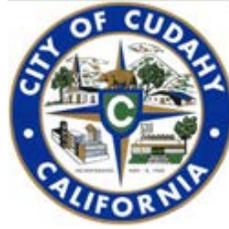


Baru Sanchez, Mayor  
Christian Hernandez, Vice Mayor  
Chris Garcia, Council Member  
Jack Guerrero, Council Member  
Cristian Markovich, Council Member



CLARA STREET PARK  
TURNER HALL  
4835 Clara Street  
Cudahy, CA 90201  
Phone: (323) 773-5143  
Fax: (323) 771-2072

REMOTE TELECONFERENCE  
LOCATION:

CLARA STREET PARK  
Chamber of Commerce Room  
4835 Clara Street  
Cudahy, CA 90201

---

## AGENDA

A REGULAR MEETING  
OF THE CUDAHY CITY COUNCIL  
and JOINT MEETING of the  
CITY OF CUDAHY AS SUCCESSOR AGENCY and HOUSING SUCCESSOR AGENCY  
TO THE CUDAHY DEVELOPMENT COMMISSION  
Monday, August 22, 2016 – 6:30 P.M.

Written materials distributed to the City Council within 72 hours of the City Council meeting shall be available for public inspection in the City Clerk's Office at City Hall located at 5220 Santa Ana Street, Cudahy, CA 90201.

*In compliance with the Americans with Disabilities Act (ADA) if you need special assistance to participate in this meeting, you should contact the City Clerk's Office at (323) 773-5143 at least 72 hours in advance of the meeting.*

### Rules of Decorum

*"Members of the Public are advised that all **PAGERS, CELLULAR TELEPHONES** and any **OTHER COMMUNICATION DEVICES** are to be **turned off** upon entering the City Council Chambers." If you need to have a discussion with someone in the audience, kindly step out into the lobby.*

Under the Government Code, the City Council may regulate disruptive behavior that impedes the City Council Meeting.

Disruptive conduct may include, but is not limited to:

- Screaming or yelling during another audience member's public comments period; and
- Profane language directed at individuals in the meeting room; and
- Throwing objects at other individuals in the meeting room; and
- Physical or verbal altercations with other individuals in the meeting room; and
- Going beyond the allotted two-minute public comment period granted.

When a person's or group's conduct disrupts the meeting, the Mayor or presiding officer will request that the person or group stop the disruptive behavior, and WARN the person or group that they will be asked to leave the meeting room if the behavior continues.

If the person or group refuses to stop the disruptive behavior, the Mayor or presiding officer may order the person or group to leave the meeting room, and may request that those persons be escorted from the meeting room.

It should also be noted that any person who WILLFULLY disturbs or breaks up the City Council meeting may be arrested for a misdemeanor offense. (*Penal Code § 403.*)

**1. CALL TO ORDER**

**2. ROLL CALL**

Council / Agency Member Guerrero  
Council / Agency Member Garcia  
Council / Agency Member Markovich  
Vice Mayor / Vice Chair Hernandez  
Mayor / Chair Sanchez

**3. PLEDGE OF ALLEGIANCE**

**4. PRESENTATIONS**

- A. Young Senators Program
- B. Greater Los Angeles County Vector Control District

**5. PUBLIC COMMENTS**

(Each member of the public may submit one comment card if he or she wishes to address the City Council. Only speakers that submit a comment card within the first 20 minutes of the meeting will be permitted to speak for two (2) minutes concerning items under the City Council's jurisdiction, including items on the agenda and closed session items.)

(Every person who, without authority of law, willfully disturbs or breaks up a City Council meeting is guilty of a misdemeanor. [See, Cal. Penal Code § 403.]

**6. CITY COUNCIL COMMENTS / REQUESTS FOR AGENDA ITEMS** (Each Council Member is limited to three minutes.)

(This is the time for the City Council / Agency to comment on any topics related to "City Business," including announcements, reflections on city / regional events, response to public comments, suggested discussion topics for future council meetings, general concerns about particular city matters, questions to the staff, and directives to the staff (subject to approval / consent of the City Council majority members present, regarding staff directives). Each Council / Agency Member will be allowed to speak for a period not to exceed three (3) minutes. Notwithstanding the foregoing, the City Council Members shall not use this comment period for serial discussions or debate between members on City business matters not properly agendized. The City Attorney shall be responsible for regulating this aspect of the proceeding.)

7. CITY MANAGER REPORT (information only)

8. REPORTS REGARDING AD HOC, ADVISORY, STANDING, OR OTHER COMMITTEE MEETINGS

9. WAIVER OF FULL READING OF RESOLUTIONS AND ORDINANCES

(Consideration to waive full text reading of all Resolutions and Ordinances by single motion made at the start of each meeting, subject to the ability of the City Council / Agency to read the full text of selected resolutions and ordinances when the item is addressed by subsequent motion.)  
(COUNCIL / AGENCY)

**Recommendation:** Approve the Waiver of Full Reading of Resolutions and Ordinances.

10. CONSENT CALENDAR

(Items under the Consent Calendar are considered routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council / Agency Member so requests, in which event the item will be removed from the Consent Calendar and considered separately.)

- A. Approve a Host Agency Agreement with SER-Jobs for Progress, Inc. to Become a Worksite for the Senior Community Service Employment Program (SCSEP) *(page 7)*

*Presented by City Manager*

**Recommendation:** The City Council is requested to approve a one year (i.e. August 22, 2016 through August 21, 2017) host agency agreement with SER-Jobs for Progress, Inc. (SER) to become a worksite for their Senior Community Services Employment Program (SCSEP) to receive program participants to work in the City.

- B. Approval of a Professional Services Agreement with the Milagro Strategy Group to Provide Media Consulting Services *(page 15)*

*Presented by City Manager*

**Recommendation:** The City Council is requested to:

1. Approve a six-month Professional Services Agreement (PSA) not to exceed \$30,000 with the Milagro Strategy Group (Milagro Group) to assist the City with ongoing media and public relations and to maintain a consistent media presence to help inform and educate the community about City policies and programs; and
2. Appropriate \$30,000 for Fiscal Year 2016-17 City Budget.

## 11. PUBLIC HEARING

- A. Public Hearing and Approval of an Interim Urgency Ordinance to Establish a Temporary Moratorium on Marijuana Dispensaries and Commercial Cannabis Activities Pursuant to the Medical Marijuana Regulation and Safety Act and Government Code Section 65858 (*page 37*)

Presented by City Attorney

**Recommendation:** It is recommended that the City Council approve the proposed Interim Urgency Ordinance to establish a forty-five (45) day temporary moratorium on marijuana dispensaries and all “commercial cannabis activities,” with conditions, with no less than a four-fifths (4/5) City Council vote, to allow the City time to study and analyze applicable and effective regulatory options that ensure the public health, safety, and welfare. Pursuant to California Government Code Section 65858, such temporary moratorium may be extended by the City Council for an additional twenty-two (22) months and fifteen (15) days prior to expiration of the initial forty-five (45) day period.

- B. Public Hearing and First Reading for the Adoption of an Ordinance to Amend Chapter 5.08 (Business License Tax – Particular Businesses) of Title 5 (Business Licenses and Regulations) of the Cudahy Municipal Code to repeal Article XXV (Medical Marijuana Dispensaries and Cultivation Facilities), Sections 5.08.1710 Through 5.08.1770, Inclusive, Subject to Adoption of an Interim Urgency Ordinance to Establish a Moratorium on Marijuana Dispensaries and Commercial Cannabis Activities (*page 51*)

Presented by City Attorney

**Recommendation:** The City Council is requested to:

1. Open and close a public hearing to allow members of the public to speak upon the proposed ordinance; and
2. Approve the first reading of the proposed ordinance for introduction and first reading which would remove the prohibition of medical marijuana dispensaries and cultivation facilities from Title 5 (Business Licenses and Regulations).

(NOTE: According to its terms, the proposed ordinance shall only be effective if the City Council adopts the proposed interim urgency ordinance to establish a temporary moratorium on marijuana dispensaries, cultivation, and all “commercial cannabis activities.” Therefore, in the event the interim urgency ordinance is approved, it is recommended that the City Council approve the proposed ordinance for introduction/first reading by majority vote, which would remove the prohibition of medical marijuana dispensaries and cultivation facilities from Title 5 (Business Licenses and Regulations). Any prohibitions for marijuana-related activities would thereafter be governed by the interim urgency ordinance until

permanent zoning regulations are adopted as part of the comprehensive General Plan update.)

## 12. BUSINESS SESSION

- A. Introduction and First Reading of An Ordinance Amending Title 9 (“Public Peace, Morals And Welfare”), Chapter 9.12 (“Graffiti Prevention And Abatement”) Of The Cudahy Municipal Code By Specifically Amending Sections 9.12.020 (“Definitions”), 9.12.030 (“Nuisance Declared”), 9.12.040 (“Graffiti Prohibitions”), And 9.12.070 (“Standards For Graffiti Removal”); Deleting Sections 9.12.080 (“Graffiti Removal”) And 9.12.140 (“Administrative Fines”), And Adding New Sections 9.12.080 (“Graffiti Removal”) And 9.12.140 (“Administrative Fines”) *(page 61)*

Presented by Community Development Manager

**Recommendation:** The City Council is requested to waive the reading in full and to introduce the attached proposed Ordinance amending the City’s regulations pertaining to the maintenance and abatement of graffiti as set forth in Chapter 9.12 of the Cudahy Municipal Code.

- B. Introduction and First Reading of An Ordinance Adding Chapter 1.40 (“Administrative Fines And Citations”) To Title 1 (“General Provisions”) Of The Cudahy Municipal Code (CMC) *(page 77)*

Presented by Community Development Manager

**Recommendation:** The City Council is requested to waive the reading in full and introduce a proposed ordinance amending Title 1 (“General Provisions”) of the Cudahy Municipal Code (CMC) by adding Chapter 1.40 (“Administrative Fines and Citations”) authorizing the imposition of administrative fines for violations of the Cudahy Municipal Code.

- C. Designation of Voting Delegate and Alternates for the League of California Cities Annual Conference, October 5-7, 2016, in Long Beach, California *(page 101)*

Presented by Deputy City Clerk

**Recommendation:** The City Council is requested to appoint a voting delegate and two alternates to represent the City at the 2016 League of California Cities Annual Conference Business Meeting to take place on Friday, October 7, 2016 in Long Beach.

- D. Approval of Second Amendment to Extend Existing City Manager Employment Agreement along with Certain Other Amendments *(page 107)*

Presented by City Attorney

**Recommendation:** It is recommended that the City Council approve the attached Second Amendment instrument to the City Manager's existing Agreement along with certain other amendments setting the term of the extension, adjusting the annual base compensation the City Manager is to receive and modifying the terms of the City Manager's work schedule.

**13. COUNCIL DISCUSSION**

**A. Mayor Sanchez**

- i. Discussion regarding graffiti abatement

**B. Council Member Garcia**

- i. Discussion item on revocation of Attorney Client Privilege regarding Council Member Guerrero's Code of Conduct Investigation Report.

**C. Council Member Guerrero**

- i. Discussion item on revocation of Attorney Client Privilege regarding Council Member Garcia's Code of Conduct Investigation Report.

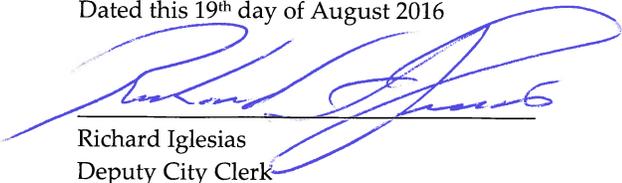
**14. CLOSED SESSION - NONE**

**15. ADJOURNMENT**

Cudahy City Council / Agency will adjourn to a Regular and Joint Meeting as Successor Agency to the Cudahy Development Commission on Monday, September 12, 2016 at 6:30 p.m.

I Richard Iglesias, hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted at Cudahy City Hall, Bedwell Hall, Clara Park, Lugo Park, and the City's Website not less than 72 hours prior to the meeting. A copy of said Agenda is on file in the City Clerk's Office.

Dated this 19<sup>th</sup> day of August 2016

  
Richard Iglesias  
Deputy City Clerk



# Item Number 10A

---

## STAFF REPORT

---

**Date:** August 22, 2016  
**To:** Honorable Mayor/Chair and City Council/Agency Members  
**From:** Jose E. Pulido, City Manager/Executive Director  
By: Jessica Balandran, Senior Administrative Analyst  
**Subject:** **Approve a Host Agency Agreement with SER-Jobs for Progress, Inc. to Become a Worksite for the Senior Community Service Employment Program (SCSEP)**

---

### **RECOMMENDATION**

The City Council is requested to approve a one year (i.e. August 22, 2016 through August 21, 2017) host agency agreement with SER-Jobs for Progress, Inc. (SER) to become a worksite for their Senior Community Services Employment Program (SCSEP) to receive program participants to work in the City.

### **BACKGROUND**

1. Since July 2003, SER National, funded by the U.S. Department of Labor (DOL), has operated the Senior Community Service Employment Program (SCSEP) focusing on the training and employment needs of the mature worker. SER serves over 3,500 participants in 8 states each year: California, Colorado, Florida, Illinois, Kansas, Rhode Island, Texas, and Wisconsin.
2. In April 2016, the City was presented with an opportunity by SER to participate in their Senior Community Service Employment Program (SCSEP).
3. On May 12, 2016, the City Attorney's Office received the host agency agreement for SCSEP provided by SER.
4. In June 2016, the City Attorney determined that a modified host agency agreement would have to be drafted and agreed upon by SER and the City in order to proceed to become a

worksite for the SCSEP.

5. On August 15, 2016, the City Attorney and the representatives from the SER agreed and finalized a modified host agency agreement.

## **ANALYSIS**

For the past several years the City has participated as a worksite for employment programs facilitated through agencies, like Hub Cities Consortium who use grant funds to compensate program participants. The City usually receives workers throughout the year who complete clerical duties within City departments. These programs are designed to assist eligible participants gain work experience that build job readiness skills along with encouragement and opportunities to build self-confidence, while reinforcing education and career goals.

The Senior Community Service Employment Program (SCSEP) is a similar program which aids unemployed low income individuals, 55 years and older, in reentering the workforce by providing subsidized community service training assignments with non-profits and government agencies to gain experience. The program assists participants with meaningful training opportunities to update and/or develop job skills needed to obtain unsubsidized employment.

Participants have diverse work experiences and possess various levels of education. SER SCSEP has been successful in placing individuals in full and part-time jobs which benefit them economically and socially.

With City Council approval, this one year agreement, the City would serve as a worksite for eligible participants and provide participants the opportunity to gain job skills training that may lead to full-time unsubsidized employment and self-sufficiency. SER takes care of all staffing logistics, such as, recruitment, prescreening, and payroll. The City would be responsible for any cost associate with background checks, health screenings or drug testing if required. Each referred participant will work in the City for about six to eight months in various City departments in different capacities such as office clerical work and aid in facility supervision.

## **CONCLUSION**

Staff recommends approval of the one year host agency agreement with the SER to participate in their Senior Community Service Employment Program (SCSEP) as a worksite, which aids unemployed low income individuals, 55 years and older, in reentering the

workforce by providing subsidized community service training assignments with non-profits and government agencies to gain work experience. This is an annual agreement and will therefore need to be approved yearly.

### **FINANCIAL IMPACT**

There is no cost associated with the approval of this agreement. The City would not provide worker's compensation benefits under this subcontract agreement as participants are not employees of the City. The City gains thousands of work hours that could be used to assist the City's various department deficiencies.

### **ATTACHMENTS**

Proposed Host Agency Agreement

**Senior Community Service Employment Program  
Voluntary Services Agreement  
City of Cudahy – Host Agency Agreement**

I. PURPOSE

This is a Senior Community Service Employment Program (SCSEP) Voluntary Services Agreement ("Agreement") between the City of Cudahy ("Cudahy") and the Grantee/Subgrantee organization SER-Jobs For Progress, Inc. ("Organization") (collectively referred to as "the parties"). **Cudahy shall not be considered the employer of the participant for any purpose other than the purpose set out in Section IV.**

II. RESPONSIBILITIES

The participant's responsibilities under this Agreement are:

- to perform the duties listed in Section VI; and
- to observe all workplace rules, including those relating to safety, honesty, integrity, and confidentiality of records during the performance of services under this Agreement.

The Organization's responsibilities under this Agreement are:

- assessment of the participant's skills;
- development of a customize employment plan;
- create a list of training activities and appropriate schedule for each participant;
- to ascertain that the work activities of the participant are appropriate for the program;
- provide all compensation (at the federal/state minimum wage) and benefits to participants for training;
- provide job search guidance through employment referrals and job readiness workshops;
- communicate to host agencies any changes in regards to training and/or SCSEP policies and procedures;
- ensure periodic rotation of participants to other host sites for additional training experience;
- conduct annual/bi-annual informational Host Agency meetings; and
- cover all SER participants under a workers' compensation insurance policy during training hours.

Cudahy's responsibilities under this Agreement are:

- to be the host agency for the participant;
- to provide a suitable work location and/or equipment for the participant to perform the participant's services under this Agreement;

- to provide relevant duties and sufficient guidance to afford the participant the opportunity to successfully perform those duties;
- to maintain time and attendance records on the participant and send them to the organization;
- to keep a copy of this Agreement in Cudahy’s records; and
- Provide a copy of the following upon request: General Liability Insurance, IRS 501(c)(3) letter [non-profits], submit an annual HA Assessment of SCSEP, and a completed In-kind Contribution Documentation form quarterly [if applicable].

**III. DURATION AND TERMINATION**

The duration of this Agreement is from August 22, 2016 until August 21, 2017 (not to exceed 1 year). This Agreement may be terminated by any one of the parties at an earlier date upon written notification to the other parties to this Agreement.

**IV. TERMS AND CONDITIONS**

The parties understand that:

- the participant may attend scheduled SCSEP-sponsored job search and job training workshops and meetings;
- the participant shall receive no remuneration (pay and/or benefits) of any kind whatsoever from Cudahy, shall not work nights, holidays, or overtime hours, nor earn leave from Cudahy while rendering services under this Agreement;
- Cudahy shall not expend Cudahy funds for training the participant;
- Cudahy may not give special consideration to select the participant for any Cudahy job vacancy for which the participant applies;
- this Agreement does not guarantee an appointment to any position within Cudahy;
- the participant shall not be considered a Cudahy employee for any purpose; and
- Cudahy assumes no liability for the reckless, negligent, or intentional misconduct of the participant.

**V. CONTACT INFORMATION**

<u>City of Cudahy</u>		<u>Organization</u>	
<u>By:</u>	Jose Pulido	<u>By:</u>	
<u>Title:</u>	City Manager	<u>Title:</u>	
<u>Address:</u>	5220 Santa Ana Street	<u>Address:</u>	
	Cudahy, CA 90201		
<u>Telephone:</u>	(323) 773-5143 ext. 226	<u>Telephone:</u>	
<u>Fax:</u>	N/A	<u>Fax:</u>	
<u>Attention:</u>	Jessica Balandran	<u>Attention:</u>	

**VI. DUTIES**

The services performed under this Agreement shall be in the public interest as community

services and may not impair existing Cudahy service contracts or displace Cudahy employees. Cudahy shall assign to the participant duties that are appropriate and reasonable in light of the educational level and proficiency of the participant, Cudahy's operational needs and workload requirements, and the geographical location where the duties are performed.

## VII. MODIFICATIONS

Modifications to any section of this Agreement must receive approval by the Cudahy and Organization. Modifications to this Agreement must be in writing and agreed to by the parties.

## VIII. TRAINING

Cudahy shall notify the Organization if the participant requires training for which funding is required, and the Organization may, at its own discretion, provide or pay for such training.

## IX. INTEGRATION

This Agreement constitutes the entire arrangement of the parties with respect to its subject matter. There have been no representations, warranties or promises made outside of this Agreement. This Agreement shall take precedence over any other documents that may be in conflict with it.

## X. SECURITY OF OFFICIAL RECORDS AND INFORMATION

The participant will ensure that all official records and information, including electronic records, in his/her possession are safeguarded and protected from theft and damage. In addition, the participant will ensure that these records and information are protected from unauthorized disclosure in accordance with the requirements all federal, state, and municipal law; and all other statutes, regulations, and Cudahy policies pertaining to the disclosure, retention, and electronic transmission of official records and information.

## XI. BACKGROUND INVESTIGATION

Cudahy shall be responsible for the cost of background checks, health screenings or drug testing required by Cudahy.

## XII. AUTHORITIES

This Agreement shall be interpreted and governed according to the laws of the State of California.

## XIII. WARRANTY OF SIGNATURE

The signatories below warrant and represent that they have competent authority on behalf of their respective entities to enter into the obligations set forth in this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the day and year first above written.

**CITY OF CUDAHY**

**SER-JOBS FOR PROGRESS, INC.**

By: \_\_\_\_\_  
Jose E. Pulido, City Manager

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Blank Page



# Item Number 10B

---

## STAFF REPORT

---

**Date:** August 22, 2016  
**To:** Honorable Mayor/Chair and City Council/Agency Members  
**From:** Jose E. Pulido, City Manager/Executive Director  
By: Rick Olivarez, City Attorney  
**Subject:** **Approval of a Professional Services Agreement with the Milagro Strategy Group to Provide Media Consulting Services**

---

### **RECOMMENDATION**

The City Council is requested to:

1. Approve a six-month Professional Services Agreement (PSA) not to exceed \$30,000 with the Milagro Strategy Group (Milagro Group) to assist the City with ongoing media and public relations and to maintain a consistent media presence to help inform and educate the community about City policies and programs; and
2. Appropriate \$30,000 for Fiscal Year 2016-17 City Budget.

### **BACKGROUND**

1. Since 2012, the City has consulted with the Milagro Group in the areas of public affairs, media services, and community relations support.
2. On May 19, 2016, the City entered in an agreement the Milagro Group to provide the City with public and media relations support, in the area of public and media relations, outreach, and support to the City in order to inform and educate the community concerning new City policies and programs adopted within the last two years.
3. On May 27, 2016, the City Council established a Communications Ad-hoc Committee and

appointed Councilmember Chris Garcia and Councilmember Cristian Markovich to the committee.

4. On July 19, 2016, the City Council Communications Ad-hoc Committee recommended that the City enter into a new agreement with the Milagro Group to provide the City with additional media consulting services.

## **ANALYSIS**

In order to help build and maintain a strong relationship with the local community, the City has an ongoing need for professional consulting services in the areas of public affairs, media, and community relations support. The City has consulted with the Milagro Group on public relations campaigns, strategic communications, and media services.

The City seeks to continue developing its media presence to ensure the community stays informed and educated about City programs, policies, and services. In order to further these goals, the City Council Communications Ad-hoc Committee has recommended engaging the Milagro Group to provide the City with six press releases each month as well as to handle and respond to any other urgent or immediate media matters that may arise. The terms of the proposed PSA with the Milagro Group reflects these recommendations, and thus, furthers the City's overall objectives of keeping the public informed and strengthening the City's media presence within the community. Under the terms of the proposed PSA, the City may terminate the contract at any time, with or without cause.

The City Council Communications Ad-hoc Committee recommended that the City compensate the Milagro Group at a rate of \$3,000 per month to produce and disseminate six monthly press releases and up to an additional \$2,000 per month, as needed, for Milagro Group to respond to urgent media matters and provide talking points for the Mayor and Councilmembers.

## **CONCLUSION**

The proposed PSA will allow the City to continue consulting with the Milagro Group to maintain and continue to build its public and media relations and to facilitate and coordinate the City's response to unexpected or urgent media matters.

### **FINANCIAL IMPACT**

The PSA proposes that the City will pay the Milagro Group \$3,000 per month over the term of the contract for the production of six press releases each month. In addition, the PSA proposes to pay the Milagro Group up to \$2,000 more per month to handle and respond to any urgent media matters and to provide talking points for the mayor and councilmembers as needed.

The full six-month term of the proposed PSA will cost the City a minimum of \$18,000, with a maximum potential cost of \$30,000. Hence, an appropriation of \$30,000 is necessary for the current fiscal year.

### **ATTACHMENTS**

- A. Professional Services Agreement between the City and the Milagro Group
- B. Exhibit "A" – the Scope of Work



PROFESSIONAL SERVICES AGREEMENT  
(Milagro Strategy Group: Media consulting services)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 (hereinafter, the “Effective Date”), by and between the CITY OF CUDAHY, a municipal corporation (“CITY”) and Milagro Strategy Group (hereinafter, “CONSULTANT”). For the purposes of this Agreement CITY and CONSULTANT may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to CITY or CONSULTANT interchangeably.

WHEREAS, CITY wishes to engage CONSULTANT to provide specialized services related to media consulting; and

WHEREAS, CITY’s in-house personnel are unable to perform the specialized services and tasks contemplated under this Agreement; and

WHEREAS, CONSULTANT possesses the specialized training, skill, expertise and experience required to perform the services contemplated under this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, CITY and CONSULTANT agree as follows:

II.  
ENGAGEMENT TERMS

1.1 SCOPE OF SERVICES: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONSULTANT agrees to perform the services and tasks set forth in **Exhibit “A”** (hereinafter referred to as the “Scope of Services”). CONSULTANT further agrees to furnish to CITY all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Services. For the purposes of this Agreement, the aforementioned services and tasks set forth in the Scope of Services shall hereinafter be referred to generally by the capitalized term “Work.”

- 1.2 TERM: This Agreement shall have a term of six (6) months. Nothing in this Section shall operate to prohibit or otherwise restrict the CITY's ability to terminate this Agreement at any time for convenience or for cause.
- 1.3 COMPENSATION:
- A. CONSULTANT's performance of the various services and tasks set forth in the Scope of Services, including production of six (6) press releases per month, shall be compensated at the rate of Three Thousand (\$3,000) per month. The CITY also agrees to pay CONSULTANT an additional amount of up to Two Thousand Dollars (\$2,000) per month to handle and respond to urgent media matters.
  - B. CONSULTANT's total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum of THIRTY THOUSAND DOLLARS (\$30,000) (hereinafter, the "Not-to-Exceed Sum"), unless such added expenditure is first approved by the CITY. In the event CONSULTANT's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, CITY may suspend CONSULTANT's performance pending CITY approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other CITY-approved amendment to the compensation terms of this Agreement.
- 1.4 PAYMENT OF COMPENSATION: Following the conclusion of each calendar month, CONSULTANT shall submit to CITY an itemized invoice indicating the services and tasks performed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONSULTANT's monthly compensation is a function of hours worked by CONSULTANT's personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each task and service performed and a grand total for all services performed. Within thirty (30) calendar days of receipt of each invoice, CITY shall notify CONSULTANT in writing of any disputed amounts included in the invoice. Within thirty (30) calendar days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.
- 1.5 ACCOUNTING RECORDS: CONSULTANT shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY shall have the right to access and examine such records, without charge, during normal business hours. CITY shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities. All other "Documents and Data" as defined in paragraph 6.1 shall be and remain property of the CITY.

- 1.6 ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Services, CONSULTANT shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT's cessation or abandonment.

## II.

### PERFORMANCE OF AGREEMENT

- 2.1 CITY'S REPRESENTATIVES: The CITY hereby designates the City Manager and the Senior Administrative Analyst (hereinafter, the "CITY Representatives") to act as its representatives for the performance of this Agreement. The City Manager shall be the chief CITY Representative. The CITY Representatives or their designee, which designee the CITY may assign by notifying CONSULTANT in writing, shall act on behalf of the CITY for all purposes under this Agreement. CONSULTANT shall not accept directions or orders from any person other than the CITY Representatives or their designee.
- 2.2 CONSULTANT'S REPRESENTATIVES: CONSULTANT hereby designates **Robert L. Alaniz** or designee, which designee CONSULTANT may assign by notifying CITY in writing, to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONSULTANT Representative shall constitute notice to CONSULTANT.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONSULTANT agrees to work closely with CITY staff in the performance of the Work and this Agreement and shall be available to CITY staff and the CITY Representatives at all reasonable times. All work prepared by CONSULTANT shall be subject to inspection and written approval by CITY Representatives or their designees.

2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONSULTANT represents, acknowledges and agrees to the following:

- A. CONSULTANT shall perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession;
- B. CONSULTANT shall perform all Work in a manner reasonably satisfactory to the CITY;
- C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code section 1090 and the Political Reform Act (Government Code section 81000 et seq.);
- D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- E. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- F. All of CONSULTANT's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONSULTANT shall perform, at CONSULTANT's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONSULTANT's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONSULTANT's employees, agents, contractors, subcontractors and subconsultants. Such effort by CONSULTANT to correct any errors or omissions shall be commenced within three (3) business days upon their discovery by either Party and shall be completed within no more than fifteen (15) calendar days from the date of discovery or such other extended period of time authorized by the CITY Representatives in writing and in their sole and absolute discretion except for any error or omission which may be a hazard to health or life safety in which case corrective action shall be taken immediately and shall be diligently completed. The Parties acknowledge and agree that CITY's acceptance of any work performed by CONSULTANT or on CONSULTANT's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of CONSULTANT, including but not limited to the representation that CONSULTANT possesses the skills, training,

knowledge and experience necessary to perform the Work skillfully, competently and to the highest standards of CONSULTANT's profession.

- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONSULTANT are material to CITY's willingness to enter into this Agreement. Accordingly, CITY has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent contractor basis and not as an employee. CONSULTANT reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not employees of CITY and shall at all times be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants are determined by the CITY Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly

removed by CONSULTANT and shall not be reassigned to perform any of the Work.

- 2.8 COMPLIANCE WITH LAWS: CONSULTANT shall keep itself informed of and in compliance with all applicable federal, state or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments, or subdivisions of CITY. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONSULTANT and all persons retained or employed by CONSULTANT shall have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by contract or otherwise, unless such authority is expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by CITY in writing.

### III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONSULTANT will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONSULTANT shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.

- B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
- C. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.
- D. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers who, according to the latest edition of the Best's Insurance Guide, have an A.M. Best's rating of no less than A:VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition of the Standard & Poor's rating guide.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT shall be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT or CONSULTANT's officers,

employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY.

- 3.6 **VERIFICATION OF COVERAGE:** CONSULTANT acknowledges, understands and agrees that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding CITY's financial well-being and, indirectly, the collective well-being of the residents of CITY. Accordingly, CONSULTANT warrants, represents and agrees that it shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any work or any of the Work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

#### IV. INDEMNIFICATION

- 4.1 The Parties agree that CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "CITY Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the CITY Indemnitees with the fullest protection possible under the law. CONSULTANT acknowledges that CITY would not enter into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect CITY as set forth herein.
- 4.2 To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the CITY Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's performance of Work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 CITY shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification

arising under this Article and related to CONSULTANT's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

- 4.4 The obligations of CONSULTANT under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.
- 4.6 CITY does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the CITY may have at law or in equity.

## V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: CITY may terminate this Agreement at any time for convenience and without cause by giving CONSULTANT a minimum of five (5) calendar days' prior written notice of CITY's intent to terminate this

Agreement. Upon such termination for convenience, CONSULTANT shall be compensated only for those services and tasks which have been performed by CONSULTANT up to the effective date of the termination. CONSULTANT may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, CITY may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in Section 6.1 below, and other information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT shall be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

## 5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; and (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONSULTANT shall cure the following Events of Defaults within the following time periods:
  - i. Within five (5) business days of CITY's issuance of a Default Notice for any failure of CONSULTANT to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONSULTANT is obligated to provide to CITY or CITY's employees or agents under this Agreement. Prior to the expiration of the 5-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 5-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for

the cure of an Event of Default under this Section 5.2.B.i. that exceeds seven (7) calendar days from the end of the initial 5-day cure period; or

- ii. Within fourteen (14) calendar days of CITY's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2.B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

In addition to any other failure on the part of CONSULTANT to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONSULTANT shall include, but shall not be limited to the following: (i) CONSULTANT's refusal or failure to perform any of the services or tasks called for under the Scope of Services; (ii) CONSULTANT's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONSULTANT's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONSULTANT, whether voluntary or involuntary; (v) CONSULTANT's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vi) CITY's discovery that a statement, representation or warranty by CONSULTANT relating to this Agreement is false, misleading or erroneous in any material respect.

- C. CITY shall cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.4, above, shall be cured by CITY within five (5) calendar days from the date of CONSULTANT's Default Notice to CITY.

- D. CITY, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of CITY's intent to suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONSULTANT shall be compensated only for those services and tasks which have been rendered by CONSULTANT to the reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY shall operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
- i. Upon written notice to CONSULTANT, the CITY may immediately terminate this Agreement in whole or in part;
  - ii. Upon written notice to CONSULTANT, the CITY may extend the time of performance;
  - iii. The CITY may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONSULTANT's breach of the Agreement or to terminate the Agreement; or
  - iv. The CITY may exercise any other available and lawful right or remedy.

CONSULTANT shall be liable for all legal fees plus other costs and expenses that CITY incurs upon a breach of this Agreement by CONSULTANT or in the CITY's exercise of its remedies under this Agreement.

- G. In the event CITY is in breach of this Agreement, CONSULTANT's sole remedy shall be the suspension or termination of this Agreement and/or the

recovery of any unpaid sums lawfully owed to CONSULTANT under this Agreement for completed services and tasks.

- 5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

## VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of CITY without restriction or limitation upon their use or dissemination by CITY. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONSULTANT in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to CITY, a perpetual license for CITY to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONSULTANT shall require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONSULTANT in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement.

CONSULTANT shall not use CITY's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.

- 6.3 **FALSE CLAIMS ACT:** CONSULTANT warrants and represents that neither CONSULTANT nor any person who is an officer of, in a managing position with, or has an ownership interest in CONSULTANT has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., section 3789 et seq. and the California False Claims Act, Government Code section 12650 et seq.
- 6.4 **NOTICES:** All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

**CONSULTANT:**

Milagro Strategy Group  
Attn: Robert L. Alaniz  
556 S. Fair Oaks Ave.  
Suite 101-412  
Pasadena, CA 91105  
Phone: (626) 628-0732  
Fax: (626) 564-0699  
ralaniz@milagros.com

**CITY:**

City of Cudahy  
Attn: City Manager  
5220 Santa Ana Street  
Cudahy, CA 90201  
Phone: (323) 773-5143  
Fax: (323) 771-2072

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepaid and addressed to the Party at its applicable address.

- 6.5 **COOPERATION; FURTHER ACTS:** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.6 **SUBCONTRACTING:** CONSULTANT shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of CITY. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.

- 6.7 CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS: CITY reserves the right to employ other contractors in connection with the various projects worked upon by CONSULTANT.
- 6.8 PROHIBITED INTERESTS: CONSULTANT warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONSULTANT, to solicit or secure this Agreement. Further, CONSULTANT warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.10 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.
- 6.11 ATTORNEYS' FEES: If either Party commences an action against the other Party, legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.
- 6.12 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.13 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties under this Agreement. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.14 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.

- 6.15 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.16 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.17 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 6.18 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.19 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between CITY and CONSULTANT prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party, which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.16, above.
- 6.20 COUNTERPARTS: This Agreement shall be executed in three (3) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart shall be delivered to CONSULTANT and the remaining two original counterparts shall be retained by CITY.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**CITY OF CUDAHY:**

**MILAGRO STRATEGY GROUP:**

By: \_\_\_\_\_  
Jose Pulido,  
City Manager

By: \_\_\_\_\_  
Robert L. Alaniz  
Senior Partner

**ATTEST:**

By: \_\_\_\_\_  
Deputy City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

## **EXHIBIT “A” Scope of Services**

### **Media Relations Support Services for the City of Cudahy**

Professional consulting services in the area of public and media relations, outreach, and support to the City in order to inform and educate the community concerning City policies, services, and programs.

Deliverables include:

1. Provide ongoing media relations support, including the drafting and production of six (6) press releases or media advisories per month.
2. Disseminate the six (6) press releases or media advisories to the media.
3. Handle and respond to all urgent media matters and provide talking points for the mayor and councilmembers as necessary.

Blank Page



# Item Number 11A

---

## STAFF REPORT

---

**Date:** August 22, 2016

**To:** Honorable Mayor/Chair and City Council/Agency Members

**From:** Jose E. Pulido, City Manager  
By: Rick R. Olivarez, City Attorney  
Joaquin Vazquez, Deputy City Attorney

**Subject:** **Public Hearing and Approval of an Interim Urgency Ordinance to Establish a Temporary Moratorium on Marijuana Dispensaries and Commercial Cannabis Activities Pursuant to the Medical Marijuana Regulation and Safety Act and Government Code Section 65858**

---

### **RECOMMENDATION**

It is recommended that the City Council approve the proposed Interim Urgency Ordinance to establish a forty-five (45) day temporary moratorium on marijuana dispensaries and all "commercial cannabis activities," with conditions, with no less than a four-fifths (4/5) City Council vote, to allow the City time to study and analyze applicable and effective regulatory options that ensure the public health, safety, and welfare. Pursuant to California Government Code Section 65858, such temporary moratorium may be extended by the City Council for an additional twenty-two (22) months and fifteen (15) days prior to expiration of the initial forty-five (45) day period.

### **BACKGROUND**

1. The 1970 Federal Controlled Substances Act (21 U.S.C. Section 841 et seq.) makes it unlawful to manufacture, distribute, dispense or possess marijuana.
2. In 1996, the California Legislature approved Proposition 215, also known as the Compassionate Use Act (the "CUA"), which was codified under Health and Safety Code Section 11262.5 et sec. and was intended to enable persons who are in need of medical marijuana for specified medical purposes, such as cancer, anorexia, AIDS, chronic pain,

glaucoma and arthritis, to obtain and use marijuana under limited circumstances and where recommended by a physician. The CUA provides that "nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes."

3. In 2004, the California Legislature enacted the Medical Marijuana Program Act (Health & Saf. Code, § 11362.7 et seq.)(the "MMP"), which clarified the scope of the CUA, created a state-approved voluntary medical marijuana identification card program, and authorized cities to adopt and enforce rules and regulations consistent with the MMP.
4. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances. California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes.
5. In 2012, the City Council adopted Ordinance No. 621 to add Article XXV (Medical Marijuana Dispensaries and Cultivation Facilities) to Chapter 5.08 (Business License Tax – Particular Businesses) of Title 5 (Business Licenses and Regulations) of the Cudahy Municipal Code. Such Article XXV prohibits the provision of a City business license or permit for the operation of a "marijuana dispensary or cultivation facility" in the City but does not address the "commercial cannabis activities" that MMRSA considers, such as manufacturing, distribution, and delivery.
6. In 2013, Deputy Attorney General James Cole issued a memorandum to all federal prosecutors to provide guidance on the enforcement of the Federal Controlled Substances Act as it related to marijuana, indicating that enforcement would not be a priority in states and local jurisdictions that have strict and robust laws regulating marijuana-related conduct.
7. In 2013, the California Supreme Court in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729, found the CUA and MMP do not preempt a city's local regulatory authority and confirmed a city's ability to prohibit medical marijuana dispensaries within its boundaries.
8. In 2013, the California Third District Appellate Court held that state law does "not preempt a city's police power to prohibit the cultivation of all marijuana within the city."

9. In 2015, the United States Congress began to defund enforcement of the Federal Controlled Substances Act in states where such enforcement activities would prevent states from implementing their own state laws that authorize the use, distribution, possession, and/or cultivation of medical marijuana.
10. In September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 – which together comprise the Medical Marijuana Regulation and Safety Act ("MMRSA"). MMRSA creates a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis. MMRSA included three separate provisions that protect local police power authority over medical marijuana establishments:
  - Business and Professions Code Section 19315(a): "Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements";
  - Business and Professions Code Section 19316(b): "Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any such standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide"; and
  - Business and Professions Code Section 19316(c): "Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution."

## **ANALYSIS**

Although in 2012, the City adopted a business license provision prohibiting the operation of a "marijuana dispensary or cultivation facility" it does not address the "commercial cannabis activities" that MMRSA considers, such as manufacturing, distribution, and delivery. In light of the numerous and dynamic regulatory options that MMRSA presents local jurisdictions, the City seeks to study and analyze such regulatory options to ensure the public health, safety, and welfare in adopting long-term regulations regarding medical marijuana. City staff also seeks to assess the impacts of voter approval of the proposed Proposition 64 (Adult Use of

Marijuana Act), which will appear on the November 8, 2016 statewide election ballot.

The temporary moratorium will allow the City to study the impact of marijuana-related activities through the broad lens of a General Plan update. Though such comprehensive update, the City can thoroughly assess land use impacts of such activities and formulate effective Zoning Code regulations to address such activities.

The proposed interim urgency ordinance will prohibit marijuana dispensaries and so-called commercial cannabis activities in all City zones. Commercial cannabis activities include the use or occupancy of any structure or property where the cultivation, possession, manufacturing, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of medical cannabis or a medical cannabis product occurs. The proposed interim urgency ordinance would allow the City Council to consider and allow marijuana dispensaries or commercial cannabis activities on a case-by-case basis, in accordance with the Development Agreement Law (Gov. Code, § 65864 et seq.) and Cudahy Municipal Code Chapter 20.28 (Development Agreements).

The initial term of the proposed moratorium, if approved, would last for a duration of forty-five (45) days unless extended, after requisite noticing, by the City Council for an additional twenty-two (22) months and fifteen (15) days prior to expiration of the initial forty-five (45) day period.

Under both statutory and case law, cities have a spectrum of regulatory options concerning medical marijuana, including the ban of some or all medical marijuana activities and the allowance and licensing of some or all medical marijuana activities. Pursuant to California Constitution Article XI, Section 7, the City has the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of the City's residents through its police power. California Government Code Section 65858 authorizes the City Council to adopt a temporary interim urgency ordinance for the immediate preservation of the public health, safety, or welfare, and to prohibit a land use that is in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, Planning Commission, or Community Development Department is considering or studying or intends to study within a reasonable time. With applicable findings and noticing, moratoria established pursuant to Government Code Section 65858 may last for a total duration not to exceed two (2) years.

## **CONCLUSION**

Approval of the interim urgency ordinance would enable approval of the complementary

interim urgency ordinance, which would remove the prohibition of medical marijuana dispensaries and cultivation facilities from Title 5 (Business Licenses and Regulations). City staff recommends approval of the proposed interim urgency ordinance by at least four-fifths (4/5) affirmative vote of the City Council.

### **FINANCIAL IMPACT**

The proposed Interim Urgency Ordinance would have no significant fiscal impact.

### **ATTACHMENTS**

Proposed Interim Urgency Ordinance

**INTERIM URGENCY ORDINANCE NO. XXX**

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUDAHY ESTABLISHING A TEMPORARY MORATORIUM ON MARIJUANA DISPENSARIES AND COMMERCIAL CANNABIS ACTIVITIES PURSUANT TO THE MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND GOVERNMENT CODE SECTION 65858**

**WHEREAS**, the Federal Controlled Substances Act (21 U.S.C. Section 841 et seq.) makes it unlawful to manufacture, distribute, dispense or possess marijuana; and

**WHEREAS**, in 2013, Deputy Attorney General James Cole issued a memorandum to all federal prosecutors to provide guidance on the enforcement of the Federal Controlled Substances Act, as it related to marijuana, indicating that enforcement would not be a priority in states and local jurisdictions that have strict and robust laws regulating marijuana-related conduct; and

**WHEREAS**, in 2015, the United States Congress began to defund enforcement of the Federal Controlled Substances Act in states where such enforcement activities would prevent states from implementing their own state laws that authorize the use, distribution, possession, and/or cultivation of medical marijuana; and

**WHEREAS**, in 1996, the voters of State of California approved Proposition 215, also known as the Compassionate Use Act (the "CUA"), which was codified under Health and Safety Code Section 11262.5 et sec. and was intended to enable persons who are in need of medical marijuana for specified medical purposes, such as cancer, anorexia, AIDS, chronic pain, glaucoma and arthritis, to obtain and use marijuana under limited circumstances and where recommended by a physician; and

**WHEREAS**, the CUA provides that "nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes."; and

**WHEREAS**, in 2004, the California Legislature enacted the Medical Marijuana Program Act (Health & Saf. Code, § 11362.7 et seq.)(the "MMP"), which clarified the scope of the CUA, created a state-approved voluntary medical marijuana identification card program, and authorized cities to adopt and enforce rules and regulations consistent with the MMP; and

**WHEREAS**, Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

**WHEREAS**, California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes; and

**WHEREAS**, in 2013, the California Supreme Court in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729, found the CUA and MMP do not preempt a city's local regulatory authority and confirmed a city's ability to prohibit medical marijuana dispensaries within its boundaries; and

**WHEREAS**, in 2013, the California Third District Appellate Court held that state law does "not preempt a city's police power to prohibit the cultivation of all marijuana within the city."; and

**WHEREAS**, in September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 – which together comprise the Medical Marijuana Regulation and Safety Act ("MMRSA"); and

**WHEREAS**, MMRSA creates a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis; and

**WHEREAS**, MMRSA included three separate provisions that protect local police power authority over medical marijuana establishments:

- Business and Professions Code Section 19315(a): "Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements";
- Business and Professions Code Section 19316(b): "Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any such standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide";
- Business and Professions Code Section 19316(c): "Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution."; and

**WHEREAS**, under both statutory and case law, cities have a spectrum of regulatory options concerning medical marijuana, including the ban of some or all medical marijuana activities and the allowance and licensing of some or all medical marijuana activities; and

**WHEREAS**, pursuant to California Constitution Article XI, Section 7, the City of Cudahy (the “City”) has the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of the City’s residents through its police power; and

**WHEREAS**, in light of the numerous and dynamic regulatory options that MMRSA presents local jurisdictions, the City seeks to study and analyze such regulatory options to ensure the public health, safety, and welfare in adopting long-term regulations regarding medical marijuana; and

**WHEREAS**, in 2012, the City Council adopted Ordinance No. 621 to add Article XXV (Medical Marijuana Dispensaries and Cultivation Facilities) to Chapter 5.08 (Business License Tax – Particular Businesses) off Title 5 (Business Licenses And Regulations) of the Cudahy Municipal Code; and

**WHEREAS**, such Article XXV prohibits the provision of a City business license or permit for the operation of a “marijuana dispensary or cultivation facility” in the City but does not address the “commercial cannabis activities” that MMRSA considers, such as manufacturing, distribution, and delivery; and

**WHEREAS**, Title 20 (Zoning) of the Cudahy Municipal Code (the “Zoning Code”) is silent as to the allowance or preclusion of marijuana dispensaries, cultivation, or other commercial cannabis activities contemplated under MMRSA; and

**WHEREAS**, without specific language addressing marijuana dispensaries, cultivation, or other commercial cannabis activities contemplated under MMRSA, the potential emerges for bad actors to unilaterally establish businesses relating to such activities for which the City would have to expend significant resources to terminate; and

**WHEREAS**, the City seeks to transfer its regulatory provisions concerning marijuana from the Business Licenses And Regulations portion of the Municipal Code to the Zoning Code to ensure clarity in land use regulations for residents, businesses, and medical marijuana qualified patients and primary caregivers; and

**WHEREAS**, such transfer of such regulatory provisions shall be commenced partly through the proposed complementary Ordinance No. XXX presented at the August 22, 2016 City Council meeting to repeal Article XXV of Chapter 5.08 of Title 5 of the Cudahy Municipal Code; and

**WHEREAS**, California Government Code Section 65858 authorizes the City Council to adopt an interim urgency ordinance for the immediate preservation of the public health, safety, or welfare, and to prohibit a land use that is in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, Planning Commission, or Community Development Department is considering or studying or intends to study within a reasonable time; and

**WHEREAS**, the City is authorized to enter into development agreements in accordance Development Agreement Law (Gov. Code, § 65864 et seq.) and Cudahy Municipal Code Chapter 20.28 (Development Agreements); and

**WHEREAS**, if approved by at least four-fifths (4/5) vote of the City Council, this Interim Urgency Ordinance shall be in effect for forty-five (45) days from the date of adoption unless extended by the City Council as provided for in the Government Code 65858 for an additional twenty-two (22) months and fifteen (15) days; and

**WHEREAS**, the City Council public hearing for consideration of this item was noticed in accordance with the requirements set forth in Government Code Sections 65090.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUDAHY, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1. Recitals.** The recitals above are true and correct and incorporated herein by reference.

**SECTION 2. Definitions.** For purposes of this Interim Urgency Ordinance, the following terms shall be defined as set forth herein in this Section 2:

1. "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Interim Urgency Ordinance, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
2. "Caregiver" or "primary caregiver" means an individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any individual described in health and Safety Section 11362.7(d)(1)-(3).
3. "Commercial cannabis activity" includes the use or occupancy of any structure or property where the cultivation, possession, manufacturing,

processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of medical cannabis or a medical cannabis product occurs, except as set forth in Health and Safety Code Section 19319, relating to qualifying patients and primary caregivers.

4. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of medical cannabis.
5. "Dispensary" means a premises where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to Health and Safety Code Section 19340, medical cannabis and medical cannabis products as part of a retail sale.
6. "Distribution" means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities carrying out commercial cannabis activities and/or operation of a dispensary.
7. "Manufacturing" shall mean and refer to the activities of "manufacturers" at "manufacturing sites," as such terms are defined in California Business and Professions Code Section 19300.5(y) and 19300.5(af), respectively.
8. "Medical cannabis," "medical cannabis product," and "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this Interim Urgency Ordinance, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
9. "Qualified patient" s means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this Interim Urgency Ordinance, a qualified patient shall include a person with an identification card, as that term is defined by Health and Safety Code Section 11362.7.

### **SECTION 3. Moratorium.**

- A. For the duration of the moratorium established by this Interim Urgency Ordinance or any extension thereof:
  1. Dispensaries, as defined in Section 2, above, are unlawful uses or occupancies in all zones within the City;

2. No such dispensaries shall be established or continued, if previously established, in any zone within the City; and
  3. Commercial cannabis activities, as defined in Section 2, above, are unlawful uses or occupancies in all zones within the City;
  4. No such commercial cannabis activities shall be established or continued, if previously established, in any zone within the City; and
  5. No use permit, variance, building permit, certification of occupancy, or any other entitlement or permit for the use, occupancy, or improvement of property, whether administrative or discretionary, shall be approved or issued by the City for the establishment or operation of commercial cannabis activities or the ratification of a preexisting commercial cannabis activity, and no person shall otherwise establish such a business or operation in any zone within the City.
- B. The prohibitions set forth in Section 3(A), above, shall apply to qualified patients and primary caregivers, as defined in Section 2, above.
- C. In the event that the recreational use of marijuana and/or cannabis is legalized under state and/or federal law, the limitations on dispensaries and commercial cannabis activities imposed under this Interim Urgency Ordinance shall apply equally and with the same force and effect regardless of whether such dispensaries and/or commercial cannabis activities pertain to recreational marijuana only, medical marijuana only, or any combination thereof.

**SECTION 4. Findings.** This Interim Urgency Ordinance is needed for the immediate preservation of the public health, safety, and welfare based upon the following:

- (i) The information set forth in the recitals, above, which is true and correct.
- (ii) Many California cities – without strict and robust regulations – are burdened with dispensaries and commercial cannabis activities which have not been appropriately evaluated for the purpose of compliance with building and safety regulations and local land use regulations and have experienced a spike in crime, including burglaries, robberies, and the sale of illegal drugs in the vicinity of such activities.
- (iii) Robust and strict regulations concerning dispensaries and commercial cannabis activities implemented by other California cities have successfully facilitated qualified patients' access to medical marijuana.
- (iv) In light of the numerous and dynamic regulatory options now offered under the CUA, MMP, as refined under AB 2650 and AB 1300, and MMRSA, the moratorium as implemented by this Interim Urgency Ordinance will provide

the City time to study appropriate regulatory strategies regarding dispensaries and commercial cannabis activities and the potential impacts such related land uses may have on the public health, safety, and welfare.

**SECTION 5. Exemptions.**

- A. The City Council has the authority, but no obligation, to grant exemptions, on a case-by-case basis, from the provisions of this Interim Urgency Ordinance, for the use or occupancy of property for commercial cannabis activity, where it finds that an applicant for such an exemption has agreed that the exempt use shall be subject to site specification regulation under Government Code Section 65864 et seq. and the commercial cannabis activity will materially benefit qualified patients and primary caregivers under the CUA, MMP, as refined under AB 2650 and AB 1300, and MMRSA.
- B. To ensure flexibility in advancing its police power and land use goals, exemptions under this Section 5 may only be authorized by the City pursuant to the terms and provisions of a development agreement, by and between the applicant for such exemption and the City, in accordance with the Development Agreement Law (Gov. Code, § 65864 et seq.) and Cudahy Municipal Code Chapter 20.28 (Development Agreements). The City may approve or deny such a development agreement in its sole and absolute discretion. Any development agreement entered into pursuant to this Section 5 shall provide for the termination of any and all uses that conflict with or are precluded by subsequent amendments to the Zoning Code, any other portion of the Cudahy Municipal Code.
- C. A written request for an exemption shall be filed with the Community Development Department and shall state the grounds for the exemption and provide supporting documentation. The City Council is not required to consider the request any sooner than thirty (30) days after such request has been submitted and been deemed to be complete by the Community Development Department.

**SECTION 6. No Regulatory Taking of any Interest in Property.** Nothing in this Interim Urgency Ordinance shall be interpreted to affect an unconstitutional taking of the property of any person. If the City Council determines based upon specific evidence in the record, that the application of one or more provisions of this Interim Urgency Ordinance to a proposed Development Project would affect an unconstitutional taking of private property, the City Council shall disregard such provisions to the extent necessary to avoid such unconstitutional taking.

**SECTION 7. CEQA.** This Interim Urgency Ordinance is not subject to CEQA under the general rule set forth in Section 15061(b)(3) of the CEQA Guidelines that CEQA only applies to projects which have the potential for causing a significant effect on the environment.

**SECTION 8. Inconsistent Provisions.** Any provision of the Cudahy Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Interim Urgency Ordinance.

**SECTION 9. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Interim Urgency Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Interim Urgency Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

**SECTION 10. Construction.** The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent. To the extent the provisions of the Cudahy Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

**SECTION 11. Effective Date.** This Interim Urgency Ordinance shall become effective immediately upon adoption if adopted by at least four-fifths (4/5) vote of the City Council and shall be in effect for forty-five (45) days from the date of adoption unless extended by the City Council as provided for in the Government Code 65858 for an additional twenty-two (22) months and fifteen (15) days.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Cudahy at the regular meeting of this 22nd day of August, 2016.

---

Baru Sanchez, Mayor

ATTEST:

---

Richard Iglesias, Deputy City Clerk

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) SS:  
CITY OF CUDAHY )

I, Richard Iglesias, Deputy City Clerk of the City of Cudahy, hereby certify that the foregoing Interim Urgency Ordinance No.XXX was passed and adopted by the City Council of the City of Cudahy, signed by the Mayor and attested by the City Clerk at a regular meeting of said Council held on the 22nd day of August, 2016 and that said Interim Urgency Ordinance was adopted by the following vote, to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Richard Iglesias, Deputy City Clerk



# Item Number 11B

---

## STAFF REPORT

---

**Date:** August 22, 2016

**To:** Honorable Mayor/Chair and City Council/Agency Members

**From:** Jose E. Pulido, City Manager  
By: Rick R. Olivarez, City Attorney  
Joaquin Vazquez, Deputy City Attorney

**Subject:** **Public Hearing and First Reading for the Adoption of an Ordinance to Amend Chapter 5.08 (Business License Tax – Particular Businesses) of Title 5 (Business Licenses and Regulations) of the Cudahy Municipal Code to repeal Article XXV (Medical Marijuana Dispensaries and Cultivation Facilities), Sections 5.08.1710 Through 5.08.1770, Inclusive, Subject to Adoption of an Interim Urgency Ordinance to Establish a Moratorium on Marijuana Dispensaries and Commercial Cannabis Activities**

---

### RECOMMENDATION

The City Council is requested to:

1. Open and close a public hearing to allow members of the public to speak upon the proposed ordinance; and
2. Approve the first reading of the proposed ordinance for introduction and first reading which would remove the prohibition of medical marijuana dispensaries and cultivation facilities from Title 5 (Business Licenses and Regulations).

(NOTE: According to its terms, the proposed ordinance shall only be effective if the City Council adopts the proposed interim urgency ordinance to establish a temporary moratorium on marijuana dispensaries, cultivation, and all “commercial cannabis activities.” Therefore, in the event the interim urgency ordinance is approved, it is recommended that the City Council approve the proposed ordinance for introduction/first reading by majority vote, which would remove the prohibition of medical marijuana dispensaries and cultivation facilities from Title 5 (Business Licenses and Regulations). Any prohibitions for marijuana-related activities would thereafter be

governed by the interim urgency ordinance until permanent zoning regulations are adopted as part of the comprehensive General Plan update.)

## **BACKGROUND**

1. The 1970 Federal Controlled Substances Act (21 U.S.C. Section 841 et seq.) makes it unlawful to manufacture, distribute, dispense or possess marijuana.
2. In 1996, the California Legislature approved Proposition 215, also known as the Compassionate Use Act (the “CUA”), which was codified under Health and Safety Code Section 11262.5 et sec. and was intended to enable persons who are in need of medical marijuana for specified medical purposes, such as cancer, anorexia, AIDS, chronic pain, glaucoma and arthritis, to obtain and use marijuana under limited circumstances and where recommended by a physician. The CUA provides that “nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”
3. In 2004, the California Legislature enacted the Medical Marijuana Program Act (Health & Saf. Code, § 11362.7 et seq.)(the “MMP”), which clarified the scope of the CUA, created a state-approved voluntary medical marijuana identification card program, and authorized cities to adopt and enforce rules and regulations consistent with the MMP.
4. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances. California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes.
5. In 2012, the City Council adopted Ordinance No. 621 to add Article XXV (Medical Marijuana Dispensaries and Cultivation Facilities) to Chapter 5.08 (Business License Tax – Particular Businesses) of Title 5 (Business Licenses and Regulations) of the Cudahy Municipal Code. Such Article XXV prohibits the provision of a City business license or permit for the operation of a “marijuana dispensary or cultivation facility” in the City but does not address the “commercial cannabis activities” that MMRSA considers, such as manufacturing, distribution, and delivery.
6. In 2013, Deputy Attorney General James Cole issued a memorandum to all federal prosecutors to provide guidance on the enforcement of the Federal Controlled Substances Act as it related to marijuana, indicating that enforcement would not be a priority in

states and local jurisdictions that have strict and robust laws regulating marijuana-related conduct.

7. In 2013, the California Supreme Court in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729, found the CUA and MMP do not preempt a city's local regulatory authority and confirmed a city's ability to prohibit medical marijuana dispensaries within its boundaries.
8. In 2013, the California Third District Appellate Court held that state law does "not preempt a city's police power to prohibit the cultivation of all marijuana within the city."
9. In 2015, the United States Congress began to defund enforcement of the Federal Controlled Substances Act in states where such enforcement activities would prevent states from implementing their own state laws that authorize the use, distribution, possession, and/or cultivation of medical marijuana.
10. In September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 – which together comprise the Medical Marijuana Regulation and Safety Act ("MMRSA"). MMRSA creates a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis. MMRSA included three separate provisions that protect local police power authority over medical marijuana establishments:
  - Business and Professions Code Section 19315(a): "Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements";
  - Business and Professions Code Section 19316(b): "Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any such standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide"; and
  - Business and Professions Code Section 19316(c): "Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution."

## **ANALYSIS**

In 2012, the City Council adopted Ordinance No. 621 to add Article XXV (Medical Marijuana Dispensaries and Cultivation Facilities) to Chapter 5.08 (Business License Tax – Particular Businesses) of Title 5 (Business Licenses and Regulations) of the Cudahy Municipal Code. Such Article XXV prohibits the provision of a City business license or permit for the operation of a “marijuana dispensary or cultivation facility” in the City but does not address the “commercial cannabis activities” that MMRSA considers, such as manufacturing, distribution, and delivery.

Title 20 (Zoning) of the Cudahy Municipal Code (the “Zoning Code”) is silent as to the allowance or preclusion of marijuana dispensaries, cultivation, or other commercial cannabis activities contemplated under MMRSA. Without specific language addressing marijuana dispensaries, cultivation, or other commercial cannabis activities contemplated under MMRSA, the potential emerges for bad actors to unilaterally attempt to set up businesses relating to such activities that the City would have to expend significant resources to terminate.

Through the proposed Ordinance, the City seeks to eventually transfer its regulatory provisions concerning marijuana to the Zoning Code to ensure clarity for residents, businesses, and medical marijuana qualified patients and primary caregivers. Until such measures are adopted by the City, the prohibition on marijuana regulated activities will be governed by the complementary Interim Urgency Ordinance, which prohibits marijuana dispensaries and commercial cannabis activities, with conditions.

Under both statutory and case law, cities have a spectrum of regulatory options concerning medical marijuana, including the ban of some or all medical marijuana activities and the allowance and licensing of some or all medical marijuana activities. Pursuant to California Constitution Article XI, Section 7, the City has the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of the City’s residents through its police power. California Government Code Section 65858 authorizes the City Council to adopt a temporary interim urgency ordinance for the immediate preservation of the public health, safety, or welfare, and to prohibit a land use that is in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, Planning Commission, or Community Development Department is considering or studying or intends to study within a reasonable time. With applicable findings and noticing, moratoria established pursuant to Government Code Section 65858 may last for a total duration not to exceed two (2) years.

## **CONCLUSION**

According to its terms, the proposed ordinance shall only be effective if the City Council adopts the proposed interim urgency ordinance to establish a temporary moratorium on marijuana dispensaries, cultivation, and all “commercial cannabis activities.” Therefore, in the event the interim urgency ordinance is approved, it is recommended that the City Council approve the proposed ordinance for introduction/first reading by majority vote, which would remove the prohibition of medical marijuana dispensaries and cultivation facilities from Title 5 (Business Licenses and Regulations). Any prohibitions for marijuana-related activities would thereafter be governed by the interim urgency ordinance until permanent zoning regulations are adopted as part of the comprehensive General Plan update.

A second reading of the proposed ordinance at a regular meeting and three (3) affirmative votes at such second reading would be required to approve the ordinance. The ordinance would then become effective thirty (30) days after the second reading.

## **FINANCIAL IMPACT**

The proposed Ordinance would have no significant fiscal impact.

## **ATTACHMENTS**

Proposed Ordinance

**ORDINANCE NO. XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUDAHY AMENDING CHAPTER 5.08 (BUSINESS LICENSE TAX – PARTICULAR BUSINESSES) OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE CUDAHY MUNICIPAL CODE TO REPEAL ARTICLE XXV (MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION FACILITIES), SECTIONS 5.08.1710 THROUGH 5.08.1770, INCLUSIVE, SUBJECT TO ADOPTION OF INTERIM URGENCY ORDINANCE NO. \_\_\_\_**

**WHEREAS**, the Federal Controlled Substances Act (21 U.S.C. Section 841 et seq.) makes it unlawful to manufacture, distribute, dispense or possess marijuana;

**WHEREAS**, in 2013, Deputy Attorney General James Cole issued a memorandum to all federal prosecutors to provide guidance on the enforcement of the Federal Controlled Substances Act, as it related to marijuana, indicating that enforcement would not be a priority in states and local jurisdictions that have strict and robust laws regulating marijuana-related conduct; and

**WHEREAS**, in 2015, the United States Congress began to defund enforcement of the Federal Controlled Substances Act in states where such enforcement activities would prevent states from implementing their own state laws that authorize the use, distribution, possession, and/or cultivation of medical marijuana; and

**WHEREAS**, in 1996, the California Legislature approved Proposition 215, also known as the Compassionate Use Act (the “CUA”), which was codified under Health and Safety Code Section 11262.5 et sec. and was intended to enable persons who are in need of medical marijuana for specified medical purposes, such as cancer, anorexia, AIDS, chronic pain, glaucoma and arthritis, to obtain and use marijuana under limited circumstances and where recommended by a physician; and

**WHEREAS**, the CUA provides that “nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”; and

**WHEREAS**, in 2004, the California Legislature enacted the Medical Marijuana Program Act (Health & Saf. Code, § 11362.7 et seq.)(the “MMP”), which clarified the scope of the CUA, created a state-approved voluntary medical marijuana identification card program, and authorized cities to adopt and enforce rules and regulations consistent with the MMP; and

**WHEREAS**, Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of counties and cities to “[a]dopt local

ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances; and

**WHEREAS**, California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes; and

**WHEREAS**, in 2013, the California Supreme Court in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729, found the CUA and MMP do not preempt a city’s local regulatory authority and confirmed a city’s ability to prohibit medical marijuana dispensaries within its boundaries; and

**WHEREAS**, in 2013, the California Third District Appellate Court held that state law does “not preempt a city’s police power to prohibit the cultivation of all marijuana within the city.”; and

**WHEREAS**, in September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 – which together comprise the Medical Marijuana Regulation and Safety Act (“MMRSA”); and

**WHEREAS**, MMRSA creates a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis; and

**WHEREAS**, MMRSA included three separate provisions that protect local police power authority over medical marijuana establishments:

- Business and Professions Code Section 19315(a): “Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements”;
- Business and Professions Code Section 19316(b): “Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any such standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide”;
- Business and Professions Code Section 19316(c): “Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.”; and

**WHEREAS**, under both statutory and case law, cities have a spectrum of regulatory options concerning medical marijuana, including the ban of some or all medical marijuana activities and the allowance and licensing of some or all medical marijuana activities; and

**WHEREAS**, pursuant to California Constitution Article XI, Section 7, the City of Cudahy (the “City”) has the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of the City’s residents through its police power; and

**WHEREAS**, in light of the numerous and dynamic regulatory options that MMRSA presents local jurisdictions, the City seeks to study and analyze such regulatory options to ensure the public health, safety, and welfare in adopting long-term regulations regarding medical marijuana; and

**WHEREAS**, in 2012, the City Council adopted Ordinance No. 621 to add Article XXV (Medical Marijuana Dispensaries and Cultivation Facilities) to Chapter 5.08 (Business License Tax – Particular Businesses) of Title 5 (Business Licenses and Regulations) of the Cudahy Municipal Code; and

**WHEREAS**, such Article XXV prohibits the provision of a City business license or permit for the operation of a “marijuana dispensary or cultivation facility” in the City but does not address the “commercial cannabis activities” that MMRSA considers, such as manufacturing, distribution, and delivery; and

**WHEREAS**, Title 20 (Zoning) of the Cudahy Municipal Code (the “Zoning Code”) is silent as to the allowance or preclusion of marijuana dispensaries, cultivation, or other commercial cannabis activities contemplated under MMRSA; and

**WHEREAS**, without specific language addressing marijuana dispensaries, cultivation, or other commercial cannabis activities contemplated under MMRSA, the potential emerges for bad actors to unilaterally attempt to set up businesses relating to such activities that the City would have to expend significant resources to terminate; and

**WHEREAS**, the City seeks to eventually migrate its regulatory provisions concerning marijuana to the Zoning Code to ensure clarity for residents, businesses, and medical marijuana qualified patients and primary caregivers; and

**WHEREAS**, this Ordinance shall only become effective upon City Council approval of Interim Urgency Ordinance No. 16-XX presented at the August 22, 2016 City Council meeting regarding marijuana dispensaries, cultivation, and all “commercial cannabis activities,” as defined in MMRSA, to establish a land use prohibition on such endeavors, with conditions, while the City studies newly implemented state laws (in consideration of the City’s Zoning Code and General Plan) for which the State of California itself is still formulating regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUDAHY, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1.** The recitals above are true and correct and incorporated herein by reference.

**SECTION 2.**

- A. Subject to Section 2(B) of this Ordinance, Chapter 5.08 (Business License Tax – Particular Businesses) of Title 5 (Business Licenses and Regulations) of the Cudahy Municipal Code is hereby amended by the repeal of Article XXV (Medical Marijuana Dispensaries and Cultivation Facilities), Sections 5.08.1710 through 5.08.1770, inclusive.
- B. Section 2(A) notwithstanding, City Council approval made in accordance with the voting threshold set forth in Government Code Section 65858, shall be a condition precedent to this Ordinance taking effect.

**SECTION 2. Inconsistent Provisions.** Any provision of the Cudahy Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Ordinance.

**SECTION 3. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

**SECTION 4. Construction.** The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent. To the extent the provisions of the Cudahy Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

**SECTION 5. Publication and Effective Date.** The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in a newspaper of general circulation within fifteen (15) days after its adoption. This Ordinance shall become effective thirty (30) days after adoption, except, pursuant to Section 2(B), above, this Ordinance shall have no force or effect unless the City Council first approves Interim Urgency Ordinance No. \_\_\_\_ in accordance with the approval threshold set forth in Government Code Section 65858.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Cudahy at the regular meeting of this 22nd day of August, 2016.

\_\_\_\_\_  
Baru Sanchez, Mayor

ATTEST:

\_\_\_\_\_  
Richard Iglesias, Deputy City Clerk

STATE OF CALIFORNIA                    )  
COUNTY OF LOS ANGELES            )     SS:  
CITY OF CUDAHY                        )

I, Richard Iglesias, Deputy City Clerk of the City of Cudahy, hereby certify that the foregoing Ordinance No.16-XX was introduced for a first reading on the 22nd day of August, 2016 and approved for a second reading and adopted by said Council at its regular meeting held on the \_\_\_th day of \_\_\_\_\_, 2016 by the following vote, to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Richard Iglesias, Deputy City Clerk



# Item Number 12A

---

## STAFF REPORT

---

**Date:** August 22, 2016

**To:** Honorable Mayor/Chair and City Council/Agency Members

**From:** Jose E. Pulido, City Manager/Executive Director  
By: Michael Allen, Community Development Manager  
James Eckart, City Prosecutor

**Subject:** **Introduction and First Reading of An Ordinance Amending Title 9 ("Public Peace, Morals And Welfare"), Chapter 9.12 ("Graffiti Prevention And Abatement") Of The Cudahy Municipal Code By Specifically Amending Sections 9.12.020 ("Definitions"), 9.12.030 ("Nuisance Declared"), 9.12.040 ("Graffiti Prohibitions"), And 9.12.070 ("Standards For Graffiti Removal"); Deleting Sections 9.12.080 ("Graffiti Removal") And 9.12.140 ("Administrative Fines"), And Adding New Sections 9.12.080 ("Graffiti Removal") And 9.12.140 ("Administrative Fines")**

---

### RECOMMENDATION

The City Council is requested to waive the reading in full and to introduce the attached proposed Ordinance amending the City's regulations pertaining to the maintenance and abatement of graffiti as set forth in Chapter 9.12 of the Cudahy Municipal Code.

### BACKGROUND

1. On November 19, 2013, the Cudahy City Council adopted and enacted a comprehensive anti-graffiti scheme pursuant to Ordinance No. 632, which, in part, declared the application and maintenance of graffiti to be a public nuisance and further set forth procedures for the abatement thereof.
2. On June 13, 2016, the City Council conducted a discussion regarding the City's graffiti prevention and abatement regulations, as well as methods of improving the current regulations.

3. On July 6, 2016, the City Prosecutor's Office met with the City Manager, Community Development Manager, and representatives of the Los Angeles County Sheriff's Department to discuss improvements to the existing Cudahy Municipal Code Section relating to graffiti abatement.

## **ANALYSIS**

In adopting Ordinance No. 632, the City Council sought to have quick and effective removal of graffiti so that it lead to a reduction in criminal activity while deterring future vandalism/graffiti. Current provisions regulating the administrative abatement of graffiti on private property has been cumbersome and lengthy. Under the current regulations, the City would not be able to abate graffiti until after the issuance of at least two separate written notices and the passage of 11 days (if a responsible party elects *not* to appeal the City's notices) or potentially 30 days, if appeals are taken to the City Manager, Planning Commission, and the City Council as is allowed under the current regulations. Furthermore, the current regulations require that the City may remove or paint over graffiti *at no cost to the property owner* if the City receives consent from the property owner to do so, creating a significant potential cost to City for the abatement on private property.

The proposed Ordinance seeks to amend provisions of Chapter 9.12 ("Graffiti Prevention and Abatement") by (i) refining the definitions of applicable terminology; (ii) prohibiting the maintenance of "graffiti attracting surfaces" (surfaces that have been defaced with graffiti more than three times within a 12-month period); (iii) refining the procedures for the abatement of graffiti – including reducing the time in which graffiti can be removed by City efforts, while still providing property owners with due process of law; and (iv) providing for the recovery of costs expended by the City in abating graffiti from private property.

In order to maximize the City's efforts, and to remove the incentive for people to place graffiti on structures in the City, it is imperative that graffiti be removed as quickly as possible – even in instances where a property owner is unable or unwilling to do so voluntarily. It is crucial for the City to not only protect the rights of property owners whose property has been vandalized with graffiti, but also to protect everyone else's right to be free from public nuisance conditions which can lead to increased crime and blight. This requires that the City continue to provide due process of law to property owners (i.e., the issuance of notice and an opportunity to appeal the notice), but also that the City be able to cause the removal of graffiti in a more time-efficient manner – and that the City be able to recover its costs of abating graffiti.

## **CONCLUSION**

Consistent with the City Council and community's desire to increase the effectiveness of the City's graffiti removal efforts, staff recommends adoption of the new proposed ordinance in order to remove graffiti in a more time-efficient and cost effective manner.

## **FINANCIAL IMPACT**

There is no immediate financial impact to the implementation of the proposed Ordinance.

## **ATTACHMENTS**

Proposed Ordinance

**ORDINANCE NO. XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUDAHY AMENDING TITLE 9 (“PUBLIC PEACE, MORALS AND WELFARE”), CHAPTER 9.12 (“GRAFFITI PREVENTION AND ABATEMENT”) OF THE CUDAHY MUNICIPAL CODE BY SPECIFICALLY AMENDING SECTIONS 9.12.020 (“DEFINITIONS”), 9.12.030 (“NUISANCE DECLARED”), 9.12.040 (“GRAFFITI PROHIBITIONS”), AND 9.12.070 (“STANDARDS FOR GRAFFITI REMOVAL”); DELETING SECTIONS 9.12.080 (“GRAFFITI REMOVAL”) AND 9.12.140 (“ADMINISTRATIVE FINES”), AND ADDING NEW SECTIONS 9.12.080 (“GRAFFITI REMOVAL”) AND 9.12.140 (“ADMINISTRATIVE FINES”)**

**WHEREAS**, Section VII of Article XI of the California Constitution provides that a City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws;

**WHEREAS**, California Government Code Section 38771 provides that legislative bodies of Cities may declare what constitutes a nuisance;

**WHEREAS**, California Government Code Section 38772 et seq. further provides that legislative bodies of cities may also provide for the summary abatement of any nuisance at the expense of the persons creating, causing, committing, or maintaining the nuisance, and by ordinance may make the expense of abatement of nuisances a lien against the property on which the nuisance is maintained and a personal obligation against the property owner;

**WHEREAS**, California Government Code Section 53069.3 authorizes the City, under certain circumstances, to provide for the removal of graffiti and other inscribed materials from private and public property;

**WHEREAS**, on November 19, 2013, the Cudahy City Council adopted and enacted Ordinance No. 632 declaring the application and maintenance of graffiti to be a public nuisance and proscribing the abatement thereof; and,

**WHEREAS**, the City Council desires to refine the administrative procedures for the City’s use, upon its election, to cause the abatement of unlawful graffiti from public and private property with City forces (or agents thereof).

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUDAHY DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Title 9 (“Public Peace, Morals and Welfare”), Chapter 9.12 (“Graffiti Prevention and Abatement”), Section 9.12.020 (“Definitions”) of the Cudahy Municipal Code is hereby amended to include the following:

**9.12.020 Definitions.**

For the purpose of this Chapter, the following words shall have the meanings respectively ascribed to them in this section:

“Costs” means and includes, but is not limited to, court costs, attorneys’ fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced property, and the law enforcement costs incurred by the City in identifying and apprehending the person who created, caused, or committed the graffiti or other inscribed material.

“Enforcement Officer” means any City official authorized to enforce the provisions of this Chapter, including, but not limited to, the Los Angeles County Sheriff’s Department, Cudahy Departments of Public Works and Community Development, or designees thereof, and , as well as any contract agent authorized by the City to abate graffiti nuisances described in this Chapter.

“Graffiti” means any unauthorized inscription, word, figure, painting, mark, ~~or~~ design, or other defacement that is written, marked, etched, scratched, sprayed, drawn, ~~or~~ painted or engraved on or otherwise glued, posted, or affixed to or on any surface of ~~on~~ any real or personal property by or with, but not limited to, any of the following: felt-tip marker, paint stick or graffiti stick or graffiti implement, to the extent that the same was not authorized in advance by the owner or occupant thereof.

“Graffiti attracting surface” means any surface of a building, structure, tree, shrub, curb, or vehicle in the City which has been defaced with graffiti or other inscribed material after removal more than three (3) times in any twelve (12) month period.

“Graffiti implement” means an aerosol paint container, a felt-tip marker or marking pen, gum label, paint stick or paint pent, glass etching tool, glass cutters, etching tools, or other similar devices that are commonly used or are likely to be used to scar or to leave a visible mark on glass, metal, concrete or wood or any other surface, etching cream or other such solvent, adhesive label, or any

other device capable of being used to leave a visible mark at least one-eighth (1/8<sup>th</sup>) of an inch in width upon any surface of any material.

*“Property Owner”* means any person who owns, possesses, occupies, or otherwise has responsibility for the repair or maintenance of real property.

*“Responsible person”* means: (1) any person, including a minor who has been determined to have placed graffiti on real or personal property of another person in the City; (2) a minor or other person who has confessed to, or admitted to, or pled guilty or no contest to a violation in the City of section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code, or a minor convicted by final judgment of a violation in the City of section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code, or a minor declared a ward of the Juvenile Court pursuant to section 602 of the Welfare and Institutions Code by reason of the commission of an act prohibited in the City by section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code; and/or (3) the parents or guardians having custody and control of a minor who is responsible. *“Responsible person” shall also include any owner of real property at which there exists graffiti.*

*“Retrofitting”* shall mean and include, without limitation, the restoration, modification or alteration of a building or structure to remove graffiti, to prevent or inhibit the recurrence of graffiti, or to return the building or structure to an acceptable, usable, unblemished, unblighted, or original state or condition.

*“Structures”* shall mean any structure as defined in the City’s Building Code, and shall also include, but not be limited to, buildings, walls, fences, poles, signs, posts, railings, benches, tables, waste containers, sidewalks, streets, cargo/shipping containers.

*“Vehicle”* shall mean a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails. A vehicle shall include, but not be limited to, a trailer.

**SECTION 2.** Title 9 (“Public Peace, Morals and Welfare”), Chapter 9.12 (“Graffiti Prevention and Abatement”), Section 9.12.030 (“Nuisance Declared”) is hereby amended to read as follows:

**9.12.030 Nuisances declared.**

The city council declares that graffiti is each of the following constitutes a public nuisance and may be abated pursuant to this Chapter, Chapter 15.20, or as otherwise provided by law:

1. Graffiti or other inscribed material which is visible from any real property (whether privately or publicly owned), public street, sidewalk, alley, or other public right-of-way, or other area open to the public, or from any common area of any multi-tenant real property (whether residential or commercial) on any building, structure, tree, shrub, sidewalk, curb, vehicle, or personal or real property; and/or,
2. Graffiti attracting surface (as defined by section 9.12.020, above).

**SECTION 3.** Title 9 (“Public Peace, Morals and Welfare”), Chapter 9.12 (“Graffiti Prevention and Abatement”), Section 9.12.040 (“Graffiti Prohibitions”) is hereby amended to add a subsection (3) to read as follows:

- (3) It is unlawful for any person to cause, permit, aid, abet, maintain or suffer any graffiti or other inscribed material which is visible from any real property (whether privately or publicly owned), public street, sidewalk, alley, or other public right-of-way, or other area open to the public, or from any common area of any multi-tenant real property (whether residential or commercial) on any building, structure, tree, shrub, sidewalk, curb, vehicle, or personal or real property owned, possessed, or within the custody or control of such person.

**SECTION 4.** Title 9 (“Public Peace, Morals and Welfare”), Chapter 9.12 (“Graffiti Prevention and Abatement”), Section 9.12.070 (“Standards for Graffiti Removal”) is hereby amended to read as follows:

**9.12.070 Standards for Graffiti Removal Abatement by Owner.**

- (1) **Graffiti.** Graffiti shall be completely removed or completely covered in a manner that renders it inconspicuous. When graffiti is painted out, the color used to paint it out shall match the original color of the surface, or the surface shall be completely repainted with a new color that is aesthetically compatible with existing colors and architecture. The removal shall not leave shadows and shall not follow the pattern of the graffiti such that the letters or similar shapes remain apparent on the surface after graffiti markings have been removed. If the area is heavily covered with graffiti, the entire surface shall be repainted.

(2) **Graffiti Attracting Surface.** In addition to the removal of any graffiti (as set forth in subsection 1, above), responsible persons shall abate graffiti attracting surfaces (as defined in Section 9.12.020) by causing any of the following modifications (or combinations thereof) to be made to the surface:

(a). Retrofitting of said surface or structure (with all requisite City approvals, permits, and inspections);

(b). Application and/or use of anti-graffiti materials (as approved by the Director of Community Development or his/her designee) to the surface or structure such as anti-etching films or anti-graffiti paints;

(c). Installation of landscaping (as approved by the Director of Community Development) so as to screen or to provide a barrier to the surface or structure; and,

(d). Installation of additional lighting (as approved by the Director of Community Development).

**SECTION 5.** Title 9 (“Public Peace, Morals and Welfare”), Chapter 9.12 (“Graffiti Prevention and Abatement”), Section 9.12.080 (“Graffiti Removal”) is hereby deleted in its entirety.

**SECTION 6.** Title 9 (“Public Peace, Morals and Welfare”), Chapter 9.12 (“Graffiti Prevention and Abatement”), Section 9.12.080 (“Graffiti Removal”) is hereby added to read as follows:

**9.12.080 Graffiti Removal.**

(1) Abatement of Nuisance. The City Council hereby declares that the maintenance of the graffiti and/or a graffiti attracting surface is subject to abatement pursuant to the provisions of this Chapter. Furthermore, the City Council authorizes the appropriation and use of public funds to remove graffiti or other inscribed material from publicly or privately owned real or personal property located within the City and to repair, restore, replace, or retrofit publicly or privately owned property within the City that has been defaced with graffiti or other inscribed material that cannot be removed cost effectively, or to otherwise abate graffiti attracting surfaces as defined hereinabove.

(a) In instances where a responsible person consents to the abatement of graffiti or graffiti attracting surfaces by City forces, the

Director of Public Works, or his designee, is authorized to immediately abate the nuisance.

(2) Notice to Abate. In lieu of the procedures outlined in Chapter 15.20 (“Property Maintenance – Abatement of Nuisances”), whenever any Enforcement Officer determines the existence of a nuisance involving graffiti or a graffiti attracting surface as defined by and declared in section 9.12.030 of this Chapter and determines that City employees, representatives, or contact agents may need to abate said nuisance, the Enforcement Officer shall issue a “Notice to Abate Graffiti Nuisance” (hereinafter, “Notice to Abate Graffiti”) to the owner and the entity in possession of or in control of the property on which the nuisance exists, or to any other responsible person, requiring the abatement of the nuisance within forty-eight (48) hours of the date of service of the Notice to Abate Graffiti, or within some other reasonable time in connection with a “graffiti attracting surface”.

(a) Contents of Notice to Abate Graffiti. A Notice to Abate Graffiti issued pursuant to this Chapter shall contain the following provisions:

1. The address of the real property on which the nuisance condition exists;
2. A brief description of the nuisance condition(s);
3. A reference to the law prohibiting or pertaining to the nuisance condition;
4. A brief description of the required corrective actions;
5. A time period and/or schedule in which to complete the nuisance abatement actions (with all required City approvals, permits, and inspections, when applicable) [hereinafter, “compliance period”];
6. The period and manner in which a responsible person may contest the Notice to Abate Graffiti pursuant to this Chapter;
7. A statement that if the violations are not abated within the time specified or a timely appeal is not made, such nuisance may be abated by City Agents, in the manner provided in the Notice. On such occasions, all costs of the abatement shall be assessed

against the responsible person(s) and/or the subject property, as a lien or as a special assessment or in any other manner provided by law.

(b) Service of Notice to Abate Graffiti.

1. Notice to Abate Graffiti shall be served upon the responsible persons by either personal delivery or by certified first class mail. The time and date on which a Notice to Abate Graffiti is personally served or is placed in a U.S. Postal Service mail receptacle shall constitute the date of service. Failure of any responsible person to receive a Notice to Abate Graffiti shall not invalidate any action or proceeding pursuant to this Chapter.

2. The Enforcement Officer issuing the Notice to Abate Graffiti to an owner of real property may rely on the owner's mailing address according to the last equalized assessment roll of the Los Angeles County Recorder's Office and/or as listed on any application for a City business license, permit, or other entitlement in determining a service address for the Notice to Abate Graffiti.

(3) Method of Abatement. Where graffiti is being abated by the repainting of the surface on which the graffiti exists, the responsible person shall adhere to the requirements of 9.12.070. As it relates to a graffiti attracting surface, a Notice to Abate Graffiti may require, but shall not be limited to, any of the following modifications (or combinations thereof) to said building, structure, tree, shrub, sidewalk, curb, or vehicle (or the property on which said building, structure, tree, shrub, sidewalk, curb, or vehicle exists) as methods of abatement (the costs of which are to be borne by the responsible person):

(a) Retrofitting of said surface or structure (at a cost not to exceed 10% of the assessed value of the property on which the nuisance exists, as indicated on the last equalized assessment roll of the Los Angeles County Recorder's Office);

(b) Application and/or use of anti-graffiti materials (as approved by the Director of Community Development or his/her designee) to the surface or structure such as anti-etching films or anti-graffiti paints;

(c) Installation of landscaping (as approved by the Director of Community Development) so as to screen or to provide a barrier to the surface or structure; and,

(d) Installation of additional lighting (as approved by the Director of Community Development).

(4) Appeal of Notice to Abate Graffiti.

(a) Right of Appeal From a Notice to Abate Graffiti.

1. Notwithstanding the provisions of Chapter 9.48 of this Title, a responsible person receiving a Notice to Abate Graffiti pursuant to the provisions of this Chapter, may contest the Notice by filing a written request for an appeal and paying any applicable fees (as established by Council resolution), with the City Clerk within two (2) business days of the date of service of the Notice to Abate Graffiti. A written request for an appeal shall contain the following information:

a) Name, address, and telephone number of each responsible person who is appealing the Notice to Abate Graffiti (hereinafter, "appellant"), as well as a description of each appellant's relationship/interest in the real property upon which the City intends to enter and abate a graffiti nuisance;

b) Address and description of real property upon which the City intends to enter and abate a graffiti nuisance;

c) Date of Notice to Abate Graffiti being appealed;

d) Specific action being appealed;

e) Grounds for appeal in sufficient detail to enable the hearing officer to understand the nature of the controversy; and,

f) The signature of at least one appellant.

2. Failure of the City Clerk to receive a timely request for an appeal (including payment of applicable fees) constitutes a waiver of the right to contest a Notice to Abate Graffiti. In this event, the Notice to Abate Graffiti is final and binding.

3. The provisions of this section only apply to instances where the City has elected to establish the right, but not the obligation, to abate graffiti with City agents. In no event does this Chapter limit the right of City officials to issue alternative written or oral notices of code violations to responsible persons, or to cause the

abatement of graffiti nuisances in a different manner, including, without limitation, by court orders arising from the City's exercise of its criminal or civil remedies.

(b) Appeal Hearing Before City Manager (or Designee).

1. As soon as practicable after receiving the request for an appeal (and in no event more than 30 days from the filing date of the request), the City Manager or designee shall schedule and conduct the appeal hearing. The City Manager or designee shall provide each appellant with notice of the date, time, and location of the appeal hearing at least three (3) calendar days prior to its occurrence. Service of the notice of hearing shall be made by first class mail, postage prepaid, to each appellant at the address(es) provided on the request for an appeal. The failure of any appellant to receive a properly addressed notice of hearing shall not invalidate any action or proceeding by the City pursuant to this Chapter.

2. Appeal hearings are informal, and formal rules of evidence and discovery do not apply. The City bears the burden of proof to establish a graffiti nuisance by a preponderance of the evidence. The Notice to Abate Graffiti and any additional reports/photographs submitted by the Enforcement Officer shall constitute prima facie evidence of the facts contained in those documents and such Enforcement Officer is not required to participate in the appeal hearing. The appellant and City officials, as well as any other responsible person, shall have the right to present testimony, witnesses, and evidence at the hearing pertaining to the alleged nuisance or other ground of appeal, as well as to cross-examine any witnesses testifying at the hearing. The appellant and the Enforcement Officer may represent himself/herself/themselves or be represented by anyone of his/her/their choice. The appellant, or other interested persons, may bring an interpreter to the hearing at his/her/their sole expense. The City may, at its discretion, record the hearing by stenographer or court reporter, audio recording, or video recording.

3. The failure of any appellant to appear at the hearing shall constitute a rescission of the request for an appeal hearing, and the appellant will be deemed to have waived his rights to a hearing. In this event, the Notice to Abate Graffiti shall be deemed final and binding.

4. The City Manager or designee may continue the hearing on his/her own motion.

(c) Notice of Decision; Order to Abate

1. Within a reasonable time, not to exceed ten (10) calendar days following the conclusion of the appeal hearing, the City Manager or designee shall make any one or more of the following determinations in a written decision (hereinafter, "Order to Abate"):

a) A finding and description of each graffiti nuisance at the subject property, or the non-existence thereof. In the event of a finding of non-existence of all nuisance conditions contained in the Notice to Abate Graffiti, the City Manager or designee shall cancel the Notice to Abate Graffiti.

b) The name of each person responsible for a graffiti nuisance at the subject property, as well as the name of any appellant who lacks responsibility therefor;

c) The required corrective action and completion date for each unabated graffiti nuisance;

d) Any other finding, determination, or requirement that is relevant or related to the subject matter on appeal.

2. The decision of the City Manager or designee is final and binding. The Order to Abate shall also contain the following statement: "This Order to Abate is a final administrative decision of the City, and judicial review of this decision is subject to the time limits set forth in California Code of Civil Procedure sections 1094.6 et seq."

3. A copy of the Order to Abate shall be served on all appellants by first class mail to the address(es) stated on the request for appeal form. In the event that a responsible person was originally served with a Notice to Abate Graffiti but was not an appellant, such responsible person shall also be served a copy of the Order to Abate by first class mail to the address(es) at which the Notice to Abate Graffiti was served. Failure of an appellant or other responsible person to receive a properly addressed and mailed Order to Abate shall not invalidate any action or proceeding pursuant to this Chapter.

(5) Scope of Abatement. Whenever the City authorizes the use of public funds for the removal of graffiti, the painting or repairing of surfaces containing graffiti, or for the abatement of graffiti attracting surfaces, the City shall not authorize or undertake to provide for the painting or repairing of any more extensive area than that where the graffiti or graffiti attracting surface is located, unless the City Manager, or his designee, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid aesthetic disfigurement to the

neighborhood or community, or unless a responsible person agrees in writing to pay for the costs of repainting or repairing the more extensive area.

(6) Costs of Abatement. The costs of abatement performed by City forces, or agents thereof, shall constitute a personal obligation against the responsible persons (as defined in this Chapter) and may be assessed in any, or all, of the following manners:

(a) Special assessment or nuisance abatement lien in accordance with the provisions of Chapter 9.48 of this Title;

(b) Graffiti abatement lien against any property owned by a minor or other person (or the parent or guardian of any minor) creating, causing, or committing a graffiti nuisance, as authorized by section 38773.2 of the California Government Code (or any successor statute thereto);

(c) Special assessment against any property owned by a minor or other person (or the parent or guardian of any minor) creating, causing, or committing a graffiti nuisance, as authorized by section 38773.6 of the California Government Code (or any successor statute thereto);

(d) Any other manner provided in the City's Graffiti Abatement Protocols/Policy (in instances where a responsible person consents to the removal of the nuisance by City forces);

(e) Pursuant to an order of restitution by a court of competent jurisdiction in accordance with California Penal Code section 1202.4, California Government Code section 38772, or any other applicable State or Federal law; and,

(f) Any other manner provided or authorized by law.

**SECTION 7.** Title 9 ("Public Peace, Morals and Welfare"), Chapter 9.12 ("Graffiti Prevention and Abatement"), Section 9.12.140 ("Administrative Fines") is hereby deleted in its entirety.

**SECTION 8.** Title 9 ("Public Peace, Morals and Welfare"), Chapter 9.12 ("Graffiti Prevention and Abatement"), Section 9.12.140 ("Administrative Fines") is hereby added to read as follows:

**9.12.140 Administrative Fine**

In addition to any other penalty provided under this Code and/or other applicable law, any violation of this Chapter shall be subject to an administrative fine imposed in accordance with the provisions of Chapter 1.40 of this Code.

**SECTION 9.** It is the City Council's desire and intent that this ordinance shall not affect or excuse any violation of Chapter 9.12 of the Cudahy Municipal Code that occurred prior to the effective date of this ordinance; nor shall this ordinance impede, impact, or negate any administrative, civil, or criminal enforcement of said chapter that commenced prior to the enforcement date of this ordinance.

**SECTION 10.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 11.** This Ordinance shall take effect and be in force on the thirty-first (31<sup>st</sup>) day after its adoption.

**SECTION 12:** The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published as required by law.

**ORDINANCE NO. \_\_\_\_\_ HAD ITS FIRST READING ON \_\_\_\_\_, ITS SECOND READING ON \_\_\_\_\_, AND WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CUDAHY AT ITS REGULAR MEETING OF \_\_\_\_\_.**

---

**Baru Sanchez, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Richard Iglesias, Deputy City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
\_\_\_\_\_, City Attorney

DRAFT V2



# Item Number 12B

---

## STAFF REPORT

---

**Date:** August 22, 2016  
**To:** Honorable Mayor/Chair and City Council/Agency Members  
**From:** Jose E. Pulido, City Manager/Executive Director  
By: Michael Allen, Community Development Manager  
**Subject:** **Introduction and First Reading of An Ordinance Adding Chapter 1.40 ("Administrative Fines And Citations") To Title 1 ("General Provisions") Of The Cudahy Municipal Code (CMC)**

---

### **RECOMMENDATION**

The City Council is requested to waive the reading in full and introduce a proposed ordinance amending Title 1 ("General Provisions") of the Cudahy Municipal Code (CMC) by adding Chapter 1.40 ("Administrative Fines and Citations") authorizing the imposition of administrative fines for violations of the Cudahy Municipal Code.

### **BACKGROUND**

1. On November 25, 2014, the City Council adopted Ordinance 641 (enacted as Chapter 8.52 of the CMC) that, amongst other regulations, established a process for imposing administrative fines for violations of the Cudahy Municipal Code related to the unlawful possession, use, storage, sale, and/or display of fireworks within the City.
2. On July 6, 2016, the City Prosecutor's Office met with the City Manager, Community Development Manager, and representatives of the Los Angeles County Sheriff's Department to discuss improvements to the existing CMC Section relating to administrative fines and Ordinance 641.

### **ANALYSIS**

Currently, when a violation of a City's municipal code occurs, the City typically tries to seek

voluntary compliance from the public with applicable laws before resorting to other enforcement remedies in an effort to seek compliance. When voluntary efforts fail, the City may resort to administrative and/or civil enforcement remedies – as appropriate for the specific violation that is occurring. Administrative remedies may include the modification, suspension, and/or revocation of City-issued approvals and permits (e.g., revocation of a conditional use permit), while civil remedies include, but are not limited to, injunctive actions seeking court orders for the termination of unlawful activities and/or conditions.

Another option is the use of criminal remedies. Pursuant to the CMC (and corresponding State law authorization), a violation of any provision of the City's municipal code constitutes either an infraction or a misdemeanor. Individuals charged with either an infraction or a misdemeanor offense are required to appear in court – typically before a judge or commissioner in order to either contest the violation or to otherwise plead guilty/no contest and receive the corresponding sanction. While infractions are punishable only by a fine (ranging between \$100-\$500 plus applicable State-mandated penalty assessments), misdemeanor offenses are punishable by fines up to \$1,000 (plus applicable penalty assessments) and/or up to six months in jail.

The proposed Ordinance seeks to provide the City with another remedy for violations of the Cudahy Municipal Code (and other Codes adopted therein) – one designed to obtain compliance through administrative means without the need to expend additional City resources seeking the assistance of the Los Angeles Superior Court. Specifically, pursuant to the California Government Code, the proposed Ordinance would grant the City the authority to impose an *administrative fine* for violations of the City's municipal code. The imposition of such fines would serve as punishment for the violation, incentive to correct the violation, and a deterrent against future violations.

The proposed Ordinance provides procedures for the imposition of administrative fines through the use of administrative citations. In accordance with State law, the proposed Ordinance requires the issuance of a warning and an opportunity to abate any violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues that **do not** create an immediate danger *prior* to the issuance of an administrative citation. Violations of all other provisions of the Code, as well those pertaining to building and structural violations that create an immediate danger **do not** require the issuance of a warning before the issuance of an administrative citation - however, a Departmental policy would likely be established to provide at least one warning/notice of violation prior to the issuance of an administrative citation in all cases where there is no immediate danger.

In order to protect the due process rights of the citation recipient, the proposed Ordinance

sets forth the procedures for appealing the administrative fine/citation – as well as the procedures for conducting the appeal hearings. The procedures outlined in the Ordinance provides that a person seeking to appeal the fine/citation must file a written request with the City Clerk and must tender an advance deposit of the administrative fine. The Ordinance also provides a procedure for persons who are financially unable to tender the advance deposit of the fine to seek a waiver of the advance deposit.

In an effort to ensure the use of a uniform procedure for the imposition and appealing of administrative fines issued for any violation of the CMC, this Ordinance also deletes provisions of Chapter 8.52 ("Fireworks") related to administrative citations/fines applicable solely to fireworks violations.

The use of administrative citations/fines is a growing trend throughout the State by municipalities (and, in some instances, by State and County agencies) in their efforts to successfully cause the cessation of hazardous, substandard, and unpermitted activities and conditions. In instances where City officials are unable to obtain voluntary compliance from a responsible party, the imposition of a fine (without the other consequences of a criminal conviction) may prove sufficient incentive to cause the abatement of existing violations. Furthermore, the use of administrative citations/fines (rather than pursuing criminal prosecution) will preserve the City's resources while still serving as an incentive for responsible persons to abate violations and to deter future violations.

The adoption of this Ordinance would not prohibit City Officials from proceeding with criminal prosecution where the use of administrative citations/fines are unsuccessful or where criminal prosecution in lieu of the administrative fines is otherwise appropriate.

Staff will also be presenting to the City Council a proposed Resolution setting the administrative fines (along with applicable late charge and interest rate) at a future City Council meeting. The Resolution would propose to set the default fine for misdemeanor violations at \$100, \$200, and \$500 (for 1st, 2nd, and 3rd or greater offenses in a 12 month period), but will also include a matrix for violations for which the City would like to deviate (by either increasing or decreasing) from the default fine schedule. A copy of the proposed Resolution is included in Attachment B – however, this is not set for formal consideration by the Council at this meeting.

## **CONCLUSION**

In its efforts to seek compliance with applicable laws, it is imperative to provide the City's

enforcement officers with sufficient tools to be able to handle any situation. Under the current scheme, if compliance is not achieved through the issuance of notices or other voluntary efforts, enforcement officers are often left with either continuing unsuccessful efforts or seeking the filing of criminal charges against responsible parties by the City Prosecutor. Staff recommends the adoption of the proposed Ordinance, authorizing the issuance of administrative citation (and the imposition of administrative fines) not only provides an additional enforcement remedy to the City, but it is a remedy that seeks to preserve City resources by utilizing a "less severe" enforcement tool than criminal prosecution.

### **FINANCIAL IMPACT**

The primary impact will be a cost savings because cases previously referred to the City Prosecutor will now be handled by staff, and fines that would have previously been paid to the Superior Court (with a small percentage being paid to the City) will now be completely paid to the City. There will be an initial cost for the printing of citation books, as well as for the set-up for the collection of fines either in-house or through an independent company (the same or similar to that which collects parking fines).

### **ATTACHMENTS**

- A. Proposed Ordinance
- B. Proposed Fine Resolution

ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUDAHY ADDING CHAPTER 1.40 (“ADMINISTRATIVE FINES AND CITATIONS”) TO TITLE 1 (“GENERAL PROVISIONS”) OF THE CUDAHY MUNICIPAL CODE AND DELETING PROVISIONS OF CHAPTER 8.52 (“FIREWORKS”) RELATING TO THE IMPOSITION OF ADMINISTRATIVE FINES FOR VIOLATIONS OF THE CUDAHY MUNICIPAL CODE

WHEREAS, violations of the Cudahy Municipal Code currently constitute misdemeanor offenses, infraction offenses, and/or public nuisances;

WHEREAS, California Government Code Section 53069.4 authorizes local jurisdictions to enact legislation making violations of the City’s laws subject to an administrative fine or penalty; and,

WHEREAS, on \_\_\_\_\_, 2014, the City Council of the City of Cudahy adopted Ordinance 641 (enacted as Chapter 8.52 of the Cudahy Municipal Code) that, amongst other regulations, establishes a process for imposing administrative fines for violations of certain provisions of the Cudahy Municipal Code relating solely to the unlawful possession, use, storage, sale, and/or display of fireworks within the City;

WHEREAS, the City Council finds that there is a need to expand the use of administrative fines to other violations of the Cudahy Municipal Code in order to strengthen its ability to seek the abatement of violations and to deter future violations – as well as to preserve the resources of the City and the Court;

WHEREAS, the State legislature has enacted other statutes (e.g., Civil Code Section 2929.3) that authorize municipalities to enforce State laws through the imposition of an administrative or civil fine/penalty;

WHEREAS, the City Council desires to have one uniform procedure for the imposition, payment, and collection of administrative fines, as well as for the issuance and appealing of administrative citations, in connection with all violations of the municipal code.

THE CITY COUNCIL OF THE CITY OF CUDAHY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: A new Chapter 1.40 (“Administrative Fines and Citations”) is hereby added to Title 1 (“General Provisions”) of the Cudahy Municipal Code to read as follows:

CHAPTER 1.40 ADMINISTRATIVE FINES AND CITATIONS

1.40.010 Findings and Purpose.

The City Council of the City of Cudahy finds and declares as follows:

A. Enforcement of the Cudahy Municipal Code and adopted ordinances throughout the City is an important public service in order to protect the health, safety, and welfare of the public. Although it is always the goal of the City to obtain voluntary compliance with its laws, the City Council recognizes that there will be instances where compliance must be compelled by administrative or judicial means when persons responsible for violations of the Code fail or refuse to voluntarily comply with applicable laws.

B. Government Code Section 53069.4 authorizes local jurisdictions to enact legislation making a violation of any local ordinance subject to an administrative fine or penalty. The State Legislature has also enacted other provisions of California law that allow local governments to impose administrative or civil fines/penalties for violations of specified provisions of State law. The City Council intends, pursuant to this statute, to establish an administrative citation program that:

1. Imposes a non-judicial administrative fine and/or penalty for offenses of the Cudahy Municipal Code (including, but not limited to, any other code adopted therein) and other State laws as authorized by State Statute;

2. Encourages prompt abatement or correction of prohibited conditions, uses or activities in the City; and,

3. Creates deterrence against future violations of the City's laws.

C. The administrative citation remedy is not intended to replace any other remedy allowed by the Cudahy Municipal Code or State law. It is intended to provide an alternative and/or additional means by which the City's laws may be enforced.

#### **1.40.020 Applicability and Scope**

A. Use of this Chapter shall be at the sole discretion of the City and is one remedy that the City has to address violations of the Cudahy Municipal Code or other applicable provisions of State law. By adopting this Chapter, the City does not intend to limit its discretion or ability to utilize any administrative, civil, criminal, or other remedy available at law or equity, or any combination thereof, to address violations of the City's laws.

B. This Chapter makes a violation of any provision, restriction, or requirement of this Code or any Code adopted by reference herein, any ordinance of the City, any rule or regulation promulgated pursuant thereto, or any condition of any permit, license, or other entitlement issued pursuant to this Code subject to an administrative fine.

C. This Chapter establishes the administrative procedures for the imposition, enforcement, collection, and administrative review of administrative fines and/or penalties pursuant to Government Code Section 53069.4.

D. An administrative fine in an amount adopted by resolution of the City Council shall be imposed by means of an administrative citation issued by an Enforcement Officer, and shall be paid directly to the City of Cudahy (or agent thereof). Payment of a fine shall not excuse a failure to correct a violation, nor shall it bar concurrent or further enforcement actions by the City.

E. The City Manager, or a designee thereof, may dismiss a citation at any time if a determination is made that it was issued in error, in which event any deposit of a fine shall be refunded. Notice of such action shall be given to the Citee in writing.

F. The City Manager, or a designee thereof, is authorized to promulgate procedural rules and regulations governing the provisions in this Chapter.

#### **1.40.030 Definitions**

As used in this Chapter, the following words are defined as follows:

A. "Administrative fine" and/or "administrative penalty" shall mean the monetary sanction established by resolution of the City Council that is imposed upon a Responsible Person by means of a Citation.

B. "Citation" shall mean an administrative citation that is issued to a Responsible Person pursuant to this Chapter.

C. "Citee" shall mean a Responsible Person to whom a citation is issued.

D. "City" shall mean the City of Cudahy, California.

E. "City Manager" shall mean the chief administrative official of the City as appointed by the City Council.

F. "Code" shall include: (i) the entire Cudahy Municipal Code and any other Code, rule, or regulation incorporated therein by adoption or reference, (ii) any uncodified ordinance adopted by the City Council of Cudahy, (iii) any rule or regulation promulgated pursuant to the provisions of the Cudahy Municipal Code, (iv) any condition of any permit, license, or other entitlement issued pursuant to this Code, and (v) other State laws as authorized by State statute.

G. "Enforcement officer" and "Officer" shall mean any City employee, peace officer, or other law enforcement official with obligations to enforce the Cudahy Municipal Code.

H. "Hearing officer" shall include a private entity, organization, association or person, or a public official, or duly constituted reviewing authority or commission that the City Manager designates or appoints to consider all timely requests for an administrative hearing upon issuance of a citation.

I. "Owner" shall mean and include any person having legal title to, or who leases, rents, occupies or has charge, control or possession of, or responsibility for, any real property in the City, including all persons shown as owners on the last equalized assessment roll of the Los Angeles County Assessor's Office. Owners include persons with powers of attorney, executors of estates, trustees, or who are court-appointed administrators, conservators, guardians or receivers. An owner of personal property shall be any person who has legal title, charge, control, responsibility for, or possession of such personal property.

J. "Person" shall mean and includes any individual, partnership of any kind, a corporation of any kind, limited liability company, association, joint venture or other organization or entity, however formed, as well as fiduciaries, trustees, heirs, executors, administrators, or assigns, or any combination of such persons. "Person" also includes any public entity or agency that acts as an owner in the City.

K. "Property" or "Premises" shall mean any real property, or improvements thereon, or portions thereof, as the case may be. "Property" includes any parkway or unimproved public easement abutting such real property. "Property" shall also include all forms of personal property or animals, where applicable.

L. "Responsible Person" shall mean any person, whether as an owner or an agent, manager, or representative of an owner, or otherwise, that allows, causes, creates, maintains, suffers, or permits a violation of the Code to exist or continue, by any act or the omission of any act or duty.

M. "Violation" shall mean an act or omission of any act, or use or condition that constitutes an offense of the Code, as well as a breach or violation of any condition of a permit, approval, license, or other entitlement issued pursuant to the Code.

#### **1.40.040 Issuance of Administrative Citation; Contents Thereof**

A. Whenever an Officer determines that a violation of the Code has occurred, the Officer may issue a Citation on a City-approved form imposing an

administrative fine or fines to the Responsible Person(s) in accordance with the provisions of this Chapter.

B. When the violation pertains to building, plumbing, electrical or other similar structural or zoning issues that creates an immediate danger to health or safety, a citation may be issued forthwith. In the absence of an immediate danger, a citation for a violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues shall not be issued pursuant to this Chapter unless the Responsible Person has first been provided with a reasonable period, as determined by the Officer, in which to complete the abatement or compliance actions.

C. An Officer may issue a Citation for a violation not committed in the Officer's presence if the Officer has determined, through investigation, that the Citee did commit, or is otherwise responsible for, the violation.

D. Each day, or any portion thereof, that a prohibited condition, use or activity under the Code is committed, continued or permitted, shall constitute a separate violation for which an administrative fine may be imposed. A single Citation may charge multiple violations of the Code, however, each violation is subject to a separate and distinct administrative fine.

E. Each Citation shall contain, at a minimum, the following information:

1. Name and mailing address of the Responsible Person.
2. The issuance date of the Citation.
3. The address or description of the location of the violation.
4. The date and approximate time of the commission of the violation(s), or detection thereof by an Officer.
5. The relevant provision(s) or section(s) of the Code alleged to have been violated;
6. A description of the violation(s);
7. Amount of the fine for each violation, the procedure and place to pay the fine(s) and/or re-inspection fees, and any late payment charge and/or interest charge(s), if not timely paid;
8. When appropriate, the action(s) required to correct the violation(s), and, if applicable, any deadlines or time limitations for commencing and completing such action(s);
9. A description of the administrative citation review process and the manner by which a hearing on a Citation may be obtained (including the

form to be used, where it may be procured from, and the period in which a request must be made in order to be timely);

10. The name and signature of the Officer, and the signature of the Citee, if he or she is physically present and willing to sign the Citation at the time of its issuance. The refusal of a Citee to sign a citation shall not affect its validity or any related subsequent proceeding, nor shall signing a Citation constitute an admission that a person has committed a violation of the Code;

11. A statement that the failure to timely tender the fine(s) and other fees, costs, and/or charges imposed pursuant to this Chapter may result in the recordation of a lien and/or the delay in issuance or renewal of any City license and/or permit;

12. A statement that the failure to correct any violation as referenced in the Citation could result in the recordation of a Declaration of Substandard Property with the Los Angeles County Recorder's Office; and,

13. Any other information deemed necessary by the City Manager.

#### **1.40.050 Service of Administrative Citation and Notices**

A. A Citation may be served either by personal delivery to the Citee or by first class mail through the United States Postal Service.

B. If served by personal delivery, the date of personal delivery of the Citation to the Citee shall constitute its issuance date and the date that service shall be deemed complete.

B. If served by first class mail, the Citation shall be sealed in an envelope with postage prepaid and addressed to the Citee at his or her last-known business, residence, or mailing address as same appears in public records of the City, the Los Angeles County Tax Assessor's Office, the Los Angeles County Recorder's Office, the California Department of Motor Vehicles, and/or the Secretary of State. In such instances, the date a Citation is deposited with the United States Postal Service shall constitute its issuance date, and the date that service shall be deemed complete.

C. If a Citation is personally sub-served upon an authorized agent, manager or representative of the Citee, a copy thereof shall also be served upon the Citee by first class mail at his or her last-known business, residence, or mailing address as same appears in public records of the City, the Los Angeles County Tax Assessor's Office, the Los Angeles County Recorder's Office, the California Department of Motor Vehicles, and/or the Secretary of State. In such instances, the date a copy of the Citation is deposited with the United States Postal Service shall constitute its issuance date, and the date that service shall

be deemed complete

D. If service cannot be accomplished personally or by mail for Citations involving a real property-related violation of the Code, the officer shall post the Citation at a prominent location on the real property where the violation is alleged to have occurred. In such instances, the date of posting shall constitute the issuance date of the Citation, and the date that service shall be deemed complete.

E. Any notice or order given pursuant to any provision of this Chapter shall be served in the manner provided for in this section, unless otherwise stated.

F. Failure of a Citee to receive a Citation or notice given in the manner stated in this Section shall not invalidate any fine, late charge, action or proceeding that is imposed or brought pursuant to this Chapter.

#### **1.40.060 Imposition of Administrative Fines, Late Charge, Interest Charges, and Re-Inspection Fees**

A. **Fine.** The amounts of the fines imposed pursuant to this Chapter shall be set forth in a schedule of fines established by resolution of the City Council. The City Council may, by resolution, also impose escalating fines in amounts it deems appropriate for repeat offenses of the same ordinance. The amounts of fines may be modified from time to time by a resolution of the City Council.

1. If a violation is otherwise classified as an infraction under the Code, the administrative fine shall not exceed \$100.00 for a first offense, \$200.00 for a second offense of the same ordinance within a twelve month period of time, and \$500.00 for a third or greater offense of the same ordinance within a twelve month period of time, as set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900 of the California Government Code. The amounts of such fines may be modified from time to time by a resolution of the City Council provided they do not exceed the limits allowed by State law.

B. **Re-Inspection Fee.** In addition to any fine imposed pursuant to this Chapter, a re-inspection fee shall be assessed against any Responsible Person in an amount established by resolution of the City Council if the Responsible Person does not timely and completely correct or abate a violation (with all requisite approvals, permits, licenses, and/or inspections) after having received notification from the City to correct or abate same.

C. **Late Payment Charge.** Failure to pay an administrative fine within the period specified on the citation shall result in the assessment of a late

charge. The late charge shall be equal to one hundred percent (100%) of the total fine owed (excluding any re-inspection fee).

D. **Interest.** Failure to pay an administrative fine within sixty (60) days of the issuance of a Citation or, if contested, within sixty (60) days of an order to pay pursuant to a decision by a hearing officer or judicial officer confirming the fine, shall result in the imposition of an interest charge at a rate established by resolution of the City Council. Interest shall not accrue on a late charge or re-inspection fee. The rate of interest may be modified from time to time by resolution of the City Council.

#### **1.40.070 Payment and Collection of Fines, Fees and Other Charges**

A. **Payment.** All administrative fines and re-inspection fees imposed by means of a Citation shall be due from the Citee and shall be received by the City (or agent thereof) within twenty (20) calendar days from the date the Citation was served. Thereafter, a late charge shall be due and owing, as well as interest, as imposed by this Chapter.

1. Administrative fines, re-inspection fees, late charges, and any interest due shall be paid to the City at such location or address as stated in the citation, or as may otherwise be designated by the City Manager.

2. Payment of an administrative fine shall not excuse or discharge a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

3. Abatement of a violation shall not excuse the obligation of a Citee to pay an administrative fine or any other charges, fees, or costs imposed as a result of the issuance of a Citation.

B. **Collection.** Unpaid administrative fines and other charges, fees, or costs imposed in accordance with this Chapter shall constitute a debt that may be collected in any manner allowed by law, including, but not limited to: (i) the filing of a civil action in the Los Angeles Superior Court; and/or, (ii) the recordation of a lien with the Los Angeles County Recorder's Office against Citee-owned property that was the subject of the Citation; and/or, (iii) by means of a special assessment against Citee-owned property that was the subject of the Citation; and/or, (iv) by means of collecting the debt using the California Franchise Tax Board "Inter-Agency Offset Program" (pursuant to Section 12419.10 of the California Government Code); and/or, (v) by denying the issuance or renewal of any City approval, license, permit, or other entitlement to

any Citee who has failed to tender all unpaid administrative fines, late payment charges, interest charges, or re-inspection fees. The City shall also be entitled to recover its attorneys' fees and costs arising from an action to collect an administrative fine and other charges, fees, or costs imposed in accordance with this Chapter, if it is the prevailing party and provided it made the election to seek attorney fees at the commencement of the action. A Citee shall be entitled to recover his or her attorney fees if the City made the election to seek attorney fees at the outset of the action and the Citee prevails thereon.

1. The City Manager, or a designee thereof, may promulgate policies and procedures for the City's election to use one or more of the foregoing collection remedies. Unless otherwise set forth in a policy promulgated by the City Manager, the recordation of a lien or special assessment for unpaid administrative fines, late charges, interest charges, or re-inspection fees shall substantially comply with the procedures set forth in Chapter 8.16 ("Abatement of Nuisances") and/or Chapter 15.20 ("Property Maintenance – Abatement of Nuisances") of this Code for the recordation of liens and special assessments for abatement costs.

**1.40.080 Right to an Administrative Hearing; Waiver of Advance Deposit of Fine**

A. **Appeal.** Any Citee may contest the violation(s), or that he or she is a Responsible Person, by filing a request for an administrative hearing in the manner set forth on the citation within ten (10) calendar days from the issuance date of the Citation. If the request for a hearing is not timely received in the manner set forth on the Citation, the Citee shall have waived the right to a hearing and the citation shall be deemed final.

1. A request for a hearing shall contain the following:
  - a. The citation number.
  - b. The name, address, telephone and any facsimile numbers or e-mail addresses of each person contesting the citation.
  - c. A statement of the reason(s) why a citation is being contested.
  - d. The date and signature of the Citee(s).
2. No filing fee shall be charged for the filing of a request for an administrative hearing.
3. A timely request for a hearing shall not excuse a Citee from the duty to immediately abate a violation of the Code, nor from any other

responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

B. **Advanced Deposit of Fine.** Requests for a hearing shall be accompanied by an advance deposit of the entire amount of the fine (and any accompanying re-inspection fee) stated in the Citation. Failure to deposit a fine (and accompanying re-inspection fee) within the required period, or the tender of a non-negotiable check, shall render a request for an administrative hearing incomplete and untimely, in which case the Citee shall have waived the right to a hearing and the Citation shall be deemed final. Fines that are deposited with the City shall not accrue interest. Fines deposited shall be returned to the person tendering the fines in the event a Citation is overturned.

1. **Hardship Waiver of Advance Deposit of Fine.** A Citee who is financially unable to deposit the administrative fine with his or her request for a hearing may complete a City-approved application form for an advance deposit hardship waiver (hereinafter, "Hardship Waiver"). This form and all required accompanying records shall be tendered, along with a request for a hearing, to the Office of the City Clerk – Cudahy City Hall, 5220 Santa Ana Street, Cudahy, California 90201 - within twenty (20) calendar days from the issuance date of the Citation.

a. To be considered for a Hardship Waiver, the application form must be complete, signed, and must be accompanied by documents that enable the City to reasonably determine the Citee's present inability to deposit the fine. Documents suitable for consideration, may include, without limitation, accurate, complete and legible copies of state and federal income tax returns and all schedules for the preceding tax year; financial statements, loan applications, bank account records, income and expense records for twelve months preceding submittal of the waiver form, as well as other documentation demonstrating the Citee's financial hardship. The City may, at its sole discretion, request additional documents in order to determine a Citee's financial ability to tender an advance deposit of the fine. Failure to submit sufficient evidence of a Citee's financial inability to tender an advance deposit of the fine shall result in a denial of the Hardship Waiver. The City may, at a time chosen in its sole discretion and after a Citation is final or confirmed, destroy or discard the documents submitted by a Citee for a Hardship Waiver without prior notice to the Citee.

b. Failure to submit a completed, signed Hardship Waiver form, along with sufficient records that support a claim of financial hardship, shall render any request for an administrative hearing incomplete and untimely, unless an advanced deposit of the fine was timely tendered in accordance with Section 1.40.080.B of this Code. In this event, the Citee shall have waived the right to a hearing and the Citation shall be deemed final.

c. The City shall issue a written decision regarding the application for a Hardship Waiver. If the Hardship Waiver is denied, the written decision shall specify the reasons for not granting the Hardship Waiver. This decision is final and non-appealable. The decision shall be served upon the person requesting the Hardship Waiver by first class mail to the address listed on the Hardship Waiver application.

(1) Approval of a Hardship Waiver shall result in the City setting a hearing pursuant to Section 1.40.090 of this Chapter.

(2). If the City determines that the Citee is not entitled to a Hardship Waiver, the Citee shall tender the full amount of the administrative fine as set forth in the written decision on the Hardship Waiver within ten (10) calendar days of the date the decision is deposited with the U.S. Postal Service. In the event the City Clerk does not receive the full amount of the fine in the required period (i) the request for a hearing is rendered incomplete and untimely, (ii) the Citee shall have waived the right to a hearing and the Citation shall be deemed final, and (iii) a late charge shall be imposed upon the administrative fine.

#### **1.40.090 Administrative Hearing – Procedures**

A. An administrative appeal hearing shall be scheduled and conducted within sixty (60) calendar days of the date a timely and complete request is received by the City. A Citee who files a request for an administrative hearing to contest a citation (hereinafter, “appellant”) shall be notified in writing by first class mail of the date, time, and location of the hearing at least ten (10) calendar days prior to the date of the hearing. The failure of an appellant to receive a properly addressed notice shall not invalidate the Citation or any hearing or City action or proceeding conducted pursuant to this Chapter.

B. At the place and time set forth in the written notice of administrative hearing, the Hearing Officer shall hear and consider the testimony of the issuing officer, the appellant(s), and/or their witnesses, as well as any documentary evidence presented by these persons concerning the violation(s) alleged in the Citation.

C. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The City bears the burden of proof to establish a violation and responsibility therefore by a preponderance of evidence. The issuance of an administrative citation shall constitute prima-facie evidence of the violation and the contents of the Enforcement Officer’s file in the case (including the Citation) shall be received into evidence. The Enforcement Officer who issued the Citation is not required to attend or participate at the hearing. The appellant(s), and Officer, if present, shall have an opportunity to present

evidence and witnesses and to cross-examine witnesses. An appellant may bring an interpreter to the hearing at the appellant's sole expense. The hearing officer may question any person who presents evidence or who testifies at any hearing.

D. An appellant may appear at the hearing in person or by written declaration executed under penalty of perjury. Said declaration and any documents in support thereof shall be tendered to and received by the Office of the City Clerk at least three (3) City business days prior to the hearing. If the appellant fails to attend the scheduled hearing, or to otherwise submit a written declaration in a timely manner, the hearing officer shall cancel the hearing and send a notice thereof to the appellant(s) by first class mail to the address(es) stated on the appeal form. A cancellation of a hearing due to non-appearance of the appellant shall constitute the appellant's waiver of the right to appeal. In such instances, the Citation (and corresponding fine and other applicable fees) shall be deemed final.

E. Hearings may be continued once at the request of an appellant or the Officer who issued the citation. Any request by an appellant to continue a hearing must be submitted to the City Clerk in writing no later than two (2) business days before the date scheduled for the hearing. The hearing officer may continue a hearing for good cause or on his/her own motion; however, in no event may the hearing be continued for more than thirty (30) calendar days without stipulation by all parties.

#### **1.40.100 Hearing Officer Decision; Right of Appeal Therefrom**

A. After considering all of the testimony and evidence submitted at the hearing, the Hearing officer shall issue a written decision to uphold or overturn the Citation based upon whether there was a preponderance of evidence that the violation(s) listed in the Citation existed or occurred and shall state the reasons therefore.

1. If the Citation is upheld and the violation has not been fully corrected as of the date of the hearing, the hearing officer shall order correction thereof in the decision and provide a deadline to complete said action(s) – which shall in no event be greater than thirty (30) calendar days from the date of the decision. The decision of the hearing officer shall be a final administrative decision.

2. If the Citation is upheld and the appellant did not deposit the fine at the time the appellant requested an administrative appeal hearing, the hearing officer shall also order the payment of the fine (and other applicable fees and costs) as set by Council resolution within twenty (20) calendar days of the decision.

3. If the Citation is overturned in whole or in part, the City shall refund the fine deposit corresponding to the portion of the Citation that was overturned. Any such fine shall be mailed to the Responsible Person within forty-five (45) calendar days of the City's receipt of the Hearing Officer's decision and order.

B. The appellant(s) shall be served by first class mail with a copy of the hearing officer's written decision. The date the decision is deposited with the U.S. Postal Service shall constitute the date of its service. The failure of an appellant to receive a properly addressed decision shall not invalidate or any hearing, City action or proceeding conducted pursuant to this Chapter.

C. Decisions of the hearing officer are, in accordance with Government Code Section 53069.4(b), appealable to the superior court within twenty (20) days after the date of their service. Each decision shall contain a statement advising the appellant(s) of this appeal right and the procedures and court-filing fee for its exercise. An appellant shall serve a copy of the court filed Notice of Appeal on the Office of the City Clerk – Cudahy City Hall, 5220 Santa Ana Street, Cudahy, California 90201 - by personal service or first class mail within five (5) calendar days of filing the original thereof.

D. If a hearing officer's decision is not appealed in a timely manner, the decision shall be deemed confirmed, final, and binding.

E. An appeal from a hearing officer's decision is not appealable to the City Council and the Superior Court is the sole reviewing authority. The appeal hearing before the Superior Court shall be heard de novo, except that the contents of the City's file in the case (including the Citation) shall be received in evidence and shall constitute prima facie evidence of the facts stated therein.

1. If a Responsible Person prevails on appeal, the City shall reimburse his or her filing fee, as well as the fine deposit in accordance with the court judgment. These monies shall be mailed to the Responsible Person within forty-five (45) calendar days of the City's receipt of a notice of judgment or ruling from the superior court clerk.

#### **1.40.110 Penalties**

Failure of a Citee to comply with a corrective action stated in any uncontested citation, or with regard to a correction order in any hearing officer decision that is deemed confirmed and not appealed to the superior court, shall constitute a misdemeanor offense punishable in accordance with Chapter 1.36 of this Code. A Citee's willful non-payment of administrative fines, late charges, interest charges or re-inspection fees shall constitute a misdemeanor offense punishable in accordance with Chapter 1.36 of this Code.

**SECTION 2.** Subsection (a) of Section 8.52.110 (“Issuance of Administrative Citations – Contents”) of Chapter 8.52 (“Fireworks”) of Title 8 (“Health and Safety”) of the Cudahy Municipal Code is hereby amended to read as follows:

**8.52.110 Administrative Fines – Purpose.**

(1) This chapter authorizes the imposition of administrative fines on any person who violates any provision of this chapter in order to encourage and obtain compliance with its provisions for the benefit and protection of the entire community. ~~This chapter governs the imposition, enforcement, and collection and administrative review of all administrative fines related to the possession, use, storage, sale, and/or display of those fireworks classified as “dangerous fireworks,” with the exception of a pyrotechnic licensee when operating pursuant to that license, and the use of “safe and sane fireworks” on or at date, times, and/or locations other than those permitted in this chapter.~~ Administrative fines for violations of this chapter shall be imposed, enforced, and collected, and administrative review of administrative fines imposed for violations of this chapter shall be governed by the provisions of Chapter 1.40 of this code. Such administrative fines are imposed under the authority of the California Government Code Section 53069.4, Health and Safety Code Section 12557, and the city’s police power.

**SECTION 3.** Section 8.52.130 (“Administrative Fines”) of Chapter 8.52 (“Fireworks”) of Title 8 (“Health and Safety”) of the Cudahy Municipal Code is hereby deleted in its entirety.

**SECTION 4.** Section 8.52.140 (“Right to an Administrative Hearing”) of Chapter 8.52 (“Fireworks”) of Title 8 (“Health and Safety”) of the Cudahy Municipal Code is hereby deleted in its entirety.

**SECTION 5.** Section 8.52.150 (“Administrative Hearing – Procedures”) of Chapter 8.52 (“Fireworks”) of Title 8 (“Health and Safety”) of the Cudahy Municipal Code is hereby deleted in its entirety.

**SECTION 6.** Section 8.52.160 (“Hearing Decision – Right of Appeal”) of Chapter 8.52 (“Fireworks”) of Title 8 (“Health and Safety”) of the Cudahy Municipal Code is hereby deleted in its entirety.

**SECTION 7.** It is the City Council’s desire and intent that this ordinance shall not affect or excuse any violation of Chapter 8.52 nor any other provision of the Cudahy Municipal Code that occurred prior to the effective date of this ordinance; nor shall this ordinance impede, impact, or negate any administrative, civil, or criminal enforcement of said chapter that commenced prior to the enforcement date of this ordinance.

**SECTION 8:** If any section, subsection, paragraph, sentence, clause or phrase of this Article is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

**SECTION 9.** This Ordinance shall take effect thirty (30) days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be posted as required by law.

**ORDINANCE NO. \_\_\_\_\_ HAD ITS FIRST READING ON \_\_\_\_\_, ITS SECOND READING ON \_\_\_\_\_, AND WAS DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CUDAHY AT ITS REGULAR MEETING OF \_\_\_\_\_.**

\_\_\_\_\_  
**Baru Sanchez, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Richard Iglesias, Deputy City Clerk**

**RESOLUTION NO. 16-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF CUDAHY ESTABLISHING THE ADMINISTRATIVE FINE SCHEDULE  
FOR VIOLATIONS OF THE CUDAHY MUNICIPAL CODE**

**WHEREAS**, on September \_\_\_\_, 2016, the City Council of the City of Cudahy adopted Ordinance \_\_\_\_, amending Title 1 of the Cudahy Municipal Code to establish a process for imposing administrative/civil fines for violations of the Cudahy Municipal Code (and other technical codes adopted therein); and,

**WHEREAS**, Ordinance \_\_\_\_ establishes the administrative procedures for the imposition, enforcement, collection, and administrative review of the administrative citations and administrative fines and penalties;

**WHEREAS**, Ordinance \_\_\_\_ provides that the amount of the administrative fine for violations of the South Gate Municipal Code and other applicable State laws shall be set forth in a schedule of fines established by resolution of the City Council; and,

**WHEREAS**, Ordinance \_\_\_\_ requires that the schedule of fines provide for increased fines for repeat violations of the same code provision by the same responsible person; and,

**WHEREAS**, Ordinance \_\_\_\_ provides for the assessment of a re-inspection fee (in an amount to be established by Resolution) against a Responsible Person who does not timely and completely correct or abate a violation after having received notification from the City to correct or abate same; and,

**WHEREAS**, Ordinance \_\_\_\_ provides for the imposition of an interest charge (in an amount to be established by Resolution) for any administrative fines that are not paid within sixty (60) calendar days of the issuance of an uncontested administrative citation or within sixty (60) calendar days of a final administrative and/or judicial determination; and,

**WHEREAS**, the City of Cudahy has a substantial interest in promoting compliance with the local laws that have been enacted by the City Council in an effort to promote and protect the health, safety, and general welfare of the City's residents, business community, and visitors; and,

**WHEREAS**, the City Council believes that the use of the administrative citation program promotes the City of Cudahy's interest in promoting compliance with local laws; and,

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Cudahy that the “Schedule of Administrative/Civil Fines,” as set forth in Exhibit “A”, attached hereto, is hereby adopted.

The foregoing was passed and adopted at a regular meeting of the City Council of the City of Cudahy on the \_\_\_\_\_day of September, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

DRAFT

**EXHIBIT A**

**SCHEDULE OF ADMINISTRATIVE FINES  
FOR VIOLATIONS OF THE CUDAHY MUNICIPAL CODE  
(AND OTHER CODES ADOPTED THEREIN)**

Unless otherwise specified in the following schedule, the administrative fine for violations of the Cudahy Municipal Code (and other codes adopted therein) enforced pursuant to the provisions of Chapter 1.40 of Title 1 of the Cudahy Municipal Code shall be as follows

- \$100 for the 1<sup>st</sup> offense
- \$200 for the 2<sup>nd</sup> offense of the same provision within a 12-month period of time
- \$500 for the 3<sup>rd</sup> or greater offense of the same provision within a 12-month period of time

<b>Code Section (CMC)</b>	<b>Description of Violation</b>	<b>First Offense</b>	<b>Second Offense (in 12-month period)</b>	<b>Third Offense (in 12-month period)</b>
<i>Title X ("_____")</i>				
<i>Chapter X.XX ("_____")</i>				
§X.XX.XXX	"_____"			

<b>Code Section (CMC)</b>	<b>Description of Violation</b>	<b>First Offense</b>	<b>Second Offense (in 36-month period)</b>	<b>Third Offense (in 36-month period)</b>
<i>Title 8 ("Health and Safety")</i>				
<i>Chapter 8.12 ("Fireworks")</i>				
§8.52.020	"Type and Time"			
§8.52.030	"Use"			
§8.52.040	"Prohibitions on Discharge"			
§8.52.050	"Storage and Sale"			

**BE IT FURTHER RESOLVED** that a re-inspection fee of \$\_\_\_\_\_ shall be imposed upon any person causing, permitting, aiding, abetting, or suffering a violation of the Cudahy Municipal Code (or other code adopted therein) that is not timely and completely corrected or abated (with all required approvals, permits, licenses, and/or inspections) after having received notification from the City to correct or abate same.

**BE IT FURTHER RESOLVED**, that interest in the amount of ten percent (10%) per year, computed daily, shall accrue and be assessed on any fine that is not fully paid to the City within sixty (60) calendar days of its imposition/issuance when it is not contested in accordance with the provisions of Chapter 1.40 of Title 1 of the Cudahy Municipal Code, or if it is not fully paid to the City within sixty (60) calendar days of any decision of a hearing officer or a judicial officer to uphold or confirm the fine if contested in accordance with the provisions of Chapter 1.40 of Title 1 of the Cudahy Municipal Code.

DRAFT

Blank Page



# Item Number 12C

---

## STAFF REPORT

---

**Date:** August 22, 2016  
**To:** Honorable Mayor/Chair and City Council/Agency Members  
**From:** Jose E. Pulido, City Manager/Executive Director  
By: Richard Iglesias, Deputy City Clerk  
**Subject:** **Designation of Voting Delegate and Alternates for the League of California Cities Annual Conference, October 5-7, 2016, in Long Beach, California**

---

### RECOMMENDATION

The City Council is requested to appoint a voting delegate and two alternates to represent the City at the 2016 League of California Cities Annual Conference Business Meeting to take place on Friday, October 7, 2016 in Long Beach.

### BACKGROUND

On July 25, 2016 a letter was received by the Deputy City Clerk from the League of California Cities requesting the City Council to formally designate a voting delegate and up to two voting alternates who will attend the League's Annual Business Meeting.

### ANALYSIS

The League of California Cities 2016 Annual Conference is scheduled for October 5-7, 2016, in Long Beach, California. The Annual Business Meeting will be held on Friday, October 7<sup>th</sup> at the Long Beach Convention Center. The current Council representative to the League of California Cities is Vice Mayor Christian Hernandez with Council Member Cristian Markovich as the alternate representative.

In order to cast a vote on matters pertaining to municipal or League of California Cities policy, the League of California Cities has requested that the City Council take formal action to designate a voting delegate and up to two alternates at this time in order to submit those

names to the league by its deadline of September 23, 2016.

### **CONCLUSION**

After appointing a delegate and alternate(s), the Deputy City Clerk will complete the 2016 Annual Conference Voting Delegate/Alternate Form and fax to the League of California Cities affirming that the designation reflects the action taken by the Council.

### **FINANCIAL IMPACT**

No financial impact.

### **ATTACHMENTS**

- A. League of California Cities Letter dated June 10, 2016
- B. Annual Conference Voting Procedures
- C. 2016 Annual Conference Voting Delegate/Alternate Form

1400 K STREET  
 SACRAMENTO, CA 95814  
 PH: (916) 658-8200  
 FX: (916) 658-8240



WWW.CACITIES.ORG

**Council Action Advised by July 31, 2016**

June 10, 2016

**TO: Mayors, City Managers and City Clerks**

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES  
 League of California Cities Annual Conference – October 5 – 7, Long Beach**

The League's 2016 Annual Conference is scheduled for October 5 – 7 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly), scheduled for noon on Friday, October 7, at the Long Beach Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

**Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, September 23, 2016. This will allow us time to establish voting delegate/alternate records prior to the conference.**

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: [www.cacities.org](http://www.cacities.org). In order to cast a vote, at least one voter must be present at the

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Long Beach Convention Center, will be open at the following times: Wednesday, October 5, 8:00 a.m. – 6:00 p.m.; Thursday, October 6, 7:00 a.m. – 4:00 p.m.; and Friday, October 7, 7:30–10:00 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

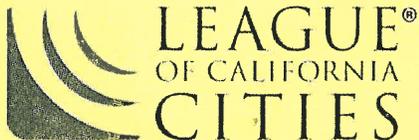
Once again, thank you for completing the voting delegate and alternate form and returning it to the League office by Friday, September 23. If you have questions, please call Kayla Gibson at (916) 658-8247.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form

## Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



CITY: \_\_\_\_\_

2016 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM

Please complete this form and return it to the League office by Friday, September 23, 2016. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

2. VOTING DELEGATE - ALTERNATE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

3. VOTING DELEGATE - ALTERNATE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: \_\_\_\_\_ E-mail \_\_\_\_\_

Mayor or City Clerk \_\_\_\_\_ Phone: \_\_\_\_\_
(circle one) (signature)

Date: \_\_\_\_\_

Please complete and return by Friday, September 23, 2016

League of California Cities
ATTN: Kayla Gibson
1400 K Street, 4th Floor
Sacramento, CA 95814

FAX: (916) 658-8240
E-mail: kgibson@cacities.org
(916) 658-8247



# Item Number 12D

---

## STAFF REPORT

---

**Date:** August 22, 2016  
**To:** Honorable Mayor/Chair and City Council/Agency Members  
**From:** Richard Padilla, Assistant City Attorney  
**Subject:** **Approval of Second Amendment to Extend Existing City Manager Employment Agreement along with Certain Other Amendments**

---

### **RECOMMENDATION**

It is recommended that the City Council approve the attached Second Amendment instrument to the City Manager's existing Agreement along with certain other amendments setting the term of the extension, adjusting the annual base compensation the City Manager is to receive and modifying the terms of the City Manager's work schedule.

### **BACKGROUND**

1. On August 5, 2014, the City Council approved a two year employment contract with Jose Pulido to serve as City Manager (hereinafter, the "Master Agreement"). The Master Agreement had a two year term commencing from August 11, 2014. The Master Agreement is attached as Exhibit "A" to this Staff Report.
2. On December 14, 2015, the City Council created an Ad Hoc Committee composed of Mayor Sanchez and Vice Mayor Hernandez, which was tasked with formulating and recommending proposed amendments to the City Manager's existing contract, including an amendment to extend the term of the City Manager's contract which was set to expire on its own terms on August 10, 2016.
3. In Open Session at its Regular Meeting of August 8, 2016, the City Council approved a First Amendment instrument to the Master Agreement which merely extended the term of the Master Agreement to September 7, 2016 so that the City Council could refine and finalize the terms of a longer term extension for possible Open Session approval at the

City Council's next Regular Meeting of August 22, 2016.

## **ANALYSIS**

Over the past few months, the Council Ad Hoc Committee, in consultation with the City Attorney's Office, formulated a set of proposed amendments which address the following areas: (a) the number of years by which the City Manager's contract should be extended; (b) the amount of annual base compensation the City Manager should receive; and (c) the City Manager's work schedule. The Ad Hoc Committee's recommendations were shared with the City Council in Closed Session during the July 25, 2016 meeting.

The City Attorney's Office has prepared a draft Second Amendment instrument to the Master Agreement which incorporates the recommendations of the Ad Hoc Committee. The proposed modifications are as follows:

- ***Annual base salary will be set at \$195,000 per year;***
- ***The Master Agreement will be extended for an extension term of three (3) years commencing as of August 12, 2016; and***
- ***Provisions of the Master Agreement relating to the City Manager's work schedule have been changed to provide that the City Manager, as requested by the City Council, will be available to attend and participate in meetings, events and other activities of the City that may occur outside of the City's regular business.***

All other provisions of the Master Agreement, however, remain the same, including provisions requiring that the City Manager submit to an annual performance review. It should also be noted that the Second Amendment instrument does not implement any sort of automatic COLA adjustments to the City Manager's base salary and any proposed future increase in salary would remain subject to the City Council's review and approval at a Regular Meeting of the City Council.

## **RECOMMENDATION**

It is recommended that the City Council approve the attached Second Amendment instrument to the Master Agreement and authorize the Mayor to execute the same on behalf of the City.

**ATTACHMENTS**

- A. City Manager's Master Employment Agreement.
- B. Second Amendment to Master Employment Agreement.

2016  
FIRST AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT  
 (Employee: Jose Pulido)

THIS FIRST AMENDMENT (“Amendment”) to that certain agreement entitled “Employment Agreement for the Position of City Manager” originally executed on August 6, 2014 by and between the CITY OF CUDAHY (“City”) and JOSE PULIDO, an individual (“Employee”) is made and entered into this 8<sup>th</sup> day of August 2016 (“Effective Date”). For purposes of this Amendment, the capitalized term “Parties” shall be a collective reference to both City and Employee. The capitalized term “Party” may refer to either City or Employee as appropriate.

RECITALS

WHEREAS, the Parties executed and entered into an agreement dated August 6, 2014 and entitled “Employment Agreement for the Position of City Manager” (hereinafter, the “Master Agreement”) (A true and correct copy of the Master Agreement is attached and incorporated hereto as Exhibit “A”); and

WHEREAS, Section 9.4 (Amendments) of the Master Agreement allows the Parties to amend the Master Agreement provided such amendments are memorialized in the form of a written amendment approved by the Parties; and

WHEREAS, the Parties desire to extend the term of the Master Agreement subject to its same terms and conditions on a temporary basis while a longer term extension instrument is formulated; and

WHEREAS, the City Council believes that a finalized extension instrument will likely be ready for approval by the first regular meeting of the City Council on September 6, 2016.

NOW, THEREFORE, the Parties agree as follows:

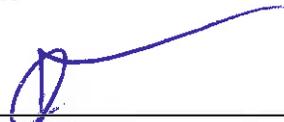
1. The forgoing recitals are true and correct.
2. The Master Agreement is hereby extended subject to its same terms and conditions for a period commencing on August 11, 2016 and ending September 7, 2016 to allow the Parties time to finalize and approve the terms of a longer term extension instrument.
3. This Amendment will cease to remain in effect upon the earlier of the following: (i) September 7, 2016; or (ii) the approval and execution of a Second Amendment to the Master Agreement which sets forth the terms and conditions of a longer term extension of the Master Agreement.

4. The Parties agree that other than this Amendment, the Master Agreement is not otherwise Amended and shall remain the operative, final, and integrated employment agreement between City and Employee.

IN WITNESS WHEREOF, City has caused this Amendment to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk and Employee has signed and executed this Amendment, as of the date first executed by the Parties below.

By:   
\_\_\_\_\_  
Baru Sanchez  
Mayor

Date: \_\_\_\_\_

By:   
\_\_\_\_\_  
Jose Pulido  
Employee/ City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

ATTEST:

By: \_\_\_\_\_  
Rick Olivarez, City Attorney

By: \_\_\_\_\_  
City Clerk



**EMPLOYMENT AGREEMENT  
For the Position of  
CITY MANAGER**

This Employment Agreement (“Agreement”) is made and entered into this 6th day of August, 2014, by and between the CITY OF CUDAHY (“CITY”), a California municipal corporation, and JOSE E. PULIDO (“PULIDO”), an individual, on the following terms and conditions:

**RECITALS**

A. CITY desires to employ the services of PULIDO as Manager of CITY (“City Manager”) as that position is generally described under Chapter 2.12 (City Manager) of the Cudahy Municipal Code; and

B. The City Council finds that PULIDO possesses the education, training, experience and expertise necessary to perform the duties of City Manager; and

C. PULIDO desires to accept employment as City Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement; and

D. The City Council approved this Agreement and the execution of same in open session at its meeting of August 6, 2014 as required under Government Code section 53262.

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, CITY and PULIDO agree as follows:

**SECTION 1. Position, Duties and Term.**

1.1 **Position.** PULIDO accepts employment with CITY as its City Manager and shall perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement.

1.2 **Commencement Date/Conditions of Employment.**

1.2.1 PULIDO shall commence the performance of his duties as the City Manager on August 11, 2014 (“Commencement Date”), subject to subsection 1.2.2 below.

1.2.2 PULIDO’s employment with the CITY is contingent upon PULIDO’s submitting to a general medical exam by a qualified physician selected by CITY prior to the Commencement Date. CITY and PULIDO shall receive a copy of all medical reports related to the examination.

**1.3 Term; At-will.**

1.3.1 The term of this Agreement (“Term”) shall commence upon the Commencement Date and shall expire on August 10, 2016. The foregoing notwithstanding, nothing in this Section shall operate to prohibit, modify or otherwise restrict the City Council’s ability to terminate PULIDO’s employment at any time for cause or for convenience without cause at any time prior to the expiration of the Term.

1.3.2 PULIDO’s employment with CITY shall be “at-will” pursuant to the provisions of *Government Code* § 36506. PULIDO’s employment shall be subject to the provisions of this Agreement and provisions applicable to the office of the City Manager contained in the City’s Municipal Code, as it may be amended from time to time. PULIDO acknowledges that he is an at-will employee of CITY who shall serve at the pleasure of the City Council at all times during the period of his service hereunder. To the extent they conflict with his at-will status, the terms of the CITY’s personnel rules, policies, regulations, procedures, ordinances, and resolutions including, without limitation, CITY Personnel Policies, as they may be amended or supplemented from time to time, shall not apply to PULIDO, and nothing in this Agreement is intended to, or does, confer upon PULIDO any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council to terminate his employment, except as is expressly provided in Section 5 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of PULIDO as provided in Section 5 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of PULIDO to resign at any time from this position with CITY, subject only to the provisions set forth in Section 5 [Termination] of this Agreement.

**1.4 Duties.** PULIDO shall serve as the City Manager and shall be vested with the powers, duties and responsibilities set forth in Section 2.12.030 of the Cudahy Municipal Code, the terms of which are incorporated herein by reference, as may be amended from time to time. PULIDO shall provide service at the direction and under supervision of the City Council. It is the intent of the parties that the City Manager shall keep the City Council fully apprised of all significant ongoing operations of CITY. To that end, PULIDO shall report directly to the City Council and will periodically, or as may be otherwise specifically requested by the City Council, provide oral or written status reports to the City Council on his activities and those of CITY.

PULIDO’s duties as City Manager shall include, but are not limited to:

- a. Attending all meetings of the City Council, unless excused by the Mayor (or presiding officer if the Mayor is unavailable), and taking part in the

discussion of all matters before the City Council. The City Manager shall receive notice of all regular and special meetings of the City Council;

- b. Reviewing all agenda documents before preparing the agenda for any regular or special meetings of the City Council;
- c. Directing the work of all elective and appointive CITY officers, department directors, division managers and all CITY employees, except those that are directly appointed by or report directly to the City Council. The City Manager shall endeavor to implement changes that the City Manager believes will result in greater efficiency, economy, or improved public service in the administration of CITY affairs;
- d. Recommending to the City Council from time to time of the adoption of such measures as the City Manager may deem necessary or expedient for the health, safety, or welfare of the community or the improvement of administrative services;
- e. Conducting research in administrative practices in order to bring about greater efficiency and economy in CITY government and develop and recommend to the City Council long range plans to improve CITY operations and prepare for future CITY growth and development;
- f. Providing management training and developing leadership qualities among department heads and staff as necessary to build a CITY management team that can plan for and meet future changes; and
- g. Exercising control of CITY government in emergencies as authorized by the City's Municipal Code and California law.
- h. Duties as prescribed under Chapter 2.12 of the Cudahy Municipal Code, incorporated herein by reference, as it may be amended from time to time.

It is the intent of the City Council for the City Manager to function as the chief executive officer of the CITY's organization. Without additional compensation, PULIDO shall provide such other services as are customary and appropriate to the position of City Manager, together with such additional services assigned from time to time by the City Council as may be consistent with California law and the CITY's Municipal Code and policies. PULIDO shall devote his best efforts and full-time attention to the performance of these duties. Notwithstanding PULIDO's duties as City Manager, nothing in this Agreement shall be construed to prohibit direct communications between the City Council and employees of the CITY in a manner consistent with the CITY's personnel rules, administrative policies and City Council policies.

**1.5 Hours of Work.** PULIDO shall devote the time necessary to adequately perform his duties as City Manager during the term of employment commencing August 11, 2014. At a minimum, PULIDO shall work eight (8) hours per day, five (5) days per week. PULIDO shall, to the extent reasonably practicable and excluding those days when PULIDO is taking vacation, sick or management leave, maintain an onsite presence at City Hall during each day City Hall is

open for regular business and shall make himself available to the City Council, CITY staff and members of the community during normal business hours for City Hall and for the performance of his duties and of CITY business. The position of City Manager shall be deemed an exempt position under state and federal wage and hour laws. PULIDO's compensation (whether salary or benefits or other allowances) is not based on hours worked and PULIDO shall not be entitled to any compensation for overtime.

**1.6 Other Activity.** In accordance with *Government Code* § 1126, during the period of his employment, PULIDO shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict-of-interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of PULIDO's duties as City Manager.

**1.7 Residence.** PULIDO shall not be required to reside within the territorial boundaries of the CITY. The foregoing notwithstanding, PULIDO shall maintain a permanent residence within a reasonable distance to the CITY so as to permit PULIDO travel to the CITY within one hundred twenty (120) minutes in the event of CITY emergencies.

**1.8 Conflicts of Interest.** PULIDO shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the CITY, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City Council. PULIDO shall further refrain from developing a financial stake in any commercial venture or partnership with any entity doing business with the CITY where such financial stake would create a violation of *Government Code* section 1090. For and during the term of this Agreement and any extension term, PULIDO further agrees that except for a personal residence or residential property acquired or held for future use as his personal residence, PULIDO will not invest in any other real estate or property improvements within the corporate limits of the CITY without the prior consent of the City Council and subject to the restrictions of all applicable financial conflict of interest laws.

**SECTION 2. Compensation.** For the services to be provided pursuant to this Agreement, PULIDO shall receive the following compensation, subject to appropriate tax and governmental deductions:

**2.1 Base Salary.** PULIDO shall receive an annual salary of **One Hundred Eighty Thousand Dollars (\$180,000.00)** paid according to the payroll schedule in place for CITY employees paid bi-weekly.

**2.2 Evaluation.** At a time agreed upon by the City Council and PULIDO on or before August 11th each year, the City Council will review and evaluate the performance of PULIDO as City Manager and may use an experienced professional outside facilitator mutually agreed upon by the City Council and PULIDO to do so. No later than thirty (30) calendar days prior to August 11<sup>th</sup>, CITY shall send a Notice of Upcoming Evaluation to PULIDO so that

CITY and PULIDO may begin discussions regarding the date and contents of the upcoming evaluation review. The purpose of the review shall be to provide PULIDO with feedback on his performance, including the performance of the duties set forth in Section 1.4 above, progress in meeting, achieving, or exceeding City Council defined goals, objectives, priorities, activities, and programs, and to identify areas requiring improvement and how such improvement may be accomplished. In conducting the performance evaluation and considering adjustments to PULIDO's compensation, the City Council may consider, among other things, PULIDO's:

- a. overall performance as City Manager, including leadership and management skills;
- b. professional ethics;
- c. progress in meeting, achieving, or exceeding City Council defined goals, objectives, priorities, activities, and programs;
- d. involvement in local, regional, and statewide organizations beneficial to the CITY;
- e. the financial feasibility or desirability of authorizing any proposed adjustment to compensation in light of current and/or projected economic conditions, including whether the CITY is operating with a balanced budget;
- f. prevailing job market conditions and compensation trends; and
- g. such other factors as the City Council may find relevant.

The City Council shall at all times retain discretion to agree to or deny any proposed adjustment to PULIDO's compensation terms, notwithstanding the findings or determinations of any performance review. Failure of CITY to provide a performance evaluation shall not limit CITY's ability to terminate this Agreement pursuant to Section 5 [Termination].

## **2.3 Mutual Commitments.**

### **2.3.1 Strategic Workshops**

- a. The City Council and the City Manager will meet annually to review the CITY's existing Strategic Plan and/or set out goals and priorities for the City Manager to implement. This annual meeting shall occur between January 1st and February 28th of each year. For purposes of clarity, the City Council and the City Manager shall further establish a relative priority among those goals and objectives within the Strategic Plan.

## 2.4 **Benefits.**

### 2.4.1 Health Insurance.

Health Insurance: PULIDO shall receive health insurance benefits equivalent to all other non-represented CITY management employees, as those benefits may change from time to time. CITY shall pay one hundred percent (100%) of premiums for PULIDO and his family members.

Dental Insurance: PULIDO shall receive dental insurance benefits equivalent to all other non-represented CITY management employees as those benefits may change from time to time. CITY shall pay one hundred percent (100%) of premiums for PULIDO and his family members.

Vision Care: PULIDO shall receive vision benefits equivalent to all other non-represented CITY management employees as those benefits may change from time to time. CITY shall pay one hundred percent (100%) of premiums for PULIDO and his family members.

### 2.4.2 Long Term Disability.

Except as otherwise set forth in this Agreement, and in addition to the benefits specified herein, PULIDO shall receive any and all employee long term disability program benefits otherwise accorded CITY's executive management employees, as prescribed as of the Effective Date of this Agreement and as those benefits may be changed from time to time.

### 2.4.3 Term Life Insurance.

CITY shall select and provide PULIDO with a policy of term life insurance and shall pay the entire cost of the life insurance premium during the Term of this Agreement or any extension term. During the Term of this Agreement, the death benefit payable on the life insurance policy shall be capped at the maximum sum of One Million Dollars (\$1,000,000.00). In the event of PULIDO's death during the Term of this Agreement, PULIDO's designated beneficiary shall receive one hundred percent (100%) of the death benefit payment.

### 2.4.4 Accidental Death & Dismemberment.

Except as otherwise set forth in this Agreement, and in addition to the benefits specified herein, PULIDO shall receive any and all employee accidental death and dismemberment program benefits

otherwise accorded CITY's executive management employees, as prescribed as of the Effective Date of this Agreement and as those benefits may be changed from time to time.

**2.5 Automobile Allowance.** CITY recognizes that PULIDO's duties as City Manager may require extensive use of an automobile in the ordinary course of performing his duties as City Manager. Accordingly, CITY, as added compensation, shall provide PULIDO with an automobile allowance in the amount of Four Hundred Dollars (\$400.00) per month to assist PULIDO with the cost of using and operating his own private vehicle and to offset expenses such as gasoline, auto insurance, maintenance, repair and other automobile related costs and expenses. PULIDO shall be responsible for maintaining and paying for liability insurance as required by State law and for all operating, maintenance and repair costs of PULIDO's automobile and for any other automobile-related expenses in excess of the allowance set forth herein.

**2.6 Business Related Equipment.** CITY shall provide a cell phone and cover service costs and other personal data devices (e.g., iPad, computer, etc.) in so far as such items are necessary for the performance of CITY-related business and are in fact used for CITY business.

**2.7 Business Expenses.** Excluding those expenses already covered by the supplemental compensation allowances set forth under Sections 2.5 and 2.6 above, CITY shall reimburse PULIDO for reasonable and necessary travel, subsistence and other business expenses incurred by PULIDO in the performance of his duties or in connection with PULIDO's participation in those authorized activities referenced under Section 1 above. All reimbursements shall be subject to and in accordance with any limitations or restrictions set forth under the laws of the State of California and any CITY-adopted reimbursement policies as either may be adopted, updated or otherwise amended from time to time.

### **SECTION 3. Vacation and Other Leave.**

**3.1 Vacation Leave.** PULIDO shall be eligible to accrue six and two-thirds (6 2/3) hours of vacation leave each month, for a maximum of eighty (80) hours of vacation leave per year during the Term of this Agreement. Vacation leave may be carried over from year to year. Notwithstanding the foregoing, at no time shall PULIDO accrue more than three hundred twenty (320) hours or forty (40) business days of total vacation leave. In recognition of this limit, PULIDO shall cease to accrue any additional vacation leave time so long as his total accrued but unused vacation leave remains at 320 hours or 40 business days total. On December 31<sup>st</sup> of each year, PULIDO may sell back accumulated but unused vacation leave time at his applicable base salary hourly rate, provided that fifty (50) hours of accrued vacation time remains on the books.

Section 5.5 below notwithstanding, upon separation of employment for any reason, CITY shall buy back PULIDO's accrued and unused vacation leave time at applicable base salary hourly rate, in addition to the payment contemplated under Section 5.1, below.

**3.2 Holidays.** Paid holidays shall be in accordance with CITY's current practices and are subject to change. Paid holidays will be those deemed authorized by CITY.

**3.3 Sick Leave.** PULIDO shall be eligible to accrue eight (8) hours of sick leave each month, for a maximum of ninety six (96) hours of sick leave per year during the Term of this Agreement. Sick leave shall be used by PULIDO only in cases of actual sickness of PULIDO or a member of PULIDO's immediate family, including PULIDO's dependents. Sick leave may be carried over from year to year. Notwithstanding the foregoing, at no time shall PULIDO accrue more than four hundred eighty (480) hours or sixty (60) business days of total sick leave time. In recognition of this limit, PULIDO shall cease to accrue any additional sick leave time so long as his total accrued but unused sick leave remains at 480 hours or 60 business days total. On July 1<sup>st</sup> of each year, PULIDO may sell back at full rate of pay (applicable base salary hourly rate) a maximum of ninety-six (96) hours of accrued but unused sick time, provided however that at least fifty-eight (58) hours remain on the books prior to PULIDO being eligible for any sick leave buy-back.

Section 5.5 below notwithstanding, in the event CITY terminates PULIDO for convenience, PULIDO may sell back up to one hundred ninety-two (192) hours of accrued but unused sick leave to CITY at applicable base salary hourly rate, in addition to the payment contemplated under Section 5.1, below.

**3.4 Management Leave.** CITY recognizes that while PULIDO is an exempt employee and not entitled to overtime pay, PULIDO's duties will likely require him to be available more than forty (40) hours per week. Accordingly, PULIDO shall be eligible to accrue two and one-fourth (2 ¼) hours of management leave each month, for a maximum of twenty-seven (27) hours of management leave per year during the Term of this Agreement. Accrued but unused management leave time may be carried over from year to year. On July 1<sup>st</sup> of each year, PULIDO may sell back at full rate of pay (applicable base salary hourly rate) accrued but unused management leave time, provided however that at least twenty-seven (27) hours remain on the books. Upon separation from employment with CITY, PULIDO shall not be entitled to compensation for, and CITY shall not buy back, any accrued but unused management leave time.

#### **SECTION 4. Retirement.**

The CITY is a member of the Public Employees Retirement System (PERS) for the purpose of employee retirement benefits. PULIDO shall be eligible for coverage under PERS as provided under paragraph 7 of the contract between PERS and the CITY, as amended on October 16, 2011. CITY shall provide PULIDO membership in PERS using the Two Percent (2%) at age 60 formula; CITY shall contribute CITY's Employer Share of the cost of membership in PERS during the Term of this Agreement and PULIDO shall contribute the cost of the Employee Share.

#### **SECTION 5. Termination.**

**5.1 By CITY Not for Cause/For Convenience.** CITY may terminate PULIDO for any reason, and at any time, with or without cause, by providing PULIDO thirty (30) days prior written notice thereof. In lieu of providing thirty (30) days prior written notice of termination,

CITY may place PULIDO on paid leave status during the thirty (30) day notice period or any portion thereof. This Agreement and its provisions govern the procedures for termination of PULIDO; any practice or procedure contained in or arising from any personnel policies or past CITY practices relating to the employment, discipline, or termination of its employees shall not apply to the procedures utilized by CITY for termination of PULIDO.

5.1.1 If PULIDO is terminated without cause, or he separates from CITY employment by mutual agreement between the CITY and PULIDO, at any time prior to February 11, 2015, he shall not be entitled to severance pay.

5.1.2 If PULIDO is terminated without cause, or upon his separation by mutual agreement between the CITY and PULIDO, at any time on or after February 11, 2015 but prior to August 11, 2015, he shall be entitled to severance pay of twelve (12) months' base salary, less any and all applicable or legally required deductions.

5.1.3 If PULIDO is terminated without cause, or upon his separation by mutual agreement between the CITY and PULIDO, at any time on or after August 11, 2015, he shall be entitled to severance pay of six (6) months' base salary, less any and all applicable or legally required deductions and subject to the limitations of Government Code section 53260.

5.1.4 Severance pay shall be paid by the CITY within thirty (30) days of termination. PULIDO shall receive any and all compensation for accrued but unused vacation and sick leave time for which he is eligible under Section 3 in addition to any severance payment provided under section 5.1.

5.1.5 The foregoing notwithstanding, CITY shall not exercise its right to terminate PULIDO for convenience and without cause during the 30-day period immediately following any General Municipal Election of the CITY in which one or more City Council seats are subject to an election contest or during the 30-day period immediately following any Special Municipal Election of the CITY in which one or more City Council seats are subject to an election contest.

5.2 **By Employee.** PULIDO may terminate his employment for any reason, and at any time, with or without cause, by providing CITY with thirty (30) days advance written notice. Notwithstanding Section 5.1, above, in the event that PULIDO terminates his employment, CITY shall have the option, in its complete discretion, to make PULIDO's termination effective at any time prior to the end of such 30-day period, provided CITY pays PULIDO all compensation due and owing him through the last day actually worked. In the event PULIDO resigns, he will not be entitled to severance pay.

5.3 **By CITY for Cause.** CITY may terminate this Agreement at any time by providing PULIDO written notice of his termination for cause. No severance payment shall be paid in the event CITY terminates this Agreement for cause, except that CITY shall pay PULIDO his accumulated and unused vacation leave as provided for in this Agreement. For

purposes of this Agreement, cause for termination shall include, but not be limited to, the following:

- a. Commitment of any illegal or unethical act involving personal gain to PULIDO;
- b. Willful or intentional failure or refusal to perform his duties and responsibilities consistent with his obligations under this Agreement, or to comply with lawful directives issued by the City Council pertaining to performance of his job duties and responsibilities;
- c. Engaging in unlawful discrimination or harassment of employees or any third party while on CITY premises or time;
- d. Material breach of the terms and conditions of this Agreement;
- e. Any intentional or grossly negligent act or omission that materially and substantially:
  - i. impedes or disrupts the operations of CITY or its organizational units;
  - ii. is detrimental to PULIDO's safety, the safety of any other CITY official, agent, or employee, or public safety; or
  - iii. violates properly established CITY rules or procedures as established by collective action of the City Council, including but not limited to the adoption of ordinances and resolutions;
- f. Commission of an act of moral turpitude. Under California law, acts of moral turpitude are acts including, but not limited to dishonesty, fraud, and theft, violence or the threat of violence, driving under the influence, possession of controlled substances for sale, vandalism, abuse, lewd acts, and securities violations. The City Council will not make a finding or determination about whether PULIDO has engaged in such conduct without first providing PULIDO a full, fair opportunity to rebut, defend, and justify any such alleged act involving moral turpitude in an open or closed session, at PULIDO's sole choice, provided that PULIDO may be placed on administrative leave without pay pending the outcome of any CITY investigation of such acts;
- g. Conviction of a felony, or plea of, guilty or nolo contendere or conviction of a misdemeanor involving moral turpitude, provided that PULIDO may be placed on administrative leave without pay should he be charged with any such crime;
- h. Willful or negligent destruction, misappropriation, or misuse of public property, waste of public supplies, or use of public property or supplies for other than a public purpose;

- i. Willful political activity involving the support of (or opposition to) candidates for City Council;
- j. Willful and unlawful retaliation against any other CITY officer or employee or member of the general public who in good faith discloses, divulges, or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of law occurring on the job or directly related thereto;
- k. Violation of any conflict of interest or incompatibility of office laws including, but not limited to the Political Reform Act and *Government Code* § 1090;
- l. Willful violation of any laws involving an abuse of office or position, as defined in *Government Code* § 53243.4;
- m. Performance of material outside business interests;
- n. Abuse of any prescription or non-prescription drugs, alcohol, or controlled substances that affect the performance of the City Manager's duties;
- o. Engaging in conduct tending to bring embarrassment or disrepute to CITY; and/or
- p. Unexcused absences from work for three (3) consecutive days without notice, except in case of emergency.

PULIDO expressly waives any rights provided for Administrative Personnel under CITY's Personnel Policies, any rights provided for the City Manager or Administrative Personnel under the Cudahy Municipal Code, or under state or federal law to any form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination.

**5.4 Termination Obligation.** PULIDO agrees that all property, including without limitation, all equipment, tangible Proprietary Information (as defined in Section 6, below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to CITY and shall be returned promptly to CITY upon termination of PULIDO's employment. PULIDO's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

**5.5 Benefits Upon Termination.** All benefits to which PULIDO is entitled under this Agreement shall cease upon PULIDO's termination in accordance with this Section 5, unless expressly continued either under this Agreement, under any specific written policy or benefit plan applicable to PULIDO, or unless otherwise required by law.

**5.6 Cessation of Work Due to Non-Permanent Illness or Injury.** In addition to any right of termination set forth under Sections 5.1 and 5.3, above, CITY reserves the right to terminate PULIDO's employment along with this Agreement if PULIDO ceases to work as a result of illness or injury: (i) which does not arise out of the course of employment; (ii) which does not limit a major life activity within the meaning of California's Fair Employment and

Housing Act; and (iii) where the cessation of work continues beyond the longer of the following: a period of four successive weeks beyond PULIDO's accrued sick leave; or a period of twenty consecutive days beyond a period of thirty consecutive days of incapacity due to the illness or injury.

**5.7 Disability.** In addition to any right of termination set forth under Sections 5.1 and 5.3, above, CITY reserves the right to terminate PULIDO's employment along with this Agreement after PULIDO suffers any physical or mental disability that does not arise out of the course of employment and that prevents the performance of PULIDO's essential job duties, unless reasonable accommodation can be made to allow PULIDO to continue working. The foregoing notwithstanding, CITY may terminate PULIDO if the disability poses a direct threat to CITY, PULIDO or any other employees working for CITY and any reasonable accommodation attempted by CITY would not mitigate or eliminate such a threat. The CITY will not provide a severance payment if PULIDO is terminated under this Section of this Agreement.

**5.8 Illness, Injury or Disability Arising Out of the Course of Employment.** In the event PULIDO suffers a physical or mental disability arising out of the course of employment, CITY's ability to terminate PULIDO solely and exclusively on the basis of the illness, injury or disability shall be subject to applicable workers' compensation laws for the State of California, the Americans with Disabilities Act (42 U.S.C. §§ 12101 et. seq.) and the California Fair Employment and Housing Act. Further, PULIDO's exclusive remedy or remedies against CITY for such illness, injury or disability shall be those legally required under the workers' compensation laws of the State of California.

**5.9 Medical Examination.** PULIDO agrees to submit to a medical and/or psychological examination by a qualified physician or psychiatrist selected by the CITY, in the event a decision must be made under Sections 5.6 through 5.8. CITY and PULIDO shall receive a copy of all medical reports related to the examination.

**5.10 Death of Employee.** This Agreement along with PULIDO's employment shall terminate automatically upon PULIDO's death.

## **SECTION 6. Proprietary Information.**

"Proprietary Information" is all information and any idea pertaining in any manner to the business of CITY (or any CITY affiliate), its elected and appointed officials, officers, employees, clients, consultants, or business associates, which was produced by any employee of CITY in the course of his or her employment or otherwise produced or acquired by or on behalf of CITY. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts and customer lists. All Proprietary Information not generally known outside of CITY's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by CITY, PULIDO shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of CITY and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination,

PULIDO shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. PULIDO's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

**SECTION 7. Conflict of Interest.** PULIDO represents and warrants to CITY that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

**SECTION 8. Professional Development.** The CITY acknowledges its interest in PULIDO's continuing professional development and agrees to allow and pay all expenses associated with his attendance at annual conferences of the International City Management Association, League of California Cities, and California City Managers Association. Further, the CITY agrees to pay the membership dues for PULIDO in the International City Management Association and City Manager's Department of the League of California Cities. With the prior consent of the Council, the CITY agrees to allow PULIDO to attend and participate in such other professional associations and conferences as may be mutually agreeable to both parties. The CITY acknowledges the right of PULIDO to engage in other professional activities as long as they do not interfere or conflict with PULIDO's duties as City Manager. Such professional activities may include teaching, writing, consulting and others.

**SECTION 9. General Provisions.**

9.1 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, or at the last known address maintained in PULIDO's personnel file. PULIDO agrees to notify CITY in writing of any change in his address during his employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

City's Notice Address:

City of Cudahy  
5220 Santa Ana Street  
Cudahy, California 90201  
Attn: Mayor and City Council

Pulido's Notice Address: [Deliver to last updated address in personnel file]

9.2 **Indemnification.** Subject to, in accordance with, and to the extent provided by the California Tort Claims Act [*Government Code* §§ 810 et seq.], CITY will indemnify, defend, and hold PULIDO harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring within the course and scope of PULIDO's duties as City Manager during PULIDO's tenure as City Manager. The CITY shall pay the amount of any

settlement or judgment thereon; provided that PULIDO cooperates in the defense of the claim, demand, or action. In this regard, the CITY shall have the discretion to compromise or settle any such claim, demand or action and pay the amount of any settlement rendered thereon. Notwithstanding the foregoing, the CITY shall have no duty to indemnify, defend or hold PULIDO harmless from any criminal proceeding or with regard to any civil, criminal or administrative proceeding initiated by him.

Without limiting the application of this Section 9.2, nothing in this Agreement shall expand the CITY'S defense and indemnification obligations beyond those provided in the Tort Claims Act and *Government Code* §§ 995-996.6. Further, in the event CITY provides funds for legal criminal defense pursuant to this sub-section and the terms of the *Government Code*, PULIDO shall reimburse the CITY for such legal criminal defense funds, and for any paid leave provided pursuant to Section 5.3 above, if PULIDO is convicted of a crime involving an abuse of office of position as provided by *Government Code* §§ 53243-53243.4.

**9.3 Bonding.** The CITY shall bear the full cost of any fidelity or other bonds required of the City Manager under any laws or ordinance.

**9.4 Integration.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of PULIDO'S employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of PULIDO, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to PULIDO and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

**9.5 Amendments.** This Agreement may not be altered, amended or modified except in a written document signed by PULIDO, approved by the City Council and signed by CITY'S Mayor or designee.

**9.6 Waiver.** Failure to exercise any right under this Agreement shall not constitute a waiver of such right. No waiver of a provision of this Agreement shall constitute a waiver of any other provision, whether or not similar. No waiver shall be binding unless executed in writing by the party making the waiver.

**9.7 Assignment.** PULIDO shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to PULIDO, assign its rights and obligations hereunder.

**9.8 Severability.** If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

**9.9 Attorneys' Fees.** In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

9.10 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue properly only in Los Angeles County, State of California.

9.11 **Interpretation.** This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit or against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. Each party waives its future right to claim, contest, or assert that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

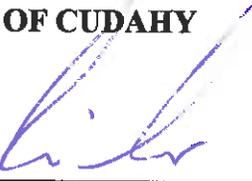
9.12 **Acknowledgment.** PULIDO acknowledges that he has had the opportunity to consult legal counsel with regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

9.13 **Miscellaneous.** The provisions of Chapter 2.12 of the Cudahy Municipal Code relating to the City Manager are incorporated into this Agreement by this reference, as amended from time to time.

**IN WITNESS WHEREOF,** CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its Interim City Clerk, and PULIDO has signed and executed this Agreement, as of the date first indicated above.

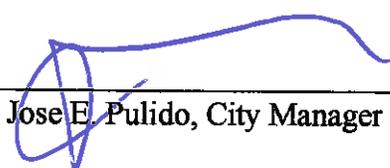
**CITY OF CUDAHY**

By: \_\_\_\_\_

  
Chris Garcia, Mayor

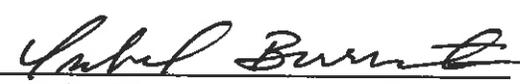
**CITY MANAGER**

By: \_\_\_\_\_

  
Jose E. Pulido, City Manager

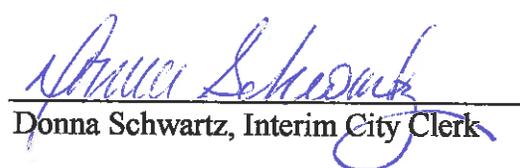
**APPROVED AS TO FORM:**

By: \_\_\_\_\_

  
Isabel Birrueta, Assistant City Attorney

**ATTEST:**

By: \_\_\_\_\_

  
Donna Schwartz, Interim City Clerk

2016  
SECOND AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT  
(Employee: Jose Pulido)

THIS SECOND AMENDMENT (“Amendment”) to that certain agreement entitled “Employment Agreement for the Position of City Manager” originally executed on August 6, 2014 by and between the CITY OF CUDAHY (“City”) and JOSE PULIDO, an individual (“ Employee”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2016 (“Effective Date”). For purposes of this Second Amendment, the capitalized term “Parties” shall be a collective reference to both City and Employee. The capitalized term “Party” may refer to either City or Employee as appropriate.

RECITALS

WHEREAS, the Parties executed and entered into an agreement dated August 6, 2014 and entitled “Employment Agreement for the Position of City Manager” (hereinafter, the “Master Agreement”) (A true and correct copy of the Master Agreement is attached and incorporated hereto as Exhibit “A”); and

WHEREAS, Section 9.4 (Amendments) of the Master Agreement allows the Parties to amend the Master Agreement provided such amendments are memorialized in the form of a written amendment approved by the Parties; and

WHEREAS, the Master Agreement was set to expire on August 10, 2016; and

WHEREAS, the Cudahy City Council (“City Council”), in anticipation of the pending expiration of the Master Agreement on August 10, 2016, approved a First Amendment instrument to the Master Agreement (hereinafter, the “First Amendment”) which merely extended the term of the Master Agreement to September 7, 2016 to allow the City Council time to refine and finalize the terms of a longer term extension to the Master Agreement; and

WHEREAS, the First Amendment was approved at the City Council’s Regular meeting of August 8, 2016 in open session; and

WHEREAS, this Second Amendment now reflects the long term agreement between the Parties; and

WHEREAS, the amendments to the Master Agreement as set forth in this Second Amendment include an extension of the Term for an additional three (3) years as well as an increase in the Employees annual base compensation; and

WHEREAS, the amendments to the Master Agreement as embodied in this Second Amendment also include modified language intended to reflect the City Council’s desire that Employee be available to participate in meetings, events and functions that may occur outside of the City’s normal business hours as requested by the City Council or as circumstances may reasonably prescribe; and

WHEREAS, notwithstanding the preceding recital, the City Council recognizes that Employee should be afforded reasonable flexibility in scheduling his work day; and

WHEREAS, execution of this Second Amendment was approved in open session at the City Council's regular meeting of August 22, 2016 as required under Government Code Section 53262.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

SECTION 1. Subsection 1.3.1 of Section 1.3 (Term; At-will) of the Master Agreement as last amended by way of the First Amendment is hereby amended by the addition of the following sentence which shall follow the first sentence of Subsection 1.3.1:

***The foregoing notwithstanding, the Term is extended by an extension term of three (3) years commencing August 12, 2016.***

The extension to the Term of the Master Agreement as set forth in this Second Amendment shall supersede and replace the extension set forth in the First Amendment, but only in so far as the extension set forth in the First Amendment extends the Term of the Master Agreement beyond August 31, 2016 and no further. Any extension of the Term of the Master Agreement beyond August 31, 2016 shall be governed by this Second Amendment.

SECTION 2. The text of Section 1.5 (Hours of Work) of the Master Agreement is hereby deleted, repealed and replaced in its entirety by the following:

***Work Schedule. Throughout the Term of this Agreement and any extension term, PULIDO shall devote the time reasonably necessary to adequately perform his duties as City Manager and shall also devote time reasonably necessary to effectively and competently manage City staff and oversee the day-to-day business operations of the City. In the furtherance of the foregoing, PULIDO shall maintain a reasonably substantial onsite presence at Cudahy City Hall during the City's regular work week and during the City's regular business hours which are currently set at a schedule of Monday through Thursday with a ten hour workday. The foregoing notwithstanding, PULIDO shall also be available and present at Cudahy City Hall and at other locations in the City of Cudahy during non-business hours as requested by the City Council from time to time or as reasonably necessary to participate in City Council meetings or to engage with individual members of the City Council, members of the community and community stakeholder groups. The position of City Manager shall be deemed an exempt position under state and federal wage and hour laws. PULIDO's compensation (whether salary or benefits or other allowances) is not based on hours worked and PULIDO shall not be entitled to any compensation for overtime.***

SECTION 3. The text of Subsection 2.1 (Base Salary) of the Master Agreement is hereby deleted, repealed and replaced in its entirety by the following:

***PULIDO shall receive an annual salary of One Hundred and Ninety-Five Thousand Dollars (\$195,000) paid incrementally according to the payroll schedule in place for City employees paid bi-weekly.***

This amendment to Subsection 2.1 (Base Salary) of the Master Agreement shall become operative on August 12, 2016 and shall be applied prospectively.

SECTION 4. With respect to Section 5.1.3 of the Master Agreement detailing the severance Employee is entitled to receive, the Parties acknowledge and agree that Employee has been employed continuously with the City beyond August 11, 2015 and is therefore eligible to receive six months severance subject to the terms, conditions, restrictions and limitations set forth under Section 5 of the Master Agreement.

SECTION 5. Except as otherwise set forth in this Second Amendment, the Master Agreement as previously amended by way of the First Amendment shall remain binding, controlling and in full force and effect. The provisions of this Second Amendment shall be deemed a part of the Master Agreement as previously amended by way of the First Amendment and except as otherwise provided under this Second Amendment, the Master Agreement as previously amended by way of the First Amendment and all provisions contained therein shall remain binding and enforceable. In the event of any conflict or inconsistency between the provisions of this Second Amendment and the provisions of the Master Agreement or the First Amendment, the provisions of this Second Amendment shall govern and control, but only in so far as such provisions conflict with the Master Agreement or the First Amendment and no further.

SECTION 6. The Master Agreement as amended by way of this Second Amendment and the First Amendment constitutes the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between City and Employee prior to the execution of this Second Amendment. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to the Master Agreement as amended by this Second Amendment or the First Amendment shall be valid and binding unless in writing and duly executed by the Parties in the form of a written contract amendment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Second Amendment to be executed on the day and year first appearing above.

**CITY:**

**City of Cudahy**

By: \_\_\_\_\_  
Baru Sanchez  
Mayor

**EMPLOYEE**

**Jose Pulido, an individual:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AGENDA DRAFT

**Exhibit A**  
**Master Agreement plus First Amendment**

AGENDA DRAFT