CITY OF EUREKA
CITY COUNCIL / EUREKA REDEVELOPMENT AGENCY
AGENDA

Regular Council/Agency Meeting
Tuesday, January 20, 2009
Closed Session - 4:30 P.M.
Regular Session - 5:30 P.M.
CITY COUNCIL CHAMBERS
CITY HALL - 531 "K" STREET
EUREKA, CA 95501

Adjourned Council/Agency Mtg.
Thursday, January 22, 2009
Closed Session - 5:30 P.M.
Regular Session - 6:30 P.M.
CITY COUNCIL CHAMBERS
CITY HALL - 531 "K" STREET, EUREKA

All persons in attendance at public meetings are requested to observe the following rules of civil debate:

1. We may disagree, but we will be respectful of one another.
2. All comments will be directed to the issue at hand.
3. Personal attacks are unacceptable.

ACCESSIBILITY NOTICE: The meeting rooms are ADA accessible. Accommodations and access to City meetings for people with special needs must be requested of the City Clerk at 441-4175 in advance of the meeting. This agenda and other materials are available in alternative formats upon request.

ROLL CALL

CLOSED SESSION NOTE: Closed Session will commence at 4:30 P.M. with a 5:25 P.M. curfew.

A. PUBLIC COMMENT PERIOD
(Limited to 3 minutes each speaker on closed session agenda items only)

B. CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION
Name of case: United States of America v. City of Eureka et. al; Case No. C085725
Pursuant to California Government Code Section 54956.9(a)

C. CONFERENCE WITH LABOR NEGOTIATORS
Agency designated representatives: David Tyson for City of Eureka
Employee organization: Unrepresented management, mid-management, and confidential employees.
Pursuant to California Government Code Section 54957.6

D. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 1-054024, 1-054-25
Agency negotiator: David W. Tyson for the City of Eureka
Negotiating Parties: Eureka Waterfront Partners
Under negotiation: price, terms, and conditions
Pursuant to California Government Code Section 54956.8

REGULAR SESSION – 5:30 P.M.

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

REPORT OUT OF CLOSED SESSION

MAYOR'S ANNOUNCEMENTS

COUNCIL REPORTS / CITY-RELATED TRAVEL REPORTS

Councilmember Jeff Leonard – Eureka Skate Park Project Out to Bid

BOARD/COMMISSION REPORTS

PUBLIC COMMENT PERIOD

NOTE: This is the time for members of the public who wish to be heard on matters that do not appear on the Agenda. You may also request that a matter appearing on the Consent Calendar be pulled and discussed separately. Pursuant to City Council Minute Order dated May 4, 1989, City Council policy is to limit each speaker to three (3) minutes. Such time allotment or portion thereof shall not be transferred to other speakers. Pursuant to City Council Minute Order dated June 6, 2000, the public will be allowed to speak concurrently with the calling of an agenda item following the staff presentation of that item.

Pursuant to the Brown Act, the City Council may not take action on an item that does not appear on the Agenda.

1. Is there any person in the audience who wishes to address the Council at this time?

CONSENT CALENDAR

Notice to the Public: All matters listed under this category are considered to be routine by the City Council and will be enacted by one motion. Unless a specific request is made by a Councilmember or the public, the Consent Calendar will not be read. There will be no separate discussion of these items. However, if discussion is required, that item will be removed from the Consent Calendar and considered separately.

2. Council meeting minutes.
   Recommendation: Approve the regular Council/Redevelopment Agency Board meeting minutes of January 6, 2009, and special meeting minutes of October 28, November 4, November 12, November 25, and December 16, 2008 as submitted.
   (City Clerk)

3. Mayor's appointments to boards, commissions and committees.
   Recommendation: Approve the Mayor's appointments and re-appointments to boards, commissions, and committees with the following term expirations dates:

Art & Culture Commission:	Re-appt Lori Goodman	01/01/2013
Board of Appeals:	Re-appt Ken Davlin	01/01/2013
Finance Advisory Comm.:	Re-appt Peter Hannaford	01/01/2013
Finance Advisory Comm.:	Re-appt James Tenney	01/01/2013
Historic Preservation Com.:	Re-appt Jessica Bigger	12/31/2012
Housing Advisory Board:	Appoint Kay Escarda	01/01/2010
Transportation Safety Com.:	Re-appt Carole Beaton	01/01/2013
Transportation Safety Com.:	Re-appt Kim Bergel	01/01/2013
Transportation Safety Com.:	Re-appt Ron Kuhnel	01/01/2013
Transportation Safety Com.:	Re-appt Norman Peterson	01/01/2013
Transportation Safety Com.:	Appoint Charles Bean	01/01/2010

(Mayor)

4. Purchase New Street Sweeper.
   Recommendation: Approve purchase of new Schwarze model A7000 street sweeper in the amount of $183,161.55, utilizing a cooperative purchasing agreement through Houston Galveston Area Council, contract number SW-04-08 code BE02.
   (Assistant City Manager)

5. Memorandum of Understanding – Eureka Police Officer's Association (EPOA) – Contract Amendment.
   Recommendation: Adopt resolution authorizing the Mayor to execute an Amendment to the current Memorandum of Understanding between the City of Eureka and the Eureka Police Officers' Association (EPOA) regarding salaries and supplemental benefits.
   (Personnel Director)

6. Destruction of Records.
   Recommendation: Approve the resolution requesting destruction of records pursuant to City policy.
   (Chief of Police)

7. Agreement with Humboldt Towing Inc. for services to provide towing, recovery and secure storage for vehicles impounded as evidence by the Eureka Police Department.
   Recommendation: Accept the Contractor Rate Schedule provided by Humboldt Towing inc. in their formal bid proposal dated 12/18/08 for services to provide towing, recovery and secure storage for vehicles impounded as evidence by the Eureka Police Department.
   (Chief of Police)

8. Resolution authorizing City Manager to execute Agreements with State Board of Equalization for Implementation of a Local Transactions and Use Tax.
   Recommendation:
   1. Adopt resolution authorizing City Manager to execute two agreements with the State Board of Equalization: An Agreement for Preparation to Administer and Operate City's Transactions and Use Tax Ordinance and an Agreement for State Administration of City Transactions and Use Taxes.
   2. Appropriate funds in the General Fund non-departmental division, to pay the State Board of Equalization to prepare to administer the City's Transactions and Use Tax in an amount not to exceed $175,000.

   (Finance Director)

9. Resolution authorizing Hinderliter, de Llamas and Associates to examine Transactions and Use Tax records of the City in order to provide compliance auditing services.
   Recommendation: Adopt resolution authorizing examination of transactions and use tax records.
   (Finance Director)

10. Request for Exception to the Hiring Freeze
    Recommendation: The Public Works Department recommends that Council approve the exception to the hiring freeze for three Maintenance Worker I/II positions, which are already included in the FY 08/09 budget and are paid out of either the Water Distribution Fund or Wastewater Collections Fund, not the General Fund.
    (Personnel Director)

11. Request for Exception to the Hiring Freeze
    Recommendation: The Public Works Department recommends that Council approve the exception to the hiring freeze for the Maintenance Worker II position, which is already included in the FY 08/09 budget.
    (Personnel Director)

12. Problem Oriented Policing Program POP Coordinator
    Recommendation:
    1. Adopt the classification specification (job description) and compensation for the new Problem Oriented Policing POP Coordinator position; and
    2. Authorize the filling of the POP Coordinator position.

    (Personnel Director)

ORDINANCES/RESOLUTIONS

13. Sewer Use Ordinance Amendment.
    Recommendation: Waive reading, read by title only, and introduce Bill No. 800-C.S., an ordinance amending Eureka Municipal Code Title V, Chapter 50, amending Sections 50.001 through 50.999 and adding new Sections 50.040 through 50.046 pertaining to Sewers.
    (Assistant City Manager-Operations)

REPORTS/ACTION ITEMS

14. Regional Housing Needs An
    Recommendation: Receive report from Glen A. Campora, Senior Policy Advisor for California Department of Housing and Community Development.
    (Councilmember Glass)

15. Wireless Communications Ordinance
    Recommendation: Discuss and provide staff direction on the desired elements of a draft wireless communications ordinance.
    (City Attorney)

16. Emerging Renewable Resource Program (EERP) Funding Application for PG&E WaveConnect Project
    Recommendation: Authorize Mayor to sign letter to California Public Utilities Commission.
    (Councilmember Leonard)

CITY MANAGER/EXECUTIVE DIRECTOR'S REPORTS

ADJOURNMENT

NOTE: If open session items cannot be completed by 10:00 P.M., the meeting will be continued to the adjourned regular meeting on the following Thursday, as noted above on the heading of this agenda.

If closed session items cannot be completed by 6:25 P.M., they will be continued at the conclusion of the regular agenda, provided there is time. If time does not allow then those closed session items will be continued to the adjourned regular meeting on the following Thursday, as noted above on the heading of this agenda.

NOTICE: Any writing that is a public record not exempt from public disclosure and relating to an agenda item for an open session of a regular meeting of the City Council is available for public inspection at the following designated location: Office of the City Clerk
Eureka City Hall
531 "K" Street, Room 207
Eureka, CA 95501

City of Eureka
APPLICATION FOR APPOINTMENT TO
CITY BOARD/COMMISSION

RECEIVED #3
DEC 30 2008
CITY CLERK

NAME OF BOARD OR COMMISSION: Art & Culture

* * * * * * * * * *

NAME: Lori Goodman

HOME ADDRESS: 6687 HUMBOLDT HILL ROAD, EUREKA 95503

BUSINESS ADDRESS:

HOME PHONE: 707.445.0565 BUSINESS PHONE:

E-MAIL ADDRESS: loribg@suddenlink.net

* * * * * * * * * *

PERSONAL DATA

EXPERIENCE RELATED TO BOARD/COMMISSION

I have been an active member of the Eureka Art & Cult commission for 5 years. - Please see resume

PRESENT EMPLOYMENT

Artist

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years)

EACC, Humboldt Arts council, The Ink People, RAA
~~1st~~ HSU 1st St. Gallery Board

REFERENCES

Libby Maynard, Gary Bird

Per Eureka Ordinance No. 552-C.S.: "In order to be eligible for appointment to any board or commission, a person shall be a qualified registered elector of the City of Eureka, the Humboldt Community Services District, or be the owner of a business located within the City limits of the City of Eureka."

By my signature, I hereby certify that I am qualified to serve on a city board or commission as specified in Ordinance No. 552-C.S.

SIGNATURE: Lori Goodman DATE: 12-27-08

RETURN TO:	City Clerk's Office	
	City of Eureka	*FOR OFFICE USE ONLY:*
	531 "K" Street, Room 208	*Appointed:*
	Eureka, CA 95501	*Termination Date:*
	(707) 441-4175 (vm), (707)441-4138 (fax)	*RDS (T+5):*

LORI
GOODMAN

707.445.0565
loribg@suddenlink.net
www.loribgoodman.com
6687 Humboldt Hill Road
Eureka, California 95503

EDUCATION

Master of Arts, Sculpture, Humboldt State University, Arcata, California
Bachelor of Arts, Los Angeles State University, Los Angeles, California

ONE-TWO PERSON EXHIBITIONS

2008: AT BAY, solo installation, First Street Gallery of HSU, Eureka, California concurrent with an outdoor installation on the Eureka waterfront.
2006: KOZO NEXUS, Sumi Gallery, Joan Giordano, Lori Goodman, Hisako Kobayashi, New York, NY
REPEATS II, solo Installation, Lori Goodman, California State University Stanislaus, Turlock, California
STANDING, New Works by Lori Goodman, Piantes, Eureka, California
GOODMAN, Accident Gallery, Eureka, California,
2005: GOODMAN CONSIDERS THE ALTERNATIVES, Considerations Gallery, Eureka, California.
2003: REPEATS, solo Installation, Reese Bullen Gallery, Humboldt State University, Arcata, California
2001-2002: GHOSTDANCING, Garden Installation with Barbara Dolan Wilkinson, Morris Graves Museum of Art, Eureka, California.
2001: GOODMAN, the Garden Gate, Arcata, California
1996: THE COMMUNITY, Humboldt Arts Council solo exhibition, Eureka, California
1995: LITTLE CARRIERS, solo exhibit, Tusches Gallery, Eureka, California
LARGELY REDUCED, with Nancy Head, The Ink People Gallery, Eureka, California
1992: EARTHSKIN, a Forest Project, group installation, IDEA GALLERY, Sacramento, California
1991: GOODMAN, AN INSTALLATION OF TREES, The Ink People Gallery, Eureka, California
1990: LORI GOODMAN AND NANCY HEAD, NEW WORKS, The Ink People Gallery, Eureka, California
THE HUMBOLDT STATE UNIVERSITY GRADUATE SHOW, Reese Bullen Gallery, Humboldt State University, Arcata, CA
1989: LORI GOODMAN, FROM THE OUTSIDE IN, Foyer Gallery, Humboldt State University, Arcata, California
LORI GOODMAN AND RUTH MOUNTAINGROVE, The Store Front Gallery, Arcata, California
LORI GOODMAN, PAPERWORKS, Hartridge House Gallery, Eureka, California
1984: PAPER, LORI GOODMAN AND NANCY HEAD, Tomaso's, Eureka, California
1982: LORI GOODMAN AND TERRY HILL, NEW WORK, The Art Center, Eureka, California

GROUP *EXHIBITIONS* (select)

2008: NEW DIRECTIONS in HANDMADE PAPER, The Culture Center of Gualala, California
2007: THE DECKLE EDGE, Morris Graves Museum of Art, Eureka, California
2006: SUMI NEW YORK, Summer Invitational Show, SOHO, New York
SEVEN PLUS, Community Reflected, Fortuna, California
2004: THE DECKLE EDGE, EXPLORATIONS IN HANDMADE PAPER, The Cultural Center of Gualala, California
THE DECKLE EDGE, EXPLORATIONS IN HANDMADE PAPER. The Cultural Arts Council of Sonoma County,
HUMBOLDT ART'S COUNCIL MEMBERSHIP JURIED EXHIBITION, Morris Graves Museum of Art, Eureka, CA
2003: ACCESSIBILITY 2003: FROM THE OUTSIDE IN, an invitational installation, Sumter So. Carolina
PAPER ROAD GENEVA, Juried International Association of Hand Papermakers, Geneva, Switzerland
SEVEN, Morris Graves Museum of Art, Eureka, California
2002: HUMBOLDT ART'S COUNCIL MEMBERSHIP SHOW, Morris Graves Museum of Art, Eureka, California, **Best of Show**
ART ON & OF HANDMADE PAPER, *The Friends of Dard Hunter Juried Member Exhibition,* Oregon College of Art & Craft, Hoffman Gallery, Portland, Oregon
2001: ON THE FRONT BURNER, SEVEN WOMEN, The Ink People Gallery, Eureka, California
2000: REDWOOD ART ASSOCIATION Juried Spring Show, Morris Graves Museum, Eureka, California
1999: ANNUAL WOMEN'S SHOW, Idea Gallery, Belize City, Belize, Central America
1999: ANNUAL WOMEN'S INVITATIONAL, Institute of Mexican Culture, Belize City, Belize, Central America
1996: A COLLABORATION AND EXCHANGE, Ghana and Humboldt County, *Ghana, West Africa*
META 4 IN TIME, The Ink People Gallery, Eureka, California
INSTRUCTOR'S EXHIBIT, Book Arts Conference, Reese Bullen Gallery, Humboldt State University, Arcata, CA
1995: PAPER TRAIL WEST, Juried Exhibition, Cashmere, Washington
1994: HUMBOLDT ARTS COUNCIL ACQUISITION SHOW, Humboldt Arts Council, Juror's Selection Award
1992: WALLWORKS, LA. Artcore's Ninth Juried Competition, LA Artcore, Los Angeles, California, juried, H. Fox

1992, '88, '84, WEST COAST WORKS ON/OF PAPER, Eureka, California, juried international competitions
1990: EXPLORATIONS - Selected Student Works from the California State University Summer Arts' program, 1989, California State University Trustees' Conference Center, Long Beach, California
1989: INVITATIONAL ALUMNI SHOW, College of the Redwoods, Eureka, California
SHOW OFF SHOW, The Ink People Gallery, Eureka, California
REDWOOD ART ASSOCIATION JURIED SPRING SHOW, Humboldt Cultural Center, Eureka, California, award
1988: INTRODUCTIONS, Laura Russo Gallery, Portland, Oregon
HUMBOLDT ARTS FESTIVAL, Eureka, California
NORTH COAST FIBER AND CRAFT, Humboldt Cultural Center, Eureka, California, juried, award
1987: FOUR DIRECTIONS, Humboldt Cultural Center, Eureka, California
PAPERMAKERS, Maxwell's, Eureka, California
MADE WITH PAPER, Hartridge House, Eureka, California
1986: NORTHERN CALIFORNIA FIBER EXHIBIT, Humboldt Cultural Center, Eureka, California, juried, award
INVITATIONAL FIBER SHOW, The Art Center, Eureka, California
1985: REDWOOD ART ASSOCIATION, Spring Show, Humboldt Cultural Center, Eureka, California, award

COMISSIONS
New World Design for Kobe Club, New York City, New York
ST. Joseph Hospital, Eureka California, Radiation Oncology
Hospice of Humboldt, reception room donor wall, Eureka, California
Humboldt County Waste Reduction Awards
Drs. Nancy & John Van Speybroeck, Arcata, California

PUBLICATIONS (select) please see web site for reviews
Northcoast Journal, Eureka, California, ARTBEAT, review, May 2008
Art Week, Preview June 2007
Hand Papermaking juried slide registry 2004
Accessibility 2003, From the Outside In, catalogue, reviews
Paper Road, Exposition Geneva, catalogue
Sculpture, International Sculpture Center publication, review
Visions Art Periodical, *Show Case*, Los Angeles, California
Northcoast Journal, Humboldt County, California, featured article
Times Standard Newspaper, Eureka, California, *Tress That Come From Paper*, featured article
Times Standard Newspaper, Eureka, California, *When the Paper Is the Art,* featured article

TEACHING AND PROFESSIONAL EXPERIENCE (art related)
2004-present, member of Eureka Art and Cultural Commission
2006: Papermaking workshop, California State University, Stanislaus
1997-1999: U.S. Peace Corps. I taught Papermaking to Maya Women's groups, gave numerous workshops for interested Belizeans and set up a papermaking studio/facility at a school for at risk young women. The studio is a functioning, viable part of the curriculum and maintained by the school's Arts/Crafts Director
1996: Papermaking and Sculpture Instructor, Artline: Artist in Residency Program, Big Lagoon, California
Papermaking Instructor, Book Arts Conference - Humboldt State University, Arcata, California
1995: Papermaking and Sculpture Instructor, Artline: Artist in Residency program, Rio Dell Elementary
GATE Program papermaking workshop, Fortuna, California
1994, 1992: Director, West Coast Works On/Of Paper, Eureka, California
1990-94 Papermaking workshops at my studio
1990-94: Papermaking Instructor, Humboldt State University, Center Activities and The Ink People Center for Art
1991: Papermaking Instructor, workshop leader, with Nancy Head, a two-week intensive course, Aspen, Colorado
Papermaking Workshop, University of California, Santa Cruz
1990: Co-Director, High School Spring Arts Festival, Humboldt State University, Arcata, California
1989: Papermaking Instructor, College of the Redwoods, Eureka, California
1988: Contemporary Papermaking, guest lecturer for Humboldt Fiber, Arcata, California
1987: Papermaking Instructor, Co-owner/Director, The Center for Textile Arts, Eureka, California
1974-89: Co-Owner and Instructor of Fiber Arts, **The Woolmark**, fiber arts supply store, Eureka, California

City of Eureka
APPLICATION FOR APPOINTMENT TO CITY BOARD/COMMISSION

RECEIVED
DEC 17 2008
CITY CLERK

NAME OF BOARD OR COMMISSION: BOARD OF APPEALS

* * * * * * * * * * * *

NAME: KENNETH G. DAVLIN

HOME ADDRESS: 2731 UST EUREKA 95501

BUSINESS ADDRESS: SAME

HOME PHONE: 707-443-5282 **BUSINESS PHONE:** 707-496-3430

E-MAIL ADDRESS: kdavlin@grovermartin.com

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PERSONAL DATA

(will email resume)

EXPERIENCE RELATED TO BOARD/COMMISSION

REGISTERED ENGINEER
RETIRED PRESIDENT OF OSCAR LARSON & ASSOC.

PRESENT EMPLOYMENT

PRINCIPAL - GROVER MARTIN, INC [MGMNT CONSULTANT]
CFO - AMERICAN ETHANOL CALIFORNIA, INC

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years)

(SEE EMAIL)

REFERENCES

(SEE EMAIL) DAVID HULL, MIKE KNIGHT, ROLLIN RICHMOND

Per Eureka Ordinance No. 552-C.S.: "In order to be eligible for appointment to any board or commission, a person shall be a qualified registered elector of the City of Eureka, the Humboldt Community Services District, or be the owner of a business located within the City limits of the City of Eureka."

By my signature, I hereby certify that I am qualified to serve on a city board or commission as specified in Ordinance No. 552-C.S.

SIGNATURE: [signature] PE **DATE:** DEC 17, 2008

RETURN TO:	City Clerk's Office	
	City of Eureka	*FOR OFFICE USE ONLY:*
	531 "K" Street, Room 208	*Appointed:*
	Eureka, CA 95501	*Termination Date:*
	(707) 441-4175 (vm), (707)441-4138 (fax)	*RDS (T+5):*

City of Eureka
APPLICATION FOR APPOINTMENT TO CITY BOARD/COMMISSION

NAME OF BOARD OR COMMISSION: Finance Advisory Comm.

* * * * * * * * * * *

NAME: Peter D. Hannaford

HOME ADDRESS: 3555 J STREET EUREKA 95503-5419

BUSINESS ADDRESS: SAME

HOME PHONE: 444-8559 **BUSINESS PHONE:** Same

E-MAIL ADDRESS: hannafordwashdc@aol.com

RECEIVED
DEC 31 2008
CITY CLERK

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PERSONAL DATA

EXPERIENCE RELATED TO BOARD/COMMISSION Member since 3/07

PRESENT EMPLOYMENT Hannaford Enterprises, Inc

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years)
FAC; Committee on the Present Danger (national)

REFERENCES David Ogden, Chairman FAC

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By my signature, I hereby certify that I am qualified to serve on a city board or commission as specified in Ordinance No. 552-C.S.

SIGNATURE: Peter D. Hannaford **DATE:** 12/28/08

RETURN TO:	City Clerk's Office	
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City of Eureka
APPLICATION FOR APPOINTMENT TO
CITY BOARD/COMMISSION

RECEIVED
NOV 07 2008
CITY CLERK

NAME OF BOARD OR COMMISSION: FINANCE ADVISORY

* * * * * * * * * * *

NAME: JAMES TENNEY

HOME ADDRESS: 405 RANDALL EUREKA

BUSINESS ADDRESS: —

HOME PHONE: 707-269-0552 **BUSINESS PHONE:** —

E-MAIL ADDRESS: TENNEYjames@SBCglobal.NET

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PERSONAL DATA D.O.B. 12/30/1936

RESIDENT OF EUREKA 6/14/2000

EXPERIENCE RELATED TO BOARD/COMMISSION

ACCOUNTANT TRAINED F.A.C. SINCE 12/2001
26 YRS in ASSESSOR'S OFFICE

PRESENT EMPLOYMENT

RETIRED from City & City of San Francisco

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years)

B.P.O. Elks L.O.O. Moose

REFERENCES

MIKE JONES (5TH WARD) CHARLOTTE MacDonald (EUREKA Main St)

Per Eureka Ordinance No. 552-C.S.: "In order to be eligible for appointment to any board or commission, a person shall be a qualified registered elector of the City of Eureka, the Humboldt Community Services District, or be the owner of a business located within the City limits of the City of Eureka."

By my signature, I hereby certify that I am qualified to serve on a city board or commission as specified in Ordinance No. 552-C.S.

SIGNATURE: James P. Tenney **DATE:** 11/07/08

RETURN TO:	City Clerk's Office	
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City of Eureka
APPLICATION FOR APPOINTMENT TO
CITY BOARD/COMMISSION

RECEIVED
DEC 31 2007
CITY CLERK

NAME OF BOARD OR COMMISSION: Historic Preservation Commission

* * * * * * * * * * *

NAME: Jessica Bigger

HOME ADDRESS: 1413 D Street Eureka 95501

BUSINESS ADDRESS: 963 Myrtle Ave Eureka 95501

HOME PHONE: 707-442-6707 BUSINESS PHONE: 707-269-4305

E-MAIL ADDRESS: jessica@mingtree.com

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PERSONAL DATA

- 1st homeowner to sign Mills Act contract with the City of Eureka.
- Love old houses + historic Architecture.

EXPERIENCE RELATED TO BOARD/COMMISSION

Current HPC Commissioner, Victorian homeowner, Realtor

PRESENT EMPLOYMENT - Realtor®

Ming Tree GMAC Real Estate

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years)

Keep Eureka Beautiful - Street Tree planting coordination, Marketing Director - Women's Entrepren Institi
Humboldt Association of Realtors, Eureka chamber Ambassador, California + National Association of Realtors.

REFERENCES

- Larry O Doss Ming Tree GMAC Broker 445-4500
- Patrick Cleary TM - Lost Coast Communi 786-5104
- Rob Wall - Planner City of Eureka

Per Eureka Ordinance No. 552-C.S.: "In order to be eligible for appointment to any board or commission, a person shall be a qualified registered elector of the City of Eureka, the Humboldt Community Services District, or be the owner of a business located within the City limits of the City of Eureka."

By my signature, I hereby certify that I am qualified to serve on a city board or commission as specified in Ordinance No. 552-C.S.

SIGNATURE: Jessica Bigger DATE: 12/31/2007

RETURN TO: City Clerk's Office
City of Eureka
531 "K" Street, Room 208
Eureka, CA 95501
(707) 441-4175 (vm), (707)441-4138 (fax)

FOR OFFICE USE ONLY:
Appointed:
Termination Date:
RDS (T+5):

City of Eureka
APPLICATION FOR APPOINTMENT TO
CITY BOARD/COMMISSION

RECEIVED
JAN 0 6 2009
OFFICE OF MAYOR

NAME OF BOARD OR COMMISSION: Housing Advisory Board

* * * * * * * * * * *

NAME: Kay Escarda

HOME ADDRESS: 3540 Highland Place

BUSINESS ADDRESS: N/a

HOME PHONE: 442-7495 BUSINESS PHONE: N/a

E-MAIL ADDRESS: k-escarda@sbcglobal.net

* * * * * * * * * * *

PERSONAL DATA Retired Teacher; League of Women Voters, Past Pres.; Health Service Agency, KINS radio commentor.

EXPERIENCE RELATED TO BOARD/COMMISSION Former HAB Chair, Housing Authority Commissioner; Humboldt Bay Housing Development Corp. Board; MAC Committee; Co. Housing Element Committee member

PRESENT EMPLOYMENT

Retired –

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years) see above CRTA (retired teachers Bd), LWV (Board), KINS Radio, HBHDC (Board) Heritage Soc Historical Soc., HSU alumni, MAC tutor, Eureka Adult School Sub. Clarke museum

REFERENCES

Melinda, Cindy, Sharon (so they say) Elizabeth Conner, Bob Moretti

Per Eureka Ordinance No. 552-C.S.: "In order to be eligible for appointment to any board or commission, a person shall be a qualified registered elector of the City of Eureka, the Humboldt Community Services District, or be the owner of a business located within the City limits of the City of Eureka."

By my signature, I hereby certify that I am qualified to serve on a city board or commission as specified in Ordinance No. 552-C.S.

SIGNATURE: Kay Escarda DATE: 1/8/09

RETURN TO: City Clerk's Office
City of Eureka
531 "K" Street, Room 208
Eureka, CA 95501
(707) 441-4175 (vm), (707)441-4138 (fax)

FOR OFFICE USE ONLY:
Appointed:
Termination Date:
RDS (T+5):

* Please consider me for the 1 year open position
Thank you

City of Eureka
APPLICATION FOR APPOINTMENT TO CITY BOARD/COMMISSION

RECEIVED
JAN 14 2008
CITY CLERK

NAME OF BOARD OR COMMISSION: Transportation Safety Commission
NAME: Carole Beaton
HOME ADDRESS: 1525 McFarlan St., Eureka, CA 95501
HOME PHONE: 445-4229 CELL PHONE: 845-9748
EMAIL ADDRESS: Carole.beaton@sbcglobal.net

PERSONAL DATA

- I am healthy and fit 62 years old, with a BA in Psychology and Education, and an MA is Psychology, plus over four years of post-graduate studies in education and other areas. I also hold several valid teaching credentials.
- I am computer literate, love to read and learn, and have lots of energy.
- I am passionate about getting people on their feet and off their rears.

EXPERIENCE RELATED TO BOARD/COMMISSION

- My major form of transportation around Eureka is walking and cycling. I also drive frequently for my volunteer work (hauling animals to the vet for surgery and picking up large loads of pet food from local stores and delivering it to rescue groups). I also took the bus to work frequently before I retired, so I have lots of local experience using all available forms of transportation.
- I have been a member of the Humboldt Bay Bicycle Commuters Association for over 10 years and have taught many classes for children on safe bicycling with Rick Knapp.
- I was a major neighborhood organizer in the effort to re-open the McFarlan St. trail. This involved over 40 hours of research, writing articles, and preparing information for the City Council and Mayor.
- I have been on the Parking Place Commission for over a year.

PRESENT EMPLOYMENT

- I am a retired special education teacher. I was the Resource Specialist Teacher at Pine Hill Elementary School for 17 years. (I walked, rode my bike, took the bus part way, and drove to school rarely.) I also taught elementary school in Arizona and adolescent delinquents in Los Angeles for 12 years.

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years)

- I am a co-founder of Bless the Beasts of Humboldt County, a grass-roots animal welfare organization. I write grants and facilitate spay and neuter surgeries for the pets of low-income people.
- I am the founder and facilitator of the "Animeals" program which is a cooperative effort of Bless the Beasts, Humboldt Senior Resource Center and PETCO. We provide pet food weekly to seniors who get home-delivered meals.
- I am an active volunteer at Miranda's Rescue. I write their grants and design their newsletter, and have organized many major fundraising events.
- I have been a member of the Humboldt Bay Bicycle Commuters Association for over 10 years and have taught many classes for children on safe bicycling with Rick Knapp.

REFERENCES

Nancy Wheeler, former principal at Pine Hill – 839-0363
Cynthia Van Vleck, former principal at Pine Hill – 822-0124
Rick Knapp, retired regional director of CALTRANS – 445-1097

FOR OFFICE USE ONLY:
APPOINTED: 06/03/2008
TERM. DATE: _____
RDS (T+5): _____

City of Eureka
APPLICATION FOR APPOINTMENT TO CITY BOARD/COMMISSION

RECEIVED
JAN 14 2008
CITY CLERK

NAME OF BOARD OR COMMISSION: Transportation Committee

* * * * * * * * * *

NAME: Kimberley Bergel

HOME ADDRESS: 1312 K Street

BUSINESS ADDRESS: -

HOME PHONE: 442.0542 **BUSINESS PHONE:**

E-MAIL ADDRESS: kswalford@sbcglobal.net

* * * * * * * * * *

PERSONAL DATA

EXPERIENCE RELATED TO BOARD/COMMISSION

PRESENT EMPLOYMENT

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years)

REFERENCES Patty Fleck 442.5853
Sue Natzler 445.8361
Lolita Beltramo 839 7441

Per Eureka Ordinance No. 552-C.S.: "In order to be eligible for appointment to any board or commission, a person shall be a qualified registered elector of the City of Eureka, the Humboldt Community Services District, or be the owner of a business located within the City limits of the City of Eureka."

By my signature, I hereby certify that I am qualified to serve on a city board or commission as specified in Ordinance No. 552-C.S.

SIGNATURE: Kswalfordbergel **DATE:** 01.

RETURN TO:	City Clerk's Office	
	City of Eureka	*FOR OFFICE USE ONLY:*
	531 "K" Street, Room 208	*Appointed:* 06/03/2008
	Eureka, CA 95501	*Termination Date:*
	(707) 441-4175 (vm), (707)441-4138 (fax)	*RDS (T+5):*

Kim Bergel
1312 K Street
Eureka, CA 95501

To: City Council of Eureka
Re: Transportation Safety Committee

Hello, my name is Kim Bergel. I am a third generation Humboldt County resident, who has lived in Eureka most of my life. I am the mother of two preschool age children (ages 2 and 4), the wife of a local business owner (Bergel Construction), and an enthusiastic pedestrian and cyclist.

Though I have a vehicle I prefer to ride my bike and or walk as a means of transportation. I regularly ride my children to school which is approximately 6 miles round trip and walk daily. I would estimate I walk or ride 3.5 miles average per day on the streets of Eureka, equaling 1095 miles a year conservatively. I spend a lot of time on Seventh Street and near the Zoo, as well as in the downtown/Old Town area.

My main motivation to participate on this committee is to promote safety for myself and my children as well as my fellow pedestrians and cyclists.

Thank you for your consideration

KBergel

City of Eureka

APPLICATION FOR APPOINTMENT TO CITY BOARD/COMMISSION

Print Form

RECEIVED
JAN 16 2008
CITY CLERK

NAME OF BOARD OR COMMISSION: TRANSPORTATION SAFETY COMMISSION

NAME: Ron Kuhnel

HOME ADDRESS: 1604 G Street, Eureka CA 95501

BUSINESS ADDRESS:

HOME PHONE: 707-443-6729 **BUSINESS PHONE:** 707-499-0095

E-MAIL ADDRESS: ron@kuhnel.com

PERSONAL DATA:

Retired State Employee and College Professor, Married, six children

EXPERIENCE RELATED TO BOARD/COMMISSION

Planning Commissioner for six years, Worked at Caltrans 19 yrs, co-founder Sacramento Bicycle Commuters Association

PRESENT EMPLOYMENT

Retired. Civic Activist: On Five non-profits Boards,

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years)

Audobon, Sierra Club, Friends of the Dunes, Heritage Society, Eureka Theater, Ryan Historic House and Garden Assn. Keep Eureka Beautiful. Humboldt County Historical Society. Timber Heritage Association

REFERENCES

Mary Beth Wolford (Princliple Peninsula School Dist, former councilperson), Marge Custis (civic activist), Michelle McKeegan (Chair, Keep Eureke Beautiful) - Contact numbers on request

Per Eureka Ordinance No. 552-C.S.:

In order to be eligible for appointment to any board or commission, a person shall be a qualified registered elector of the City of Eureka, the Humboldt Community Services District, or be the owner of a business located within the City limits of the City of Eureka.

By my signature, I hereby certify that I am qualified to serve on a city board or commission as specified in Ordinance No. 552-C.S

SIGNATURE: Ronald Kuhnel **DATE:** 1/16/2008

PLEASE SIGN, PRINT AND RETURN TO:

City Clerk's Office
City of Eureka
531 "K" Street, Room 208
Eureka, CA 95501
(707) 441-4175 (vm), (707)441-4138 (fax)

FOR OFFICE USE ONLY:
Appointed: 06/03/2008
Termination Date:
RDS (T+5):

City of Eureka
APPLICATION FOR APPOINTMENT TO CITY BOARD/COMMISSION

RECEIVED
DEC 21 2007
CITY CLERK

NAME OF BOARD OR COMMISSION: Traffic Safety Commission

* * * * * * * * * *

NAME: Norman Peterson

HOME ADDRESS: 730 I Street, #2, Eureka, CA 95501

BUSINESS ADDRESS: —

HOME PHONE: 445-2412 **BUSINESS PHONE:** —

E-MAIL ADDRESS:

* * * * * * * * * *

PERSONAL DATA

Eureka resident 14 years. Retired Social Worker Visually impaired guide-dog user. Sierra Club Hike Leader.

EXPERIENCE RELATED TO BOARD/COMMISSION

Social Worker for 32 years

PRESENT EMPLOYMENT

Retired

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years)

Humboldt Co. Amateur Radio Club
Humboldt Council of the Blind

REFERENCES

Anna Justus - ~~A Trinity~~ 2155 A St - 444-2969
Doug Roch - Humboldt Council of the Blind - 839-7266

Per Eureka Ordinance No. 552-C.S.: "In order to be eligible for appointment to any board or commission, a person shall be a qualified registered elector of the City of Eureka, the Humboldt Community Services District, or be the owner of a business located within the City limits of the City of Eureka."

By my signature, I hereby certify that I am qualified to serve on a city board or commission as specified in Ordinance No. 552-C.S.

SIGNATURE: [signature] **DATE:** 12/21/07

RETURN TO:	City Clerk's Office	
	City of Eureka	*FOR OFFICE USE ONLY:*
	531 "K" Street, Room 208	*Appointed:* 06/03/2008
	Eureka, CA 95501	*Termination Date:*
	(707) 441-4175 (vm), (707)441-4138 (fax)	*RDS (T+5):*

City of Eureka
APPLICATION FOR APPOINTMENT TO CITY BOARD/COMMISSION

RECEIVED
DEC 16 2008
CITY CLERK

NAME OF BOARD OR COMMISSION: Traffic Safety

* * * * * * * * * * *

NAME: Charles Bean

HOME ADDRESS: 1335 6th Street Apt. 11 Eureka

BUSINESS ADDRESS: N/A

HOME PHONE: 441-1974 ~~BUSINESS~~ Cell PHONE: 496-2187

E-MAIL ADDRESS: Charles.Bean@Yahoo.com

* * * * * * * * * * *

PERSONAL DATA Born and raised in Humboldt County; involved in IHSS Advisory Board, Tri County Independent Living; just generally interested in Commun.

EXPERIENCE RELATED TO BOARD/COMMISSION
Attended County Pedestrian Safety Plan Workshop; worked on a few Caltrans projects on Hwy 299 + Broadway

PRESENT EMPLOYMENT
Disabled

MEMBERSHIP IN ORGANIZATIONS AND ACTIVITIES (Past 5 years)
IHSS Advisory Board, HCAOG SSTAC, Tri County Independent Living Ctr.

REFERENCES
Tom Mattson, ?

Per Eureka Ordinance No. 552-C.S.: "In order to be eligible for appointment to any board or commission, a person shall be a qualified registered elector of the City of Eureka, the Humboldt Community Services District, or be the owner of a business located within the City limits of the City of Eureka."

By my signature, I hereby certify that I am qualified to serve on a city board or commission as specified in Ordinance No. 552-C.S.

SIGNATURE: Charles Bean DATE: 12/15/08

RETURN TO: City Clerk's Office
City of Eureka
531 "K" Street, Room 208
Eureka, CA 95501
(707) 441-4175 (vm), (707)441-4138 (fax)

FOR OFFICE USE ONLY:
Appointed:
Termination Date:
RDS (T+5):

City of Eureka ~ City Council

AGENDA SUMMARY

RE: Purchase New Street Sweeper	**FOR AGENDA DATE**: January 20, 2009 **AGENDA ITEM NO.**: 4

RECOMMENDATION: Approve purchase of new Schwarze model A7000 street sweeper in the amount of $183,161.55, utilizing a cooperative purchasing agreement through Houston Galveston Area Council, contract number SW-04-08 code BE02.

SUMMARY OF THE ISSUE:

The 2007/08 Equipment Operations budget included $250,000 to purchase a replacement street sweeper. Due to the uncertainty involving the street sweeping program raised this budget cycle, this purchase was delayed until the new sweeping program was developed consistent with the approved budget (funding was carried forwarded to the 2008/09 budget).

The new sweeping program is in place, reducing sweeping in residential areas from weekly to monthly, while maintaining the weekly sweeping schedule in commercial areas. Even when accounting for these reductions, the street sweeper continues to operate between 160-180 hours monthly requiring the replacement of the older sweeper. Prior to these reductions, the street sweeper operated between 260-280 hours monthly.

It is staff's recommendation to utilize the cooperative purchasing program offered by Municipal Maintenance Equipment for this purchase, which will allow the City to purchase at the lowest price based on a competitive bidding process conducted through Houston Galveston Area Council. Section 39.46 of the Municipal Code states "The Purchasing Agent shall have the authority to join other units of government in cooperative purchasing plans when the best interests of the City would be served thereby." It is felt that using the cooperative purchasing process in this case is indeed in the best interest of the City.

(continued)

FISCAL IMPACT: The 2008/09 Equipment Operations budget includes adequate funds for this purchase. This is not a general fund purchase and by this action, no additional appropriations are requested.

Signature:	Signature:
Michael Knight Assistant City Manager-Operations	**David Tyson** City Manager

REVIEWED BY:	**DATE**:	**INITIALS**:
City Attorney	1-12-09	SS
Finance	1-12-09	VW

COUNCIL ACTION:	
Ordinance No. _____	**Resolution No.** _____

AGENDA SUMMARY

RE: Purchase new Street Sweeper	FOR AGENDA DATE: January 20, 2009 AGENDA ITEM NO.:

The City has two (2) street sweepers, a newer primary, and a backup to accomplish the citywide sweeping program. The primary sweeper is used daily unless it's inoperative due to mechanical breakdown or out of service for necessary routine maintenance, in which case the backup sweeper is put into service. Having a primary and backup sweeper helps insure the sweeping program is accomplished on schedule, which is very important to citizens who prepare the area in front of their residences by moving cars and other potential obstructions on the scheduled sweeping day.

Currently, the primary and backup sweepers are approximately seven (7) and twelve (12) years old. In the past, the schedule for replacing the street sweeper was at five (5) year intervals, insuring the greatest dependability and lowest maintenance costs for operation. With high mileage on the primary engines and hours of use on the auxiliary engines on the current sweepers, maintenance costs are increasing and dependability is decreasing. Continuing to operate and maintain these sweepers in their current roles becomes less cost effective. Purchasing a new sweeper as a primary will allow for the rotation of the current primary sweeper to the backup role, increasing dependability, and reducing maintenance costs.

Public Works staff researched various street sweeper models to determine the best fit for our operation. The Schwarze model A7000 was determined to the best sweeper when considering use and cost This sweeper is a regenerative air sweeper, designed for use in a wide range of street sweeping applications. In contrast to mechanical broom sweepers, the regenerative sweeper creates a vacuum to lift debris from the street surface.

This is a highly efficient system which ensures that even hard-to-reach particles hidden within pavement cracks and irregularities are removed, including the "PM-10 fines" known to contain a high percentage of heavy metals, phosphates and other pollutants. Recent studies emphasize the importance of removing these "PM-10 fines" due to the non-point source pollutants they contribute to stormwater runoff. Use of the regenerative air type sweeper results in a cleaner street and a cleaner environment.

Originally, staff estimated the replacement cost at approximately $250,000. Utilizing a thorough selection process by Rob McNamara, Equipment Operations Superintendent, and the use of the cooperative purchasing agreement, this important equipment will be obtained for substantially less. It is anticipated that in the future, the replacement interval for the street sweeper may be extended due to our reduced street sweeping program.

SCHWARZE A7000

Regenerative Air Sweeper

Versatile
Exceptional Durability
Powerful

SCHWARZE™ INDUSTRIES

SCHWARZE INDUSTRIES
A7000 SWEEPER

Versatile
Exceptional Durability
Powerful

Schwarze Industries is dedicated to using a Total Performance Teamwork concept to produce, maintain and market the finest power sweeping equipment in the world. All of our products are made with pride in the USA, and we offer a broad line, with more sweeper models to choose from than any other manufacturer in America.

The Schwarze model A7000 is a heavy duty, chassis-mounted, regenerative air sweeper with an 8.4 cubic yard hopper. Its basic design has had over 20 years of successful operation throughout the United States and around the world.As one of the largest, most powerful air sweepers in existence, the Schwarze A7000 is an ideal choice for use in a wide range of demanding municipal and contractor sweeping applications.

The A7000 blower system generates a high velocity air column over 17,000 CFM that is propelled into the top of the sweeping head through a 14-inch blast tube. The air is first pressurized in the upper chamber of the sweeping head and then expelled into the head's lower chamber through the blast orifice. This high volume air blast loosens the debris from the pavement surface, then transports it across the width of the sweeping head and lifts it into the containment hopper via a 14-inch suction tube. This highly efficient system ensures that even hard-to-reach particles hidden within pavement cracks and irregularities are removed. This includes a significant amount of the 'PM-10 fines' known to contain a high percentage of heavy metals and other pollutants. That's why the A7000 has been certified as 'Rule 1186 Compliant' by the South Coast Air Quality Management District, one of southern California's leading state environmental agencies.

Hydraulic System

Type	Dual output 2 section
Pump Capacity	6.5 gpm @1800RPM (24.6L / min.) per section for 13.0gpm total
Drive	Direct gear
Maximum Pressure	2500psi (173 bar)
Reservoir	25 gallons (94 liters)
Filter	10 micron, spin on
Protection	Pressure relief valve
Controls	Electro-hydraulic

Auxiliary Hydraulic System

Type	Gear type, driven by electric motor
Function	Raise/lower hopper, open/close hopper door, raise brooms and pickup head

Standard Equipment

- Schwarze-Exclusive WhisperWheel℠ Fan System
- Noise Reduction Shroud
- Sweeps-In-Reverse℠ Sweeping System
- DC Auxiliary Hydraulic Pump
- Hopper-Mounted Amber Strobe Light with Limb Guard
- High Level Brake Light
- Amber Flashing Warning Lights
- Rear Flood Lights
- 3 Point Automatic Auxiliary Engine Shutdown System
- Washdown System
- Hydrant Wrench
- Fire Extinguisher
- Backup Alarm
- Resettable Circuit Breakers
- Road Flare Kit

To assure debris transfer with minimal fugitive dust escapement, double-belted curtains on the front and rear of the sweeping head contain the circulating air flow. This prevents dirty, debris-laden air from entering into the atmosphere as fugitive dust particles. The Schwarze A7000 picks up more of the micron-sized contaminates that accumulate on roads and streets. Recent studies emphasize the importance of removing these PM-10 'fines' due to the amount of non-point source pollutants that contribute to America's stormwater runoff stream. Using the regenerative air Schwarze A7000 sweeper results in a cleaner surface and a cleaner environment.

The model A7000 has several industry-leading features that position it at the head of its class. These include Schwarze's WhisperWheel℠ fan system, which lets Schwarze air sweepers run over 70% quieter and with less fuel consumption. The A7000 is also available with the patented Mechani-Pneumatic Broom Assist Sweeping Head℠ and Schwarze Sweeps-In-Reverse℠, allowing operation in both forward and reverse directions.

Rule 1186 AQMD Certified

The Schwarze model A7000 sweeper has been designated by the South Coast Air Quality Management District as Rule 1186 Certified for its ability to pick up and contain small-micron material.

Side Brooms

Type	Vertical steel digger
Location	Right, Left, forward of pickup head
Diameter	44" (1117.60 mm)
Drive	Hydraulic
Suspension	Torque-sensing spring
Wear Adjustment	Automatic
Pressure	Manual
Speed	Variable, non-reversing
Segments	5 each side, disposable
Tilt Angle Adjustment	Manual with optional in-cab controls

Debris Hopper

Volumetric Capacity	8.4 cubic yards (6.4 cu. meters)
Useable Capacity	7.0 cubic yards (5.4 cu. meters)
Dump Angle	53 degrees
Floor Angle	3 degrees
Lifting	Twin hydraulic cylinders
Hopper Dump Door	Open/close/ lock hydraulically
Inspection Doors	1 on each side of hopper

SPECIFICATIONS CONTINUED ON BACK

AGENDA SUMMARY

RE: MEMORANDUM OF UNDERSTANDING – EUREKA POLICE OFFICERS' ASSOCIATION (EPOA) – CONTRACT AMENDMENT	**For Agenda Date: JANUARY 20, 2009** **Agenda Item No:** 5

RECOMMENDATION:
Adopt Resolution Authorizing the Mayor to Execute an Amendment to the Current Memorandum of Understanding Between the City of Eureka and the Eureka Police Officers' Association (EPOA) Regarding Salaries and Supplemental Benefits.

SUMMARY OF THE ISSUE:
Per the terms of the Memorandum of Understanding (MOU) between the City and EPOA, Police Officers are eligible to receive specialist pay when assigned certain job duties in divisions such as Investigations and Traffic. When first implemented, the Police Department's Traffic Division had assignments of one Police Sergeant with no specialist pay, and two Police (Motorcycle) Officers at 5% specialist pay. Eventually, the Traffic Police Sergeant was reassigned to the Investigations Division, and the Traffic Division has been operating with the two assigned Motorcycle Officers. Due to the demand for an enhanced Traffic Division that can accomplish more, Police Chief Nielsen is proposing that a new assignment of Senior Traffic Officer at 7.5% specialist pay be created. This proposal would result in no new positions, and the only cost increase would be the specialist pay received by the new Senior Traffic Officer assignment.

Recently, the Police Department's Investigations Division also experienced assignment changes. When the Supervising Investigator assignment at 12% specialist pay was changed to a Senior Investigator at 7.5% specialist pay, this change resulted in a cost savings of 4.5%. It is proposed that this savings be applied toward the specialist pay of the new Senior Traffic Officer assignment. EPOA has agreed to the changes to Article 8 detailed in the attached side letter signed by EPOA President Todd Wilcox, and Council approval is requested to fund the additional 3% needed to reach the 7.5% amount for the Senior Traffic Officer assignment.

As negotiations on this item have been concluded and agreement has been reached, Staff recommends the City Council adopt the attached Resolution authorizing the Mayor to execute the attached amendment to the Memorandum of Understanding between the City of Eureka and the Eureka Police Officers' Association.

FISCAL IMPACT:
The increased cost for a Senior Traffic Officer assignment for the remainder of FY 08/09 is approximately $1,000. The costs for future fiscal years would be addressed during the budget processes for those years.

DH SIGN: Lucia A. Haase **Personnel Director**	**CM SIGN:** David W. [signature] **City Manager**
REVIEWED BY: **DATE:** **City Attorney** 12/31/08 **Finance Director** 12/31/08 **Police Chief** 12/31/08	**INITIALS:** SS MW GN
COUNCIL ACTION: **Ordinance No.**	 **Resolution No.**

cc: Todd Wilcox, EPOA President

CITY OF EUREKA

DEC 29 2008

PERSONNEL

Memorandum

PERSONNEL DEPARTMENT

DATE: **DECEMBER 23, 2008 (AMENDED)**
TO: **TODD WILCOX, EPOA PRESIDENT**
FROM: **TERESIA HAASE, PERSONNEL DIRECTOR**
RE: **SIDE LETTER; AMENDMENT TO MOU ARTICLE 8, SPECIALIST PAY**

PERSONNEL MANAGEMENT

Recruitment & Selection

Benefit Administration

Employee Records

Classification

Compensation

Employment Mandate Compliance

Training

RISK MANAGEMENT

Safety

Workers' Compensation

Risk Reduction

Insurance Programs

LABOR RELATIONS

Contract Negotiations

Organizational Analysis

Disciplinary Actions

Grievance Arbitration

Todd, Chief Nielsen is proposing changes in the Traffic Division which require an amendment to EPOA MOU Article 8, Specialist Pay, in relation to assignments in Traffic. These changes are supported by the City Manager, and if approved by the City Council, the current and proposed assignments in Traffic would be as follows:

Current Assignment Configuration

(2)	Motorcycle Officers at 5%	Rotational Assignment

Proposed Assignment Configuration

(1)	Senior Traffic Officer at 7.5%	Permanent (Non-rotational) Assignment
(2)	Motorcycle Officers at 5%	Rotational Assignment

No new positions are proposed. An internal recruitment process would be implemented for the Senior Traffic Officer assignment. This new specialist assignment would continue to be subject to the same terms and conditions memorialized in EPOA MOU Article 8 regarding all specialist positions.

If EPOA wishes to meet and confer on these proposed changes, please let me know as soon as possible, as it is hoped that this item can be placed on the January 20, 2008, Council agenda for approval. If I have not heard from you by Monday, January 5, 2009, I will assume EPOA does not wish to discuss the proposed changes and has no objection to them.

If EPOA agrees to the proposed changes, please sign below and return the original to me by no later than Monday, January 5, 2009.

EPOA understands and agrees to the items listed above, and to the attached proposed changes to EPOA MOU Article 8 in relation to Specialist Pay for Traffic assignments.

Todd Wilcox — 12.29.08

Todd Wilcox, EPOA President — Date signed

cc: Garr Nielsen, Police Chief

ARTICLE 8 - SPECIALIST PAY (revised 01/20/09)

A. Each employee who is assigned to a specialist position listed in Paragraph B below shall receive a five (5) percent base pay differential for each month, or portion thereof, during which the employee is assigned to perform specialist service.

B. The positions designated to be specialist positions with a 5% differential include: Investigator (includes Drug Task Force), Field Training Officer, and Motorcycle Officer.

C. Each employee who is assigned to a specialist position listed in Paragraph D below, shall receive a seven and one half (7.5) percent base pay differential for each month, or portion thereof, during which the employee is assigned to perform specialist services.

D. The position(s) designated to be specialist positions with a 7.5% differential include: Senior Investigator, Senior Investigator/Evidence, ***and Senior Traffic Officer***.

E. The selection of specialist assignments shall be at the discretion of the Chief of Police.

F. The length of time an employee may hold a specialist assignment shall be at the discretion of the Chief of Police based solely upon the needs of the City.

G. Pursuant to Section E and F of this Article, the Chief of Police may make K-9 specialist and mounted patrol specialist assignments under the following conditions:

1. Employees assigned as K-9 specialist or mounted patrol specialist shall be subject to the FLSA 7K exemption providing for 43 hours in a 7 day work period.

2. Employees assigned as K-9 specialists or mounted patrol specialist shall be compensated for 30 minutes per day, seven days a week, 365 days per year for the normal care, feeding, grooming, and training of the dog or horse. The parties agree that 30 minutes per day is a reasonable amount of time a K-9 specialist or mounted patrol specialist normally needs for these activities. In the event that a K-9 specialist or mounted patrol specialist finds that more than 30 minutes per day is necessary for the normal care, feeding, grooming, and training of the dog or horse, it shall be the employee's responsibility to inform the City of such need, prior to

exceeding the 30 minute daily limit.

The 30 minutes per day compensation shall be paid either as straight time or overtime dependent upon the number of hours the employee normally works in a 7 day work period.

3. To facilitate as broad a range of experience within the Police Department as possible, an employee who maintains K-9 specialist status or mounted patrol specialist status and who subsequently requests and is assigned to another specialist assignment pursuant to this Article, shall only be compensated as though he/she were a K-9 specialist or mounted patrol specialist. Should, for any reason, an employee assigned to two specialist assignments have their dog or horse retired, the employee shall begin receiving specialist pay pursuant to Section A or D above, in the next pay period.

H. An employee who is assigned to more than one specialist position shall not be compensated separately for each assignment, but shall receive the one highest specialist compensation of all of the assigned positions.

JB

RESOLUTION NO. _____

RESOLUTION OF THE COUNCIL OF THE CITY OF EUREKA
AMENDING SALARIES, SUPPLEMENTAL BENEFITS AND
OTHER TERMS AND CONDITIONS OF EMPLOYMENT
BETWEEN THE CITY OF EUREKA AND THE
EUREKA POLICE OFFICERS' ASSOCIATION
JANUARY 1, 2008 - DECEMBER 31, 2010

WHEREAS, in accordance with the provisions of the Meyers-Milias-Brown Act, the authorized representatives of the City of Eureka, herein called City, have met and conferred in good faith with the authorized representatives of the Eureka Police Officers' Association, herein called EPOA, amending salaries, supplemental benefits, and/or other terms and conditions of employment; and

WHEREAS, the representatives of the City and EPOA have agreed on an amendment to the Memorandum of Understanding embodying such amendments to salaries, supplemental benefits, and/or other terms and conditions of employment; and

WHEREAS, the representatives of the City and EPOA have agreed to recommend to the City Council and the general membership of EPOA that this amendment to the Memorandum of Understanding be adopted;

WHEREAS, the EPOA general membership has ratified and approved said amendment to the Memorandum of Understanding.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby adopts said amendment to the Memorandum of Understanding and authorizes the Mayor to execute said amendment to the Memorandum of Understanding.

Passed, approved and adopted by the Council of the City of Eureka, County of Humboldt, State of California on the 20th day of January, 2009, by the following vote:

AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS

_____
Virginia Bass, Mayor

ATTEST:

_____
Kathleen Franco Simmons, City Clerk

APPROVED AS TO ADMINISTRATION: APPROVED AS TO FORM:

_____ _____
David W. Tyson, City Manager Sheryl Schaffner, City Attorney

AGENDA REVIEW

RE: Destruction of Records

AGENDA DATE: January 20, 2009
AGENDA ITEM NO: 6

RECOMMENDATIONS:
Approve the attached resolution requesting destruction of records pursuant to City policy.

Pursuant to Penal Code Section 832.5(b) which requires that internal affairs files and findings be maintained for at least five years, and per Council adoption of a records retention policy providing for destruction of unneeded or outdated City records in accordance with Government Code 34090, we have reviewed our files and wish to destroy all internal affairs files that are over five years old and the log listing these reports. Please note that these internal affairs investigations and reports have been completed and closed out in their entirety over the five year requirement.

FISCAL IMPACT:None

DH SIGN: _____
Chief of Police

CM SIGN: _____
City Manager

REVIEWED BY: City Attorney

DATE: _____

INITIALS: _____

COUNCIL ACTION:

AGENDA REVIEW

RESOLUTION NO.

RESOLUTION OF THE COUNCIL OF THE CITY OF EUREKA FOR THE DESTRUCTION OF CERTAIN RECORDS

WHEREAS, pursuant to Government Code Section 34090, a resolution of the City Council must be prepared for the destruction of certain records; and

WHEREAS, Penal Code Section 832.5 (b) which requires that internal affairs files and findings be maintained for at least five years; and

WHEREAS, attached to this resolution are accurate summaries of the records which the Police Department feels meet the criteria of the Goverment and Penal Codes and are no longer necessary for use; and

WHEREAS, all such original records to be destroyed are five (5) years old or older,

NOW, THEREFORE, BE IT RESOLVED that all records shown in the attached summary may be destroyed.

Passed, approved and adopted by the Council of the City of Eureka, County of Humboldt, State of California on the 20th day of January, 2009, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

_____
Mayor of the City of Eureka

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

APPROVED AS TO ADMINISTRATION:

_____
City Manager

AGENDA REVIEW

The following are the internal affairs files we request to purge and destroy:

Year 2003 log of investigations
#03-1

AGENDA SUMMARY

RE:	An Agreement with Humboldt Towing Inc. for services to provide towing, recovery and secure storage for vehicles impounded as evidence by the Eureka Police Department.	For Agenda Date:	January 20, 2009
		Agenda Item No.:	7

RECOMMENDATION:

Accept the Contractor Rate Schedule provided by Humboldt Towing Inc. in their formal bid proposal dated 12/18/08 for services to provide towing, recovery and secure storage for vehicles impounded as evidence by the Eureka Police Department.

SUMMARY OF THE ISSUE:

On December 7, 2008, Requests for Proposals for towing, recovery and storage of evidence vehicles for the Eureka Police Department was advertised in the Times-Standard and mailed to three prospective bidders. One bid was received by the bid closing date of December 19, 2008. The bid was opened and read aloud in public in conformance with Eureka Municipal Code Section 39.42. Staff reviewed the proposal and determined the proposal submitted by Humboldt Towing met all required specifications.

Staff recommends that Bid No. 2009-07 be awarded to Humboldt Towing Inc. as follows:

A. Tow Rates:

1.	Light Duty Tow Rate	$ 75.00 per hour
2.	Medium Duty Tow Rate	$ 125.00 per hour
3.	Heavy Duty Tow Rate	$ 175.00 per hour
4.	Motorcycle Trailer Rate	$ 75.00 per hour

Continued Page 2

FISCAL IMPACT:

Costs associated with this bid and Agreement will be charged to the Vehicle Abatement Fund (238-42100-3167).

DH SIGN: _____
Garr Nielsen
Chief of Police

CM SIGN: _____
David W. Tyson
City Manager

REVIEWED BY:	DATE:	INITIALS:
City Attorney	1/13/09	SS
Finance	1/13/9	LW

COUNCIL ACTION:

Ordinance No. _____ **Resolution No.** _____

Continued from page 1

Note: In the event that time at the scene exceeds one (1) hour, charges shall be itemized and charged in Fifteen (15) minute increments based on the per-hour rate.

B. Storage Rates:

1.	Storage Rate	$ 25.00 per day
2.	Storage of commercial vehicles as Described in Section 34500 of the Vehicle Code. (No charges will be allowed for tow dolly.)	$ 50.00 per day

C. Call-Out Post Storage Inspection Rate $ 75.00 per hour

D. Additional Equipment and/or personnel required (such as 4 x 4 recovery truck, extra man, Excessive amounts of floor sweep) will be billed on an as needed basis.

E. Clean-up of equipment , such as transport truck, with excessive amounts of vehicle fluids or bio hazard fluids will be invoiced at $50.00 per hour.

PROPOSAL FOR TOWING, RECOVERY AND STORAGE OF EVIDENCE VEHICLES FOR THE EUREKA POLICE DEPARTMENT.

BID NO. 2009-07

An Agreement for services to provide towing, recovery and secure storage for vehicles impounded as evidence by the Eureka Police Department will be awarded to the company who submits a bid with all requirements met and the lowest dollar amount for services requested. To be the successful bidder, a company must address all areas, requirements and stipulations as set forth in this proposal. Any areas not addressed in this proposal will be cause for denial.

Consideration will be given to all tow companies, regardless of size, who are currently licensed and doing business in the City of Eureka. Bids will be accepted for a period of ten (10) days from December 8,2008.

Contractor Rate Schedule

(Please fill in bid proposal dollar amounts in the space provided)

A. Tow Rates:

1. Light Duty Tow Rate $ 75.00 per hour
2. Medium Duty Tow Rate $ 125.00 per hour
3. Heavy Duty Tow Rate $ 175.00 per hour
4. Motorcycle Trailer Rate $ 75.00 per hour

Note: In the event that time at the scene exceeds one (1) hour, charges shall be itemized and charged in fifteen (15) minute increments based on the per-hour rate.

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C. Call-Out Post Storage Inspection Rate $ 75.00 per hour

D. Additional Equipment and/or personnel required (such as 4 x 4 recovery truck, extra man, excessive amounts of floor sweep) will be billed on an as needed basis.

E. Clean-up of equipment , such as transport truck, with excessive amounts of vehicle fluids or bio hazard fluids will be invoiced at $50.00 per hour.

Contractor/Business Name:	HUMBOLDT TOWING INC.
Address:	101 H STREET - EUREKA, CA 95501
Phone:	(707) 442-4537
Person Submitting Proposal:	LEROY HOFFMAN LRoy Hoffman
Date:	DECEMBER 18, 2008

1. Detailed description of work to be performed:

A. General Specifications

1) Contractor shall:

a) Furnish all labor, materials, equipment, licenses and/or permits necessary for completion of the Agreement between the Contractor and the Eureka Police Department.

b) Respond to all calls as requested by the Eureka Police Department and be available on a 24-hour, 7-day per week basis.

c) Secure and be responsible for the safekeeping of vehicular evidence and any and all property within.

d) Comply with the following provisions: California Unfair Trade Practice Laws, California Business and Professions Code (B&PC) Section 17043, B&PC Section 16700 et seq., B&PC Section 17200, Common Law Interference Advantage, Common Law Unfair Competition, and Federal and state prohibitions against contracts in restraint of trade.

2) The facility that is to be used must be located within the city limits of Eureka.

3) If Contractor is a Eureka Police Department rotation tow service provider; a call-out will not constitute a rotation call-out.

B. Contractor & Employees

1) Contractor shall have a minimum of three (3) verifiable years of for-hire towing experience as an owner or principal or employ a full-time manager who posses at least three (3) verifiable years of tow experience. If the status of appointed manager changes or said manager ceases to be employed by the Contractor, this may be cause for cancellation of the Agreement.

2) Contractor and all applicable employees shall have a Carrier Identification (CA) number and valid Motor Carrier Property (MCP) permit. In addition, Section 34500 (j) of the Vehicle Code (VC) requires that records be maintained for hours of service.

3) Contractor shall ensure that tow truck drivers providing service for the Eureka Police Department have completed an approved tow truck driver training program within the past five (5) years.

4) Tow truck drivers shall perform all towing, recovery and storage operations in the safest and most expedient manner possible.

5) Tow truck drivers shall be at least 25 years of age and shall possess the proper class of license and endorsements for the towing vehicle and the vehicle being towed.

6) Contractor and applicable employees shall be enrolled in the Employer Pull Notice (EPN) program. In the instance where a new employee is hired, Contractor will be granted a maximum of 30 days to enroll the new employee in the EPN program. EPNs shall be signed and dated by the Contractor. Contractor shall maintain and be able to provide at all times a current list of drivers and a copy of the current EPN report, or in the case of newly hired drivers, proof of enrollment in the EPN program.

7) Contractor employees shall wear an identifiable uniform (either shirt and pants or coveralls) displaying the company name as well as the driver's name while performing services for the Eureka Police Department. Employees must also wear safety vests of reflective clothing that meets OSHA requirements.

C. Tow vehicles

1) Contractor shall equip and maintain tow trucks to be used for services in accordance with the provisions set forth in the California Vehicle Code (VC), Title 13 of the California Code of Regulations (Title 13), these Specifications, and in a manner consistent with industry standards and practices.

2) All tow trucks shall have recovery and wheel lift capabilities, Tow Truck Inspection Guide (Attachment 3). Class D tow trucks used exclusively for salvage and recovery operations are not required to possess wheel lift capabilities. A car carrier is exempt from the recovery, wheel lift, and boom capability requirements however; the car carrier must be an additional unit and shall not be used for recovery.

3) A violation of the gross vehicle weight rating (GVWR) and/or safe loading requirements of a tow truck may be cause for termination of the Agreement. This includes exceeding the tow truck's GVWR, front axle weight rating (FAWR), rear axle weight rating (RAWR), maximum tire weight ratings, or not maintaining 50 percent of the tow truck's unladen front axle weight on the front axle when towing. The total weight of the truck, including the lifted load, shall fall within the GVWR and not exceed either the FAWR or RAWR.

4) Tow truck and car carrier classifications are based on the truck chassis GVWR and the classification system used by the American Trucking Association (ATA) and truck manufacturers. Tow truck and car carrier classifications shall meet all applicable state and/or federal standards.

5) Each piece of towing equipment shall have a label or identification tag permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model, and rated capacity.

6) The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode, when the boom is static at a 30 degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell). The structural design of the recovery equipment must have a higher load capacity than the performance ratings. Winches shall conform to or exceed the specifications set forth by the Recovery Equipment Rating, Society of Automotive Engineers (SAE) Handbook, SAE j706. All ratings for cable and chain assemblies are for the undamaged assembly condition. All cable and chain assemblies should be the same type, construction, and rating as specified by the original equipment manufacturer (OEM) for the equipment.

7) All controls shall be clearly marked to indicate proper operations as well as any special warnings or cautions.

8) The CHP annual inspections consisting of a Level One inspection conducted by a commercial enforcement officer (see Attachment 4, CHP 407F, Safetynet Driver/Vehicle Inspection Report); and a tow truck inspection conducted by either a commercial enforcement officer or officer (see Attachment 3). Upon successful completion of the inspection, a Commercial Vehicle Safety Alliance (CVSA) decal shall be issued.

D. Response

1) The Eureka Police Department and Contractor shall mutually agree upon a determined response time. If Contractor is unable to respond within the determined time, a towing company on the Eureka Police Department's rotation tow list that meets storage security specifications will be called. Contractor will be responsible for charges billed by this towing company. Eureka Police Department will reimburse Contractor at the Agreement rates for towing, recovery and storage.

2) Only personnel and equipment requested shall respond to a Eureka Police Department call. Nothing would preclude Contractor from responding to an incident to ascertain if additional assistance or equipment is required, however there shall be no additional charges for any personnel or equipment that is not necessary to perform the required service. Should assistance be required, the Eureka Police Department scene manager shall be notified.

E. Storage Facility

1) Contractor shall provide a location having adequate secure storage and shall be responsible for the vehicle and vehicle contents while in his/her possession. If Contractor shares storage area (property) with another business or businesses, Eureka Police Department storage will be secured from said businesses.

2) Secure storage is defined as a building with four solid walls and a solid roof, secure area will have lockable entry/exit doors.

3) Contractor will secure vehicles from unauthorized persons (employees and public). Access to vehicles will be limited to authorized personnel only.

4) Contractor will ensure that stored vehicles will be protected from long term effects of weather (snow, hail, salt, sand, etc.).

5) Storage must be adequate to contain, up to and including, ten (10) vehicles inside.

6) Storage facility must be alarmed and monitored by a security service.

F. Inventory

Contractor shall submit to the Eureka Police Department office a monthly report of all vehicles held in storage. In the event that no vehicles are stored, a response is still required.

G. Inspection of Evidence

1) Eureka Police Department reserves the right to inspect vehicles upon a request to Contractor's representative. Call-out charges when facility is not staffed shall be billed to the Eureka Police Department at the hourly rate divided into quarter hours. Time should be rounded down to the nearest quarter hour.

H. Notification and Release

1) Contractor is advised that pursuant to Section 22852 of the California Vehicle Code, the agency directing the storage is required to notify the registered and legal owners of the vehicle. Therefore, the Eureka Police Department will notify the registered and legal owners of vehicles impounded as evidence.

2) Upon notification of permission to release by Eureka Police Department, it is the responsibility of Contractor to ensure, prior to release, that there are no liens or encumbrances existing on the vehicle, such as a financial institution.

3) Upon notification by the Eureka Police Department that its financial responsibility has ended, Contractor shall terminate billing to Eureka Police Department.

4) Contractor shall strictly comply with all instructions for the release or retention of the impounded vehicle which are contained on the Eureka Police Department 180, Vehicle Report. Failure to comply with this paragraph shall result in the following:

a) First offense – written reprimand

b) Second offense – cancellation of Agreement

This will not preclude the Eureka Police Department or the affected District Attorney from filing criminal charges against Contractor if appropriate.

5) It is the sole responsibility of the Eureka Police Department to properly notify Contractor of the date of release.

SPECIAL TERMS AND CONDITIONS

1. Compliance with Law

Contractor and employee(s), any of whom are salaried, non-salaried, volunteer, or involved in any aspect or activity of the business, whether or not receiving compensation of any kind for doing so, shall at all times, comply with federal, state, and local laws and ordinances.

a) In the event of a minor traffic violation by an employee of the Contractor which is known by the Eureka Police Department, Contractor shall be advised of the violation by the Eureka Police Department. Contractor will be granted the opportunity to take necessary steps to ensure that the employee complies with the law. Any subsequent traffic violations may be cause for termination of the Agreement. Any flagrant traffic violation by Contractor or employee may be cause for immediate termination of the Agreement.

b) Should at any time during the term of the Agreement, any conviction of or plea(s) to any offense(s) pertaining to the Contractor or employee(s) involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug-related offense, felony driving while under the influence of alcohol and/or a drug, misdemeanor driving while under the influence of alcohol and/or a drug, or moral turpitude become know to the Eureka Police Department, it shall result in immediate termination of the Agreement.

2. Standard of Conduct

A. During the course of business as related to the Agreement, Contractor and employee(s) shall refrain from any acts of misconduct including but not limited to, any of the following:

1) Rude or discourteous behavior.

2) Lack of service, selective service, or refusal to provide service which Contractor or employee(s) is capable of performing.

3) Any act of sexual harassment or sexual impropriety.

4) Unsafe driving practices.

5) Exhibiting any objective symptoms of alcohol and/or drug use.

6) Appearing at the scene with the odor of an alcoholic beverage emitting from the driver's or employee's breath. The employee shall submit to a preliminary alcohol screening test upon demand of the Eureka Police Department.

B. All Eureka Police Department related tow service complaints received or initiated by the Eureka Police Department against Contractor or Contractor's employees will be accepted and investigated in a fair and impartial manner. Contractor and/or employees shall cooperate with Eureka Police Department investigators during the course of an investigation. Contractor will be notified in writing the results of any investigation.

3. Liability and Damages

Any damage to the vehicle through gross negligence by Contractor or by Contractor's employees will be just cause for immediate termination of the Agreement. Contractor will bear all costs for repair of vehicle and for establishing a new Agreement.

4. Insurance

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance
Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability. Code 1 (any auto)
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Level of Insurance

1. General Liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this operation or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage
3. Employer's Liability: 1,000,000 per accident for bodily injury or disease.

Bodily injury and property damage with a combined single limit of not less than $ 2,000,000 for Class A tow trucks. The combined limits for class B, C, and D shall not be less than $2,000,000. These minimum standards are to include general liability and any auto coverage.

1) Storage Liability – Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than $ 2,000,000.

2) Storage Keeper's Liability – Shall be $2,000,000 for vehicles in the care, custody, and control of the operator in the storage yard.

Deductibles and Self-Insured Retentions
Any deductibles or self insured retentions must be declared to and approved by the City. At the option of the City, either: The insurer shall reduce or eliminate such deductibles, or self –insured retentions as respect the City, its officer, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigation, claim administration and defense expenses.

Other Insurance Provisions
The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy.

2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

The insurance policy shall remain in force throughout the term of the Agreement. Policy expiration or cancellation will immediately nullify Agreement. Contractor's insurance policy shall provide for not less than 30 days written notice by certified mail, return receipt requested to the Eureka Police Department, in the event the insurance policy is canceled or is due to expire. Additionally, Contractor shall notify Eureka Police Department in advance of the expiration, or cancellation of Contractor's insurance policy.

A. Contractor removing a vehicle from a hazardous materials incident to the nearest reasonable and safe stopping location will be considered to be transporting property, subject to normal minimum insurance requirements.

B. Contractor shall furnish to the Eureka Police Department proof of Worker's Compensation Insurance. Proof of insurance shall be provided prior to the execution of the proposed Agreement and shall remain in force throughout the term of the Agreement. The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

Waiver of Subrogation
The worker's compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of this policy which arises form the work performed by the named insured for the City.

Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best rating of no less the A:VII

Verification of Coverage
Contractor shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsement or policies conform to the requirements. All certificates and endorsement are to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

5. Security Clearance Requirement

Contractor and all personnel who are assigned to the Agreement are required to have a clear driver's License. During the Agreement, any adverse finding(s) under the driver's license check may, at the sole discretion of the Eureka Police Department, result in termination of the Agreement. New personnel are subject to the driver's license check as outlined above.

6. Financial Responsibility

A. When a vehicle and property are impounded as evidence for use in an investigation and possible prosecution of a crime, the Eureka Police Department is financially responsible for towing, recovery and storage charges incurred from the initial seizure to the time criminal charges are filed by the district attorney. The district attorney of the county where the case is filed is financially responsible for charges from the time charges are filed until the case is adjudicated. (Attorney General's Opinion 858-804).

B. The registered owner is responsible for all storage charges incurred after the vehicle is released by the Eureka Police Department. Refer to Division 11, Chapter 10, Article 2, beginning with Section 22851 of the California Vehicle Code for information regarding lien sales.

7. Subcontracting

There shall be no subcontracting for any portion of the Agreement.

8. Term of Agreement

The term of this agreement will begin on January 1, 2009, and will remain in effect until December 31, 2011.

9. Cancellation

A. The Agreement may be cancelled without penalty by the Eureka Police Department upon thirty (30) days prior written notice to the Contractor.

B. Cancellation or removal from the Eureka Police Department Rotation Tow List, if applicable, may result in the immediate cancellation of the Agreement.

C. The sale or transfer of the controlling interest in Contractor's company shall require a review of this contract and approval by the Eureka Police Department of the new owner.

D. Contractor may cancel the Agreement upon no less than sixty (60) days notice.

10. Suspension

The Eureka Police Department shall suspend Contractor, for a period of 360 days, from competing in future Invitations for Bid when the Contractor has demonstrated unsatisfactory performance in complying with or completing previously awarded Agreements.

GEOGRAPHICAL REGIONS

The geographical regions covered by this Agreement are as follows:

- US-101, northern boundary MPM 137.14.
- US_101, southern boundary MPM 46.19.
- SR 36, western boundary is US 101
- SR 36, eastern boundary is the Trinity County line.
- SR 299, western boundary is US 101
- SR 299, eastern boundary is the Trinity County line
- SR 96, northern boundary is the Siskiyou County line.
- SR 96, southern boundary is SR 299
- SR 169, northern end to
- SR 169, southern boundary is SR 96
- All of SR200
- All of SR 211.
- All of SR 255
- All of SR 283.

AND

- To include all unincorporated and incorporated property within these areas, with the western boundary being the Pacific Ocean.
- All U.S. Forest Service roads/property within these boundaries.
- Hoopa Valley Tribal Reservation.
- Yurok Indian Reservation
- Redwood National/State Park.
- All State property and government lands not named above

AND

- Contractor agrees to provide services in any location required whether in city, out of city, in county, out of county, in state or out of state on an "as needed basis".

ATTACHMENT 2

TOW OPERATOR/DRIVER INFORMATION

Instructions: Please type or print clearly. Form must be filled out completely.

OPERATOR/DRIVER FULL NAME (FIRST, MIDDLE, LAST) DOB

LIST ALL ALIASES (USE ADDITIONAL PAGES IF NECESSARY)

COMPANY NAME JOB TITLE CLASSIFICATION

DRIVER LICENSE NUMBER STATE EXP DATE CLASS ENDORSEMENTS

MEDICAL CERTIFICATE MEDICAL CERTIFICATE EXPIRATION DATE
____YES _____NO

NUMBER OF YEARS EXPERIENCE AS A TOW TRUCK OPERATOR/DRIVER IN THE FOLLOWING CHP CLASSES

Class A _____ Class B _____ Class C _____ Class D _____

OPERATOR/DRIVER PRESENTLY ENROLLED IN DMV PULL NOTICE PROGRAM? _____ YES _____ NO

OPERATOR/DRIVER EVER BEEN CONVICTED OF A CRIME? _____ YES _____ NO

IF YES EXPLAIN CIRCUMSTANCES, INCLUDE CRIMES COMMITTED, SECTION VIOLATED, DATE OF CONVICTIONS, COUNTRY, STATE, AND COUNTY WHERE CRIMES WERE COMMITTED. (USE ADDITIONAL PAGES IF NECESSARY).

I certify that the above information is true and correct, and that no omissions have been made.

- The Operator and Driver are advised that giving false information to a peace officer, either orally or in writing, is a misdemeanor pursuant to Vehicle Code Sections 20 and 31.

OPERATOR'S/OWNER'S SIGNATURE DATE

TOW DRIVER'S SIGNATURE DATE

RECEIVING OFFICER'S NAME ID NUMBER DATE

EUREKA POLICE DEPARTMENT USE ONLY

_____ APPROVED _____ DISAPPROVED

If an individual is not approved, provide tow operator with a written reason for the action and attach a copy of the reason to this form.

STANDARD AGREEMENT

AGREEMENT NUMBER

2009-07

REGISTRATION NUMBER

N/A

1. This Agreement is entered into between the City Agency and the Contractor named below

CITY AGENCYS NAME

Eureka Police Department

CONTRACTOR'S NAME

Humboldt Towing Inc.

2. The term of this Agreement is 01/01/2009 through 12/31/2011

3. The parties agree to comply with the terms and conditions of the following exhibits which are by this Reference made a part of the Agreement:

Exhibit A	Scope of Work
Exhibit B	Budget Detail and Payment Provisions
Exhibit C*	General Terms and Conditions
Exhibit D	Special Terms and Conditions (Attached hereto as part of this agreement)

CONTRACTOR

CONTRACTOR If other than an individual, state whether a corporation, partnership, etc.)

Humboldt Towing Inc.

BY (Authorized Signature) DATE SIGNED (Do not type)

ADDRESS

101 H Street Eureka, CA 95501

CITY OF EUREKA

AGENCY NAME

Eureka Police Department

BY (Authorized Signature) DATE SIGNED Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Garr Nielsen – Chief of Police

ADDRESS

604 C Street, Eureka, CA 95501-1165

EXHIBIT A
(Standard Agreement)

SCOPE OF WORK

1. Contractor agrees to provide towing and secure storage of property impounded as evidence for the Eureka Police Department.

2. The services shall be provided during:
   A 24–hour, 7 day per week basis.

3. The project representatives during the term of this agreement will be:

CITY AGENCY		CONTRACTOR	
Eureka Police Department		Humboldt Towing Inc.	
NAME		NAME	
Lt. Len Johnson		Leroy Hoffman	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
441-4087	441-4334	442-4537	442-0243

Direct all inquiries to:

CITY AGENCY		CONTRACTOR	
Eureka Police Department		Humboldt Towing Inc.	
SECTION/UNIT		SECTION/UNIT	
City of Eureka			
ATTENTION		ATTENTION	
Lt. Len Johnson		Leroy Hoffman	
ADDRESS		ADDRESS	
604 C Street, Eureka, CA 95501-1165		101 H Street, Eureka, CA 95501	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
441-4087	441-4334	442-4537	442-0243

AGENDA SUMMARY

RE: Resolution authorizing City Manager to execute Agreements with State Board of Equalization for Implementation of a Local Transactions and Use Tax

For Agenda Date: January 20, 2009
Agenda Item No.: 8

RECOMMENDATION:

1. Adopt resolution authorizing City Manager to execute two agreements with the State Board of Equalization: An *Agreement for Preparation to Administer and Operate City's Transactions and Use Tax Ordinance* and an *Agreement for State Administration of City Transactions and Use Taxes.*
2. Appropriate funds in the General Fund non-departmental division, to pay the State Board of Equalization to prepare to administer the City's Transactions and Use Tax in an amount not to exceed $175,000.

SUMMARY OF THE ISSUE:

A general municipal election was held in the City of Eureka on November 4, 2008 for the purpose of submitting to the voters of Eureka ballot measure D relating to amendment of pertinent sections of the Eureka Municipal Code pertaining to a transactions and use tax (TUT) and repeal of the Utility Users' Tax (UUT). Measure D was successful by a measure of 56.77% to 43.23% and the election results were certified by Humboldt County. That certification was accepted by the Eureka City Council by resolution on December 16, 2008. Also on December 16, the council adopted Bill No. 794-CS making the appropriate amendments to the Eureka Municipal Code. The next step in implementing the TUT

FISCAL IMPACT: Appropriate $175,000 in the General Fund non-departmental division for preparation to administer the City's Transactions and Use Tax. General Fund unreserved fund balance will be $443,328 after this action. The ongoing administration fee for the State Board of Equalization will be approximately 2% of the TUT revenue.

DH SIGN: _____ Finance Director

CM SIGN: _____ City Manager

REVIEWED BY:	DATE:	INITIALS:
City Attorney	13 Jan 09	S

COUNCIL ACTION:

Ordinance No. Resolution No.

AGENDA SUMMARY

RE: Resolution authorizing City Manager to execute Agreements with State Board of Equalization for Implementation of a Local Transactions and Use Tax

For Agenda Date: January 20, 2009
Agenda Item No.:

SUMMARY OF THE ISSUE CONTINUED:
is to make agreements with the State Board of Equalization (SBOE) to administer the tax. The SBOE has provided the attached documents, which have been reviewed by City staff. The first agreement essentially provides for the SBOE to set up forms, systems and procedures to administer the City of Eureka TUT, and obligates the City to pay the associated costs, up to a maximum of $175,000. The second agreement essentially provides for the SBOE to do the ongoing service of collecting and remitting the TUT, and authorizes the Board to withhold the legally allowed administration fee. The resolution represents council's approval for the City Manager to sign the agreements.

ATTACHMENTS:
Resolution of the City Council of the City of Eureka authorizing the City Manager to execute agreements with the State Board of Equalization for Implementation of a Local Transactions and Use Tax
Agreement for Preparation to Administer and Operate City's Transactions and Use Tax Ordinance
Agreement for State Administration of City Transactions and Use Taxes

RESOLUTION NO. 2009-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH THE STATE BOARD OF EQUALIZATION FOR IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX.

WHEREAS, on December 16, 2008 the City Council approved Ordinance No. 734-C.S. amending the City Municipal Code and providing for a local transactions and use tax; and

WHEREAS, the State Board of Equalization (Board) administers and collects the transactions and use taxes for all applicable jurisdictions within the state; and

WHEREAS, the Board will be responsible to administer and collect the transactions and use tax for the City; and

WHEREAS, the Board requires that the City enter into a "Preparatory Agreement" and an "Administration Agreement" prior to implementation of said taxes, and

Whereas, the Board requires that the City Council authorize the agreements;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Eureka that the "Preparatory Agreement" attached as Exhibit A and the "Administrative Agreement" attached as Exhibit B are hereby approved and the City Manager is hereby authorized to execute each agreement.

Passed, approved, and adopted by the Council of the City of Eureka, County of Humboldt, State of California, on the 20th day of January, 2009, by the following vote:

AYES: COUNILMEMBERS

NOES: COUNCILMEMBERS

ABSENT: COUNCILMEMBERS

ATTEST:

KATHLEEN L. FRANCO SIMMONS ,
CITY CLERK

VIRGINIA BASS, MAYOR

APPROVED AS TO FORM:

SHERYL SCHAFFNER, CITY ATTORNEY

APPROVED AS TO ADMINSTRATION:

DAVID W. TYSON, CITY MANAGER

AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE CITY'S TRANSACTIONS AND USE TAX ORDINANCE

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the City of Eureka, hereinafter called *City*, and the STATE BOARD OF EQUALIZATION, hereinafter called *Board*, do agree as follows:

1. The Board agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the City and whose ordinance has been adopted by the City.

2. City agrees to pay to the Board at the times and in the amounts hereinafter specified all of the Board's costs for preparatory work necessary to administer the City's transactions and use tax ordinance. The Board's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Board's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Board. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the City.

4. Any dispute as to the amount of preparatory costs incurred by the Board shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Board shall be billed by the Board periodically, with the final billing within a reasonable time after the operative date of the ordinance. City shall pay to the Board the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

6. The amount to be paid by City for the Board's preparatory costs shall not exceed one hundred seventy-five thousand dollars ($175,000) (Revenue and Taxation Code Section 7272.)

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Board shall be addressed to:

STATE BOARD OF EQUALIZATION
P. O. BOX 942879
SACRAMENTO, CALIFORNIA 94279-0073
ATTENTION: EXECUTIVE DIRECTOR

Communications and notices to be sent to City shall be addressed to:

Valerie Warner, Finance Director

City of Eureka

531 K St.

Eureka CA 95501

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Board has received all payments due from City under the terms of this agreement.

CITY OF EUREKA

By _____
(Signature)

_____
(Typed Name)

_____
(Title)

STATE BOARD OF EQUALIZATION

By _____
(Executive Director)

(Rev. 11/02)

AGREEMENT FOR STATE ADMINISTRATION OF CITY TRANSACTIONS AND USE TAXES

The City Council of the City of Eureka has adopted, and the voters of the City of Eureka (hereafter called "City" or "District") have approved by the required majority vote, the City of Eureka Transactions and Use Tax Ordinance (hereafter called "Ordinance"), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the State Board of Equalization, (hereinafter called the "Board") and the City do agree as follows:

ARTICLE I

DEFINITIONS

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7285.9, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No.734-C.S., as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

ARTICLE II

ADMINISTRATION AND COLLECTION OF CITY TAXES

A. **Administration.** The Board and City agree that the Board shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

B. Other Applicable Laws. City agrees that all provisions of law applicable to the administration and operation of the State Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Board pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

C. Transmittal of money.

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by City's self-imposed limits or by final judgment of any court of the State of California holding that City's ordinance is invalid or void, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the City designated and authorized by the City. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

D. Rules. The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City Ordinance and the distribution of the district taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Board shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.

F. Security. The Board agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of City for district taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it, and City shall not participate in any security now held by the Board.

G. Records of the Board.

When requested by resolution of the legislative body of the City under section 7056 of the Revenue and Taxation Code, the Board agrees to permit authorized personnel of the City to examine the records of the Board, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the City, pertaining to the ascertainment of transactions and use taxes collected for the City. Information obtained by the City from examination of the Board's records shall be used by the City only for purposes related to the collection of transactions and use taxes by the Board pursuant to this Agreement.

H. Annexation. City agrees that the Board shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Board. The notice shall include the name of the county or counties annexed to the extended City boundary. In the event the City shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the City showing the area annexed and the location address of the property nearest to the extended City boundary on each side of every street or road crossing the boundary.

ARTICLE III

ALLOCATION OF TAX

A. Allocation. In the administration of the Board's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Board, to all districts with which the Board has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Board, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

B. Vehicles, Vessels, and Aircraft. For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Board in determining the place of use.

ARTICLE IV

COMPENSATION

The City agrees to pay to the Board as the Board's cost of administering the City Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Board for the City.

ARTICLE V

MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879
Sacramento, California 94279-0073
Attention: Executive Director

Communications and notices to be sent to the City shall be addressed to:

Valerie Warner, Finance Director

City of Eureka

531 K St.

Eureka CA 95501

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2009. This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Board completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. City shall give the Board written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

ARTICLE VI

ADMINISTRATION OF TAXES IF THE ORDINANCE IS CHALLENGED AS BEING INVALID

A. Impoundment of funds.

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the City shall transmit to the Board the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

B. Costs of administration. Should a final judgment be entered in any court of the State of California, holding that City's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Board may retain all payments made by City to Board to prepare to administer the City Ordinance.

2. City will pay to Board and allow Board to retain Board's cost of administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

3. City will pay to Board or to the State of California the amount of any taxes plus interest and penalties, if any, that Board or the State of California may be required to rebate or refund to taxpayers.

4. City will pay to Board its costs for rebating or refunding such taxes, interest, or penalties. Board's costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Board's staff for use in making these rebates or refunds and any other costs incurred by Board which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Board's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Board. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by City.

6. Any dispute as to the amount of costs incurred by Board in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Board in connection with such refunds shall be billed by Board on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Board shall bill City on or before the 25th of each month for all costs incurred by Board for the preceding calendar month. City shall pay to Board the amount of such costs on or before the last day of the succeeding month and shall pay to Board the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Board costs incurred in making those refunds.

CITY OF EUREKA

By _____
(Signature)

_____
(Typed Name)

_____
(Title)

STATE BOARD OF EQUALIZATION

By _____
(Executive Director)

Bill No. 794-CS

Ordinance No. 734-C.S.

AN ORDINANCE OF THE CITY OF EUREKA
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION AND
REPEALING THE CURRENT 3% UTILITY USER TAX

WHEREAS, in the last 10 years the state has taken more than $15 million from Eureka in property tax and other revenues and without these monies its has become increasingly more difficult to balance our own budget and fund City services; and

WHEREAS, the City's General Fund is used to fund such essential government services as police, fire, public works, parks and recreation, environmental programs and other essential services provided by the City to its citizens; and

WHEREAS, the voters of the State of California approved Proposition 218, the "Tax Payer's Right to Vote", which requires new and/or increased taxes to be submitted to the voters for approval; and

WHEREAS, a Transaction and Use Tax will generate approximately $2,500,000 per year, which will partially offset the City's general fund revenue losses to the State, and will permit the City to maintain these essential governmental services; and

WHEREAS, the City currently assesses a three percent Utility User Tax, which generates approximately $1.5 million per year; and

WHEREAS, the City Finance Advisory Committee has recommended that a ballot measure be place on the November 2008 Municipal Election to approve a one quarter of one percent (0.25%) Transaction and Use Tax and to concurrently repealing the City's three percent Utility User Tax; and

WHEREAS, the Eureka City Council desires to submit to the voters a question relating to amendment of pertinent sections of the Eureka Municipal Code adding a Transaction and Use Tax and repealing the current Utility User Tax; and

WHEREAS, a Municipal Election is to be held in the City of Eureka, California, on Tuesday, November 4, 2008, at which there will be submitted to the voters the following measure:

SHALL THE EUREKA MUNICIPAL CODE BE AMENDED TO ADD A ONE QUARTER OF ONE PERCENT (0.25%) TRANSACTION AND USE TAX TO FUND ESSENTIAL SERVICES SUCH AS POLICE, FIRE, STREET MAINTENANCE, ENVIRONMENTAL PROGRAMS, AND PARKS AND RECREATION? SHOULD THE TAX BE APPROVED BY VOTERS THE EXISTING THREE PERCENT (3%) UTILITY USER TAX WOULD BE REPEALED.	YES ___ NO ____

Be it ordained by the City Council of the City of Eureka as follows:

That upon majority approval, by a vote of the electorate, of the Transaction and Use Tax Measure during the November 4, 2008, Municipal Election the City Council of the City of Eureka shall adopt the following amendments to Chapter 35 of the Eureka Municipal Code regarding Transaction and Use Tax, and the existing three percent (3%) Utility User Tax.

Chapter 35 of the Eureka Municipal Code is amended to read as follows:

Section 35.160 TITLE. This ordinance shall be known as the EUREKA Transactions and Use Tax Ordinance. The city of EUREKA hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 35.161. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption. The election was held November 4, 2008 and operative date is April 1, 2009.

Section 35.162. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that 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 California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

Section 35.163. CONTRACT WITH STATE. 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 transactions and use tax ordinance; provided, that 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.

Section 35.164. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one quarter of one percent (0.25%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance. The tax in addition the City's existing sales and use tax set forth in Chapter 35 of Section 35.050 through Section 35.083 of the EUREKA Municipal Code.

Section 35.165. PLACE OF SALE. For the purposes of this ordinance, 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 such 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.

Section 35.166. USE TAX RATE. 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 of this ordinance for storage, use or other consumption in said territory at the rate of one quarter of one percent (0.25%) 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.

Section 35.167. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

Section 35.168. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. 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 remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. 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 said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

Section 35.169. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

Section 35.170. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, 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.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subsections (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products 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. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subsections (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 35.171. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 35.172. ENJOINING COLLECTION FORBIDDEN. 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 ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 35.173. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 35.174. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect on April 1, 2009.

Sections 35.130 through 35.157. The Utility User's Tax, is repealed, effective April 1, 2009.

Passed, approved, and adopted by the Council of the City of Eureka, County of Humboldt, State of California, on the 16th day of December, 2008, by the following vote:

AYES:	COUNCILMEMBERS	GLASS, ATKINS, LEONARD, JÄGER, JONES
NOES:	COUNCILMEMBERS	NONE
ABSENT:	COUNCILMEMBERS	NONE

Mike Jones
MAYOR PRO TEM OF THE CITY OF EUREKA

The above ordinance was submitted to me on the 12th day of January, 2009, and I hereby approve the same.

Virginia Bass
Mayor of the City of Eureka

ATTEST:

1/13/2009
Kathleen Franco Simmons, City Clerk

APPROVED AS TO ADMINISTRATION:

David W. Tyson, City Manager

APPROVED AS TO FORM:

Sheryl Schaffner, City Attorney

AGENDA SUMMARY

RE: Resolution authorizing Hinderliter, de Llamas and Associates to examine Transactions and Use Tax records of the City in order to provide compliance auditing services.

For Agenda Date: January 20, 2009
Agenda Item No.: 9

RECOMMENDATION:
Adopt resolution authorizing examination of transactions and use tax records.

SUMMARY OF THE ISSUE:
A general municipal election was held in the City of Eureka on November 4, 2008 for the purpose of submitting to the voters of Eureka ballot measure D relating to amendment of pertinent sections of the Eureka Municipal Code pertaining to a transactions and use tax (TUT) and repeal of the Utility Users' Tax (UUT). Measure D was successful and its passage has lead to several subsequent council actions necessary to implement the new tax. This action is not required, but is recommended by staff. The firm of Hinderliter, deLlamas and Associates (HdL) provides high quality consulting and auditing services for Sales Tax and Property Tax, to the City of Eureka. HdL will provide TUT information along with Sales Tax information for no additional fee. When a tax error or deficiency is discovered by HdL, their fee is 25% of the recovered amount. The attached resolution will allow HdL access to the TUT records necessary to do the compliance auditing work. Staff believes that the compliance auditing work is particularly important with this tax since the TUT has a record, at other agencies, of being vulnerable to errors in the early months following enactment.

ATTACHMENTS:
Resolution of the City Council of the City of Eureka authorizing examination of transactions and use tax records

FISCAL IMPACT: There is no additional contract fee for auditing the transactions and use tax. HdL's fee is 25% of amounts recovered through their compliance auditing for the specific quarter(s) identified as being missing and/or deficient.

DH SIGN: _____ Finance Director

CM SIGN: _____ City Manager

REVIEWED BY:	DATE:	INITIALS:
City Attorney	13 Jan 09	S

COUNCIL ACTION:

Ordinance No.

Resolution No.

RESOLUTION NO. 2009-__

A RESOLUTION OF THE CITY OF EUREKA
AUTHORIZING EXAMINATION OF TRANSACTIONS AND USE TAX RECORDS

WHEREAS, pursuant to resolution No. xxx., the City of Eureka entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local transactions and use taxes; and

WHEREAS, the City Council of the City of Eureka deems it necessary for authorized representatives of the City to examine confidential transactions and use tax records of the State Board of Equalization pertaining to transactions and use taxes collected by the Board for the City pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation code sets forth certain requirements and conditions for the disclosure of Board records and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from the transactions and use tax records of the Board; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code requires that any person designated by the City shall have an existing contract to examine the City's sales and use tax records.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EUREKA HEREBY RESOLVES AS FOLLOWS:

Section 1. That the City Manager or other officer(s) or employee(s) of the City (hereafter referred to as City) designated in writing by the City Manager to the State Board of Equalization (hereafter referred to as Board), is hereby appointed to represent the City with authority to examine transactions and use tax records of the Board pertaining to transactions and use taxes collected for the City by the Board pursuant to the contract between the City and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of the City transactions and use taxes by the Board pursuant to the contract.

Section 2. That the City's existing contract with Hinderliter, de Llamas and Associates is hereby amended to add thereto the examination of the transactions and use tax records of the city pertaining to transactions and use taxes collected for the City by the Board. The fee for transactions tax related audit and recovery work will be 25% of all new transactions tax or related use tax recovered for those specific quarters identified as being missing and/or deficient.

Sections 3. That Hinderliter, de Llamas and Associates is hereby designated to examine the transactions and use tax records of the City pertaining to transactions and use taxes collected for the City by the Board. The entity designated by this section meets all of the following conditions:

(a) Has an existing contract with the City to examine those transactions and use tax records;

(b) Is required by that contract to disclose information contained in, or derived from, those transactions and use tax records only to the officer(s) or employee(s) authorized under Section 1 of this resolution to examine the information.

(c) Is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and

(d) Is prohibited by that contract from retaining the information contained in, or derived from those transactions and use tax records, after that contract was expired.

The information obtained by examination of Board records shall be used only for purposes related to the collection of City transactions and use taxes by the Board pursuant to the contract between the City and the Board.

Section 3. The City Clerk of the City is hereby directed to certify adoption of this Resolution and to send a copy to:

Sate Board of Equalization
Local Tax Section MIC:27
P O Box 942879
Sacramento, CA 94279-0001

Passed, approved, and adopted by the Council of the City of Eureka, County of Humboldt, State of California, on the 20th Day of January, 2009, by the following vote:

AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS

ATTEST:

KATHLEEN L FRANCO SIMMONS,
CITY CLERK

VIRGINIA BASS, MAYOR

APPROVED AS TO FORM:

SHERYL SCHAFFNER,
CITY ATTORNEY

APPROVED AS TO ADMINISTRATION

DAVID W. TYSON, CITY MANAGER

AGENDA SUMMARY

RE: REQUEST FOR EXCEPTION TO THE HIRING FREEZE

For Agenda Date: January 20, 2009

Agenda Item No.: 10

RECOMMENDATION:

The Public Works Department recommends that Council approve the exception to the hiring freeze for three Maintenance Worker I/II positions, which are already included in the FY 08/09 budget and are paid out of either the Water Distribution Fund or Wastewater Collections Fund, not the General Fund

SUMMARY OF THE ISSUE:

With the adoption of the FY 03/04 budget, the City Council authorized a hiring freeze for all non-public safety positions. Any exceptions to the hiring freeze must be approved by the Council.

The Public Works Department requests authorization to fill 3 vacant Maintenance Worker I/II positions. The 2 positions assigned to the Water Distribution Division provide personnel for work projects involving repairs of water mains, water services, and fire hydrants, and act as backup meter reader. The position assigned to the Wastewater Collection Division provides personnel for work projects involving repairs of sewer lines and pump stations to ensure continuous flow of City wastes. These positions respond to emergency after-hour calls and assist other city departments with work efforts. Failure to fill these positions will potentially cause delays or possibly prevent the accomplishment of the above stated work activities, along with other work activities not specified. These positions are already included in the FY 08/09 budget and are paid out of either the Water Distribution Fund or Wastewater Collections Fund, not the General Fund.

The Public Works Department requests Council determine whether to exempt these positions from the hiring freeze and authorize them to be filled.

FISCAL IMPACT:

The cost of filling these positions individually is $50,905.80 annually (based on a Maintenance Worker I, Step 3 salary rate) from either the Water Distribution Fund or Wastewater Collections Fund, not the General Fund.

DH SIGN: [signature]
Personnel Director

CM SIGN: [signature]
City Manager

REVIEWED BY:	**DATE:**	**INITIALS:**
City Attorney	13 Jan '09	SS
Finance Director	1/13/9	VW

COUNCIL ACTION:

Ordinance No.

Resolution No.

AGENDA SUMMARY

RE: REQUEST FOR EXCEPTION TO THE HIRING FREEZE

For Agenda Date: January 20, 2009

Agenda Item No.: 11

RECOMMENDATION:

The Public Works Department recommends that Council approve the exception to the hiring freeze for the Maintenance Worker II position, which is already included in the FY 08/09 budget.

SUMMARY OF THE ISSUE:

With the adoption of the FY 03/04 budget, the City Council authorized a hiring freeze for all non-public safety positions. Any exceptions to the hiring freeze must be approved by the Council.

The Public Works Department requests authorization to fill the position of Maintenance Worker II. This position is assigned to the Streets Division and provides the maintenance and repair of city streets and roadways, including asphalt patching, painting and striping, repairing, and reconstructing streets. Provides installation, maintenance and repair of traffic signs, maintenance of storm water and drainage structures, along with other work activities not specified. Through the FY 08/09 budget process a position in the Streets Division was eliminated effective July 1, 2008, having no immediate impact on the incumbent who was on Workers' Compensation Leave at the time. The Maintenance Worker II position was intentionally left vacant pending the return to work of the employee, who has been medically released back to duty. This position is already included in the FY 08/09 budget and is paid out of the General Fund.

The Public Works Department requests Council determine whether to exempt this position from the hiring freeze and authorize it to be filled.

FISCAL IMPACT:

The cost of filling this position is $59,907.54 annually (based on a Maintenance Worker II, Step 5 salary rate) from the General Fund, and is already included in the current budget.

DH SIGN: Teresia A. Haase
Personnel Director

CM SIGN: David W. [signature]
City Manager

REVIEWED BY:	**DATE:**	**INITIALS:**
City Attorney	13 Jan '09	SS
Finance Director	1/13/9	VW

COUNCIL ACTION:

Ordinance No.

Resolution No.

AGENDA SUMMARY

RE: PROBLEM ORIENTED POLICING PROGRAM POP COORDINATOR	For Agenda Date: JANUARY 20, 2009 Agenda Item No: 12

RECOMMENDATION:

(1) Adopt the classification specification (job description) and compensation for the new Problem Oriented Policing POP Coordinator position; and
(2) Authorize the filling of the POP Coordinator position.

SUMMARY OF THE ISSUE:

At the September 2, 2008, Council meeting, the concept of a City Problem Oriented Policing Program (POP) was discussed, and Staff reported they would place a program proposal on the next agenda for Council's consideration. On September 16, 2008, the attached agenda summary was presented requesting the Council (1) Approve the development and funding of a Problem Oriented Policing Program as described in the attachments; and (2) Direct the City Manager to "meet and confer" with the Eureka Police Officers Association (EPOA) and the Eureka City Employees' Association (ECEA) on the related impacts of this program. Council approved both of these requested items.

Following this meeting, Staff met and conferred with EPOA and ECEA on the elimination of one EPOA-represented Police Services Officer position, and one ECEA-represented Police Records Specialist position. Both EPOA and ECEA agreed to these position eliminations to fund the POP Program, and attached are the resulting side letters to the current EPOA and ECEA MOU"s signed by both EPOA and ECEA.

The Personnel Department subsequently developed the attached class spec for POP Coordinator, determined the previously approved salary is appropriate for the proposed position, and designated the POP Coordinator as a management (unrepresented) position.

As necessary negotiations on this item have been concluded and agreement has been reached, Staff recommends the City Council (1) adopt the classification specification (job description) and compensation for the new Problem Oriented Policing POP Coordinator position; and (2) authorize the filling of the POP Coordinator position.

FISCAL IMPACT:

There is no additional fiscal impact associated with this item. Full funding for the POP Program, including this position, was approved by the City Council on September 16, 2008.

DH SIGN: Teresa A. Chase Personnel Director	CM SIGN: David W. [illegible] City Manager
REVIEWED BY: DATE: City Attorney 01/14/09 Finance Director 01/14/09 Police Chief 01/14/09	INITIALS: SS VW GN
COUNCIL ACTION: Ordinance No.	 Resolution No.

cc: Todd Wilcox, EPOA President
Robert Harig, ECEA President

AGENDA SUMMARY

RE:	Implementation of a Problem Oriented Policing Program.	**For Agenda Date:** September 16, 2008 **Agenda Item No.:** 10

RECOMMENDATION:

1. Approve the development and funding of a Problem Oriented Policing Program as described in the attachments; and
2. Direct the City Manager to "Meet and Confer" with the Eureka Police Officers Association and Eureka City Employee's Association on the related impacts of this program.

SUMMARY OF THE ISSUE:

The Eureka Police Department believes that Problem Oriented Policing (POP) complements the use of proven and established enforcement strategies, and increases the assortment of tools available to officers and other staff that can be collectively employed to prevent and combat crime. The City of Eureka has significant issues which are challenging both the Police Department and the community. Examples of these community issues include very high numbers of parolees, sex and drug registrants, homeless individuals who congregate in downtown and greenbelt areas, public behaviors that are disturbing and threatening, and mentally ill individuals who do not fall within the parameters of organized treatment.

Effective response to these community problems requires that Eureka Police Department personnel have sufficient non-committed time, knowledge and skill, and use a variety of strategies, tools, and pro-active responses. Implementing Problem Oriented Policing in Eureka should result in greater involvement of city residents in developing problem-solving strategies. The department will become the catalyst for leveraging the community to actively engage in collaborating on prevention and problem-solving activities, with the goal of reducing victimization, disorder, fear of crime, and quality of life issues.

The Eureka Police Department's Problem Oriented Policing Program (POP) will initially consist of up to (6) individuals. The program will be supervised by Lt. Murl Harpham under the Community Response Division. Neil Hubbard, who recently retired from the department with over 30 years of law enforcement experience, will be hired back as a Reserve Officer to act as the POP project coordinator. Reserve Officer Jim Manos, who currently works on abatement issues and POP projects, will also bring his numerous years of experience and expertise to the program. One Police Officer and one Police Services Officer, who possess the appropriate qualities and skills, will also join the program when staffing permits. The fifth person that will round out the program will be an individual who will act as the program coordinator. This person will coordinate Neighborhood Watch groups and meetings, effectively communicate with the news media and community groups, and publicize the successes and accomplishments of the team. Because this coordinator's position will have a new Class Title, it will be necessary to approve the new class specification and position salary.

It is our plan to seek out office space on the Westside of Eureka as the primary office location for the Problem Oriented Policing Program. A location that has sufficient office space, as well as adequate space to hold neighborhood meetings and other community events.

Budget year 2008/2009 funds allocated for an unfilled Police Records Specialist position and an unfilled Police Services Officer Supervisor position will be used to fund the salaries for Reserve Officer Neil Hubbard and the Program Coordinator For Public Safety. All other salaries for members of the team will come from existing budgeted positions.

FISCAL IMPACT: This new Problem Oriented Policing Program (Account 42127) will be funded by utilizing existing allocated General Fund money. The program will initially have a budget of $387,558. $329,190 designated for salaries and benefits, and $58,368 for services and supplies. The approval of this Program will result in the elimination of one Records Specialist position and a Police Services Officer Supervisor position; and the creation of new Program Coordinator for Public Safety.

DH SIGN: _____ **CM SIGN:** _____

Garr Nielsen
Chief of Police

David W. Tyson
City Manager

REVIEWED BY: **DATE:** **INITIALS:**
City Attorney 9/10/08 SS

COUNCIL ACTION:

Ordinance No. _____ **Resolution No.** _____

EUREKA POLICE DEPARTMENT
SERVICE ALTERNATIVE NARRATIVE

SERVICE ALTERNATIVE TITLE: Problem Oriented Policing Program (Account 42127)

2008/2009 Budget Allocation Request: $ 387,558

The Eureka Police Department believes that Problem Oriented Policing (POP) complements the use of proven and established enforcement strategies, and increases the assortment of tools available to officers and other staff that can be collectively employed to prevent and combat crime. The City of Eureka has significant issues which are challenging both the Police Department and the community. Examples of these community issues include very high numbers of parolees, sex and drug registrants, homeless individuals who congregate in downtown and greenbelt areas, public behaviors that are disturbing and threatening, and mentally ill individuals who do not fall within the parameters of organized treatment.

Effective response to these community problems requires that Eureka Police Department personnel have sufficient non-committed time, knowledge and skill, and use a variety of strategies, tools, and pro-active responses. Implementing Problem Oriented Policing in Eureka should result in greater involvement of city residents in developing problem-solving strategies. The department will become the catalyst for leveraging the community to actively engage in collaborating on prevention and problem-solving activities, with the goal of reducing victimization, disorder, fear of crime, and quality of life issues.

The Eureka Police Department's Problem Oriented Policing Program (POP) will initially consist of up to (6) individuals. The program will be supervised by Lt. Murl Harpham under the Community Response Division. Neil Hubbard, who recently retired from the department with over 30 years of law enforcement experience, will be hired back as a Reserve Officer to act as the POP project coordinator. Reserve Officer Jim Manos, who currently works on abatement issues and POP projects, will also bring his numerous years of experience and expertise to the program. One Police Officer and one Police Services Officer, who possess the appropriate qualities and skills, will also join the program when staffing permits. The fifth person that will round out the program will be an individual who will act as the program coordinator. This person will coordinate Neighborhood Watch groups and meetings, effectively communicate with the news media and community groups, and publicize the successes and accomplishments of the team. Because this coordinator's position will have a new Class Title, it will be necessary to approve the new class specification and position salary.

It is our plan to utilize the Bayshore Mall Police Annex as the primary office location for the Problem Oriented Policing Program. This location has sufficient office space, as well as adequate space to hold neighborhood meetings and other community events. This annex currently houses Crime Prevention materials, which makes it an ideal location for the Problem Oriented Policing Program.

Budget year 2008/2009 funds allocated for an unfilled Police Records Specialist position and an unfilled Police Services Officer Supervisor position will be used to fund the salaries for Reserve Officer Neil Hubbard and the Program Coordinator For Public Safety. All other salaries for members of the team will come from existing budgeted positions.

DEPARTMENT: Police
PROGRAM: Problem Oriented Policing

FUND: General
ACCOUNT: 42127

PROGRAM MISSION:

PROGRAM DESCRIPTION:

	2006-07 Actual	2007-08 Amended Budget	2007-08 Estimated	2008-09 Budget
PROGRAM EXPENDITURES:				
Salaries and Benefits				$329,190
Services and Supplies				58,369
Capital Outlay				
Total Expenditures				$387,559

	2006-07 Actual	2007-08 Actual	2008-09 Budget
FULL TIME AND REGULAR PART-TIME POSITIONS:			
Program Coordinator - Public Safety			1.00
Police Lieutenant			1.00
Police Officer			1.00
Police Service Officer			1.00
Total			4.00

SERVICE LEVEL CHANGES:

Began Program with 1 Program Coordinator, 1 Police Lieutenant, 1 Police Officer and 1 Police Service Officer and two part-time temporary employees.

Problem Oriented Policing Program

Fully Benefited Costs for 9 months.

Person/Position	2008-09 Budget
Temp Salaries	49,213
Program Coordinator - Public Safety	53,379 *
Police Lieutenant	82,269
Police Officer	96,423
PSO	47,906
Totals	329,190

*Annual Salary 43,056-52,356

Fully Benefited Annual Salary 71,172

110-General Fund

POLICE - Problem Oriented Policing

DEPARTMENTAL EXPENDITURES		POP BUDGET
42127-2119	Office supplies	5,000
42127-2122	Postage/freight	2,000
42127-2152	Sm tools/equipment	1,000
42127-2157	Uniforms/protective	2,000
42127-3100	Prof/tech-miscell.	500
42127-3200	Maint/rep-miscell.	3,000
42127-3501	Travel-general	2,000
42127-3601	Training-general	4,000
42127-3711	Electricity	6,110
42127-3812	Phone-line charges	3,000
42127-3901	Public notice-generl	500
42127-4307	Crime prevention	5,000
42127-4390	Misc. promot. activ.	1,000
42127-5120	Fleet lease	23,213
42127-5307	Communications Chgs	46
		58,369

NOTE:
All of these expenditures are coming from the Police division (42100) per the same account line.

Memorandum

PERSONNEL DEPARTMENT

DATE: September 15, 2008
TO: Robert Harig, ECEA President
FROM: Cindi Ricards, Senior Personnel Analyst CR
RE: REALLOCATION OF VACANT POLICE RECORDS SPECIALIST POSITION

PERSONNEL MANAGEMENT
Recruitment & Selection
Benefit Administration
Employee Records
Classification
Compensation
Employment Mandate Compliance
Training

Robert, per the attached Agenda Summary, the City would like to reallocate funds from an existing vacant Police Records Specialist and a Senior Police Services Officer (EPOA) position to help fund a Problem Oriented Policing (POP) program. Part of these funds will be used to create a new position that will help coordinate the POP program, and it has not yet been determined whether the new position will be a represented or an unrepresented position. Once a job audit has been completed, the class spec, title, and salary range will be determined, and this information will be provided to ECEA for your review.

RISK MANAGEMENT
Safety
Workers' Compensation
Risk Reduction
Insurance Programs

If you have any questions or wish to discuss this further, please contact me at your earliest convenience. As you might expect, the Police Department is anxious to receive Council approval to create and fill this new position. Unless ECEA has concerns at this point, we will continue moving forward with approval of the Agenda Summary. If we do not hear from you by 5:00 p.m., Monday, September 29, 2008, we will assume ECEA does not have any current concerns and will proceed with the process as described above.

LABOR RELATIONS
Contract Negotiations
Organizational Analysis
Disciplinary Actions
Grievance Arbitration

cc: Garr Nielsen, Police Chief
Dave Hawley/Dee Arrowsmith, Teamsters (by FAX)

ECEA has been notified that the City would like to reallocate the position of Police Records Specialist and use the resulting funds towards creating a new position that will help coordinate the POP program as described above. ECEA has had the opportunity to discuss and present any questions or concerns regarding the information provided here.

Robert E. Harig
Robert Harig, ECEA President

10-24-08
Date signed

Comments: _____

Memorandum

PERSONNEL DEPARTMENT

CITY OF EUREKA

OCT 10 2008

PERSONNEL

DATE: September 15, 2008
TO: Todd Wilcox, EPOA President
FROM: Cindi Ricards, Senior Personnel Analyst
RE: REALLOCATION OF VACANT SENIOR POLICE SERVICES OFFICER POSITION

PERSONNEL MANAGEMENT

Recruitment & Selection

Benefit Administration

Employee Records

Classification

Compensation

Employment Mandate Compliance

Training

RISK MANAGEMENT

Safety

Workers' Compensation

Risk Reduction

Insurance Programs

LABOR RELATIONS

Contract Negotiations

Organizational Analysis

Disciplinary Actions

Grievance Arbitration

Todd, per the attached Agenda Summary, the City would like to reallocate funds from an existing vacant Senior Police Services Officer position and a vacant Police Records Specialist (ECEA) position to help fund a Problem Oriented Policing (POP) program. Part of these funds will be used to create a new position that will help coordinate the POP program, and it has not yet been determined whether the new position will be a represented or an unrepresented position. Once a job audit has been completed, the class spec, title, and salary range will be determined, and this information will be provided to EPOA for your review.

If you have any questions or wish to discuss this further, please contact me at your earliest convenience. As you might expect, the Police Department is anxious to receive Council approval to create and fill this new position. Unless EPOA has concerns at this point, we will continue moving forward with approval of the Agenda Summary. If we do not hear from you by 5:00 p.m., Monday, September 29, 2008, we will assume EPOA does not have any current concerns and will proceed with the process as described above.

cc: Garr Nielsen, Police Chief

EPOA has been notified that the City would like to reallocate the position of Senior Police Services Officer and use the resulting funds towards creating a new position that will help coordinate the POP program as described above. EPOA has had the opportunity to discuss and present any questions or concerns regarding the information provided here.

Todd Wilcox, EPOA President

10.09.08
Date signed

Comments: _____

December 2008
FLSA: EXEMPT

PROBLEM-ORIENTED POLICING (POP) PROGRAM COORDINATOR

DEFINITION

Under general supervision, provides a wide variety of professional support work in developing, coordinating, implementing, and maintaining problem-oriented policing projects, programs and agreements; acts as liaison for the City with a variety of private, public and community organizations and law enforcement agencies; conducts studies and crime analyses; develops recommendations for action and policies and procedures; provides professional assistance to Police Department and other City management staff in areas of expertise; performs related work as required.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from assigned supervisory or management personnel. Exercises direct and general supervision over assigned staff.

CLASS CHARACTERISTICS

This is the fully experienced professional-level management support class capable of performing the complete range of program planning, administration and final implementation for complex and sensitive programs with significant community service delivery implications. Successful performance of the work requires knowledge of public policy and municipal functions and activities as they relate to problem-oriented policing. This class is distinguished from Project Manager in that the latter reports directly to an assigned Department Head and develops, oversees and implements higher level projects and programs with significant internal and/or external implications.

EXAMPLES OF ESSENTIAL JOB FUNCTIONS (Illustrative Only)

Management reserves the right to add, modify, change or rescind the work assignments of different positions and to make reasonable accommodations so that qualified employees can perform the essential functions of the job.

- Develops, coordinates, implements, and maintains problem-oriented policing programs provided for the benefit of the local community, including recommending, developing, updating, implementing and publicizing problem-oriented policing programs, goals, objectives, policies, procedures and priorities as directed.
- Confers with, informs, and organizes community members and local law enforcement regarding problem-oriented policing programs, policies, procedures and standards, including conducting meetings and workshops, providing media interviews, and preparing press releases and public service announcements;
- Performs crime analysis activities; prepares resulting statistics and reports; and presents information to the media, public and private groups, and through public presentations;
- Prepares and processes grant applications; monitors and implements grant funding and complies with requirements, including reporting grant funding activities according to applicable grant regulations;
- Facilitates resolution of issues between community members, law enforcement, and other public and private parties regarding problem-oriented policing programs and activities;
- Prepares written staff reports and agenda items regarding various problem-oriented policing programs and activities; prepares marketing and information materials to publicize and promote problem-oriented policing programs (i.e., brochures, handouts, news releases);
- Establishes and maintains working and official records and files for problem-oriented policing programs and activities;

- Participates in the preparation and monitoring of the annual budget for problem-oriented policing programs;
- Acts as the City's representative and liaison on relevant topics, including but not limited to, responding to questions and comments from the public in a courteous and timely manner; collaborating with involved parties to reach resolutions on identified issues; speaking in public and making public presentations;
- Prepares a variety of written correspondence, reports, policies, procedures, ordinances, requests for proposal, grant documents, agreements and other written materials.
- Receives, investigates and responds to citizens' issues, inquiries and requests for services.
- May supervise and direct the work of staff, interns and/or volunteers on a project, program, or day-to-day basis; trains staff in work procedures.
- Performs other duties as assigned.

QUALIFICATIONS

Knowledge of:

- Principles, practices and procedures of municipal public administration in relation to law enforcement.
- Functions and services of a municipal government in relation to law enforcement.
- Principles and techniques of conducting analytical studies, evaluating alternatives and making sound recommendations.
- Basic principles, practices and funding sources for problem-oriented policing programs and projects.
- Basic supervisory principles and practices.
- Applicable Federal, State, and local laws, codes and regulations.
- Public relations techniques.
- Principles and practices of public agency budget development and administration and sound financial management policies and procedures.
- Techniques of contract administration.
- Modern office practices, methods and computer equipment.
- Record keeping principles and procedures.
- Computer applications related to the work.
- English usage, grammar, spelling, vocabulary, and punctuation.
- Techniques for dealing effectively with the public, law enforcement agencies, the media, and City staff, in person and over the telephone.
- Techniques for effectively representing the City in contacts with governmental agencies, including law enforcement; community groups and various business, professional, educational, regulatory and legislative organizations.
- Techniques for providing a high level of customer service to public and City staff, in person and over the telephone.

Ability to:

- Assist in the development of goals, objectives, policies, procedures and work standards relating to problem-oriented policing programs and activities.
- Coordinate and oversee departmental and programmatic administrative, budgeting and fiscal reporting activities.
- Perform responsible and difficult administrative work involving the use of independent judgment and personal initiative.
- Interpret, apply and explain complex Federal, State, and local laws, codes, regulations, departmental policies and procedures.
- Conduct research on a wide variety of administrative topics including grant funding, contract feasibility, budget and staffing proposals, and operational alternatives.
- Understand the organization and operation of the assigned department and of outside agencies as necessary to assume assigned responsibilities.

- Prepare clear and effective reports, correspondence, policies, procedures and other written material.
- Make accurate arithmetic, financial and statistical computations.
- Effectively conduct meetings and make presentations to various groups.
- Analyze situations and identify pertinent problems/issues; collect relevant information; evaluate realistic options; and recommend/implement appropriate course of action.
- Organize and prioritize a variety of projects and multiple tasks in an effective and timely manner; organize own work, set priorities and meet critical time deadlines.
- Operate modern office equipment including computer equipment and specialized software applications programs.
- Use English effectively to communicate in person, over the telephone and in writing.
- Use tact, initiative, prudence and independent judgment within general policy, procedural and legal guidelines.
- Establish and maintain effective working relationships with those contacted in the course of the work.

Education and Experience:

Any combination of training and experience which would provide the required knowledge, skills and abilities is qualifying. A typical way to obtain the required qualifications would be:

Equivalent to graduation from a four-year college or university with major coursework in business or public administration, economics, or a related field, and three (3) years of responsible professional experience with problem-oriented policing projects and programs, including extensive public contact.

License:

- Valid California class C driver's license with satisfactory driving record.

PHYSICAL DEMANDS

Must possess mobility to work in a standard office setting and use standard office equipment, including a computer; to operate a motor vehicle, to visit various City and meeting sites and to inspect various community sites; vision to read printed materials, a computer screen, and to view various community sites; and hearing and speech to communicate in person, before groups and over the telephone. This is primarily a sedentary office classification although standing in work areas, and walking and/or driving between work areas may be required. Finger dexterity is needed to access, enter and retrieve data using a computer keyboard, typewriter keyboard or calculator and to operate standard office equipment. Positions in this classification occasionally bend, stoop, kneel, reach, push and pull drawers open and closed to retrieve and file information. Employees must possess the ability to lift, carry, push, and pull materials and objects necessary to perform job functions.

ENVIRONMENTAL ELEMENTS

Employees work primarily in an office environment with moderate noise levels, controlled temperature conditions and no direct exposure to hazardous physical substances. Viewing of various community sites is frequently performed that may require exposure to inclement weather conditions and other hazards. Employees may interact with upset public and private representatives as a result of interpreting and enforcing programmatic policies and procedures.

WORKING CONDITIONS

May be required to work on evenings, weekends and holidays.

City of Eureka ~ City Council

AGENDA SUMMARY

RE: Sewer Use Ordinance Amendment	**FOR AGENDA DATE:** January 20, 2009 **AGENDA ITEM NO.:** 13

RECOMMENDATION:

1. Waive reading, read by title only, and introduce Bill NO. 800- C.S., an ordinance amending Eureka Municipal Code Title V, Chapter 50, amending Sections 50.001 through 50.999 and adding new Sections 50.040 through 50.046 pertaining to Sewers.

SUMMARY OF THE ISSUE:

Tetra Tech on behalf of the North Coast Regional Water Quality Control Board (Regional Board) conducted a Pretreatment Compliance Inspection (PCI) of the Elk River Wastewater Treatment Plant in November 2007.

A Summary Report was prepared by Tetra Tech that identified among other things the need to update the City's Sewer Use Ordinance in order to stay in compliance with federal pretreatment regulations and subsequently with the City's NPDES permit.

Staff has worked with Regional Board staff and the City Attorney to prepare an ordinance amendment to Eureka Municipal Code, Chapter 50, "Sewers," in conformance with comments contained in the Summary Report.

(continued)

FISCAL IMPACT: None.

Signature: _____ **Michael Knight** Assistant City Manager-Operations	Signature: _____ **David Tyson** City Manager

REVIEWED BY:	**DATE:**	**INITIALS:**
City Attorney	1-14-09	SS
Finance Department	1-13-09	VW
Engineering	1-13-09	KG

COUNCIL ACTION: **Ordinance No.** _____	 **Resolution No.** _____

AGENDA REVIEW

RE Sewer Use Ordinance Amendment	FOR AGENDA DATE: January 20, 2009 AGENDA ITEM NO.:

In addition to addressing the ordinance deficiencies noted in the Summary Report, Bill No. 800-C.S. contains amendments recommended by the City Attorney and adds provisions for permitting waste grease haulers that serve restaurants and other food service establishments in the City. Grease hauler permit requirements are found in new sections 50.040 through 50.046. The new requirements for grease haulers will help the City ensure that the servicing of grease interceptors is being conducted adequately and in accordance with applicable laws.

Bill No. 800-C.S. is attached with new language shown by underline and language recommended to be deleted by strikethrough. Also attached is a summary of changes which describes the purpose and content of recommended changes.

Staff recommends Council:

Waive reading, read by title only, and introduce Bill NO. 800- C.S., an ordinance amending Eureka Municipal Code Title V, Chapter 50, amending Sections 50.001 through 50.999 and adding new Sections 50.040 through 50.046 pertaining to Sewers.

Attachments:

1. Bill NO. 800-C.S.
2. Summary of changes

BILL NO. 800– C.S.
ORD. NO. ___ – C.S.

AN ORDINANCE OF THE CITY OF EUREKA AMENDING EUREKA MUNICIPAL CODE TITLE V, CHAPTER 50, BY AMENDING SECTIONS 50.001 through 50.999 AND ADDING NEW SECTIONS 50.040 through 50.046 PERTAINING TO SEWERS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF EUREKA AS FOLLOWS:

Section 1.

The following sections are hereby amended/added to Title V, Chapter 50: Sections 50.001 through 50.999, Title "Sewers" to read as follows:

Sewers

GENERAL PROVISIONS

§ 50.001 PURPOSE AND POLICY.

(A) *Purpose.* This chapter sets forth uniform requirements for users of the wastewater collection and Publicly Owned Treatment Works (POTW) for the city. This chapter shall apply to all persons using the POTW. It provides for the setting of user charges and fees for the equitable distribution of costs to all users. Revenues derived from the application of the provisions of this chapter shall be used to defray the city's cost of operating and maintaining an adequate wastewater collection and treatment system and to provide sufficient funds for capital outlay, bond service costs, capital improvements depreciation and pretreatment. This chapter also enables the city to comply with all applicable state and federal laws including the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403).

(B) *Objectives.* The objectives of this chapter are:

(1) To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;

(2) To prevent the introduction of pollutants into the POTW which may pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;

(3) To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;

(4) To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;

(5) To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW;

(6) To enable the city to comply with its NPDES permit conditions, sludge use and disposal requirements and any other federal or state laws to which the POTW is subject.

('63 Code, § 5-5.101) (Ord. 571-C.S., passed 6-2-94)

§ 50.002 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT or *THE ACT.* The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

AUTHORIZED REPRESENTATIVE OF THE INDUSTRIAL USER.

(1) If the industrial user is a corporation, *AUTHORIZED REPRESENTATIVE* shall mean:

(a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation;

(b) The manager of one or more manufacturing, production, or operation facilities ~~employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars),~~ provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit or general permit requirements; ~~if~~ and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the industrial user is a partnership, or sole proprietorship, an *AUTHORIZED REPRESENTATIVE* shall mean a general partner or proprietor, respectively;

(3) If the industrial user is a federal, state or local governmental facility, an *AUTHORIZED REPRESENTATIVE* shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility;

(4) The individuals described in subsections (1) through (3) of this definition may designate another *AUTHORIZED REPRESENTATIVE* if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

BEST MANAGEMENT PRACTICES (BMP) Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 50.020, 50.021, and 50.022 of this chapter. BMP also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

BIOCHEMICAL OXYGEN DEMAND (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five-day 20° centigrade expressed in terms of mass and concentration milligrams per liter (mg/l).

BUILDING SEWER OR LATERAL. A sewer conveying wastewater from the premises of a user to the POTW.

CATEGORICAL PRETREATMENT STANDARD or *CATEGORICAL STANDARD.* Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307 (b) and (c) of the Act (33 USC 1317) which apply to a specific category of industrial users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

CITY. The City of Eureka, California or the City Council of Eureka.

CITY MANAGER or *MANAGER.* The person designated by the city to manage the operation of the POTW, and who is charged with certain duties and responsibilities by this chapter or his duly authorized representative.

COLOR. The optical density at the visual wave length of maximum absorption, relative to distilled water. One hundred percent transmittance is equivalent to zero (0.0) optical density.

COMPOSITE SAMPLE. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.

ENVIRONMENTAL PROTECTION AGENCY (EPA). The U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Quality Control Board or other duly authorized official of said agency.

EXISTING SOURCE. Any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

GRAB SAMPLE. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the wastestream and without consideration of time.

GREASE HAULER: A person, firm or business that collects the contents of a grease interceptor and transports it.

GREASE INTERCEPTOR: A plumbing appurtenance or appliance that intercepts fats, oil and grease from a wastewater discharge.

INDIRECT DISCHARGE or *DISCHARGE.* The introduction of source regulated under Section 307 (b), (c) or (d) of the Act.

INDUSTRIAL USER or *USER.* Any person who discharges or causes or permits the discharge of non-domestic wastewater into the POTW.

INSTANTANEOUS MAXIMUM ALLOWABLE DISCHARGE LIMIT. The maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

INTERFERENCE. A discharge which alone or in conjunction with a discharge or discharges from other sources: inhibits or disrupts the POTW, its treatment processes, or operations or its sludge processes, use, or disposal; and therefore is a cause of a violation of the city's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

MEDICAL WASTE. Isolation wastes, infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, fomites, etiologic agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

NEW SOURCE. ~~Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section.~~

(1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act that will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

(a) The building, structure, facility, or installation is constructed at a site at which no other source is located; or

(b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or

(c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.

(2) Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

(a) Begun, or caused to begin, as part of a continuous onsite construction program

(i) any placement, assembly, or installation of facilities or equipment; or

(ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time.

Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

NONCONTACT COOLING WATER. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

NUISANCE. Anything which is injurious to health or is indecent or offensive to the senses or an obstruction to the free use of property so as to interfere with the comfort or enjoyment of life or property or which affects at the same time an entire community or neighborhood or any considerable number of persons although the extent of the annoyance or damage inflicted upon individuals may be unequal.

PASS THROUGH. A discharge which exits the POTW into waters of the U.S. in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES permit (including an increase in the magnitude or duration of a violation).

PERSON. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state, or local governmental entities.

pH. A measure of the acidity or alkalinity of a substance, expressed in standard units.

POLLUTANT. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, odor).

PREMISES. A parcel of real estate, including any improvements thereon, which is determined by the city to be a single user for the purpose of receiving, using and paying for services.

PRETREATMENT. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical or biological processes, by process changes, or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

PRETREATMENT REQUIREMENTS. Any substantive or procedural requirement related to pretreatment imposed on an industrial user, other than a pretreatment standard.

PRETREATMENT STANDARDS or *STANDARDS.* Prohibitive discharge standards, categorical pretreatment standards, and local limits.

PROHIBITED DISCHARGE STANDARDS or *PROHIBITED DISCHARGES.* Absolute prohibitions against the discharge of certain substances; these prohibitions appear in § 50.020 of this chapter.

PUBLICLY OWNED TREATMENT WORKS or *POTW.* Any devices or storage, treatment, recycling or reclamation of sewage or industrial wastes and any conveyances which convey wastewater to a treatment plant. Also, the city's jurisdiction over the industrial users and responsibility for the operation and maintenance of the treatment works. Building sewers connecting building drains to the POTW are not public sewers although they may be partially located in a public right-of-way or easement.

SEPTIC TANK WASTES. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

SEWAGE. Human excrement and gray water (household showers, dishwashing operations, and the like).

SIGNIFICANT INDUSTRIAL USER. Applies to industrial users subject to categorical pretreatment standards; any other industrial user that discharges an average of 25,000 gpd or more of process wastewater, contributes a process wastestream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the treatment plant or, is designated as significant by the city on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

SLUG LOAD. Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in § 50.020 of this chapter or any discharge of a nonroutine, episodic nature, including but not limited to, an accidental spill or a noncustomary batch discharge.

STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE. A classification pursuant to the "Standard Industrial Classification Manual" issued by the U.S. Office of Management and Budget.

STORMWATER. Any flow occurring during or following any form of natural precipitation including snowmelt.

SUSPENDED SOLIDS. The total suspended matter that floats on the surface of, or is suspended in water, wastewater, or other liquid, and which is removable by laboratory filtering.

TOXIC POLLUTANT. One of 126 pollutants, or combination by the EPA under the provision of Section 307 (33 USC 1317) of this Act.

TREATMENT PLANT EFFLUENT. Any discharge of treated wastewater from the POTW into waters of the state.

WASTEWATER. Liquid and water-carried industrial wastes, and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

WASTEWATER TREATMENT PLAN or *TREATMENT PLANT.* The portion of the POTW designed to provide treatment of sewage and industrial waste.

('63 Code, § 5-5.103) (Ord. 571-C.S., passed 6-2-94)

§ 50.003 ABBREVIATIONS.

The following abbreviations shall have the designated meanings:

BOD - Biochemical Oxygen Demand

CFR - Code of Federal Regulations

COD - Chemical Oxygen Demand

EPA - U.S. Environmental Protection Agency

gpd - Gallons per day

l - liter

mg - milligrams

mg/l - milligrams per liter

NPDES - National Pollutant Discharge Elimination System

O&M - Operation and Maintenance

POTW - Publicly Owned Treatment Works

RCRA - Resource Cost and Recovery Act

SIC - Standard Industrial Classifications

SWDA - Solid Waste Disposal Act (42 USC 6901, et seq.)

TSS - Total Suspended Solids

USC - United States Code

('63 Code, § 5-5.104) (Ord. 571-C.S., passed 6-2-94)

§ 50.004 VANDALISM.

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance, or equipment or other part of the POTW. Any person found in violation of this requirement shall be subject to the enforcement actions set out in this chapter.

('63 Code, § 5-5.306) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.005 CONFIDENTIAL INFORMATION.

Information and data on an industrial user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from city inspection and sampling activities, shall be available to the public unless the industrial user specifically requests and is able to demonstrate to the satisfaction of the city, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law. When requested and demonstrated by the industrial user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information and will be available to the public without restriction.

('63 Code, § 5-5.801) (Ord. 571-C.S., passed 6-2-94)

§ 50.006 CONFLICTING PROVISIONS.

(A) All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this chapter, are hereby repealed to the extent of the inconsistency or conflict. ('63 Code, § 5-5.1503)

(B) In the event any provision of this chapter conflicts or is otherwise inconsistent with the latest edition of the Uniform Plumbing Code which has been or may be adopted by this code, the provisions of this chapter shall prevail. ('63 Code, § 5-5.1504)

(Ord. 571-C.S., passed 6-2-94)

§ 50.007 SEVERABILITY.

If any provision of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall not be ~~e~~affected and shall continue in full force and effect.

(Ord. 571-C.S., passed 6-2-94)

GENERAL SEWER USE REGULATIONS

§ 50.020 PROHIBITED DISCHARGE STANDARDS.

(A) No person shall discharge any substances directly into a manhole or other opening in a community sewer other than through an approved building sewer unless, upon a written application by the user and the payment of the applicable user charges and fees, the city issues a permit for such direct discharges.

(B) No person shall introduce or cause to be introduced into the POTW, directly or indirectly, any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirement. Furthermore, no person may contribute the following substances to the POTW:

(1) Pollutants which create a fire or explosive hazard in the municipal wastewater collection and POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140° F (60° C) using the test methods specified in 40 CFR 261.21.

(2) Any wastewater having a pH less than 5.0 or more than 12.5, or otherwise causing corrosive structural damage to the POTW or equipment, or endangering city personnel.

(3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case solids greater than one-inch or 25.4 millimeters in any dimension.

(4) Any wastewater containing pollutants, including oxygen demanding pollutants (BOD, and the like), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with either the POTW, or any wastewater treatment or sludge process; or which will constitute a hazard to humans or animals.

(5) Any wastewater having a temperature greater than 150° F (65.5° C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.

(7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause ~~acute~~ worker health and safety problems.

(8) Any trucked or hauled pollutants, except at discharge points designated by the city in accordance with § 50.039 of this chapter.

(9) Any noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, a hazard to life, or to prevent entry into the sewers for maintenance and repair.

(10) Any wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent thereby violating the city's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than 10% from the seasonably established norm for aquatic life.

(11) Any wastewater containing any radioactive wastes or isotopes, except as specifically approved in writing by the City Manager, in compliance with applicable state or federal regulations.

(12) Stormwater, surface water, ground water, artisan well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, and unpolluted industrial wastewater, unless specifically authorized in writing by the City Manager.

(13) Any sludges, screenings, or other residues from the pretreatment of industrial wastes.

(14) Any medical wastes, except as specifically authorized in writing by the City Manager in a wastewater discharge permit.

(15) Any wastewater causing the treatment plant's effluent to fail a toxicity test.

(16) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the POTW.

(17) Any discharge of fats, oils, or greases of animal or vegetable origin is limited to 100 mg/l.

(18) Any discharge of petroleum/mineral oil products is limited to 25 mg/l.

(C) Wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the POTW.

('63 Code, § 5-5.201) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.021 FEDERAL CATEGORICAL PRETREATMENT STANDARDS.

The National Categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.

('63 Code, § 5-5.202) (Ord. 571-C.S., passed 6-2-94)

§ 50.022 SPECIFIC POLLUTANT LIMITATIONS.

(A) The City Manager is authorized to establish Local Limits pursuant to 40 CFR 403.5(c).

~~(A)~~ (B) The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following:

~~0.131~~ 0.113 mg/l arsenic

0.119 mg/l benzene

0.044 mg/l cadmium

0.023 mg/l chloroform

0.692 mg/l copper

0.796 mg/l cyanide

0.009 mg/l 1,1 dichloroethane

0.062 mg/l 1,2 dichlorobenzene

0.021 mg/l 1,3 dichlorobenzene

0.081 mg/l 1,4 dichlorobenzene

0.070 mg/l ethylbenzene

3.915 mg/l lead

0.009 mg/l mercury

0.049 mg/l methylene chloride

0.574 mg/l nickel

~~25.0 mg/l oil and grease (petroleum/mineral oil products)~~

0.146 mg/l silver

0.376 mg/l toluene

1.438 mg/l total chromium

0.392 mg/l total phenols

~~0.276 mg/l~~ 0.520 mg/l total xylenes (total xylenes is defined as the sum of ortho, para, and meta xylenes)

0.678 mg/l zinc

(B) Concentrations apply at the point where the waste is discharged to the POTW. All concentrations for metallic substances are for "total" metal, unless indicated otherwise. At his discretion, the City Manager may impose mass limitations in addition to or in place of the concentration based limitations above.

(C.) The City Manager may develop Best Management Practices (BMP), by ordinance or in individual wastewater discharge permits, to implement Local Limits and the requirements of sections 50.020, and 50.021 of this chapter.

('63 Code, § 5-5.203) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.023 CITY'S RIGHT OF REVISION.

The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW if deemed

necessary to comply with the objectives and/or the general and specific prohibitions established in this chapter.

('63 Code, § 5-5.204) (Ord. 571-C.S, passed 6-2-94)

§ 50.024 SPECIAL AGREEMENT.

The city reserves the right to enter into special written agreements with industrial users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a pretreatment standard or requirement. However, the industrial user may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from EPA. Such a request will be approved only if the industrial user can prove that factors relating to its discharge are fundamentally different from the factors considered by EPA when establishing that pretreatment standard. An industrial user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions in 40 CFR 403.13.

('63 Code, § 5-5.205) (Ord. 571-C.S., passed 6-2-94)

§ 50.025 DILUTION.

No industrial user or wastewater hauler shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation, unless expressly authorized by an applicable pretreatment standard or requirement. The City Manager may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

('63 Code, § 5-5.206) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

PRETREATMENT OF WASTEWATERS

§ 50.035 PRETREATMENT FACILITIES.

Industrial users shall provide necessary wastewater treatment as required to comply with this chapter and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in this chapter within the time limitations specified by the EPA, the state, or the City Manager, whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the city

shall be provided, operated, and maintained at the industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedure shall be submitted to the city for review, and must be approved by the city before construction of the facility. The review of such plans and operating procedures will in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the city under the provisions of this chapter.

('63 Code, § 5-5.301) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.036 ADDITIONAL PRETREATMENT MEASURES.

(A) Whenever deemed necessary, the City Manager may require industrial users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the industrial user's compliance with the requirements of this chapter.

(B) Each person discharging into the POTW greater than 100,000 gallons per day shall install and maintain, on his property and at his expense, a suitable storage and flow control facility to insure equalization of flow over a 24-hour period.

(C) Grease, oil and sand interceptors shall be provided when, in the opinion of the City Manager, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the City Manager and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the owner at his sole expense.

(D) Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(E) At no time shall any reading on a properly calibrated combustible gas detector at the point of discharge into the POTW, or at any point in the POTW, be more than 20% of the lower explosive limit (LEL) of the meter.

('63 Code, § 5-5.302) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.037 ACCIDENTAL DISCHARGE/SLUG CONTROL PLANS.

The City Manager may require any industrial user to develop and implement an accidental discharge/slug control plan. At least once every two years the City Manager shall evaluate whether each significant industrial user needs such a plan. Any industrial

user required to develop and implement an accidental discharge/slug control plan shall submit a plan which provides, at a minimum, the following:

(A) Description of discharge practices including nonroutine batch discharges.

(B) Description of stored chemicals.

(C) Procedures for immediately notifying the POTW of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the prohibited discharges in § 50.020 of this chapter.

(D) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

(E) Procedures for immediately notifying the POTW of any changes affecting the potential for a slug discharge.

('63 Code, § 5-5.303) (Ord. 571-C.S., passed 6-2-94)

§ 50.038 TENANT RESPONSIBILITY.

Where an owner of property lets premises to any other person as a tenant, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of this chapter. This provision is enforceable against the either or both the owner, tenant or both, without regard to any contractual arrangements as between the owner and tenant.

('63 Code, § 5-5.304) (Ord. 571-C.S., passed 6-2-94)

§ 50.039 HAULED WASTEWATER.

(A) Septic tank waste of residential origin may be accepted into the POTW at a designated receiving structure within the treatment plant area, and at such times as are established by the City Manager, provided such wastes do not violate the provisions of this chapter or any other requirements established or adopted by the city. Wastewater discharge permits for individual vehicles to use such facilities shall be issued by and at the discretion of the City Manager based on the interests and purposes to be served under this chapter.

(B) The discharge of hauled industrial wastes is prohibited without prior approval and a wastewater discharge permit from the city.

(C) Fees for dumping septage will be established as part of the industrial user fee system as authorized in this chapter.

('63 Code, § 5-5.305) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.040 GREASE HAULER PERMIT REQUIRMENTS

Any person collecting, pumping or hauling waste kitchen grease generated at businesses located within the City of Eureka shall apply for and obtain a "grease hauler permit" from the City before engaging in that activity. The City Manager shall approve, deny, or approve with special conditions all applications for grease hauler permit. It shall be unlawful for any grease hauler to operate within the City limits without a current grease hauler permit.

§ 50.041 GREASE HAULER PERMIT APPLICATION

(A) *Contents.* All grease haulers required to have a grease hauler permit must submit a completed permit application. Incomplete or inaccurate applications will not be processed and will be returned to the grease hauler for revision.

(B) *Application signatories and certification.* All grease hauler permit applications and grease hauler reports must contain the certification statement, described in Section 50.052 (B) of this chapter, and be signed by an authorized representative of the grease hauler.

(C) The City Manager will evaluate the data furnished by the grease hauler and may require additional information. Within 45 days of receipt of a complete grease hauler permit application, the City Manager will determine whether or not to issue a grease hauler permit. If no determination is made within this time period, the application will be deemed denied. The City Manager may deny any application for a grease hauler permit based on insufficient information or information indicating a risk to the City's POTW might result from the activity as proposed.

§ 50.042 GREASE HAULER PERMIT REISSUANCE

(A) Grease hauler permits shall be valid for a period of two (2) years and will expire two years from the date of issuance.

(B) A grease hauler shall apply for permit renewal by submitting a complete grease hauler permit application in accordance with §50.040 of this chapter a minimum of 45 days prior to the expiration of the grease waste hauler's existing grease hauler permit.

§ 50.043 GREASE HAULER PERMIT CONTENTS

Grease hauler permits shall include such conditions as are reasonably deemed necessary by the City Manager to ensure that the collection of waste kitchen grease within the City limits is being conducted in accordance with applicable federal state and local laws. At a minimum, the grease hauler permits shall contain the following conditions:

(A) A statement that indicates grease hauler permit issuance and expiration date.

(B) Reporting, notification and record keeping requirements.

§ 50.044 GREASE HAULER PERMIT APPEALS.

Any grease hauler may petition the City to reconsider the terms of or the denial of a grease hauler permit within ten days of its denial or issuance subject to the following conditions:

(A) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(B) In its petition, the appealing party must indicate the grease hauler permit provisions objected to, the reason for this objection, and the alternative condition, if any, it seeks to place in the grease hauler permit.

(C) The effectiveness of the grease hauler permit shall not be stayed pending the appeal process.

(D) If the City fails to act within 30 days, a request for reconsideration shall be deemed to be denied.

(E) If the ruling made by the City Manager is unsatisfactory to the person requesting reconsideration, they may, within ten days after notification of such city action, file a written appeal to the Eureka City Council. The written appeal shall be heard by the Council within 30 days after the date of filing. The Eureka City Council shall make a final ruling on the appeal within ten days after the close of the hearing on the appeal.

§ 50.045 GREASE HAULER PERMIT MODIFICATION

(A) The City Manager may modify any grease hauler permit at any time, based on good cause, which shall include, but is not limited to, the following:

(1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

(2) For a violation of any terms or conditions of the grease hauler permit;

(3) For misrepresentations or failure to fully disclose all relevant facts in the grease hauler permit application or in any required reporting.

(4) To correct typographical or other errors in the grease hauler permit;

(B) The filing of a request by the permittee for a grease hauler permit modification does not stay any grease hauler permit condition.

§ 50.046 REVOCATION OF PERMIT.

(A) Grease hauler permits may be revoked for the following reasons:

(1) Misrepresentation or failure to fully disclose all relevant facts in the grease hauler permit application;

(2) Falsifying reports;

(3) Failure to pay fines;

(4) Failure to meet compliance schedules;

(5) Failure to complete a grease hauler survey or the grease hauler permit application;

(6) Failure to provide advance notice of the transfer of a permitted facility;

(7) Violation of any pretreatment standard or requirement, or any terms of the grease hauler permit or this ordinance.

(B) Grease hauler permits are nontransferable, and shall be voidable upon nonuse, cessation of operations, or transfer of business ownership. All grease hauler permits are void upon the issuance of a new grease hauler permit.

WASTEWATER DISCHARGE PERMIT

§ 50.050 WASTEWATER SURVEY.

When requested by the City Manager, all industrial users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The City Manager is authorized to prepare a form for this purpose and may periodically require industrial users to update the survey. Failure to complete this survey shall be reasonable grounds for terminating service to the industrial user and shall be considered a violation of this chapter, or for imposing penalties as set out in section 50.999 below.

('63 Code, § 5-5.401) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.051 WASTEWATER DISCHARGE PERMIT REQUIREMENTS.

(A) *Requirement.*

(1) It shall be unlawful for any significant industrial user to discharge wastewater into the city's POTW without first obtaining a wastewater discharge permit from the City Manager. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this chapter and subjects the wastewater discharge permittee to the enforcement actions set out in this chapter. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law.

(2) The City Manager may require other industrial users, including liquid waste haulers, to obtain wastewater discharge permits as necessary to carry out the purposes of this chapter.

('63 Code, § 5-5.402)

(B) *Existing connections.* Any significant industrial user which discharges industrial waste into the POTW prior to the effective date of this chapter and who wishes to continue such discharges in the future, shall, within 45 days after said date, apply to the city for a wastewater discharge permit in accordance with § 50.052(A) of this chapter, and shall not cause or allow discharges to the POTW to continue after 90 days of the effective date of this chapter except in accordance with a wastewater discharge permit issued by the city. ('63 Code, § 5-5.403)

(C) *New connections.* Any significant industrial user proposing to begin or recommence discharging industrial wastes into the POTW must obtain a wastewater discharge permit prior to discharging. An application for this wastewater discharge

permit must be filed at least 45 days prior to the date upon which any discharge will begin. ('63 Code, § 5-5.404)

(D) *Extrajurisdictional industrial users.* The city may enter into an agreement with the neighboring jurisdiction in which the significant industrial user is located to provide for the implementation and enforcement of pretreatment program requirements against said industrial user. ('63 Code, § 5-5.405)

(Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.052 WASTEWATER DISCHARGE PERMIT APPLICATION.

(A) *Contents.* All industrial users required to have a wastewater discharge permit must submit a completed wastewater discharge permit application. The City Manager shall approve a form to be used as a permit application. Incomplete or inaccurate applications will not be processed and will be returned to the industrial user for revision. ('63 Code, § 5-5.406)

(B) *Application signatories and certification.* All wastewater discharge permit applications and industrial user reports must contain the following certification statement and be signed by an authorized representative of the industrial user.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(C) *Misleading, incomplete or false information.* Any application submitted with information that is at any time determined to be materially misleading, incomplete or false may result in termination of the permit, disconnection of service, penalties under this chapter, as well as any other remedies provided by law.

('63 Code, § 5-5.407)

(Ord. 571-C.S., passed 6-2-94)

§ 50.053 WASTEWATER DISCHARGE PERMIT DECISIONS.

The City Manager will evaluate the data furnished by the industrial user and may require additional information. Within 45 days of receipt of a complete wastewater

discharge permit application, the City Manager will determine whether or not to issue a wastewater discharge permit. If no determination is made within this time period, the application will be deemed denied. The City Manager may deny any application for a wastewater discharge permit.

('63 Code, § 5-5.408) (Ord. 571-C.S., passed 7-2-94)

§ 50.054 DURATION OF PERMIT; REISSUANCE.

(A) Wastewater discharge permits shall be issued for a specified time period, not to exceed five years, at the discretion of the City Manager. Each wastewater discharge permit will indicate a specific date upon which it will expire. ('63 Code, § 5-5.501)

(B) A significant industrial user shall apply for wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application in accordance with § 50.051(A) of this chapter a minimum of 45 days prior to the expiration of the industrial user's existing wastewater discharge permit. ('63 Code, § 5-5.507)

(Ord. 571-C.S., passed 6-2-94)

§ 50.055 PERMIT CONTENTS.

Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the City Manager to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect ambient air quality, and protect against damage to the POTW.

(A) Wastewater discharge permits shall contain the following conditions:

(1) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five years.

(2) A statement that the wastewater discharge permit is nontransferable without prior notification and approval from the city, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.

(3) Effluent limits applicable to the user based on applicable standards in federal, state, and local law.

(4) Self-monitoring, sampling, reporting, notification, and recordkeeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, or local law.

(5) Statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law.

(6) Requirements to control Slug Discharges, if determined by the POTW to be necessary.

(B) Wastewater discharge permits may contain, but need not be limited to the following:

(1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.

(2) Limits on instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.

(3) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

(4) Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.

(5) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.

(6) The unit charge or schedule of industrial user charges and fees for the management of the wastewater discharged to the POTW.

(7) Requirements for installation and maintenance of inspection and sampling facilities and equipment.

(8) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit.

(9) Other conditions as deemed appropriate by the City Manager to ensure compliance with this chapter, and state and federal laws, rules, and regulations.

('63 Code, § 5-5.502) (Ord. 571-C.S., passed 6-2-94)

§ 50.056 APPEALS.

Any person, including the industrial user, may petition the city to reconsider the terms of a wastewater discharge permit within ten days of its issuance.

(A) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(B) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reason for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

(C) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal process.

(D) If the city fails to act within 30 days, a request for reconsideration shall be deemed to be denied.

(E) If the ruling made by the City Manager is unsatisfactory to the person requesting reconsideration, they may, within ten days after notification of such city action, file a written appeal to the Council. The written appeal shall be heard by the Council within 30 days after the date of filing. The Council shall make a final ruling on the appeal within ten days after the close of the meeting.

('63 Code, § 5-5.503) (Ord. 571-C.S., passed 6-2-94)

§ 50.057 PERMIT MODIFICATION

(A) The City Manager may modify the wastewater discharge permit with good cause including, but limited to, the following:

(1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

(2) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

(3) To address change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(4) To address information indicating that permitted discharge poses a threat to the city's POTW, city personnel, or the receiving waters;

(5) For a violation of any terms or conditions of the wastewater discharge permit;

(6) For misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application nor in any required reporting;

(7) To address revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;

(8) To correct typographical or other errors in the wastewater discharge permit;

(9) To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

(B) The filing of a request by the permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.

('63 Code, § 5-5.504) (Ord. 571-C.S., passed 6-2-94)

§50.058 TRANSFER OF PERMIT.

(A) Wastewater discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least 30 days advance notice to the City Manager and the City Manager approves in writing to the wastewater discharge permit transfer. The notice to the City Manager must include a written certification by the new owner and/or operator which:

(1) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes.

(2) Identifies the specific date on which the transfer is to occur.

(3) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

(B) Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable on the date of facility transfer.

('63 Code, § 5-5.505) (Ord. 571-C.S., passed 6-2-94)

§ 50.059 REVOCATION OF PERMIT.

(A) Wastewater discharge permits may be revoked for the following reasons:

(1) Failure to notify the city of significant changes to the wastewater prior to the changed discharge;

(2) Failure to provide notification to the city of changed condition pursuant to § 50.074 of this chapter;

(3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

(4) Falsifying self-monitoring reports;

(5) Tampering with monitoring equipment;

(6) Refusing to allow the city timely access to the facility premises and records;

(7) Failure to meet effluent limitations;

(8) Failure to pay fines;

(9) Failure to pay sewer charges;

(10) Failure to meet compliance schedules;

(11) Failure to complete a wastewater survey or the wastewater discharge permit application;

(12) Failure to provide advance notice of the transfer of a permitted facility;

(13) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or the ordinance.

(B) Wastewater discharge permits shall be voidable upon nonuse, cessation of operations, or transfer of business ownership. All wastewater discharge permits are void upon the issuance of a new wastewater discharge permit.

('63 Code, § 5-5.506) (Ord. 571-C.S., passed 6-2-94)

REPORTING REQUIREMENTS

§ 50.070 BASELINE MONITORING REPORTS.

(A) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determined under 40 CFR 403.6(a)(4), whichever is later, existing significant industrial users subject to such

categorical pretreatment standards, and currently discharging to or scheduled to discharge to the POTW, shall be required to submit to the city a report which contains the information listed in division (B) of this section. At least 90 days prior to commencement of their discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the city a report which contains the information listed in division (B) of this section. A new source shall also be required to report the method of pretreatment it intends to use to meet applicable pretreatment standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.

(B) The industrial user shall submit the information required by this section including:

(1) *Identifying information.* The name and address of the facility including the name of the operator and owners.

(2) *Wastewater discharge permits.* A list of any environmental control wastewater discharge permits held by or for the facility.

(3) *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

(5) *Measurement of pollutants.*

(a) Identify the categorical pretreatment standards applicable to each regulated process.

(b) Submit the results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the city) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long-term average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operation and shall be analyzed in accordance with procedures set out in ~~§ 50.078~~ <u>§ 50.080</u> of this chapter.

(c) Sampling must be performed in accordance with procedures set out in § 50.079(A) of this chapter.

(6) *Certification.* A statement reviewed by the industrial user's authorized representative and certified by a qualified professional, indicating whether pretreatment

standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirement.

(7) *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out § 50.052(A)(14) of this chapter.

(8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with § 50.052(B) of this chapter.

('63 Code, § 5-5.601) (Ord. 571-C.S., passed 6-2-94)

§ 50.071 COMPLIANCE SCHEDULE PROGRESS REPORT.

The following conditions shall apply to the schedule required by § 50.070 of this chapter. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, beginning and conducting routine operation). No increment referred to above shall exceed nine months. The industrial user shall submit a progress report to the City Manager no later than 14 days following each date in the schedule and the final date of compliance. The report shall include at a minimum, whether or not it complied with the increment of progress, the reason for any delay, (and, if appropriate) the steps being taken by the industrial user to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the City Manager.

('63 Code, § 5-5.602) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.072 REPORT ON COMPLIANCE WITH CATEGORICAL PRETREATMENT STANDARD DEADLINE.

Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to such pretreatment standards and requirements shall submit to the city a report containing the information described in § 50.070(B)(4) - (6) of this chapter. For industrial users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the industrial user's

long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the industrial user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with § 50.052(B) of this chapter.

('63 Code, § 5-5.603) (Ord. 571-C.S., passed 6-2-94)

§ 50.073 PERIODIC COMPLIANCE REPORTS.

(A) Any significant industrial user subject to a pretreatment standard shall, at a frequency determined by the City Manager, but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by such pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with § 50.052(B) of this chapter.

(B) All wastewater samples must be representative of the industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.

(C) If an industrial user subject to the reporting requirement in and of this section monitors any pollutant more frequently than required by the POTW, using the procedure prescribed in § 50.079(A) of this chapter, the results of this monitoring shall be included in the report.

('63 Code, § 5-5.604) (Ord. 571-C.S., passed 6-2-94)

§ 50.074 REPORTS OF CHANGED CONDITIONS.

Each industrial user is required to notify the City Manager of any planned significant changes to the industrial user's operations or system which might alter the nature, quality or volume of its wastewater at least 45 days before the change.

(A) The City Manager may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application.

(B) No industrial user shall implement the planned changed conditions until and unless the City Manager has responded to the industrial user's notice.

(C) For purposes of this requirement, flow increases of 10% or greater, and the discharge of any previously unreported pollutants, shall be deemed significant.

('63 Code, § 5-5.605) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.075 REPORTS OF POTENTIAL PROBLEMS.

(A) In the case of any discharge including, but not limited to, accidental discharge of nonroutine, episodic nature, a noncustomary batch discharge, or a slug load which may cause potential problems for the POTW (including a violation of the prohibited discharge standards of this chapter), it is the responsibility of the industrial user to immediately telephone and notify the city of the incident. This notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective action taken by the industrial user.

(B) Within five days following such discharge, the industrial user shall, unless waived by the City Manager, submit a detailed written report describing the causes of the discharge and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability which may be imposed by this chapter.

(C) Failure to notify the city of potential problem discharges shall be deemed a separate violation of this chapter.

(D) A notice shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in division (A) of this section. Employers shall ensure that all employees, who may cause or suffer such a discharge to occur, are advised of the emergency notification procedure.

('63 Code, § 5-5.606) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.076 REPORTS FROM NONSIGNIFICANT INDUSTRIAL USERS.

All industrial users not subject to categorical pretreatment standards and not required to obtain a wastewater discharge permit shall provide appropriate reports to the city as the City Manager may require.

('63 Code, § 5-5.607) (Ord. 571-C.S., passed 6-2-94)

§ 50.077 NOTICE OF VIOLATION; REPEAT SAMPLING AND REPORTING.

If sampling performed by an industrial user indicates a violation, the industrial user must notify the Control Authority within 24 hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation. The industrial user is not required to resample if the POTW performs monitoring at the industrial user's at least once a month, or if the POTW performs sampling between the industrial user's initial sampling and when the industrial user receives the results of this sampling.

('63 Code, § 5-5.608) (Ord. 571-C.S., passed 6-2-94)

§ 50.078 NOTIFICATION OF THE DISCHARGE OF HAZARDOUS WASTE.

(A) Any industrial user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the names of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than ten kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent information is known and readily available to the industrial users an identification of the hazardous constituents contained in the wastes, an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 30 days after the discharge commences. Any notification under this division (A) need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under § 50.074 of this chapter. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of §§ 50.070, 50.072 and 50.073 of this chapter.

(B) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(C) In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(D) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State Law.

('63 Code, § 5-5.609) (Ord. 571-C.S., passed 6-2-94)

§ 50.079 ANALYTICAL REQUIREMENTS.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

('63 Code, § 5-5.610) (Ord. 571-C.S., passed 6-2-94)

§ 50.080 SAMPLE COLLECTION; DETERMINATION OF NONCOMPLIANCE.

(A) *Sample collection.*

~~(1) Except as indicated in subsection (2) of this division (A), the industrial user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the City Manager may authorize the use of time proportional sampling or through a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.~~

(1) Except as indicated in subsection (2) of this division (A), the industrial user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the City Manager. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

(2) Samples for oil and grease, temperature, pH, cyanide, phenols, toxicity, sulfides, and volatile organic chemicals must be obtained using grab collection techniques.

(3) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 50.070 and 50.071 of this chapter a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City Manager may authorize a lower minimum. For the reports required by Section 50.073 the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.

('63 Code, § 5-5.611)

(B) *Determination of noncompliance.* The City Manager may use a grab samples to determine noncompliance with pretreatment standards. ('63 Code, § 5-5.612)

(Ord. 571-C.S., passed 6-2-94)

§ 50.081 RECORD KEEPING.

Industrial users shall retain, and make available for inspection and copying, all records and information required to be retained under this chapter. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning compliance with this chapter, or where the industrial user has been specifically notified of a longer retention period by the City Manager.

('63 Code, § 5-5.613) (Ord. 571-C.S., passed 6-2-94)

CONNECTIONS TO POTW

§ 50.090 PERMITS REQUIRED.

(A) No person shall uncover, make any connections with or opening into, use, alter, or disturb any portion of the POTW or appurtenance thereof without first obtaining a permit from the Building Official in accordance with the provisions of the Uniform Plumbing Code adopted by § 150.023. ('63 Code, § 5-5.1601)

(B) All excavations for building sewers in public streets and easements shall require a permit from the city pursuant to the provisions of §§ 98.15 - 98.20 of this code, in addition to the permit required by the provisions of this chapter. ('63 Code, § 5-5.1602)

(Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.091 CONNECTION FEES AND INSTALLATION CHARGES.

(A) *Connection fees.* Any person, prior to connecting a building sewer to the POTW, shall be required to pay a connection charge in addition to any other charges and fees required by the provisions of the Uniform Plumbing Code and this chapter. The connection charge for such parcels shall be $2,000 for each separate and individual connection.

(B) *Installation charge.*

(1) Installations of building sewers shall be made by the city from the sewer main to the property line by appropriate methods at the expense of the applicant.

(2) An applicant for a new sewer installation shall advance a sum to the city based upon an estimate by the City Manager of the total cost of all labor, materials, equipment, and other costs incidental to the installation, plus 20% for general overhead, for the installation of the building sewer from the sewer main to the property line.

(3) In lieu of the advance required by the provisions of this section, the City Manager may require applicants for new sewer installation to make such sewer installation at their own expense in accordance with such standards as have been or may be adopted by resolution of the Council. In such instances, all labor, materials, equipment, and other items necessary for the installation shall be furnished by the applicant.

('63 Code, § 5-5.1603) (Ord. 571-C.S., passed 6-2-94) Penalty, see § 50.999

§ 50.092 MAINTENANCE OF BUILDING SEWERS.

All users shall keep, operate, and maintain their building sewer connections, including that portion thereof within a public right-of-way, in good order and condition and free of roots, grease, sand, and other nonstructural related obstructions and shall be liable for damages which may result from their failure to do so. Upon the final acceptance by the city of the work of the installation of that portion of the building sewer within the public right-of-way, the city shall assume the responsibility for the repair or replacement of said portion of the building sewer which is necessitated or caused by any subsequent structural failure, except to the extent that the failure is the result of latent defects or misrepresented work or conditions upon acceptance. The city shall have the sole authority to determine whether an obstruction in a building sewer is the result of structural or nonstructural cause. The city shall be admitted at all reasonable hours to all parts of any premises connected with the sewerage system for the purpose of checking the fixtures and the establishment of service charges as provided in this chapter.

('63 Code, § 5-5.1604) (Ord. 571-C.S., passed 6-2-94)

§ 50.093 MAIN EXTENSIONS.

(A) *Extensions required.*

(1) An applicant for a permit to connect a premises to the POTW where the property upon which such premises is situated does not abut the POTW, shall deposit with the city the following sums: in the case of all applications for a new sewer main extension, a sum shall be advanced to the city based upon an estimate by the City Manager of the total costs of all labor, materials, equipment, and other costs incidental to the main extension, plus 20% for general overhead, but excluding the cost of oversizing sewer mains for the general benefit of the sewer collection system, but in no event shall the charge be less than $500.

(2) In lieu of the advance required by the provisions of this division (A), the City Manager may require applicants for new sewer connections to make such sewer connections at their own expense in accordance with such standards as have been or may be adopted by resolution of the Council. In such instances, all labor, materials, equipment, and other items necessary for such connections shall be furnished by the applicants.

(3) In cases where a property is connected to the POTW indirectly via connection to another property's lateral ("cross-connected sewer lateral"), the City Manager may order the owner of the property to go through the process set out in part one above and complete the installation of a separate connection. This process shall be required when, in the professional opinion of the City Manager and his public works professionals, a modern direct connection is necessary to prevent backups, overflows, update decayed or vulnerable lateral lines, or presents any other threat to the health and safety of the immediately adjacent properties, neighborhood, or POTW.

('63 Code, § 5-5.1701)

(B) *Extensions by the applicant.* In lieu of the advances required by the provisions of division (A) of this section, the City Manager may require applicants for new sewer connections to make such sewer main extensions at their own expense in accordance with such standards as have been or may be adopted by resolution of the Council. In such instances, all labor, materials, equipment, and other items necessary for the extension shall be furnished by the applicant. Any extra costs incurred by the applicant in any oversizing of sewer mains required by the City Manager for the general benefit of the sewer collection system may be reimbursed by the city in accordance with a written agreement with the applicant entered into prior to the construction of such main extension. ('63 Code, § 5-5.1702)

(C) *Low-pressure sewer manifold agreements.* The Director of Public Works, where it is determined the installation of low-pressure sewer manifold system is necessary to provide sewer service to a specific area, shall establish a reimbursement agreement to provide for the design and installation of said system. The reimbursement agreement shall require a surcharge be assessed to each parcel connecting to the manifold system. The surcharge shall consist of an equal portion of the estimated costs to design and install the total system main extension. The surcharge shall be based on a review and agreement prepared by the Director of Public Works prior to the installation of the system. Services (laterals) off the main will be at each parcel owner's expense. ('63 Code, § 5-5.1703)

(Ord. 571-C.S., passed 6-2-94)

RATES AND CHARGES

§ 50.105 WASTEWATER VOLUME DETERMINATION.

(A) *Metered water supply.* User charges which are based on wastewater volumes shall be applied against the total amount of water used from all sources unless, in the opinion of the city, significant portions of water received are not discharged to the POTW. The total amount of water used from public and private sources shall be determined by means of public meters or private meters installed and maintained at the expense of the user and approved by the city. ('63 Code, § 5-5.1401)

(B) *Metered wastewater volume and metered diversions.* For users where, in the opinion of the city, a significant portion of the water received from any metered source does not discharge to the POTW because of the principal activity of the user or removal by other means, the user charges and fees may be applied against the volume of water discharged from such premises into the POTW. Written notification and proof of the diversion of water shall be provided by the user if the user is to avoid the application of the user charges and fees against the total amount of water used from all sources. The user may install a meter of a type and at a location approved by the city and at the user's expense. Such meters may measure either the amount of sewage discharged or the amount of water diverted. Such meters shall be tested for accuracy at the expense of the user when deemed necessary by the Manager. ('63 Code, § 5-5.1402)

(C) *Estimated wastewater volume.*

(1) For users where, in the opinion of the city, it is unnecessary or impractical to install meters, the user charges and fees may be based upon a volume estimate prepared by the user and approved by the city. Such estimate shall be based upon a rational determination of the wastewater discharged and may consider such factors as the number of fixtures, seating capacity, population equivalent, annual production of goods and services, or such other determinants of water use necessary to estimate the wastewater volume discharged.

(2) For users who, in the opinion of the city, divert a significant portion of their flow from the POTW, the user charges and fees may be based upon a volume estimate prepared by the user and approved by the city. The estimate shall include the method and calculations used to determine the wastewater volume and may consider such factors as the number of fixtures, seating capacity, population equivalent, annual production of goods and services, or such other determinations of water use necessary to estimate the wastewater volume discharged.

('63 Code, § 5-5.1403)

(Ord. 571-C.S., passed 6-2-94)

§ 50.106 PRETREATMENT CHARGES AND FEES.

The Council may adopt reasonable charges and fees for reimbursement of costs of setting up and operating the city's pretreatment program which may include:

(A) Fees for wastewater discharge permit applications including the cost of processing such applications.

(B) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing an industrial user's discharge, and reviewing monitoring reports submitted by the users.

(C) Fees for reviewing and responding to accidental discharge procedures and construction.

(D) Fees for filing appeals.

(E) Other fees as the city may deem necessary to carry out the requirements contained in this section. These fees relate solely to the matters covered by this chapter and are separate from all other fees, fines, and penalties chargeable by the city.

('63 Code, § 5-5.1501) (Ord. 571-C.S., passed 6-2-94)

§ 50.107 WASTEWATER USER CHARGES.

(A) *Classification of users.* All users shall be classified by assigning each one to a "user classification" category according to the principal activity conducted on the user's premises and based on the typical wastewater constituents and characteristics for that type of user as determined by the city. The purpose of such classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control and to establish recovery of the city costs. ('63 Code, § 5-5.1801)

(B) *User charges.* A schedule of wastewater charges and fees shall be adopted from time to time by ordinance of the City Council. ('63 Code, § 5-5.1802)

(C) *Compliance with state regulations.* The charges and fees shall be established at a level which will enable the city to comply with any revenue requirements of the State Clean Water Grant Program, and the charges and fees shall be determined in a manner consistent with regulations of the grant program. ('63 Code, § 5-5.1803)

(D) *Special situations.* Notwithstanding any other provision of this chapter, the Council shall have the power to establish by ordinance, or by agreement with the user, the service connection charge and the monthly sewer service charges applicable to any public corporation, political subdivision, city, county, district, the state, the United States, or any department or agency thereof, or to any user outside the city limits at rates different from those set forth in this chapter. ('63 Code, § 5-5.1804)

(Ord. 571-C.S., passed 6-2-94)

§ 50.108 BILLING; PERSONS RESPONSIBLE FOR PAYMENT.

(A) *Billing.*

(1) All sewer service charges shall become due and payable to the city as of the date of billing. All sewer service charges shall become delinquent 30 days from and after the date of billing. All bills delinquent 30 days or more shall be subject to a 1% per month finance charge.

(2) All bills for such charges shall be issued by the Director of Finance. They shall be combined with bills or statements for water services where the premises in question are connected to the water system. The bills shall state their purpose (water and sewer services) and shall list separately the charge for water service and the charge for sewer service and the total charge for both services. Neither charge may be paid separately from the other. If the real property with sewer service is not connected to the water system, a separate bill shall be rendered for sewer service only. All bills shall be for monthly or bimonthly periods. The Director of Finance shall have the power to require any user to pay bills monthly if, in his discretion, monthly payments are required for the protection of the city.

('63 Code, § 5-5.1805)

(B) *Persons responsible for payment.* All sewer service charges shall be billed to the following persons:

(1) In the case of any person whose premises are connected with the water system, to the person who requested such connection to the water system, or his successor in interest, or to any person requesting that such bill be charged to him; or,

(2) In the case of any person whose premises are not connected to the water system, then to the person who requested such connection to the sewage works, or his successor in interest, or, if no such request was made, then to the owner of such premises on the date on which such premises are required by the provisions of this chapter to connect to the sewage works, or to the successor in interest to such person, or to any person requesting that such bill be charged to him.

('63 Code, § 5-5.1806)

(Ord. 571-C.S., passed 6-2-94)

§ 50.109 PENALTY FOR NONPAYMENT.

If an invoice for the sewer use charge established by this chapter is unpaid 60 days after mailing, a penalty of 10% per month shall be charged, and an additional 0.5% shall be charged until the charges and penalties are paid in full.

('63 Code, § 5-5.1807) (Ord. 571-C.S., passed 6-2-94)

§ 50.110 PROPERTY LIENS FOR DELINQUENCIES.

At least every six months, the Director of Finance shall record with the county a list of all delinquent charges and the penalties thereon and shall include in each such list the amount of each charge and the penalty thereon, a description of the real property upon which the same is a lien, and the name of the city. Such list when so recorded shall have the force, effect, and priority of a judgment lien and continue for three years after the time of recording unless sooner released or otherwise discharged.

('63 Code, § 5-5.1808) (Ord. 571-C.S., passed 6-2-94)

ADMINISTRATION AND ENFORCEMENT

§ 50.120 DUTIES OF CITY MANAGER.

Except as otherwise provided in this chapter, the City Manager shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the City Manager may be delegated by the City Manager to other city personnel.

('63 Code, § 5-5.102) (Ord. 571-C.S., passed 6-2-94)

§ 50.121 COMPLIANCE MONITORING.

(A) *Inspection and sampling.* The City Manager shall have the right to enter the facilities of any industrial user to ascertain whether the purpose of this chapter, and any permit or order issued hereunder, is being met and whether the industrial user is complying with all requirements thereof. Industrial users shall allow the City Manager or his representatives ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(1) Where an industrial user has security measures in force which require proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangement with its security guards so that, upon presentation of suitable identification, personnel for the city, state, and EPA shall be permitted to enter without delay, for the purposes of performing their specific responsibilities.

(2) The city, state, and EPA shall have the right to set up on the industrial user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(3) The city may require the industrial user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at its own expense. The monitoring equipment should normally be situated on the user's premises, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that the facility will not be obstructed by landscaping or parked vehicles. All devices used to measure wastewater flow and quality shall be calibrated yearly to ensure their accuracy.

(4) Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the City Manager and shall not be replaced. The costs of clearing such access shall be born by the industrial user.

(5) Unreasonable delays in allowing city personnel access to the industrial user's premises shall be a violation of this chapter.

(6) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local agency construction standards and specifications. Construction shall be completed within 90 days following written notification by the city, unless a time extension is otherwise granted by the city.

('63 Code, § 5-5.701)

(B) *Search warrants.* If the City Manager has been refused access to a building, structure, or property or any part thereof, and if the City Manager has demonstrated probable cause to believe that there may be a violation of this chapter or that there is a need to inspect as part of a routine inspection program of the city designed to verify compliance with this chapter or any permit or order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City Attorney may apply to the appropriate court for a search and/or seizure warrant describing therein the specific location subject to the warrant. The warrant shall specify what, if anything, may be searched and/or seized on the property described. In the event of an emergency affecting public health and safety, inspections shall be made without the issuance of a warrant. ('63 Code, § 5-5.702)

(Ord. 571-C.S., passed 6-2-94)

§ 50.122 PUBLICATION OF INDUSTRIAL USERS IN SIGNIFICANT NONCOMPLIANCE.

The city ~~may~~ shall publish annually, in the largest daily newspaper published in the municipality where the POTW is located, a list of the industrial users and categorical industrial users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

~~(A) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of wastewater measurements taken during a six-month period exceed the daily maximum limit or average limit of the same pollutant parameter by any amount;~~

~~(B) Technical review criteria (TRC) violations, defined here as those in which 33% or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria [1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH];~~

~~(C) Any other discharge violation that the city believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of city personnel or the general public);~~

(A) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(B) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or

Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(C) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);

(D) Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the city's exercise of its emergency authority to halt or prevent such a discharge;

(E) Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) Failure to provide within 30 days after the due date, any required reports, including baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance;

(H) Any other violation which the city determines will adversely affect the operation or implementation of the local pretreatment program.

('63 Code, § 5-5.901) (Ord. 571-C.S., passed 6-2-94; Am. Ord. 681-C.S., passed 7-6-04)

§ 50.123 ADMINISTRATIVE ENFORCEMENT REMEDIES.

(A) *Notification of violation.* Whenever the City Manager finds that any user has violated or is violating this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment requirement, the City Manager or his agent may serve upon said user a written notice of violation. Within seven days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the City Manager. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(B) *Consent Orders.* The City Manager may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action to be taken

by the User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections § 50.123 (D) and § 50.123 (E) of this ordinance and shall be judicially enforceable.

(C) *Show Cause Hearing*. The City Manager may order a User which has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, to appear before the City Manager and show cause why the proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least seven (7) days prior to the hearing. Such notice may be served on any Authorized Representative of the User as defined in Section 50.002 and required by Section § 50.052 (B). A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the User.

~~(B)~~ (D) *Compliance Orders.* When the city finds that a user has violated or continues to violate this chapter, wastewater discharge permits or order issued hereunder, or any other pretreatment standard or requirement, he may issue an order to the user responsible for the discharge directing that the user come into compliance within 30 days. If the user does not come into compliance within 30 days, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may not extend the deadline for compliance established for a federal pretreatment standard or requirement, nor does a compliance order release the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a prerequisite to taking any other action against the user.

~~(C)~~ (E) *Cease and desist orders.*

(1) When the City Manager finds that a user is violating this chapter, the user's wastewater discharge permit, any order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the City Manager may issue an order to the user directing it to cease and desist all such violations and directing the user to:

(a) Immediately comply with all requirements;

(b) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

(2) Issuance of a cease and desist order shall not be a prerequisite to taking any other action against the user.

~~(D)~~ (F) *Administrative fine.*

(1) Notwithstanding any other section of this chapter, any user that is found to have violated any provision of this chapter, its wastewater discharge permit, and orders issued hereunder, or any other pretreatment standard or requirement shall be fined in an amount not to exceed $1,000. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

(2) Assessments may be added to the user's next scheduled sewer service charge and the City Manager shall have such other collection remedies as may be available for other service charges and fees.

(3) Unpaid charges, fines, and penalties shall, after 60 calendar days, be assessed an additional penalty of 10% of the unpaid balance and interest shall accrue thereafter at a rate of 0.5% per month. A lien against the individual user's property will be sought for unpaid charges, fines, and penalties.

(4) Users desiring to dispute such fines must file a written request for the City Manager to reconsider the fine along with full payment of the fine amount within 30 days of being notified of the fine. Where a request has merit, the City Manager shall convene a hearing on the matter within 30 days of receiving the request from the industrial user. In the event the user's appeal is successful, the payment together with any interest accruing thereto shall be returned to the industrial user. The city may add the costs of preparing administrative enforcement actions such as notices and orders to the fine.

(5) Issuance of an administrative fine shall not be a prerequisite for taking any other action against the user.

~~(E)~~ (G) *Emergency suspensions.*

(1) The City Manager may immediately suspend a user's discharge (after informal notice to the user) whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The City Manager may also immediately suspend a user's discharge (after notice and opportunity to respond) that threatens to interfere with the operation of the POTW, or which presents or may present an endangerment to the environment.

(a) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the City Manager shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The City Manager shall allow the user to recommence its discharge when the user has

demonstrated to the satisfaction of the city that the period of endangerment has passed, unless the termination proceedings set forth in this chapter are initiated against the user.

(b) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the City Manager, prior to the date of any show cause or termination hearing as set forth in this chapter.

(2) Nothing in this division (E) shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

~~(F)~~ (H) *Termination of discharge.*

(1) In addition to those provisions in § 50.059 of this chapter, any user that violates the following conditions of this chapter, wastewater discharge permits, or orders issued hereunder, is subject to discharge termination.

(a) Violation of wastewater discharge permit conditions;

(b) Failure to accurately report the wastewater constituents and characteristics of its discharge;

(c) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;

(d) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling;

(e) Violation of the pretreatment standards in §§ 50.020 through 50.025 of this chapter.

(2) Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under division (C) of this section why the proposed action should not be taken.

('63 Code, §§ 5-5.1001 - 5-5.1006) (Ord. 571-C.S., passed 6-2-94)

§ 50.124 JUDICIAL ENFORCEMENT REMEDIES.

(A) *Injunctive relief.* Whenever the user has violated a pretreatment standard or requirement or continues to violate the provisions of this chapter, wastewater discharge permits or orders issued hereunder, or any other pretreatment requirement, the city may petition the Superior Court for the issuance of a temporary or permanent injunction, as

may be appropriate in restraining the continuance of such violation. ('63 Code, § 5-5.1101)

(B) *Civil penalties.*

(1) Any user which has violated or continues to violate this chapter, any order, or wastewater discharge permit hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum civil penalty of $6,000 per violation per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

(2) The city may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.

(3) When a discharge of wastes causes an obstruction, damage, or other impairment to the POTW, the city may assess a charge against the user for the cost of the work required to clean or repair the POTW and add such charge to the user's service charge.

(4) Filing a suit for civil penalties shall not be a prerequisite for taking any other action against a user.

('63 Code, § 5-5.1102)

(Ord. 571-C.S., passed 6-2-94)

§ 50.125 SUPPLEMENTAL ENFORCEMENT ACTION.

(A) *Water supply severance.* Whenever a user has violated or continues to violate the provisions of this chapter, orders, or wastewater discharge permits issued in this chapter, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply. ('63 Code, § 5-5.1201)

(B) *Public nuisances.* Any violation of this chapter, wastewater discharge permits, or orders issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the City Manager or his designee. Any person(s) creating a public nuisance shall be subject to the provisions of applicable state and city codes, ordinances, rules and/or regulations governing such nuisances, including recoupment by the city of any costs incurred in removing, abating or remedying said nuisance.

('63 Code, § 5-5.1202) (Ord. 571-C.S., passed 6-2-94)

§ 50.126 REMEDIES NONEXCLUSIVE.

The provisions in §§ 50.122 through 50.125 of this chapter are not exclusive remedies. The city reserves the right to take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the city reserves the right to take other action against any user when the circumstances warrant. Further, the city is empowered to take more than one enforcement action against any noncompliant user. These actions may be taken concurrently.

('63 Code, § 5-5.1104) (Ord. 571-C.S., passed 6-2-94)

§ 50.127 AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS.

(A) *Upset.*

(1) For the purposes of this section, *UPSET* means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (3) of this division (A) are met.

(3) An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the industrial user can identify the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) The industrial user has submitted the following information to the POTW and treatment plant operator within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):

1. A description of the indirect discharge and cause of noncompliance.

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue.

3. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(4) In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(5) Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(6) The industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

('63 Code, § 5-5.1301)

(B) *Bypass.*

(1) (a) *BYPASS* shall mean the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(b) *SEVERE PROPERTY DAMAGE* shall mean substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (3) and (4) of this division (B).

(3) (a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the POTW, at least ten days before the date of the bypass if possible.

(b) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the POTW within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and

prevent recurrence of the bypass. The POTW may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) (a) Bypass is prohibited, and the POTW may take enforcement action against an industrial user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

3. The industrial user submitted notices as required under subsection (3) of this division (B).

(b) The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three conditions listed in subsection (4)(a) of division (B).

('63 Code, § 5-5.1302)

(Ord. 571-C.S., passed 6-2-94)

§ 50.999 PENALTY.

(A) Any user that willfully or negligently violates any provision of this chapter, any orders, or wastewater discharge permits issued hereunder, or any other pretreatment requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than $500 per violation per day or imprisonment for not more than one year or both.

(B) Any user that willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least $500 per violation per day or imprisonment for not more than one year. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.

(C) Any user that knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other documentation filed, or required to be maintained, pursuant to this chapter, wastewater discharge permit or order, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or

method required under this chapter shall, upon conviction, be punished by a fine of not more than $500 per violation per day or imprisonment for not more than one year or both.

(D) In the event of a second conviction, a user shall be punished by a fine of not more than $2,000 per violation per day or imprisonment for not more than two years or both.

('63 Code, § 5-5.1103) (Ord. 571-C.S., passed 6-2-94)

PASSED, APPROVED AND ADOPTED by the City Council of the City of Eureka in the County of Humboldt, State of California, on the ___ day of _____, 2009, by the following vote:

AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS
ABSTAIN: COUNCILMEMBERS

_____
Mike Jones, Mayor Pro Tem

The above ordinance was submitted to me on the ____ day of _____, 2009, and I hereby approve the same.

_____
Virginia Bass, Mayor

Approved as to Administration:

_____
David W. Tyson, City Manager

Approved as to form:

_____
Sheryl Schaffner, City Attorney

THE ABOVE ORDINANCE WAS ATTESTED BY THE CITY CLERK OF THE CITY OF EUREKA on the____ day of _____, 2009.

_____
Kathleen L. Franco Simmons, City Clerk

Bill No. 800-C.S. Summary of Revisions

On November 13-14, 2007 the City of Eureka Pretreatment Program was audited by Tetra-teach on behalf of the Regional Water Quality Control Board (RWQCB). Deficiencies in the City Sewer use Ordinance were noted. As a result the RWQCB issued a Notice of Violation (NOV) to the City of Eureka on July 31, 2008. The Notice required that the City's Sewer Use Ordinance (SUO) be amended to correct the deficiencies.

In addition to the changes required by the NOV other changes are made based on recommendations by the City Attorney.

Changes were also made to strengthen the City of Eureka's Fats Oils and Grease program which is a component of the Sanity Sewer Management Plan which is required by the RWQCB

A description of the changes follows;

- Section 50.002: The definition of *Authorized Representative of the Industrial User* is changed to reflect the new definition contained in the General Pretreatment Regulations (40 CFR part 403). This change is a requirement of the NOV.

- Section 50.002: The definition of *Best Management Practices* is added to reflect the addition of the definition to the General Pretreatment Regulations (40 CFR part 403). This change is a requirement of the NOV.

- Section 50.002: The definition *Grease Hauler* is added as the term is used in a new section of the Sewer Use ordinance that regulates the haulers that service grease interceptors.

- Section 50.002: The definition of *Grease Interceptor* is added to define a term which is already in use in section 50.036(C) of the SUO.

- Section 50.002: The definition of *New Source* is changed to reflect the new definition contained in the General Pretreatment Regulations (40 CFR part 403). This change is a requirement of the NOV.

- Section 50.020 (B) is changed to specify that prohibited discharges to the sanitary sewer system can not be discharged directly or indirectly. This change is based on the recommendation of the City Attorney.

- Section 50.020 (B)(7) is changed to specify that no pollutants which result in the presence of toxic gases, vapors or fumes can be discharged to the POTW in a quantity that may cause worker health and safety problems. The term acute is deleted thus making the discharge of any substance in quantities that can cause

worker health and safety problems an offense; not just acute worker health and safety problems. This change is based on response to an illicit discharge.

- Section 50.020 (B) (18) is added to limit the discharge of petroleum and mineral oil products to 25 mg/L. The limit is in an existing component of the ordinance, but was inappropriately located in the local limit section of the ordinance. This change is a requirement of the NOV.

- Section 50.020 (B): The allowable discharge limit for arsenic is changed to correct a typographical error and reflect the limit generated in the local limit study. This change is a requirement of the NOV.

- Section 50.020 (B): The allowable discharge limit for xylenes is changed to correct a typographical error and reflect the limit generated in the local limit study. This was a typographical error. This change is a requirement of the NOV.

- Section 50.037 (E) is added to specify that Industrial Users may be required to include procedures for immediately notifying the POTW of any changes affecting the potential for a slug discharge. This change is a requirement of the NOV.

- Section 50.038 is amended to clarify the responsibilities regarding wastewater discharge for tenants and property owners. This change is based on the recommendation of the City Attorney.

- Section 50.039 is amended to clarify requirements of Hauled Wastewater Discharge permits. This change is based on the recommendation of the City Attorney.

- Sections 50.040, through 50.046 are new sections that regulate grease haulers. The sections authorize the City of Eureka to issue permits to firms that service and clean grease interceptors in the City. The permits will require that grease haulers document and report their grease interceptor cleaning activities. This will help ensure that the servicing of grease interceptors within the City limits is being conducted adequately and in accordance with applicable laws.

- Section 50.050 is amended to clarify that failure to complete a wastewater survey would be grounds for the imposition of penalties. This change is based on the recommendation of the City Attorney.

- Section 50.052 (C) is added to clarify that any misleading, false or incomplete information submitted in a wastewater discharge permit application would be grounds for revocation of the permit or other penalties under the SUO. This change is based on the recommendation of the City Attorney.

- Section 50.055(A)(6) is added to incorporate a new Pretreatment Permit Requirement mandated under 40CFR part 403. This change is a requirement of the NOV.

- Section 50.058 (A) is amended to clarify that approval to transfer a wastewater discharge permit must be in written form from the City Manager. This change is based on the recommendation of the City Attorney.

- Section 50.070 (B) (5) (b) is amended to correct a typographical error. This change is a requirement of the NOV.

- Section 50.078 (D) is added to provide clarification that the notification requirements for the discharge of hazardous waste does not create a right to discharge hazardous waste. This change is based on response to an illicit discharge.

- Section 50.080(A) (1),(2),(3) is changed to specify that composite samples must be taken over a 24 hr period. This change is requirement of the NOV.

- Section 50.092 is changed to provide clarification regarding sewer laterals. This change is based on the recommendation of the City Attorney.

- Section 50.093(A)(3) is changed to allow the City, when necessary, to require property owners which have cross connected sewer laterals to make direct connects to the sanitary sewer. This change is based on the recommendation of the City Attorney.

- Section 50.122 is changed to reflect the new definition of Significant Non-Compliance contained in the General Pretreatment Regulations (40 CFR part 403). This change is a requirement of the NOV.

- Section 50.123 (B) is changed to incorporate the use of Consent Orders as an Administrative Enforcement Remedy. This change is a requirement of the NOV.

- Section 50.123(C) is changed to incorporate the use of Show Cause Hearings as an Administrative Enforcement Remedy. This change is a requirement of the NOV.

- Section 50.123(D-H) are changed to reflect the addition of Consent Orders and Show Cause Hearings. This change is a requirement of the NOV.

Statutory Provisions: Regional Housing Need

RHNA Determination Process

Government Code Section 65584.01 (c) and (d)

(c) (1) At least 26 months prior to the scheduled revision pursuant to Section 65588 and prior to developing the existing and projected housing need for a region, the department shall meet and consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. The council of governments shall provide data assumptions from the council's projections, including, if available, the following data for the region:

(A) Anticipated household growth associated with projected population increases.

(B) Household size data and trends in household size.

(C) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.

(D) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs.

(E) Other characteristics of the composition of the projected population.

(2) The department may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed in subparagraphs (A) to (E), inclusive, of paragraph (1) and the methodology it shall use and shall provide these determinations to the council of governments.

(d) (1) After consultation with the council of governments, the department shall make a determination of the region's existing and projected housing need based upon the assumptions and methodology determined pursuant to subdivision (c). Within 30 days following notice of the determination from the department, the council of governments may file an objection to the department's determination of the region's existing and projected housing need with the department.

(2) The objection shall be based on and substantiate either of the following:

(A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (b), and shall identify the population projection which the council of governments
believes should instead be used for the determination and explain the basis for its rationale.

(B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to subdivision (c). The objection shall include a proposed alternative determination of its regional housing need based upon the determinations made in subdivision (c), including analysis of why the proposed alternative would be a more reasonable application of the methodology and assumptions determined pursuant to subdivision (c).

(3) If a council of governments files an objection pursuant to this subdivision and includes with the objection a proposed alternative determination of its regional housing need, it shall also include documentation of its basis for the alternative determination. Within 45 days of receiving an objection filed pursuant to this section, the department shall consider the objection and make a final written determination of the region's existing and projected housing need that includes an explanation of the information upon which the determination was made.

Statutory Provisions: Regional Housing Need

Appeals of Draft Allocations

Government Code Section 65584.05.

(a) At least one and one-half years prior to the scheduled revision required by Section 65588, each council of governments and delegate subregion, as applicable, shall distribute a draft allocation of regional housing needs to each local government in the region or subregion, where applicable, based on the methodology adopted pursuant to Section 65584.04. The draft allocation shall include the underlying data and methodology on which the allocation is based. It is the intent of the Legislature that the draft allocation should be distributed prior to the completion of the update of the applicable regional transportation plan. The draft allocation shall distribute to localities and subregions, if any, within the region the entire regional housing need determined pursuant to Section 65584.01 or within subregions, as applicable, the subregion's entire share of the regional housing need determined pursuant to Section 65584.03.

(b) Within 60 days following receipt of the draft allocation, a local government may request from the council of governments or the delegate subregion, as applicable, a revision of its share of the regional housing need in accordance with the factors described in paragraphs (1) to (9), inclusive, of subdivision (d) of Section 65584.04, including any information submitted by the local government to the council of governments pursuant to subdivision (b) of that section. The request for a revised share shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation.

(c) Within 60 days after the request submitted pursuant to subdivision (b), the council of governments or delegate subregion, as applicable, shall accept the proposed revision, modify its earlier determination, or indicate, based upon the information and methodology described in Section 65584.04, why the proposed revision is inconsistent with the regional housing need.

(d) If the council of governments or delegate subregion, as applicable, does not accept the proposed revised share or modify the revised share to the satisfaction of the requesting party, the local government, may appeal its draft allocation based upon either or both of the following criteria:

(1) The council of governments or delegate subregion, as applicable, failed to adequately consider the information submitted pursuant to subdivision (b) of Section 65584.04, or a significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted pursuant to that subdivision.

(2) The council of governments or delegate subregion, as applicable, failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established pursuant to Section 65584.04.

(e) The council of governments or delegate subregion, as applicable, shall conduct public hearings to hear all appeals within 60 days of the date established to file appeals. The local government shall be notified within 10 days by certified mail, return receipt requested, of at least one public hearing on its appeal. The date of the hearing shall be at least 30 days and not more than 35 days from the date of the notification. Before taking action on an appeal, the council of governments or delegate subregion, as applicable, shall consider all comments, recommendations, and available data based on accepted planning methodologies submitted by the appellant. The final action of the council of

governments or delegate subregion, as applicable, on an appeal shall be in writing and shall include information and other evidence explaining how its action is consistent with this article. The final action on an appeal may require the council of governments or delegate subregion, as applicable, to adjust the allocation of a local government that is not the subject of an appeal.

(f) The council of governments or delegate subregion, as applicable, shall issue a proposed final allocation within 45 days of the completion of the 60-day period for hearing appeals. The proposed final allocation plan shall include responses to all comments received on the proposed draft allocation and reasons for any significant revisions included in the final allocation.

(g) In the proposed final allocation plan, the council of governments or delegate subregion, as applicable, shall adjust allocations to local governments based upon the results of the appeals process specified in this section. If the adjustments total 7 percent or less of the regional housing need determined pursuant to Section 65584.01, or, as applicable, total 7 percent or less of the subregion's share of the regional housing need as determined pursuant to Section 65584.03, then the council of governments or delegate subregion, as applicable, shall distribute the adjustments proportionally to all local governments. If the adjustments total more than 7 percent of the regional housing need, then the council of governments or delegate subregion, as applicable, shall develop a methodology to distribute the amount greater than the 7 percent to local governments. In no event shall the total distribution of housing need equal less than the regional housing need, as determined pursuant to Section 65584.01, nor shall the subregional distribution of housing need equal less than its share of the regional housing need as determined pursuant to Section 65584.03. Two or more local governments may agree to an alternate distribution of appealed housing allocations between the affected local governments. If two or more local governments agree to an alternative distribution of appealed housing allocations that maintains the total housing need originally assigned to these communities, then the council of governments shall include the alternative distribution in the final allocation plan.

(h) Within 45 days of the issuance of the proposed final allocation plan by the council of governments and each delegate subregion, as applicable, the council of governments shall hold a public hearing to adopt a final allocation plan. To the extent that the final allocation plan fully allocates the regional share of statewide housing need, as determined pursuant to Section 65584.01, the council of governments shall have final authority to determine the distribution of the region's existing and projected housing need as determined pursuant to Section 65584.01. Within 60 days of adoption by the council of governments, the department shall determine whether or not the final allocation plan is consistent with the existing and projected housing need for the region, as determined pursuant to Section 65584.01. The department may revise the determination of the council of governments if necessary to obtain this consistency.

(i) Any authority of the council of governments to review and revise the share of a city or county of the regional housing need under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

Statutory Provisions: Regional Housing Need

RHNA TRANSFER (only County to Cities)

Government Code Section 65584.07(a)-(d) *(underlined by HCD for emphasis)*
(a) During the period between adoption of a final regional housing needs allocation until the due date of the housing element update under Section 65588, the council of governments, or the department, whichever assigned the county's share, shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(1) One or more cities within the county agree to increase its share or their shares in an amount equivalent to the reduction.

(2) The transfer of shares shall only occur between a county and cities within that county.

(3) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county' s share of moderate- and above moderate-income housing is reduced.

(4) The council of governments or the department, whichever assigned the county's share, shall approve the proposed reduction, if it determines that the conditions set forth in paragraphs (1), (2), and (3) above have been satisfied. The county and city or cities proposing the transfer shall submit an analysis of the factors and circumstances, with all supporting data, justifying the revision to the council of governments or the department. The council of governments shall submit a copy of its decision regarding the proposed reduction to the department.

(b) (1) The county and cities that have executed transfers of regional housing needs under this section shall amend their housing elements and submit them to the department for review under Section 65585.

(2) All materials and data used to justify any revision shall be made available upon request to any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship. A fee may be charged to interested parties for any additional costs caused by the amendments made to former subdivision (c) of Section 65584 that reduced from 45 to 7 days the time within which materials and data were required to be made available to interested parties.

(c) (1) If an incorporation of a new city occurs after the council of governments, or the department for areas with no council of governments, has made its final allocation under Section 65584, the city and county may reach a mutually acceptable agreement on a revised determination and report the revision to the council of governments and the department, or to the department for areas with no council of governments. If the affected parties cannot reach a mutually acceptable agreement, then either party may request the council of governments, or the department for areas with no council of governments, to consider the facts, data, and methodology presented by both parties and make the revised determination.

(2) The revised determination shall be made within six months after receipt of the written request, based upon the methodology adopted under Section 65584.04, and shall reallocate a portion of the affected county's share of regional housing needs to the new city. The revised determination shall neither reduce the total regional housing needs nor change the previous allocation of the regional housing needs assigned by the council of governments or the department, where there is no council of governments, to other cities within the affected county.

(d) (1) If an annexation of unincorporated land to a city occurs after the council of governments, or the department for areas with no council of governments, has made its final allocation under Section 65584, the city and county may reach a mutually acceptable agreement on a revised determination and report the revision to the council of governments and the department, or to the department for areas with no council of governments. If the affected parties cannot reach a mutually acceptable agreement, then either party may request the council of governments, or the department for areas with no council of governments, to consider the facts, data, and methodology presented by both parties and make the revised determination.

(2) (A) Except as provided under subparagraph (B), the revised determination shall be made within six months after receipt of the written request, based upon the methodology adopted under Section 65584.04, and shall reallocate a portion of the affected county's share of regional housing needs, if appropriate, to the annexing city. The revised determination shall neither reduce the total regional housing needs nor change the previous allocation of the regional housing needs assigned by the council of governments or the department, where there is no council of governments, to other cities within the affected county.

(B) If the annexed land is subject to a development agreement authorized under subdivision (b) of Section 65865 that was entered into by a city and a landowner prior to January 1, 2008, the revised determination shall be based upon the number of units allowed by the development agreement.

(3) A revised determination shall not be made if all of the following apply:

(A) The annexed land was within the city's sphere of influence when the regional housing need was allocated by the council of governments under Section 65584.05 or by the department under Section 65584.06.

(B) The council of governments or the department certifies that the annexed land was fully incorporated into the methodology for purposes of determining the city's share of the regional housing need.

(C) The area covered by the annexation is the same as the area that was incorporated into the methodology.

Statutory Provisions: Regional Housing Need

1st Year Requirement to Zone for Unmet RHNA Due to Unidentified/Inadequate Sites in Prior Planning Period

Government Code Section 65584.09

(a) For housing elements due pursuant to Section 65588 on or after January 1, 2006, if a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.

(b) The requirements under subdivision (a) shall be in addition to any zoning or rezoning required to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 for the new planning period.

(c) Nothing in this section shall be construed to diminish the requirement of a city or county to accommodate its share of the regional housing need for each income level during the planning period set forth in Section 65588, including the obligations to (1) implement programs included pursuant to Section 65583 to achieve the goals and objectives, including programs to zone or rezone land, and (2) timely adopt a housing element with an inventory described in paragraph (3) of subdivision (a) of Section 65583 and a program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583, which can accommodate the jurisdiction's share of the regional housing need.

Statutory Provisions: Regional Housing Need

CHARGING FEES FOR RHNA COST (IN LIEU OF STATE REIMBURSEMENT)

Government Code Section 65584.1
Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations pursuant to Sections 65584, 65584.01, 65584.02, 65584.03, 65584.04, 65584.05, and 65584.07. A city, county, or city and county may charge a fee, not to exceed the amount charged in the aggregate to the city, county, or city and county by the council of governments, to reimburse it for the cost of the fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose the fee pursuant to Section 66016, except that if the fee creates revenue in excess of actual costs, those revenues shall be refunded to the payers of the fee.

Statutory Provisions: Regional Housing Need

Determination & Population Assumptions

Government Code Section 65584.01 (excerpt):
(b) The department's determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments.

If the total regional population forecast for the planning period, developed by the council of governments and used for the preparation of the regional transportation plan, is within a range of 3 percent of the total regional population forecast for the planning period over the same time period by the Department of Finance, then the population forecast developed by the council of governments shall be the basis from which the department determines the existing and projected need for housing in the region.

If the difference between the total population growth projected by the council of governments and the total population growth projected for the region by the Department of Finance is greater than 3 percent, then the department and the council of governments shall meet to discuss variances in methodology used for population projections and seek agreement on a population projection for the region to be used as a basis for determining the existing and projected housing need for the region.

If no agreement is reached, then the population projection for the region shall be the population projection for the region prepared by the Department of Finance as may be modified by the department as a result of discussions with the council of governments.

COG Tasks in Regional Housing Need Allocation Process

Task *(excluding subregional delegation option)*
Task 1: Initial Activities & Outreach Task 1.1: Consult w/ HCD about regional Allocation Task 1.2: Outreach to local governments Task 1.3: Establish methodology committee **Task 2: Preparation of Methodology** Task 3.1: Methodology Committee meetings Task 3.2: Request/obtain data from local jurisdictions Task 3.3: Data processing & analysis Task 3.4: Develop methodology alternatives Task 3.5: Outreach & technical discussions Task 3.6: COG issues proposed methodology
Task 3: Review of Methodology Task 4.1: 60-day public comment period Task 4.2: Outreach to local governments Task 4.3: Public hearing about methodology Task 4.4: COG responds to public comments Task 4.5: COG adopts final methodology
Task 4: Preparation & Review of Draft RHNA Task 5.1: Develop RHNA allocation model Task 5.2: Technical discussions & documentation Task 5.3: COG issues draft allocations Task 5.4: Local jurisdictions request revisions Task 5.5: COG responds to revision requests
Task 5: Appeals Process Task 6.1: Jurisdictions may appeal draft RHNA Task 6.2: Public hearing about appeals Task 6.3: COG reviews & responds to appeals requests
Task 6: Preparation & Adoption of Final RHNA Task 7.1 COG issues final draft of RHNA Task 7.2: Public hearing to adopt final RHNA Task 7.3: Review and approval of final RHNA by HCD

Statutory Provisions: Regional Housing Need

COG Plan and Factors in Developing Methodology and Distributing RHNA

Government Code Section 65584.04:

(a) At least two years prior to a scheduled revision required by Section 65588, each council of governments, or delegate subregion as applicable, shall develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable pursuant to this section. The methodology shall be consistent with the objectives listed in subdivision (d) of Section 65584.

(b) (1) No more than six months prior to the development of a proposed methodology for distributing the existing and projected housing need, each council of governments shall survey each of its member jurisdictions to request, at a minimum, information regarding the factors listed in subdivision (d) that will allow the development of a methodology based upon the factors established in subdivision (d).

(2) The council of governments shall seek to obtain the information in a manner and format that is comparable throughout the region and utilize readily available data to the extent possible.

(3) The information provided by a local government pursuant to this section shall be used, to the extent possible, by the council of governments, or delegate subregion as applicable, as source information for the methodology developed pursuant to this section. The survey shall state that none of the information received may be used as a basis for reducing the total housing need established for the region pursuant to Section 65584.01.

(4) If the council of governments fails to conduct a survey pursuant to this subdivision, a city, county, or city and county may submit information related to the items listed in subdivision (d) prior to the public comment period provided for in subdivision (c).

(c) Public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs. Participation by organizations other than local jurisdictions and councils of governments shall be solicited in a diligent effort to achieve public participation of all economic segments of the community. The proposed methodology, along with any relevant underlying data and assumptions, and an explanation of how information about local government conditions gathered pursuant to subdivision (b) has been used to develop the proposed methodology, and how each of the factors listed in subdivision (d) is incorporated into the methodology, shall be distributed to all cities, counties, any subregions, and members of the public who have made a written request for the proposed methodology. The council of governments, or delegate subregion, as applicable, shall conduct at least one public hearing to receive oral and written comments on the proposed methodology.

(d) To the extent that sufficient data is available from local governments pursuant to subdivision (b) or other sources, each council of governments, or delegate subregion as applicable, shall include the following factors to develop the methodology that allocates regional housing needs:

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary nfrastructure for additional development during the planning period.

Statutory Provisions: Regional Housing Need

COG Plan and Factors in Developing Methodology and Distributing RHNA

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High-housing costs burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.

(e) The council of governments, or delegate subregion, as applicable, shall explain in writing how each of the factors described in subdivision (d) was incorporated into the methodology and how the methodology is consistent with subdivision (d) of Section 65584. The methodology may include numerical weighting.

(f) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(g) In addition to the factors identified pursuant to subdivision (d), the council of governments, or delegate subregion, as applicable, shall identify any existing local, regional, or state incentives, such as a priority for funding or other incentives available to those local governments that are willing to accept a higher share than proposed in the draft allocation to those local governments by the council of governments or delegate subregion pursuant to Section 65584.05.

(h) Following the conclusion of the 60-day public comment period described in subdivision (c) on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments, or delegate subregion, as applicable, as a result of comments received during the public comment period, each council of governments, or delegate subregion, as applicable, shall adopt a final regional, or subregional, housing need allocation methodology and provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion as applicable, and to the department.

Regional Housing Need:
Allocation Period: January 2007 - June 30, 2014 CONSULTATION D R A F T - for discussion only

	Humboldt County Jurisdictions							Prior Period RHNA			
								INFORMATIONAL ONLY			
I.	PROJECTED HOUSEHOLD GROWTH	2000 Headship Rate									
	Household growth (headship rate) [1]	4,550									
II.	PROJECTED TOTAL HOUSING NEED										
	Homeowner HHs [2]	2,621									
	Homeowner HH vacancy adjustment [3]	47									
	Renter HHs	1,928									
	Renter HHs vacancy adjustment [3]	96									
	Replacement adjustment [4]	54									
	Total Housing Need	4,747									
III.	PROJECTED HOUSING NEED BY INCOME [5]	Determination	Income %					RHNA: Previous Period			
	Very Low	1,175	25%					1,034	26%		
	Low	762	16%					676	17%		
	Moderate	825	17%					811	21%		
	Above moderate	1,985	42%					1,383	35%		
	Total	4,747	100%					3,904	100%		
	Homeowner vacancy adjustment [3]	1.80%									
	Rental vacancy adjustment [3]	5.00%									
	Replacement adjustment [4]	1.2%									
	DOF Demolition Data:	2001	2002	2003	2004	2005	2006	2007	Average		
	Humboldt County Jurisdictions	-21	-35	-26	-25	-28	-77	-99	-44		
	Housing Units	*56,182*	*56,567*	*57,099*	*57,540*	*58,015*	*58,939*	*59,627*	*57,710*		
	Demolition %	0.04%	0.06%	0.05%	0.04%	0.05%	0.13%	0.17%	0.077%	x 2 x 7.5 years =	1.15%
	DOF Projected Households: 2014							59,191	8.3%		
	DOF Baseline "Occupied" Units: 2007							54,641			
	Household Growth 2007 - 2014:							4,550			
	DOF Projected "Household" Population: 2014							133,567	4.7%		
	DOF "Household" Population: 2007							127,591			
	NOTE: HCD NEEDS COG POPULATION PROJECTIONS BY AUGUST 10, 2007.										

Notes:

1. Population and household ("occupied" housing units) estimates as of 1/1/2007 are from DOF's E-5a report (State of California, Department of Finance, Population and Housing Estimates, for Cities, Counties, and the State, 2001–2007, with 2000 Benchmark, Sacramento, California, May 2007); DOF's population projections for 7/1/2014 are based on DOF's P-3 report (State of California, Department of Finance, Population Projections for California and Its Counties 2000-2050, by Age, Gender and Race/Ethnicity, Sacramento, California, July 2007). Projected households in 2014 are derived by DOF by applying age- and ethnicity-specific household formation ratios (headship rates) from Census 2000 to the projected population. Household growth reflects the difference between 2014 projected households and 2007 "occupied" units.
2. New households are allocated to either homeowner or renter categories based on proportion of owner/renter occupied households from 2000 Census (H-7 Tenure) held constant through projection period. Homeowner rate subtracted from 100% yields renter rate.
3. Vacancy rate percentages of 1.8% (owner) and 5.0% (renter) are estimated for current conditions from standard targets of 2.0% and 6.0%, respectively, per Office of Planning and Research, Economic Practices Manual (1984:37).
4. Replacement percentage is applied to total projected housing need figures based on demolition permits reported by DOF January 2001 through 2007. The average rate is adjusted by a multiple of 2 to account for missing permits and use conversions not involving demolition. The adjusted rate is then multiplied by 7.5 (years) to derive the estimated replacement percentage over the allocation period. The minimum replacement percentage is 1% whereas the maximum replacement percentage is 2%.
5. The allocation per income category is calculated by multiplying the county's total housing need by the proportion of households in each income category as of Census 2000. The four income categories are based on Census 2000 median household income and income definitions of state law (Health and Safety Code Sections, 50079.5, 50105, et.seq.).

Determination of County's Number/Percentage of Households By Income Category
per 2000 Census data
Humboldt County

Median Household Income $ 31,226

Income Limits in Each Category:	Max % of Median	Starting	Highest
Very Low	(50%)		$ 15,613
Low	(80%)	$ 15,614	$ 24,981
Moderate	(120%)	$ 24,982	$ 37,471
Above Moderate		$ 37,472	all else

Households in Bracket	Income Brackets		Very Low	carryover	Low	carryover	Moderate	carryover	Above Moderate
7,059	$ -	$ 10,000	7,059						
5,057	$ 10,000	$ 14,999	5,057						
4,624	$ 15,000	$ 19,999	567	4,057	4,057				
4,179	$ 20,000	$ 24,999	-	-	4,164	15	15		
3,711	$ 25,000	$ 29,999	-	-	-	-	3,711		
3,589	$ 30,000	$ 34,999	-	-	-	-	3,589		
3,213	$ 35,000	$ 39,999	-	-	-	-	1,588	1,625	1,625
2,832	$ 40,000	$ 44,999	-	-	-	-	-	-	2,832
2,366	$ 45,000	$ 49,999	-	-	-	-	-	-	2,366
4,119	$ 50,000	$ 59,999	-	-	-	-	-	-	4,119
4,019	$ 60,000	$ 74,999	-	-	-	-	-	-	4,019
3,485	$ 75,000	$ 99,999	-	-	-	-	-	-	3,485
1,259	$ 100,000	$ 124,999	-	-	-	-	-	-	1,259
652	$ 125,000	$ 149,999	-	-	-	-	-	-	652
471	$ 150,000	$ 199,999	-	-	-	-	-	-	471
600	$ 200,000	$ 999,999	-	-	-	-	-	-	600
			-						
			-						
51,235			12,683		8,221		8,904		21,428
100.0%			24.8%		16.0%		17.4%		41.8%

Note: "carryover" column reflects calculation of households (ratio) counted in next income group. Group Income is calculated by multiplying county median income against percentage (50%/80%/120%) representing income category

Source: 2000 Census, SF 3, Table QT-P32

http://factfinder.census.gov/servlet/DatasetTableListServlet?_ds_name=DEC_2000_SF3_U&_type=table&_program=DEC&_lang=en&_ts=177364408628

	HUMBOLDT COUNTY	DATA / SOURCE
DEPT OF FINANCE (DOF)	Table 1: E-5 County/State Population and Housing Estimates, 1/1/2007	

	POPULATION			HOUSING UNITS								PERSONS
	POP	HOUSE-	GROUP	Hsg Units	SINGLE		MULTIPLE		MOBILE	OCCU-	PCT	PER
OUNTY	TOTAL	HOLD (HH)	QUARTERS	TOTAL	DETACHED	ATTACHED	2 TO 4	5 PLUS	HOMES	PIED	VACANT	HH
umboldt	131,959	127,591	4,368	59,627	41,151	1,605	5,867	4,800	6,204	54,641	8.36	2.335

		2001	2002	2003	2004	2005	2006	2007	Average			
umboldt Total	Demolitions	-21	-35	-26	-25	-28	-77	-99	-44			
	Housing Units	*56,182*	*56,567*	*57,099*	*57,540*	*58,015*	*58,939*	*59,627*	*57,710*			
	Demolition %	-0.04%	-0.06%	-0.05%	-0.04%	-0.05%	-0.13%	-0.17%	0.077%	x2x7.5yrs=	1.15%	

ENSUS DATA (SF 3)

16. OCCUPANCY STATUS [3] - Universe: Housing units — Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data

	Total:	Percent
lumboldt County, California	55,912	100.0%
)ccupied	51,238	91.6%
'acant	**4,674**	**8.4%**

17. TENURE [3] - Universe: Occupied housing units — Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data

	Total:	Percent
lumboldt County, California	51,238	100.0%
)wner occupied	29,524	57.6%
Renter occupied	21,714	42.4%

QT-P32. Income Distribution in 1999 of Households and Families: 2000

Subject	Households
Total	51,235
Less than $10,000	7,059
$10,000 to $14,999	5,057
$15,000 to $19,999	4,624
$20,000 to $24,999	4,179
$25,000 to $29,999	3,711
$30,000 to $34,999	3,589
$35,000 to $39,999	3,213
$40,000 to $44,999	2,832
$45,000 to $49,999	2,366
$50,000 to $59,999	4,119
$60,000 to $74,999	4,019
$75,000 to $99,999	3,485
$100,000 to $124,999	1,259
$125,000 to $149,999	652
$150,000 to $199,999	471
$200,000 or more	600
Median income (dollars)	31,226

Table I-1

QUANTIFIED OBJECTIVES
Eureka
(January 1, 2002 to July1, 2007)

Category	Very Low	Low	Moderate	Above Moderate	Total
NEW CONSTRUCTION					
Eureka Fair Share Allocation					
HCAOG Housing Needs Determination For period 2002 to 2008	125	83	83	253	544
Residential Permits issued 1/2001 to 7/2003	0	1	47	39	90
Remaining Need	**125**	**82**	**36**	**214**	**454**
Expected Units Developed Through Housing Programs					
Implementation Program I.4 (Residential Conversions)	15	15	0	0	30
Implementation Program I.5 (Secondary Units)	60	60	0	0	120
Implementation Program I.8 (Commercial Conversions)	50	50	0	0	100
Units Developed by the Private Market	0	0	100	200	300
Total New Construction	**125**	**125**	**100**	**200**	**550**

Table I-1 (continued)
Quantified Objectives
(January 1, 2002 to July 1, 2007)

Category	Very Low	Low	Moderate	Above Moderate	Total
CONSERVATION					
Implementation Program I.20 (Mortgage Credit Certificates)	0	0	12	0	12
Section 8 Certificates	503	0	0	0	503
Section 8 Vouchers	150	0	0	0	150
First Time Homebuyers Program	1	16	33	0	50
"At Risk" Units	6	66	57	0	129
Total Conservation	**660**	**82**	**102**	**0**	**844**
REHABILITATION					
CDBG Owner-Occupied Rehabilitation[1]	10	10	0	0	20
CDBG Renter-Occupied Rehabilitation[1]	10	10	0	0	20
Implementation Program I.21 (Multi-Family Rental Rehabilitation)	5	5	5	0	15
Implementation Program I.21 (Full-Scale Neighborhood Improvement Organization Program)	90	58	52	0	200
Implementation Program I.21 (Owner Occupant Rehabilitation Program)	6	6	28	0	40
SRRP (Payback)[2]	3	3	0	0	6
Total Conservation	**124**	**92**	**85**	**0**	**301**

Notes: [1] The units listed here are funded by grants awarded the City prior to 2002
[2] These units are expected to be funded by paybacks derived from the revolving fund set up as part of the State Rental Rehabilitation Program

EUREKA CITY COUNCIL

AGENDA SUMMARY

RE: WIRELESS COMMUNICATIONS ORDINANCE	FOR AGENDA DATE: JANUARY 20, 2009 AGENDA ITEM NO.: 15

RECOMMENDATION:

1. Discuss and provide staff direction on the desired elements of a draft wireless communications ordinance

SUMMARY:

Pursuant to direction by the City Council, staff has researched examples of how other cities have approached regulating the placement of wireless telecommunication facilities. Issues that have been discussed by the Council for consideration include:

> Expanded noticing
> Directing the facilities to commercial, as opposed to residential areas.
> Co-location to decrease the number of sites required to meet wireless needs
> Demonstration of need for new facilities
> Demonstrating compliance with federal radio frequency emission rules
> Design and aesthetics issues (stealthing)
> Noise, generator fuel spill containment, and other potential neighborhood impact issues

(Continued on page 2)

FISCAL IMPACT:
Staff time, unquantifiable at this stage.

CITY ATTORNEY SIGNATURE: :

Sheryl L. Schaffner, City

CITY MANAGER SIGNATURE:

David W. Tyson, City Manager

Council Action:

Ordinance No. Resolution No.

SUMMARY *(continued)*

After comparing a half-dozen or so ordinances from other cities, staff has located one that might be used as a starting point to discuss addressing the issues that have been identified so far, in a manner that can be made workable. (Attached as Exhibit A.)

This model, among other things:

> Is structured to provide incentives to locate towers in areas where the City prefers they be located (i.e., commercial) and making it harder to locate them in non-preferred areas (i.e., residential), by

> Allowing wireless facilities only in areas beyond 500 feet of residential zones and schools, with exceptions only where there is a demonstrated need; but

> Making the permitting in non-residential areas somewhat easier; and

> Setting out a detailed set of requirements for tower permits in all areas;

> Expanding noticing requirements to properties within 500 feet of the site;

> Encouraging co-location to reduce the overall number of tower sites in the City;

> Requiring demonstration of compliance with federal standards; and

> Addressing aesthetics, noise and other neighborhood impact issues.

This approach appears calibrated to make the location of wireless facilities in the City predictable, clearly defined, and protective of community needs, while not presenting undue barriers for wireless service providers to provide quality coverage for the community, consistent with federal law.

The attached template is really just a "paper doll" (as requested by the Council) for discussion of an approach, issues, and options. It will need quite a bit more revision to blend with the City's existing zoning codes, address design review requirements, make sure all the definitions dovetail with other chapters, and related consistency issues, and a myriad of details worthy of debate. As one example, it is debatable whether "receive-only" antennas should be exempt from permitting, as is the case in the attached model.

Staff also has debated the pros and cons of the model's use of a two-permit process, and may recommend restructuring it to be a one-permit process, for the sake of efficiency, but without reducing any of the standards or requirements. The advantage of the two permit process is that the administrative permit option is a good incentive to encourage location of towers in areas where the City prefers they be located, and uses the more demanding Planning Commission conditional use

permit process for dealing with the applications for location in less desirable locations. Staff would welcome feedback and direction on this issue.

If overall, the general approach presented by this model seems like a good direction to take, and with Council's direction on specific issues such as those highlighted above, staff would proceed to tailor the ordinance to mesh with the City's code structure and present it to the Planning Commission for their review and recommendations.

In order to make the requirements applicable in the Coastal Zone, an amendment to the City's Local Coastal Program (LCP) would be required. The ordinance would be brought back to Council for introduction and adoption, including an amendment to the LCP, which would require the approval of the Coastal Commission.

Staff recommends that the Council review and discuss the attached template ordinance, provide feedback to staff as to the general approach as well as specific issues raised concerning the ordinance preparation, and whether to proceed in the ordinance preparation and adoption process, including any elements that the Council would wish to see included or excluded from such an ordinance.

Attachment: "Wireless Telecommunications Facilities" – a draft ordinance.

Chapter

WIRELESS TELECOMMUNICATIONS FACILITIES

Section:

155.400 Purpose
155.401 Definitions
155.402 Application
155.403 Exempt Facilities
155.404 Location Preferences - New telecommunications towers
155.405 Permit Requirements
155.406 Application Requirements
155.407 Noticing
155.408 Action on Use Permit Applications
155.409 Actions on wireless telecommunications facilities permits
155.410 Development Standards
155.411 Lapse of Permits
155.412 Relocation of towers from residential zones
155.413 Abandonment
155.414 Severability
155.415 Appeals

155.400 Purpose.

The purpose of this chapter is to provide a uniform and comprehensive set of standards for the development of wireless telecommunications facilities. The regulations contained herein are intended to protect and promote public health, safety, community welfare and the aesthetic quality of the city while at the same time providing reasonable opportunities for providers of wireless telecommunications services to provide such services in a safe, effective and efficient manner. These regulations are further intended to:

A. Require the location of new monopoles, towers and antennas in non-residential zoning districts unless technically necessary for provision of the service.
B. Require telecommunications facilities to be designed in a way to minimize adverse visual impacts.
C. Encourage co-location of facilities.
D. Protect the public's interest in the safe operation of public safety, emergency and medical services.
E. Protect the public from exposure to electromagnetic frequency or radio frequency radiation in excess of federal standards.

155.401 Definitions.

A. **Antenna** - Any system of wires, poles, rods, panels, reflecting discs or similar devices used for the transmission or reception of radio frequency electromagnetic waves when such system is external or attached to the exterior of a structure.
B. **Director** – The Director of Community Development

C. **Building-Mounted Antenna** - Any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to the side of a building, tank, tower or structure other than a telecommunications tower.

D. **Co-location** - The practice of two or more wireless telecommunications facilities service providers sharing one support structure or building for the location of their facilities.

E. **EMF/RF** - Electromagnetic radio frequency/radio frequency.

F. **FAA** - Federal Aviation Administration.

G. **FCC** - Federal Communications Commission.

H. **Ground-Mounted Antenna** - An antenna with its support structure placed directly on the ground.

I. **Lattice Tower** - A three or more legged open structure designed and erected to support wireless telecommunications antennas and connecting appurtenances.

J. **Monopole** - A single pole structure designed and erected to support wireless telecommunications antennas and connecting appurtenances.

K. **Roof-Mounted Antenna** - An antenna directly attached to the roof of an existing building, water tank, tower or structure other than a telecommunications tower.

L. **Satellite Dish Antenna** - Any device incorporating a reflective surface that is solid, open mesh or bar configured, that is shallow dish, cone, horn, bowl or cornucopia shaped and is used to transmit and/or receive electromagnetic or radio frequency communication/signals in a specific directional pattern.

M. **Stealthing** - Improvements or treatments added to a wireless telecommunications facility which mask or blend the proposed facility into the existing structure or visible backdrop in such a manner as to minimize its visual impacts. Stealthing may utilize, but does not require, concealment of all components of a facility. Examples of stealthing include, but are not limited to, the design and construction of a tower so that it is disguised as a tree or sculpture, or the incorporation of colors and design features of nearby structures.

N. **Telecommunications Tower or Tower** - A monopole or lattice tower.

O. **Wireless Telecommunications Facility or Facility** - Any structure, antenna, pole, equipment and related improvements the primary purpose of which is to support the transmission and/or reception of electromagnetic signals, including, but not limited to, telecommunications towers.

155.402 Application.

This chapter shall apply to all wireless telecommunications facilities for the transmission and/or reception of wireless radio, television, and other telecommunications signals including, but not limited to, commercial wireless communications systems such as cellular and paging systems, except those facilities defined in this chapter as exempt facilities.

155.403 Exempt facilities.

The following wireless telecommunications facilities are exempt from the requirements of this chapter, provided that they are constructed on sites previously developed and that they meet the requirements set forth below.

A. All facilities legally constructed prior to the adoption of this ordinance.

B. Facilities accessory to a residential use of a site which meet the requirements set forth below.

1. One ground, roof, or building-mounted receive-only radio or television satellite dish antenna which does not exceed 36 inches in diameter per dwelling unit. Such satellite dishes shall not extend above the roof peak or parapet of the primary structure on the parcel.
2. A single ground, roof, or building-mounted receive-only radio or television antenna including any mast. Such antennas shall not exceed a maximum height of 40 feet measured from the ground and shall not be located in front or side yard setbacks.
3. A ground, roof, or building-mounted citizens band radio antenna, including any mast, which does not exceed a maximum height of 40 feet measured from the ground. Such antennas shall not be located in front or side yard setbacks.
4. A ground, roof, or building-mounted antenna which does not exceed a maximum height of 40 feet and which is operated by a federally-licensed amateur radio operator. Such antennas shall not be located in front or side yard setbacks.

C. Government-owned communications facilities used primarily to protect public health, safety and welfare.

D. Facilities operated by providers of emergency medical services, including hospital, ambulance and medical air transportation services, for use in the provision of those services.

E. Any facility specifically exempted under federal or state law.

F. Temporary facilities erected and operated for use in emergency situations. Use of such facilities shall not exceed two weeks unless an extension is granted in writing by the director.

G. Antennas for two-way radio communications systems operated only as an internal business communications system by owners/operators and not made available to third parties. Such facilities shall not be located within any required setbacks and shall not exceed a maximum height of 40 feet measured from the ground.

H. Repair or replacement of a lawfully-established existing facility so long as the repair or replacement does not involve modifications to the facility which add height, substantially change the appearance or significantly increase the effective radiated power. For the purposes of this section, a significant increase in effective radiated power shall be defined as an increase of more than three percent (3%) of the applicable federal standard.

I. Receive-only radio or television antennas incidental to non-residential use, if the antenna meets the development standards set forth in Section 155.409, does not require issuance of a building permit for its installation, and is solely for the use of the occupants of the site on which it is located. The exemptions set forth in this section shall apply only to facilities demonstrating radio-frequency emission compliance with FCC regulations pursuant to FCC Office of Engineering Technology (OET) Bulletin No. 65 entitled "*Evaluating Compliance With FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields*" (August 1977 or later revisions or successors thereto) and shall not apply to any

facility not categorically exempt from FCC regulation pursuant to FCC OET 65, or to any facilities operated, leased to, or used by common carriers or wireless telecommunications service providers or to television and/or radio broadcast facilities.

155.404 Location Preferences - New telecommunications towers.

To the maximum extent feasible, new telecommunications towers shall be located according to the following preferences, with the most preferred sites listed first:

A. Sites zoned MG, ML, MC, CS;

B. Sites zoned CC, CW, HM, P.

155.405 Permit Requirements.

A. No wireless telecommunications facility shall be constructed or modified without first obtaining a use permit or a wireless telecommunications facilities permit, as specified below.

NP=Not permitted
UP= permitted with a use permit
WTFP=permitted with a Wireless Telecommunications Facilities Permit

Zoning District	New Tower	Co-location on existing tower	Building or roof mounted antenna
RS	NP	WTFP	NP
RM	NP	WTFP	WTFP
OR	NP	WTFP	WTFP
HM	UP(1)	WTFP	WTFP
P	UP(1)	WTFP	WTFP
PF-M	UP	WTFP	WTFP
CN	NP	WTFP	WTFP
CW	NP	WTFP	WTFP
CP	UP(1)	WTFP	WTFP
CC	UP(1)	WTFP	WTFP
CS	UP(1)	WTFP	WTFP
ML	WTFP(1)(2)	WTFP	WTFP
MG	WTFP(1)(2)	WTFP	WTFP
MC	WTFP(1)(2)	WTFP	WTFP
A	UP(1)	WTFP	WTFP(3)
AC	UP(1)	WTFP	WTFP(3)
NR	NP	NP	NP
F	NP	NP	NP
WD	NP	NP	NP
WC	NP	NP	NP

(1) Subject to the limitation that new towers are not permitted within 500 feet of any elementary or secondary school or within 500 feet of any residential zone.
(2) New towers within 1000 feet of an existing tower require a Use Permit.
(3) Antenna over 65 feet in height requires a Use Permit

B. In all zones in which a new telecommunications tower is listed as NP (not permitted), such a facility may nevertheless be permitted by use permit if the planning commission makes the findings required by section 155.408.

C. Facilities which would otherwise be exempt from the requirements of this chapter but which do not meet the size, height, setback or other requirements of section 155.403, above, may be permitted by a use permit.

D. Facilities which would otherwise be permitted with a wireless telecommunications facilities permit, but which do not meet the development standards required for such permits, may be permitted with a use permit.

155.406 Application requirements.

The following items shall be required for each permit for a wireless telecommunications facility.

A. Use Permits.

1. All application materials generally required for a use permit listed in Section 155.281.
2. All materials listed below as required for a wireless telecommunications facilities permit application.
3. An alternative height analysis for any facility exceeding the height standards set forth in Section 155.414. This analysis shall demonstrate that the proposed height is designed at the minimum height necessary and shall specifically include an analysis comparing the operation of the facility at its proposed height with its operation at the maximum height in the standards set forth in Section 155.410. It shall also address whether the additional height would be required if the facility were located at a different site. The purpose of this analysis is to ensure that additional height is permitted only when technically necessary for the provision of services.
4. An alternative site analysis. This analysis shall identify all reasonable, technically feasible, alternative locations, including facilities which could be used for co-location. The analysis shall also explain the rationale for the selection of the proposed site in view of the relative merits of any feasible alternatives. The purpose of this analysis is to present alternative strategies for the minimization of the number and impacts of facilities necessary to provide the service.

B. Wireless Telecommunications Facilities Permits.

1. A site plan which includes the location of all structures and equipment to be located on the site.
2. Elevations of all proposed wireless telecommunications structures and appurtenances and composite elevations from the streets adjoining the site, showing the proposed project and all buildings on the site.
3. Photo simulations, elevations or other visual or graphic illustrations necessary to determine potential visual impact of the proposed project. Visual impact demonstrations shall include accurate scale and coloration of the proposed facility.

4. A landscape plan that shows existing vegetation, vegetation to be removed and proposed plantings by type, size and location.
5. A geographic service area map showing:
   a. The applicant's wireless telecommunications network within 3 miles in all directions of the proposed site, including all facilities which exist at the time and for which applications are pending;
   b. The hand-off sites within the above area;
   c. The area in which the facility could be located to provide the proposed new or expanded service; and
   d. All other existing sites that could be used for the proposed antenna location.
6. A statement of how the proposed facility satisfies the locational preferences established by this chapter or, if the proposed location is not a preferred location, a description of the preferred location sites within the geographic service area and a statement of why each alternative site was rejected.
7. Noise and acoustical information for the base transceiver stations, equipment buildings and associated equipment such as air conditioning and back-up generators.
8. A statement by the applicant of its commitment to allow other carriers to collocate on their facilities whenever technically and economically feasible and aesthetically desirable.
9. A report, signed by a qualified radio frequency engineer and prepared pursuant to FCC OET 65, stating the maximum (EMF/RF) radiation to be emitted by the proposed facility and whether those emissions conform to safety standards adopted by the FCC. Such reports shall take into account all other facilities within 2,000 feet, both existing and known future facilities, the cumulative effects of co-located facilities, and existing nearby buildings and structures, and shall be written in plain English.
10. For new telecommunications towers, a biological resource survey demonstrating that the facility and construction of the facility will avoid all sensitive habitats and rare, threatened and endangered species. The director may waive this requirement based on a finding that existing information verifies the lack of such biological resources on the site.

C. When an application is submitted for a use permit and the proposed facility would be located in a zoning district in which such a facility is listed as not permitted, or within 500 feet of any elementary or secondary school or within 500 feet of any residential zoning district, the city shall hire an independent consultant, at the applicant's sole expense, to review the application and to provide an analysis of whether the facility is necessary in that zoning district in order to provide the service.

D. When an application is filed and the report required pursuant to 155.406.B.9 states that the maximum EMF/RF radiation to be emitted by the proposed facility will exceed 80% of the maximum permissible EMF/RF emissions, as set by Federal regulation, the City shall hire an independent consultant, at the applicant's sole expense, to review the application and to provide an analysis of the EMF/RF

emissions.

155.407 Noticing.

A. Use permits. All noticing for hearings on use permit applications for wireless telecommunications facilities shall be in accordance with Section 155.282, except that notice shall be provided to all owners and tenants of real property within 500 feet of the site proposed for the facility.

B. Wireless telecommunications facilities permits. Before issuing a wireless telecommunications permit, the director shall provide written notice to all owners and tenants of real property within 500 feet of the site proposed for the facility. Such notice shall be mailed no less than 10 days prior to the director's action on the permit and shall state the date that the permit will be issued and describe the facility which will be permitted. Such notice shall also state that, while an aggrieved person may appeal the determination to issue the permit, the decision may be reversed or modified on appeal only if the planning commission determines that the director erroneously determined that the requirements for the issuance of the permit were met.

155.408 Action on Use Permit Applications.

All use permit applications for wireless telecommunications facilities shall be acted upon by the Planning Commission in accordance with Section 155.280 – 155.299.

A. Use permits may be granted for wireless telecommunications facilities only if all of the following findings are made.

1. All findings otherwise required for a use permit pursuant to Section 155.285.
2. The facility to be permitted will not generate EMF/RF radiation in excess of the FCC adopted standards for human exposure.
3. If the height of the facility exceeds the standards set forth in Section 155.410, that the facility has been designed to minimize its height and other visual effects.
4. For a wireless telecommunications facility which will be located in any zoning district in which such a facility is generally not permitted:
   a. The applicant has demonstrated, based on technical necessity, that the facility must be located within one of those zoning districts in order to provide the service; and
   b. The denial of a use permit to allow a facility in one of those zoning districts would constitute a prohibition of the affected wireless telecommunications services in violation of federal law; and
   c. If the facility is proposed to be located in a residentially-zoned district, the applicant has demonstrated, based on technical requirements, that the service cannot be provided by locating the facility in a non-residential zone.
6. For a new telecommunications tower which is proposed to be located within 1,000 feet of an existing tower:
   a. The cumulative visual impacts are not significant; and

b. Location within 1,000 feet of the existing tower is technically necessary to provide services not possible with co-location on an existing tower or structure in the service area.

B. A finding of technical necessity to locate in a particular zoning district shall only be made if the planning commission finds that, based on the operational capabilities of the type of equipment used to provide the service, it is not possible to provide substantially the same additional services by locating one or more facilities in alternative locations outside of that district.

C. Use permits issued for new telecommunications towers in residential or open space zones may be conditioned upon the use of stealthing techniques to disguise the facility and make it less visually intrusive.

D. Use permits for facilities which will generate 80% or more of the maximum permissible EMF/RF emissions as set by Federal regulation shall be conditioned upon the submission to the City of an annual certification from a licensed engineer expert in the field of EMF/RF emissions verifying that the facility is operating and has been operated within the then current federal standards for such emissions. The report shall consider nearby buildings and structures and the cumulative effects of collocated facilities and other nearby facilities and be written in plain English.

155.409 Actions on wireless telecommunications facilities permits.

A. Wireless telecommunications facilities permits shall be acted upon by the director. Wireless telecommunications facilities shall be issued when all of the following requirements are met.

1. The facility meets the development standards set forth in this chapter.
2. The facility will not generate EMF/RF radiation in excess of the FCC adopted standards for human exposure.
3. If the facility is a new telecommunications tower, it does not exceed 100 feet in height.
4. If the facility is a new telecommunications tower, that the facility, and construction thereof, will avoid all sensitive habitats and rare, threatened and endangered species which may be on the site.

B. Wireless telecommunications facilities permits for facilities which will generate 80% or more of the maximum permissible EMF/RF emissions as set by Federal regulation shall be conditioned upon the submission to the City of an annual certification from a licensed engineer, expert in the field of EMF/RF, verifying that the facility is and has been operated within the then current federal standards for such emissions. The report shall consider nearby buildings and structures and the cumulative effects of collocated and other nearby facilities and be written in plain English.

C. The director shall act on all applications for wireless telecommunications facilities permits within 90 days of the submission of a completed application.

D. Wireless telecommunications facilities permits shall be approved or denied in writing. All denials shall state the reasons for the denial. Reasons for denial shall be limited to a finding by the director that one of the requirements for issuance, as set forth in A., above, has not been met.

155.410 Development Standards.

A. New Telecommunications Towers.

1. No new telecommunications tower shall be located within 500 feet of any elementary or secondary school or within 500 feet of any residential zone.
2. Unless otherwise required by the Federal Aviation Administration (FAA), or unless stealthing has been required, telecommunications towers shall be painted a single, neutral, non-glossy color designed to minimize visual impacts.
3. All telecommunications towers shall be unlit unless lighting is required pursuant to FAA regulations or the planning commission finds that lighting should be required to prevent the tower from becoming a hazard to aircraft. When lighting is required, it shall be shielded or directed in such a manner as to minimize the amount of light that falls onto nearby properties.
4. New telecommunications towers shall generally not be permitted within 1,000 feet of an existing telecommunications tower. New telecommunications towers otherwise permitted with a wireless telecommunications facilities permit, but which are proposed to be located within 1,000 feet of an existing telecommunications tower, shall require a use permit which may be granted upon a finding that cumulative visual impacts are not significant and that the tower is necessary to provide services not possible with co-location on an existing telecommunications tower or structure in the service area.
5. Ground-mounted equipment shall be screened from view.
6. If the telecommunications tower is more than 100 feet in height, it must be designed at the minimum height functionally required. This determination shall be based on the alternative height analysis submitted as part of the application for the facility or on an independent analysis obtained by the City pursuant to section 155.406.
7. No facility or combination of facilities shall generate EMF/RF in excess of the FCC adopted standards for human exposure.
8. Each telecommunications tower shall be identified by a sign placed on or near the tower, or any accessory building, which sets forth the name, address and a 24- hour telephone number of the facility's operator.
9. Telecommunications towers for which a wireless telecommunications facilities permit is issued shall be set back from all property lines by at least 25 feet. Setbacks for telecommunications towers subject to a use permit shall be determined by the planning commission as part of the use permit approval.

B. Additional facilities to be co-located on an existing telecommunications tower.

1. The original telecommunications tower was constructed and is operating in accordance with the requirements of the wireless telecommunications facilities or use permit originally issued for that facility.
2. The type and size of the new antennas are consistent with the requirements of the original wireless telecommunications facilities or use permit.
3. The new antenna array does not exceed the height of the existing

telecommunications tower.

4. The width of the proposed array does not exceed the width of the existing array or arrays.
5. The combined level of EMF/RF radiation for all arrays does not exceed the maximum permissible exposure level set by the FCC.

C. Building-mounted antennas. Building mounted antennas shall be located and designed to appear an integral part of the structure. To this end, they must comply with the following standards.

1. The lowest part of the antenna shall be a minimum of 15 feet above grade.
2. The antenna and mountings shall not project more than 18 inches from the building surface to which it is mounted.
3. Antennas, connections and supports shall be treated to match the color scheme of the building or structure to which they are attached.
4. Antennas and connections shall not project higher than the side of the building upon which it is mounted.
5. All equipment shelters, cabinets or other structures utilized or built in connection with the facility shall be located inside the building being utilized for the facility, on the ground outside the setback area or any required parking area, or on the roof if screened from view.

D. Roof-mounted antennas.

1. Roof-mounted antennas shall not exceed the maximum building height for the zoning district by more than 25 feet and shall be set back at least 20 feet from the front and side edges of the roof upon which it is mounted.
2. All equipment shelters, cabinets or other structures utilized or built in connection with the facility shall be located inside the building being utilized for the facility, or on the ground outside the setback area or any required parking area, or on the roof, if screened from view.

155.411 Lapse **of Permits.**

Lapse of use permits for wireless telecommunications facilities shall be consistent with Section 155.291, Lapse Of Use Permits.

155.412 Relocation of towers from residential zones.

A. Application for replacement facilities. The purpose of this section is to encourage the removal of towers from residential zones through the relocation of such facilities to zones in which they are permitted. In order to encourage such removal, the following shall apply to all applications for new facilities which will replace such towers.

1. The use permit or wireless telecommunications facilities permit application fee for the new facility shall be waived.
2. The application shall state the location of the tower in a residential zone will be replaced by the new facility.
3. The following application materials shall not be required:
   A. An alternative site analysis;
   B. A statement of how the proposed relocation satisfies the locational preferences of this chapter;

C. The geographic service area map otherwise required by 155.406.B.5;

D. Noise and acoustical information otherwise required by 155.406.B.7, above,
if the same type of equipment that is being used at the tower to be removed will be used at the site of the new facility;

E. The radio frequency engineer's report otherwise required by 155.406.B.9, if such a report has already been submitted to the City in relation to the tower which is being removed from the residential zone and the same or equivalent equipment will be installed at the new site.

B. Removal of tower from residential zone. All use permits and telecommunications facilities permits granted as a result of an application submitted pursuant to this section shall be conditioned upon the removal of the tower which is being replaced within three months of the completion of the construction of the new facility.

155.413 Abandonment.

The permittee under any wireless telecommunications facilities permit or use permit for a wireless telecommunications facility shall notify the city in writing within 30 days of the cease of operation of the permitted facility. Any wireless telecommunications facility which is not operated for a continuous period of six months shall be removed within six months of the date upon which operation ceased. Any wireless telecommunications facility for which the permit has expired shall be considered abandoned and shall be removed by the facility owner within three months from the date the permit expired.

155.414 Severability.

If any part of this chapter is, for any reason, held by a court of competent jurisdiction to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this chapter.

155.415 Appeals.

A. Appeals from decisions regarding wireless telecommunications facilities permits issued by the director may be appealed to the planning commission with a further appeal to the city council, pursuant to section 155.375.

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January 16, 2009

President Micheal R. Peevey
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: PG&E Application for WaveConnect Project Funding

Dear Commissioner Peevey:

On behalf of the Eureka City Council, I am submitting this letter in support of the funding application submitted by Pacific Gas and Electric Company (PG&E) for their proposed WaveConnect ocean wave energy demonstration project.

The Eureka City Council supports PG&E's proposal to conduct a three year, $6 million research project off Humboldt County's Coast. The research planned as part of the WaveConnect project is urgently needed to help determine the financial and environmental feasibility of wave energy. The City of Eureka is excited about the many benefits wave energy promises for our community and our state, but we also recognize that a lot of additional research needs to be done before those promises can be realized.

Our state is currently facing a fiscal crisis. The development of wave energy would help us grow our economy *and* reduce our dependence on fossil fuels. Our oceans hold great promise for the future production of clean, renewable energy–potentially more than 10% of current US demand. With your help, California could lead the way by helping develop this technology and creating a new wave energy industry for our nation.

The Eureka City Council encourages you to give special consideration to PG&E's application for WaveConnect funding. The need to develop renewable, alternative energy production has never been more pressing!

Sincerely,

Virginia Bass, Mayor
City of Eureka