shown thereon.

(h) A certificate by the engineer or surveyor responsible for preparation of the map stating that all monuments are of the character and occupy the positions indicated, or that they will be set in such positions on or before a specified date. The certificate shall also state that the monuments are, or will be, sufficient to enable the survey to be retraced.

19.32.050 Title Company Subdivision Guarantee. There shall be filed with the City Engineer, a subdivision guarantee from a qualified title insurance company which guarantees that the parties named therein are the only parties having any record title interest in the land subdivided. The title company shall, on the date the parcel map will be transmitted to the County Recorder, pursuant to the requirements of Section 66465 of the Subdivision Map Act, a letter stating that at the time of filing of the parcel map in the Office of the County Recorder, the parties consenting to such filing are all of the parties having a record title interest in the real property being subdivided whose signatures are required by Division 2 of Title 7 of the Government Code, as shown by the records in the Office of the County Recorder.

19.32.060 Stamping or Printing of Certificates. The affidavits, certificates, statements, acknowledgements and approvals required or permitted by this Chapter or the Subdivision Map Act to appear upon parcel maps may be legibly stamped or printed upon the map with opaque ink in such a manner as will guarantee a permanent record in black upon the tracing cloth or polyester base film. If ink is used on polyester base film, the base surface shall be coated with a suitable substance to assure permanent legibility.
19.32.070  Additional Data on Parcel Maps. Additional data on parcel maps shall be as listed in Section 19.20.060 of this Title.

19.32.080  Transmittal of Parcel Maps. After approval by the City Engineer and after he determines that all applicable requirements of the Subdivision Map Act and this code have been satisfied, he shall sign a statement to that effect on the map and shall transmit the map to the City Clerk. The City Clerk shall transmit such maps directly to the County Recorder unless otherwise required by Section 66454 of the Government Code.

19.32.090  Coordinate Ties on Parcel Maps. The provisions of Section 19.20.60 (b) and 19.20.60 (h) shall also apply to all parcel maps.
CHAPTER 19.36
ADJUSTMENT PLATS

SECTIONS:

19.36.010 Purpose of Chapter
19.36.020 Applicability
19.36.030 Application
19.36.040 Approval
19.36.050 Revised Adjustment Plat
19.36.060 Conditions of Approval
19.36.070 Certification
19.36.080 Appeal

19.36.010 Purpose of Chapter. The purpose of this Chapter is to provide a simplified procedure for the adjustment of property boundaries, or the consolidation, of legally existing adjacent lots or parcels where the land taken from one adjacent parcel is added to another adjacent parcel and where no additional lots or parcels will result. An adjustment plat shall not be used for the consolidation and re-division of lots or parcels.

19.36.020 Applicability. Notwithstanding any other provisions of this Title to the contrary, the procedure set forth in this Chapter shall govern the processing of and requirements for adjustment plats. An adjustment plat may be filed in accord with the provisions of this Chapter to adjust the boundaries between two or more legally existing adjacent parcels, provided the City Engineer determines that the boundary adjustment does not:

(a) Create any additional lots.

(b) Include a lot or parcel created illegally unless a Certificate of Compliance pursuant to Chapter 19.48 of this Code has been approved and recorded for such lot or parcel.

(c) Impair any existing access or create a need for a new access to any adjacent lot or parcel.

(d) Impair any existing easement or create need for a new easement.

(e) Violate the provisions of this Code.

(f) Alter the City limit boundary.

(g) Require substantial alterations of existing public improvements or create a need for new public improvement.

(h) Adjust the boundaries between lots or parcels which are subject to an agreement for public improvements unless the City Engineer finds that the proposed adjustment plat will not materially affect such agreement or the security therefore.
19.36.030  **Application.** An application for approval of an adjustment plat shall be filed with the City Engineer accompanied by such information as the City Engineer may require and by a fee established by City Council resolution. That application shall also be accompanied by an adjustment plat of a size and form prescribed by the City Engineer which shall bear the signature of the owners of the property involved and by a title report for the property. The City Engineer may refer copies of such plat to other public agencies for review and comment.

19.36.040  **Approval.** After an application for approval of an adjustment plat has been filed in accordance with this Chapter, the City Engineer may approve, conditionally approve or disapprove such plat. The applicant shall be notified in writing of the City Engineer's action.

19.36.050  **Revised Adjustment Plat.** A revised adjustment plat shall be submitted for approval when the City Engineer finds that the number or nature of any changes necessary for approval are such that they cannot be shown clearly or simply on the original adjustment plat. When required, the failure to file a revised adjustment plat within six months from the date of the conditional approval of the original plat shall terminate all proceedings.

19.36.060  **Conditions of Approval.** The City Engineer may impose conditions or extractions on the approval of an adjustment plat to the extent that the conditions or extractions are necessary to ensure compliance with the applicable provisions of the City's building and zoning laws, or to facilitate the relocation of existing utilities, infrastructures, or easements. The City Engineer shall not impose conditions or extractions on approval of a lot line adjustment except to conform to the building and zoning requirements contained in Titles 17 and 20, respectively, of this Code, or except to facilitate the relocations of existing utilities infrastructure, or easements. The conditions imposed by the City Engineer shall be satisfied prior to the recordation of the adjustment plat or such other document authorized by law to effectuate the lot line adjustment.

19.36.070  **Certification.**

(a) If the City Engineer determines that the adjustment plat meets all the requirements of this Code and that all conditions imposed have been satisfied, he shall certify on the adjustment plat that it has been approved pursuant to this Chapter, notify the Director of Developmental Services, file it in the Engineering Department and cause to be filed with the County Recorder, a Certificate of Compliance, having as an attachment a copy of the approved adjustment plat.

(b) As an alternative to the procedures established by Subsection (a) of this Section, a lot line adjustment may be effectuated by the recordation of the deed or record of survey; provided, however, that such deed or record of survey shall not be recorded unless it contains a certification by the City Engineer that all the requirements of this Chapter and any condition imposed pursuant to this Chapter have been satisfied and further provided that a copy of the adjustment plat shall be attached to the deed or record of survey.

(c) The City Engineer shall require the filing of a record of survey for any lot line adjustment for any property which was not created by a recorded subdivision map, for which the City Engineer requires the setting of monuments, or for which a recorded survey is required by Section 8762 of the Business and Professions Code.

19.36.080  **Appeal.** Any interested person may appeal any action of the City Engineer pursuant to this Chapter to the City Council as provided in Section 19.24.140 of this Title.
CHAPTER 19.40

REVERSIONS TO ACREAGE

SECTION 19.40.010  Reversions to Acreage by Final Map. Subdivided property may be reverted to acreage pursuant to the provisions of this Chapter.

SECTION 19.40.020  Initiation of Proceedings by Owners. Proceedings to revert subdivided property acreage may be initiated by petition of all of the owners of record of the property. The petition shall be in a form prescribed by the City Engineer. The petition shall contain the information required by Section 19.40.040 and such other information as required by the City Engineer.

SECTION 19.40.030  Initiation of Proceedings by City Council. The City Council, at the request of any person or on its own motion, may by resolution initiate proceedings to revert property to acreage. The City Council shall direct the City Engineer to obtain the necessary information to initiate and conduct the proceedings.

SECTION 19.40.040  Data for Reversion to Acreage. Petitioners for a reversion to acreage shall file the following:

(a) Evidence of title to the real property; and

(b) Evidence of the consent of all of the owners of an interest(s) in the property; or

(c) Evidence that none of the improvements required to be made have been made within two years from the date the final map or parcel map was filed for record or within the time allowed by agreement for completion of the improvements, whichever is later; or

(d) Evidence that no lots shown on the final or parcel map have been sold within five years from the date such final or parcel map was filed for record; or

(e) A tentative map in the form prescribed by Chapter 19.12 of this Title; or

(f) A final map in the form prescribed by Chapter 19.20 of this Title which delineates dedications which will not be vacated and dedications required as a condition to reversion.
Proceedings Before the City Council.

(a) A public hearing shall be held before the City Council on all petitions for, and City Council initiations for, reversions to acreage. Notice of the public hearing shall be given as provided in Section 66451.3 of the Subdivision Map Act. The City Engineer shall also mail a written notice to all property owners as shown on the latest equalized county assessment roll(s) or persons in possession, if different, within a radius of three hundred feet of the proposed project within the time limits as specified in Section 66451.3 of the Subdivision Map Act.

(b) The City Council may approve a reversion to acreage only if it finds and records in writing that:

1. Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes; and

2. All owners of an interest in the real property within the subdivision have consented to reversion; or

3. None of the required improvements to have been made within two years from the date the final or parcel map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is later; or

4. No lots shown on the final or parcel map were filed for record.

Conditions of Approval. The City Council may require as a condition of reversion:

(a) The dedication or offer of dedication of streets or easements.

(b) The retention of all or a portion of previously paid subdivision fees, deposits or improvement securities if the same are necessary to accomplish any of the provisions of this Title.

Return of Fees and Deposits - Release of Securities. Except as provided in Section 19.40.060, upon filing of the final map for reversion of acreage with the County Recorder, all fees and deposits shall be returned to the subdivider and all improvement securities shall be released by the City Council.

Delivery of Final Map. After the hearing before the City Council and approval of the reversion, the final map shall be delivered to the County Recorder.

Effect of Filing Reversion Map with the County Recorder. Reversion shall be effective upon the final map being filed for record by the County Recorder. Upon filing, all dedications and offers of dedication not shown on the final map for reversion shall be of no further force and effect.
CHAPTER 19.44

DEDICATION OF LAND FOR RECREATIONAL FACILITIES

SECTIONS:  "RESERVED"
CHAPTER 19.48

ENFORCEMENT - CERTIFICATES OF COMPLIANCE

SECTIONS:

19.48.010 Enforcement
19.48.020 Notice of Violation
19.48.030 Development Permits and Approvals Withheld
19.48.040 Certificates of Compliance
19.48.050 Appeal
19.48.060 Violations
19.48.070 Severability
19.48.080 Presumption of Lawful Creation

19.48.010 Enforcement. Whenever the County Assessor or the head of any City department finds that the provisions of this Title or of the Subdivision Map Act have been violated, he shall report such violation to the City Manager. It shall be the duty of the City Manager or his designee to investigate such report and enforce the provisions of this Title and the Subdivision Map Act.

19.48.020 Notice of Violation. Whenever the City Manager has knowledge that real property has been divided in violation of the provisions of the Subdivision Map Act or of City ordinances enacted pursuant thereto, he shall cause to be filed for record with the County Recorder a notice of intention to record a notice of violation, describing the real property in detail, naming the owners thereof, describing the violation, and stating that an opportunity will be given to the owner to present evidence. Upon the recording of the notice of intention to record a notice of violation, the City Manager or his designee shall mail a copy of such notice to the owner of the real property. The notice shall specify a time, date and place at which the owner may present evidence to the City Manager why such notice should not be recorded. If, after the owner has presented evidence, the City Manager determines that there has been no violation, he shall forthwith file a release of the notice of intention to record a notice of violation with the County Recorder. If, however, after the owner has presented evidence, the City Manager determines that the property has in fact been illegally divided, or if within sixty days of receipt of a copy of such notice the owner of such real property fails to inform the City Manager of his objection to recording the notice of violation, the City Manager shall record the notice of violation with the County Recorder. The notice of intention to record a notice of violation and the notice of violation, when recorded, shall be deemed to be constructive notice of the violation to all successors in interest in such real property. The City Manager's duties under this Section may be delegated to the City Engineer.

19.48.030 Development Permits and Approvals Withheld.

(a) The City or any other responsible agency shall not issue or grant building, grading or any other permit, or any approval necessary to develop any real property which has been divided or which has resulted from a division in violation of the provisions of the Subdivision Map Act or City ordinances enacted pursuant thereto applicable at the time such division occurred unless the City Manager or, an appeal to the City Council, finds that development of such real property is not contrary to the public health or the public safety. The authority to deny such a
(b) All applications for permits or approvals necessary for the development of real property shall be reviewed by the City Engineer, who shall determine whether the real property has been subdivided or has resulted from a division in violation of the Subdivision Map Act or City ordinances enacted pursuant thereto. The City Engineer shall also make such a determination upon a receipt of a written request from the owner of such real property or the vendee of the current owner of record pursuant to a contract of sale of the real property or upon receipt of written notification of the authority or body responsible for granting a permit or approval. The City Manager may approve real property for development pursuant to Subsection (a) and shall so inform the owner or vendee thereof and the authority or body authorized to issue or grant the permit or approval for development. If it is determined that such real property is approved for development, the City Manager may impose such conditions as would have been applicable to the division of the property and which had been established at such time by the Subdivision Map Act or City ordinances enacted pursuant thereto and are appropriate to satisfy public health and safety considerations and other considerations as are hereinafter specified unless the applicant was the owner of record at the time of the initial violation in which event the City Engineer may impose such conditions as would be applicable to a current division of property. If a conditional Certificate of Compliance has been filed for record under the provisions of Section 19.48.040, only such conditions stipulated in that certificate shall be applicable. If real property is approved for development the City Engineer shall cause a Certificate of Compliance relative to the subject real property and reflecting any conditions of development to be filed with the County Recorder pursuant to Section 19.48.040 of this Chapter.

(c) In determining whether approval or conditional approval should be granted for development of real property divided or resulting from a division in violation of the Subdivision Map Act or City ordinances enacted pursuant thereto, the City Engineer or the City Council shall give consideration to:

(1) Whether the owner of the real property can rescind the agreement by which he acquired the real property and recover the consideration paid therefore;

(2) Whether the real property meets the requirements of the applicable zoning regulations;

(3) Whether the real property has a satisfactory potable water supply;

(4) Whether the real property has legal access to a city or county maintained road;

(5) Whether the current owner would have been required to dedicate land for any public purpose or construct or install any improvements pursuant to the terms of the Subdivision Map Act or City ordinances enacted pursuant thereto had the subdivision by which the real property was created been submitted for approval at the time the current owner acquired the property.
(d) Approval for development shall be granted for development of real property where improvements have been completed prior to the time a permit or grant of approval was required for development of the property, or for development of real property for which improvements have been completed in reliance on a previous permit or grant of approval for development, unless the City Engineer finds that development is contrary to the public health or safety.

(e) Whenever any person submits an application for a building or any other permit for proposed construction of more than one main building as defined in Title 20 on any single lot or building site, the Building Director shall refer such application together with the plot plan to the City Engineer for his determination as to whether such proposed construction would create a subdivision. The permit for such proposed construction shall not be issued unless the City Engineer has approved the plot plan and determined that the proposed construction would not constitute a violation of the Subdivision Map Act or this Title.

(f) A request for development approval or a Certificate of Compliance shall be accompanied by a fee established by City Council resolution.

(g) The City Manager’s duties under this Section may be delegated to the City Engineer.

19.48.040 Certificate of Compliance.

(a) Any owner of real property or a vendee of such person pursuant to a contract of sale of such real property may request in writing that the City Manager make a determination whether such real property complies with applicable provisions of the Subdivision Map Act and City ordinances enacted pursuant thereto, or that such real property does not comply with the provisions, and the City Manager shall so notify the owner thereof setting forth the particulars of such compliance or noncompliance. If the subject real property is found to be in compliance with the Subdivision Map Act and City ordinances enacted pursuant thereto, the City Manager shall cause a certification of compliance relative to such property to be filed for record with the County Recorder.

If the subject real property is found not to be in compliance with the Subdivision Map Act and City ordinances enacted pursuant thereto, the City Manager may issue a notice of violation or a conditional Certificate of Compliance. When issuing a conditional Certificate of Compliance the City Manager may impose such conditions as would have been applicable to the division of the property at the time the applicant acquired his interest in the property and which had been established at such time by the Subdivision Map Act or City ordinances enacted pursuant thereto. Upon making such a determination and establishing such conditions, the City Engineer shall cause a conditional Certificate of Compliance setting forth such conditions to be filed for record with the County Recorder, fulfillment and implementation of the conditions shall be required prior to the subsequent issuance of a permit or grant of approval for development of the property, but compliance with such conditions shall not be required until such time as a building permit or granting permit is issued by the City.

(b) Certificates of compliance shall be issued for real property that:

(1) Has been approved for development pursuant to Section 19.48.030 of this Chapter;
(2) Has been approved for division, and the requirement for preparing, filing and recording a parcel map has been waived pursuant to Section 19.24.150 of this Title.

(c) A recorded final subdivision map or recorded parcel map shall constitute a Certificate of Compliance with respect to the lots described therein, and no additional certificates of compliance shall be issued therefore.

(d) The City Manager's duties under this Section may be delegated to the City Engineer.

19.48.050 Appeal. Any interested person may appeal any action of the City Manager or his designee pursuant to this Chapter to the City Council as provided in Section 19.24.140 of this Title.

19.48.060 Violations. Any person violating any of the provisions of this Title is guilty of a misdemeanor and shall be subject to imprisonment for a period not exceeding six months and a fine not exceeding five hundred dollars, or by both such imprisonment and such fine.

19.48.070 Severability. If any provision of this Title or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application thereof, and to this end the provisions of this Title are severable.

19.48.080 Presumption of Lawful Creation.

(a) For purposes of this Title, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created and if at the time of the creation of the parcel there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels.

(b) For purposes of this Title, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if any subsequent purchaser acquired that parcel for valuable consideration without actual or constructive knowledge of a violation of this division or the local ordinance. Owners of parcels or units of land affected by the provisions of this subdivision shall be required to obtain a Certificate of Compliance or a conditional certificate of compliance pursuant to this Chapter prior to obtaining a permit or other grant of approval for development of the parcel or unit of land. For purposes of determining whether the parcel or unit of land complies with the provisions of this Title or the Subdivision Map Act, as required pursuant to Section 19.48.040, the presumption declared in this subdivision shall be operative. (Ord. No. 90-847, 5-8-90)
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<td>Modify Mobilehome Rent Review Commission procedures for submitting a petition</td>
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<td>TA 86-12 Variances/Special Use Permits Standards for conversion of structures &amp; bldgs to condos</td>
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<td>92-928</td>
<td>TA 92-16 Cafe/Restaurant and Bar and/or Cocktail Lounge</td>
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<td>Animals and Fowl (Repealed previous)</td>
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<td>R 89-21 Randy Marino</td>
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<td>R 92-50 Kaiser Medical Center</td>
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<td>SP 87-29(92 Mod) Kaiser Medical Center</td>
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<td>Traffic Safety Commission Chairman and Vice Chairman Annual Election</td>
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<td>RDA #1, Plan Amendment #1</td>
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<td>93-952</td>
<td>R 92-52 Klein</td>
<td>07/27/93</td>
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<td>93-953</td>
<td>SP 92-27 Klein</td>
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<td>93-954</td>
<td>SP 92-28 Spaulding</td>
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<td>93-955</td>
<td>Ambulance Services Regulations</td>
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<td>93-956</td>
<td>Amusement Establishment, standards allowing alcoholic beverages</td>
<td>08/31/93</td>
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<td>Adult Entertainment/EstABLishments</td>
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<td>Moratorium, 45 days. Expired 10/15/93 *Extended 10 months by Res. 93-4324</td>
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<td>SP 87-29 (93 MOD #6) City of San Marcos</td>
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<td>93-959</td>
<td>Criminal Justice Administration Recovery Fees</td>
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<td>Storm Water Mgt &amp; Discharge Control</td>
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<td>14.15.010-120</td>
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<td>Anti-Graffiti Program Implementation</td>
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<td>93-962</td>
<td>TA 93-27 Parking Requirements for Eating Establishments</td>
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<td>DA 92-09 (94 mod) Kaiser Hospital</td>
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<td>Right to Farm Standards</td>
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<td>City Hall &amp; Posting Locations Changes</td>
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<td>Alarm Systems</td>
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<td>RDA Plan Amendment for Project Area #1</td>
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<td>TA 95-32 Kiosk Directional Signs</td>
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<td>R 94-59 South Coast Development</td>
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<td>R 95-64 Traveland Development Co</td>
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<td>R 95-63 Kentucky Fried Chicken/Roeder</td>
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<td>R 95-62 J.W. Millett Construction</td>
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<td>12/10/96</td>
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<td>R 96-70 Geraldine &amp; Lester Ryan</td>
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| 97-1006 | "No Parking" Zones Time Limits                                              | 1/14/97  | 12.12.030/12.20.030 |
| 96-1007 | Mobilehome Park Rules & Regs (adopted by voters)                            | 11/6/96  | 16.04.070 |
| 97-1008 | R 96-71 Hollandia                                                           | 2/25/97  | **       |
| 97-1009 | Municipal Park Hours                                                       | 3/11/97  | 9.04.080 |
| 97-1010 | Flood Damage Overlay Zone                                                  | 5/27/97  | 20.76.020/20.76.160 |
|        |                                                                             |          | 20.76.165 |
| 97-1011| SP 84-05(96MOD) Vallecitos Square                                           | 5/13/97  | **       |
| 97-1012| SP 87-29(97MOD) Heart of the City                                          | 5/13/97  | **       |
| 97-1013| R 97-73/ND 97-428 Philip Balocchia                                         | 6/24/97  | **       |
| 97-1014| SP 89-18(95MOD) San Elijo Ranch, Inc.                                      | 7/8/97   | **       |
| 97-1015| DA 90-04(97MOD) San Elijo Ranch, Inc.                                      | 7/8/97   | **       |
| 97-1016| Parental Responsibility Law                                                 | 6/24/97  | 10.20.010-050 |
| 97-1017| R 97-74/ND 97-435 City of San Marcos                                      | 8/26/97  | **       |
| 97-1018| R 97-75/ND 97-443 R. Allen/H. Campbell                                     | 11/12/97 | **       |
| 97-1019| SP 87-29(97MOD) City of San Marcos                                        | 11/12/97 | **       |
| 97-1020| R 97-76/ND 97-444 FryeFamily(Northwoods)                                   | 12/9/97  | **       |

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| 98-1021| R98-78/ND 97-448 South Coast Development                                   | 1/27/98  | **       |
| 98-1022| SP 90-23(97MOD)/ND 97-448 Home Depot                                      | 1/27/98  | **       |
| 98-1023| Surface Mining & Reclamation                                             | 1/27/98  | 20.124   |
| 98-1024| R 96-72 Upham                                                             | 3/24/98  | **       |
| 98-1025| R 97-79 Prime Medical Facilities                                         | 3/24/98  | **       |
| 98-1026| SP 87-25(98MOD) New Millennium                                           | 3/24/98  | **       |
| 98-1027| DA 87-04(98MOD) New Millennium                                           | 3/24/98  | **       |
| 98-1028| R 98-91 Comfort Construction                                             | 4/28/98  | **       |

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**END OF SUPPLEMENT NO. 7 TO 1994 CODE
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2002-1162 Building Standard Codes, Uniform Housing Code & Uniform Code for the Abatement of Dangerous Buildings
1/14/03
17.04.010/17.08.010,
17.12.010/17.16.010,
17.20.010/17.24.010,
17.26.010/17.28.010,
17.30.010

1/14/03
14.15.010/14.15.050(b),
(c) & (h)

2002-1164 CFD 2002-01 Improvement Area 1 & 2
1/14/03

2003-1165 SP 89-12 (02M) Raymond Pattison
1/28/03

2003-1166 Prohibition of Spectators at Illegal Speed Contests
1/28/03

12.29

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<td>Campaign Contributions</td>
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<td>Parks and Recreation; General</td>
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<td>R 04-126 Shahhal</td>
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<td>R 04-125 Meadowlark Canyon, LLC</td>
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<td>R 03-122 RMCI Development Inc.</td>
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<td>entitlements affecting primary or secondary ridgelines within the City</td>
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<td>Nudity, Urination or Defecation in Public Rights of Way and Public Places</td>
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<td>First Extension of an Interim Urgency Ordinance – Prohibiting processing any development entitlements affecting primary or secondary ridgelines within the City</td>
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<td>CFD 98-02, Annexation 114, IA F-52</td>
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**2013 CODIFICATION**

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<td>Specific Plan for Davia Village</td>
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<td>Hanson Aggregates Pacific Southwest &amp; Heart of the City Specific Plan Amendment</td>
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<td>El Dorado II, Specific Plan (SP 13-002)</td>
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<td>Urban Villages, San Marcos, LLC – University District Specific Plan Amendment</td>
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<td>D.R. Horton – Mulberry Specific Plan</td>
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**2015 CODIFICATION**

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<td>The Orlando Company, SP14-004, P14-0027</td>
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<td>Urgency Ordinance, Temporary Moratorium on the Establishment of retail Pet Stores (1st Extension)</td>
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<td>CALPERS Amendment to Contract</td>
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<td>Purchasing Ordinance Amendment</td>
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<td>Denied – changes to 16.16.100(b)(1) mobilehome mailings</td>
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**2016 CODIFICATION**

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<td>Mobile Home Rent Review Commission</td>
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<td>16.16.030( c)</td>
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<td>2016-1418</td>
<td>Retail Sales of Dogs, Cats and Rabbits</td>
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<td>Zone Reclassification – Heart of the City Specific Plan, Richmar Neighborhood</td>
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<td>Rezone – Heart of the City Specific Plan, Richmar Neighborhood (Public and Institutional)</td>
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<td>Prohibit Commercial Cultivation of Marijuana - All Zones</td>
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<td>20.205.030(d) 20.600.030 20.600.150</td>
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<td>Richland Hills North Specific Plan - Verizon Wireless Telecommunication Facility</td>
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<td>Youth Access to Tobacco</td>
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<td>10.10.010 – 10.10.070</td>
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<td>Extending Temporary Moratorium on Marijuana, Establishments, Outdoor Cultivation and Processing</td>
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<td>San Marcos Highlands Highlands Specific Plan</td>
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<td>Zone reclassification National Community Renaissance</td>
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