



SAN RAFAEL CITY COUNCIL – MONDAY, MAY 20, 2019

**REGULAR MEETING
COUNCIL CHAMBERS, CITY HALL
1400 FIFTH AVENUE, SAN RAFAEL, CALIFORNIA**

AGENDA

OPEN SESSION – THIRD FLOOR CONFERENCE ROOM, CITY HALL – 5:30 PM

1. Mayor Phillips to announce Closed Session items.

CLOSED SESSION – THIRD FLOOR CONFERENCE ROOM, CITY HALL - 5:30 PM

2. Closed Session:
 - a. Conference with Legal Counsel – Existing Litigation (2 cases)
Government Code Section 54956.9(b) & (d)(1))
Timothy Horvath v. City of San Rafael, Workers' Compensation Appeal Board Case Nos. ADJ6928890, ADJ11022602, ADJ11022622, ADJ11022633
Rotary Manor v. City of San Rafael, Marin County Superior Court No. CIV 1702340
 - b. Conference with Labor Negotiators – Government Code Section 54957.6
Lead Negotiator: Timothy L. Davis (Burke, Williams & Sorensen)
Agency Designated Representatives: Jim Schutz, Cristine Alilovich, Shibani Nag, Nadine Hade, Van Bach, Lauren Monson, Robert Epstein, Police Chief Diana Bishop
Employee Organizations: SEIU - Childcare; San Rafael Police Mid-Management Association; Public Employee Union, Local 1; San Rafael Firefighters' Association; San Rafael Police Association; SEIU Local 1021; Western Council of Engineers; San Rafael Fire Chief Officers' Association

OPEN TIME FOR PUBLIC EXPRESSION – 7:00 PM

The public is welcome to address the City Council at this time on matters not on the agenda that are within its jurisdiction. Please be advised that pursuant to Government Code Section 54954.2, the City Council is not permitted to discuss or take action on any matter not on the agenda unless it determines that an emergency exists, or that there is a need to take immediate action which arose following posting of the agenda. Comments may be no longer than two minutes and should be respectful to the community.

SPECIAL PRESENTATION:

3. Special Presentation:
 - a. Presentation of Proclamation to BioMarin Pharmaceutical Inc. for Being Named by Forbes As One of “America’s Best Midsize Employers”

CITY MANAGER’S REPORT:

4. City Manager’s Report:

CONSENT CALENDAR:

The opportunity for public comment on consent calendar items will occur prior to the City Council's vote on the Consent Calendar. The City Council may approve the entire consent calendar with one action. In the alternative, items on the Consent Calendar may be removed by any City Council or staff member, for separate discussion and vote.

5. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of City Council / Successor Agency Regular and Special Meetings of Monday, May 6, 2019 (CC)

Recommended Action - Approve as submitted

b. **Downtown San Rafael Market**

Resolution Authorizing the City Manager to Execute a Six-Month Professional Services Agreement with the Agricultural Institute of Marin to Manage the Downtown San Rafael Market for the 2019 Season (CS)

Recommended Action - Adopt Resolution

c. **City-County Joint Highway Safety Improvement Program (HSIP) Funding Agreement**

Resolution Approving and Authorizing the City Manager to Execute an Agreement Allowing the County of Marin to Administer the Highway Safety Improvement Program (HSIP) for Intersection Improvement at 14 Locations in San Rafael (PW)

Recommended Action - Adopt Resolution

d. **Lucas Valley Road at Los Gamos Drive Traffic Signal**

Resolution Approving and Authorizing the City Manager to Execute a Maintenance Agreement with the County of Marin for Maintenance of the Traffic Signal at the Intersection of Lucas Valley Road at Los Gamos Drive (PW)

Recommended Action - Adopt Resolution

PUBLIC HEARINGS:

6. Public Hearings:

a. **Flavored Tobacco Ban Ordinance**

Consideration of An Ordinance of the City of San Rafael City Council Amending Chapter 8.15 of the San Rafael Municipal Code, Entitled "Tobacco Retail Sales, Advertising and Promotion" to Regulate Sales of Flavored Tobacco Products and Sale of Tobacco Products at Pharmacies (CD)

Recommended Action - Pass Ordinance to print

COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:

(including AB 1234 Reports on Meetings and Conferences Attended at City Expense)

7. Councilmember Reports:

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: -None.

ADJOURNMENT:

Any records relating to an agenda item, received by a majority or more of the Council less than 72 hours before the meeting, shall be available for inspection in the City Clerk's Office, Room 209, 1400 Fifth Avenue, and placed with other agenda-related materials on the table in front of the Council Chamber prior to the meeting. Sign Language interpreters and assistive listening devices may be requested by calling (415) 485-3066 (voice), emailing Lindsay.lara@cityofsanrafael.org or using the California Telecommunications Relay Service by dialing "711", at least 72 hours in advance of the meeting. Copies of documents are available in accessible formats upon request. Public transportation is available through Golden Gate Transit, Line 22 or 23. Paratransit is available by calling Whistlestop. Wheels at (415) 454-0964. To allow individuals with environmental illness or multiple chemical sensitivity to attend the meeting/hearing, individuals are requested to refrain from wearing scented products.

In the Council Chambers of the City of San Rafael, Monday, May 6, 2019



**Regular Meeting
San Rafael City Council**

Minutes

[How to participate in your City Council meeting](#)

Present: Mayor Phillips
Councilmember McCullough
Councilmember Bushey
Councilmember Colin
Councilmember Gamblin

Absent: None

Also Present: City Manager Jim Schutz
City Attorney Robert Epstein
City Clerk Lindsay Lara

[Mayor Phillips requested the Colors be presented](#)

OPEN SESSION – COUNCIL CHAMBERS, CITY HALL

1. None.

CLOSED SESSION – THIRD FLOOR CONFERENCE ROOM, CITY HALL

2. Closed Session: - None.

OPEN TIME FOR PUBLIC EXPRESSION – 7:00 PM

- Katherine DaSilva Jain addressed the City Council regarding carbon offsets
- Vickie Sievers addressed the City Council regarding 5G Wireless Communication Technology

CITY MANAGER'S REPORT:

3. City Manager's Report:

- City Manager Jim Schutz reported on topics and made announcements of upcoming events and public meetings:
 - Wildfire Prevention:
 - City Council Wildfire Subcommittee, Mayor Phillips and Councilmember Bushey, is recruiting for community members to join the subcommittee and applications are due on Friday, May 10, 2019 at 5 p.m. for the remaining 8 committee members.
 - Marin Wildfire Forum was held on May 4, 2019
 - Firestorm and Wildfire Climate Workshop will be held on Wednesday, May 8, 2019 from 7-9 p.m. at B Street Community Center;
 - Reported on County of Marin's work around a County-wide approach to wildfire prevention.
 - Downtown Plan Design Charrette:

- The City is hosting Downtown Plan Design Charrette's to seek input on the development of the master plan for downtown specifically around creating the Downtown Plan Design Guidelines, parking and transportation, public space improvement zoning, and strategies to increase affordable housing and reducing displacement.
 - **Downtown Plan Design Charrette Opening Presentation** to be held on Wednesday, May 8th from 7-9 p.m. at Whistlestop;
 - **Downtown Plan Design Charrette Thursday Studio** to be held on Thursday, May 9, 2019 from 10 - 6:30 p.m. at 1200 4th Street;
 - **Downtown Plan Design Charrette Friday Studio** to be held on Friday, May 10, 2019 from 10 - 1:00 p.m. at 1200 4th Street;
 - **Downtown Plan Design Charrette Closing Presentation** to be held on Saturday, May 11, 2019 from 10-12:00 p.m. at Whistlestop.
- Reported on SMART's notification to close a portion of Second and Third Streets for one weekend each at the end of May and the beginning of June 2019.
- Mayor Phillips / City Manager Jim Schutz announced the May Madness in downtown San Rafael on May 11, 2019 at 12:00 p.m.

CONSENT CALENDAR:

4. Consent Calendar Items:

Items 4.c, 4.d and 4.i held from the Consent Calendar

Councilmember McCullough moved and Councilmember Gamblin seconded to approve the remainder of the Consent Calendar Items:

- a. **Approval of Minutes**
Approve Minutes of City Council / Successor Agency Regular Meeting of Monday, April 15, 2019 (CC)
[City Council Minutes 2019-04-15](#)
 Approved as submitted
- b. **Statement of Economic Interests Annual Filings**
Report on Fair Political Practices Commission Form 700, Statement of Economic Interests, 2018 Annual Filings, for Section 87200 Filers and Designated Employees, Including Consultants, Design Review Board, Park and Recreation Commission and Successor Agency Oversight Board (CD)
[Statement of Economic Interests Report 2019](#)
 Accepted report
- e. **Public Service Recognition Week**
Resolution Supporting Public Service Recognition Week 2019 (HR)
[Public Service Recognition Week](#)
 RESOLUTION 14661 - RESOLUTION SUPPORTING PUBLIC SERVICE RECOGNITION WEEK 2019
- f. **National Police Week**
Resolution Supporting National Police Week 2019 (PD)
[National Police Week](#)

RESOLUTION 14662 - RESOLUTION SUPPORTING NATIONAL POLICE WEEK 2019

- g. Fleet Vehicle Purchases**
Resolution Authorizing the City Manager to Increase the Approved Purchase Price for Three Police Patrol Cars by \$8,000 Each (\$24,000 Total for Three) for a Total Not-to-Exceed Purchase Amount of \$195,000 (PW)
[Fleet Vehicle Purchases](#)

RESOLUTION 14663 - RESOLUTION AUTHORIZING THE CITY MANAGER TO INCREASE THE APPROVED PURCHASE PRICE FOR THREE POLICE PATROL CARS BY \$8,000 EACH (\$24,000 TOTAL FOR THREE) FOR A TOTAL NOT-TO-EXCEED PURCHASE AMOUNT OF \$195,000

- h. Fire Station 54 & 55 Reconstruction Design**
Resolution Awarding and Authorizing the City Manager to Execute A Professional Services Agreement with Loving Campos Associates, Architects, Inc. for Design of the Fire Stations 54 and 55 Renovation in the Amount of \$615,175, and Further Delegating to the City Manager Authority to Exercise the Option to Add Construction Administration Services in An Amount Not-to-Exceed \$113,742 At a Later Date for a Total Amount Not to Exceed \$728,917 (PW)
[Fire Stations 54 & 55 Reconstruction Design](#)

RESOLUTION 14664 - RESOLUTION AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH LOVING CAMPOS ASSOCIATES, ARCHITECTS, INC. FOR DESIGN OF THE FIRE STATIONS 54 AND 55 RENOVATION IN THE AMOUNT OF \$615,175, AND FURTHER DELEGATING TO THE CITY MANAGER AUTHORITY TO EXERCISE THE OPTION TO ADD CONSTRUCTION ADMINISTRATION SERVICES IN AN AMOUNT NOT-TO-EXCEED \$113,742 AT A LATER DATE FOR A TOTAL AMOUNT NOT TO EXCEED \$728,917

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: None

The following items were removed from the Consent Calendar:

- c. 400 Upper Toyon Drive Detachment Request and Proposed Tax Sharing Agreement**
Resolution Approving and Authorizing the City Manager to Enter into a Tax Exchange Agreement with the Town of Ross in Connection with the Proposed Detachment of 400 Upper Toyon Drive (Assessor's Parcel No. 012-121-28) from the City of San Rafael and Its Annexation to the Town of Ross, in Addition to the Property Owner's Offer of Payment (CA)
[400 Upper Toyon](#)

[Mayor Phillips clarified the dollar amount to be paid by the property owner](#)

[Mayor Phillips invited public comment; however, there was none.](#)

[Councilmember Colin moved and Councilmember McCullough seconded to adopt the Resolution](#)

RESOLUTION 14665 - RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A TAX EXCHANGE AGREEMENT WITH THE TOWN OF ROSS IN CONNECTION WITH THE PROPOSED DETACHMENT OF 400 UPPER TOYON DRIVE (ASSESSOR'S PARCEL NO. 012-121-28) FROM THE CITY OF SAN RAFAEL AND ITS

ANNEXATION TO THE TOWN OF ROSS, IN ADDITION TO THE PROPERTY OWNER'S OFFER OF PAYMENT

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: None

- d. **San Rafael Wildfire Advisory Committee**
Resolution Establishing the San Rafael Wildfire Advisory Committee, Appointing Initial Committee Members and Adopting Committee Guidelines (FD)
[Wildfire Advisory Committee](#)

Councilmember Colin announced the application period for community members to participate on the subcommittee ends on May 10, 2019 at 5:00 p.m., informed the community they could apply online, and commented on the Grand Jury report.

Mayor Phillips commented on the first seven members selected for the subcommittee

Councilmember McCullough moved and Councilmember Bushey seconded to adopt the Resolution

RESOLUTION 14666 - RESOLUTION ESTABLISHING THE SAN RAFAEL WILDFIRE ADVISORY COMMITTEE, APPOINTING INITIAL COMMITTEE MEMBERS AND ADOPTING COMMITTEE GUIDELINES

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: None

- i. **2018-19 Restriping Project**
Resolution Awarding and Authorizing the City Manager to Execute a Construction Agreement for the 2018-19 Restriping Project, City Project No. 11359, to Bayside Stripe & Seal, Inc. in the Amount of \$701,270.00, and Authorizing Contingency Funds in the Amount of \$48,730 for a Total Appropriated Amount of \$750,000 (PW)
[2018-19 Restriping Project](#)

Staff responded to questions from Councilmembers. Councilmembers provided comment.

Mayor Phillips invited public comment; however, there was none.

Councilmember Bushey moved and Councilmember Colin seconded to adopt the Resolution

RESOLUTION 14667 - RESOLUTION AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE 2018-19 RESTRIPING PROJECT, CITY PROJECT NO. 11359, TO BAYSIDE STRIPE & SEAL, INC. IN THE AMOUNT OF \$701,270.00, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$48,730 FOR A TOTAL APPROPRIATED AMOUNT OF \$750,000

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: Councilmembers: Gamblin
ABSENT: Councilmembers: None

SPECIAL PRESENTATIONS:

5. Special Presentations:

a. Presentation of Resolutions Supporting Public Service Recognition Week and National Police Week (HR)

Assistant City Manager Cristine Alilovich introduced the Director of Employee Experience and Culture, Shibani Nag, to receive the resolution of appreciation

Mayor Phillips presented the Resolution of Support to Shibani Nag

Shibani Nag commented on Public Service Recognition Week

Mayor Phillips presented the Resolution of Support to Chief of Police Diana Bishop

Chief Bishop commented on National Police Week

b. Police Department Award Ceremony (PD)

Chief of Police Diana Bishop commented on the Police Department and introduced Lieutenant Scott Eberle who conducted the Award Ceremony

Lieutenant Eberle presented the following awards:

Life Saving Citation

James Bellamy, Corporal
Michael Garrison, Officer
Mark Hedeem, Reserve Officer
Rob Sinclair, Marine Unit Volunteer
John McGinnis, Marine Unit Volunteer

Meritorious Conduct Citation

Rebecca Kuga, Youth Services Bureau Supervisor (Retired)

Unit Conduct Citation

Alan Piombo, Mill Valley Police Chief (Former SRPD)
Todd Berringer, Sergeant
Ronda Cordero, Corporal
Rob Cleland, Corporal
Aaron Piombo, Corporal
Blake Delzell, Corporal
James Dooley, Officer
Gino Rantissi, Santa Rosa Police Officer (Former SRPD)
Carlos Maldonado, Berkeley Police Officer (Former SRPD)

LETTERS OF COMMENDATION

Helen Vine Detox Homicide Investigation

Wanda Spaletta, Sergeant
Lilah Gavlick, Corporal
Phil Melodia, Officer
James Dooley, Officer
Karl Luhmann, Officer

Cheryl Kondratieff, Officer

Life Saving Efforts

James Dooley, Officer

Marc Laplante, Officer (Retired)

Boat Fire Dog Rescue

Travis Ruggles, Officer

Excellence In Supervision

Wanda Spaletta, Sergeant

Mayor Phillips

Chief Bishop administered the Oath of Office to the Marin Auxiliary Members and K-9 Officers

OTHER AGENDA ITEMS:

6. Other Agenda Items:

a. Renter Protections

Informational Report on Proposed Renter Protection Policies: Mandatory Mediation and Just Cause Eviction (CM)

[Renter Protections](#) [Correspondence \(May 2 at 10:00 a.m.\)](#) [Correspondence \(May 3 at 10:00 a.m.\)](#)
[Correspondence](#) [Correspondence \(May 6 at 12:00 p.m.\)](#)

Andrew Hening, Director of Homeless Planning and Outreach, presented the staff report

Leelee Thomas, Marin County Community Development Agency

Staff responded to questions from Councilmembers. Councilmembers provided comment.

Mayor Phillips invited public comment

Speakers: George Pegelow, NextGen Marin; Julia Kiley, Marin Organizing Committee; Shannon Griffin; Ruth Yaeger and Steve Wolf; Carolyn Coles; Joan deCowaski; David Levin, Legal Aid of Marin; Speaker; Yolanda Varona; Speaker; Linda Jackson / Mayor Phillips / Councilmember McCullough; Casey Epp, Fair Housing Advocates; Judy Binsacca, League of Women Voters; Dr. Lisa Leavitt; Christina; Howard Schwartz; Alex Calfin / Mayor Phillips; Rosa; Kiki La Porta, Marin Environmental Housing Collaborative; Lisa Doring; Herb Taylor; Fernando Barreto; Beatrice; Speaker; Wendy; Speaker

There being no further comment from the audience, Mayor Phillips closed public comment

Councilmembers provided comments and feedback to staff

City Manager Jim Schutz reiterated City Council's direction to staff, stating a consensus that the basis for mediation would be a 5% or greater increase to be applied to all units, not just three or more, and the City would pay the cost of the first year while researching alternative funding sources. Additionally, staff would address concerns relating to any unintended consequences, as well as a purpose for the percent increase being 5%, as opposed to a 10%.

Councilmember Bushey moved and Councilmember Colin seconded to accept the report with the provided direction to staff

Accepted report and provided direction to staff

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: None

b. Climate Change Action Plan Adoption and Greenhouse Gas Emissions Report (CM)

- 1) Resolution Adopting Addendum No. 4 to the Certified San Rafael General Plan 2020 Final Environmental Impact Report (FEIR) (SCH# 2003052031), Prepared for the San Rafael Climate Change Action Plan 2030
- 2) Resolution Adopting the San Rafael Climate Change Action Plan 2030 (City File #P19-003)
- 3) Annual Report on the Greenhouse Gas Inventory and Reduction Strategy for 2016
- 4) Report on the 2019-2020 Two-Year Work Plan Priorities
[Climate Change Action Plan 2030 & GHG Report](#)

Cory Bytof, Sustainability Coordinator, presented the staff report along with Christine O'Rourke

Mayor Phillips invited public comment

Speakers: Bill Carney, Sustainable San Rafael; Chris Yollanis, Venture Pad; Kiki Laporta, Sustainable Marin; Bell Cole, Organizing for Action in Marin; Charlotte Kamman, Marin School of Environmental Leadership; Anna Ostrovsky, Marin School of Environmental Leadership; Stuart Siegel; Katherine DaSilva Jain

There being no further comment from the audience, Mayor Phillips closed the public comment period

Councilmember Colin provided comments

Councilmember Colin moved and Councilmember Bushey seconded to adopt the Resolution Adopting Addendum No. 4 to the Certified San Rafael General Plan 2020 Final Environmental Impact Report (FEIR) (SCH# 2003052031), Prepared for the San Rafael Climate Change Action Plan 2030

RESOLUTION 14668 - RESOLUTION ADOPTING ADDENDUM NO. 4 TO THE CERTIFIED SAN RAFAEL GENERAL PLAN 2020 FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) (SCH# 2003052031), PREPARED FOR THE SAN RAFAEL CLIMATE CHANGE ACTION PLAN 2030

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: None

Councilmember Colin moved and Councilmember Bushey seconded to adopt the Resolution Adopting the San Rafael Climate Change Action Plan 2030 (City File #P19-003)

RESOLUTION 14669 - RESOLUTION ADOPTING THE SAN RAFAEL CLIMATE CHANGE ACTION PLAN 2030 (CITY FILE #P19-003)

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: None

Councilmember Colin moved and Councilmember Bushey seconded to accept the report on the Greenhouse Gas Inventory and Reduction Strategy for 2016

Accepted report

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: None

Councilmember Colin moved and Councilmember Bushey seconded to accept the report on the 2019-2020 Two-Year Work Plan Priorities

Accepted report

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: None

COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:

7. Councilmember Reports:

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: -None.

ADJOURNMENT:

Mayor Phillips adjourned the City Council meeting at 11:36 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2019

GARY O. PHILLIPS, Mayor

In the City Manager's Conference Room of the City of San Rafael, Monday, May 6, 2019 at 5:30 p.m.



**Special Meeting
San Rafael City Council**

Minutes

Present: Mayor Phillips
Vice-Mayor McCullough
Councilmember Bushey
Councilmember Colin
Councilmember Gamblin

Absent: None

Also Present: City Manager Jim Schutz
City Clerk Lindsay Lara
Economic Development Coordinator Simon Vuong

- Citizens Advisory Committee on Economic Development & Affordable Housing Interviews Interview Applicants and Consider Appointments to Fill Four Four-Year Terms and One Alternate Four-Year Term to the End of May 2023, on the Citizens Advisory Committee on Economic Development & Affordable Housing Due to the Expiration of Terms of Dirk Brinckerhoff, Bill Carney, Kati Miller, William O'Connell, Jr., and Alternate Member Gladys Gilliland (CC)**
[Citizens Advisory Committee Interviews](#)

The City Council interviewed the following applicants: Gladys Gilliland, Dirck Brinkerhoff, William Carney, Shingai Samudzi, J.e.b. Pickett, William O'Connell, Jr., and Kati Miller. Kelly Alga withdrew her application.

After discussion, there was City Council consensus to reappoint Dirk Brinckerhoff, Bill Carney, Kati Miller, William O'Connell, Jr., and Alternate Member Gladys Gilliland to the end of May 2023

ADJOURNMENT:

Mayor Phillips adjourned the meeting at 7:03 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2019

GARY O. PHILLIPS, Mayor



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Services

Prepared by: Susan Andrade-Wax,
Community Services Director

City Manager Approval: _____

TOPIC: Agreement for Downtown San Rafael Market

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SIX-MONTH PROFESSIONAL SERVICES AGREEMENT WITH THE AGRICULTURAL INSTITUTE OF MARIN TO MANAGE THE DOWNTOWN SAN RAFAEL MARKET FOR THE 2019 SEASON

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute a six-month agreement with the Agricultural Institute of Marin to manage the Downtown San Rafael Market for the 2019 season.

BACKGROUND:

The [Downtown San Rafael Market](#) was established in 1990 and has been a popular event, drawing up to 5,000 people to the Downtown each Thursday night of the season. The event was modeled after the very successful San Luis Obispo evening festival. The goal of the Downtown Market is to provide a family-friendly environment with a variety of experiences: fresh vegetables, hot foods, music, crafts, and kids' activities to attract people to Downtown San Rafael in the evening. The focus was and remains to bring people to the Downtown and not to compete with the daytime farmers markets in the rest of Marin County.

Since its establishment in 1990, the Downtown Market has been managed by Next Generation Events. In February 2019, the owner of Next Generation announced their intent to close their business and informed the City that they would be unable to continue to manage the Downtown Market. The City entered into discussions with the [Agricultural Institute of Marin](#) (AIM), a San Rafael-based nonprofit that operates seven farmers markets around the Bay Area, to see if they had the capacity and interest to manage the Downtown Market. AIM proposed a six-month pilot agreement for the 2019 season to determine if this partnership would be a good fit for them, the City, the Downtown merchants, and the community.

ANALYSIS:

AIM has a long history of managing farmer's markets in Marin County, opening their first market at the

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

Marin County Civic Center in 1983. Since then, AIM has expanded their services to operate seven farmers markets throughout the Bay Area, including two in San Rafael. Their markets have won numerous awards, including Pacific Sun's Best Organic Produce and Best Farmers Market. AIM's mission is to educate the public about the nutritional and economic benefits of buying locally grown food directly from farmers, and to connect and support communities and agriculture. They have a demonstrated commitment to serving San Rafael and to designing family-friendly markets that bring people together and build community.

AIM is proposing to run the Downtown Market from June 13 through September 26, 2019 from 6:00 p.m. to 9:00 p.m., with a break the week of July 1, 2019. The Downtown Market will include local produce, hot foods, value-added products, crafts, educational programs, kids' activities, and live music on the plaza. AIM's goal is to bring communities together, while supporting small family farmers and local businesses. A full list of the regulations and guidelines that AIM applies to its market vendors can be found on [their website](#). To ensure affordability and food access, AIM will welcome CalFresh/EBT and WIC at the Downtown Market and will provide a market match of up to \$10 for fruit and vegetable purchases. It is important to note that during this pilot period, the quality and experience provided by the Downtown Market will not change.

COMMUNITY OUTREACH:

AIM and the City's Economic Development Director have been meeting with representatives from the Downtown Business Improvement District and the San Rafael Chamber of Commerce. Business owners on Fourth Street have provided a range of input on the Downtown San Rafael Market. Overall, they view this as an opportunity to refresh and reinvigorate the market. As this is a pilot, the City and AIM will continue to seek input from local businesses around the impact and ways the market can benefit them and the community.

In terms of the broader community, the City will collaborate with AIM to promote the Downtown Market through signage, social media, and online outreach platforms.

FISCAL IMPACT:

The City's related expenses for the Downtown Market include staff time (Police, Events, Parking Services, Public Works), signage, and weekly cleaning of the sidewalks and City Plaza. For the pilot year of this partnership, Economic Development has offered to cover the cost of waste management services, which will total no more than \$2,350. Funds to support these expenses are budgeted and available in the respective operating budgets of the five City departments.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the resolution as proposed, approving the agreement with the Agricultural Institute of Marin.
2. Adopt the resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt a resolution authorizing the City Manager to execute a six-month agreement with the Agricultural Institute of Marin to manage the Downtown San Rafael Market for the 2019 season.

ATTACHMENTS:

1. Resolution
2. Professional Services Agreement with the Agricultural Institute of Marin

RESOLUTION NO. _____

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE A SIX-MONTH PROFESSIONAL SERVICES
AGREEMENT WITH THE AGRICULTURAL INSTITUTE OF MARIN TO MANAGE THE
DOWNTOWN SAN RAFAEL MARKET FOR THE 2019 SEASON**

WHEREAS, the San Rafael City Council has determined that it is in the City’s best interest to obtain management services for the organization and operation of the Downtown San Rafael Market (hereinafter “Market”); and

WHEREAS, the Agricultural Institute of Marin (hereinafter “AIM”) has experience in providing management services and special technical skills to ensure a successful Market; and

WHEREAS, the City desires to employ AIM to provide such services and AIM is willing and able to provide said services; and

WHEREAS, all other costs incurred by AIM for the Market will be paid by AIM from Market gross receipts and shall not be an obligation of the City;

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby authorizes the City Manager to execute a six-month agreement with the Agricultural Institute of Marin (AIM) to manage the Downtown San Rafael Market for the 2019 season subject to final approval as to form by the City Attorney.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 20th day of May 2019, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Lindsay Lara, City Clerk

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF SAN RAFAEL AND AGRICULTURAL INSTITUTE OF
MARIN TO PROVIDE OPERATION AND MANAGEMENT SERVICES FOR THE
NEW DOWNTOWN SAN RAFAEL MARKET**

This Agreement is made and entered into this ____ day of _____, 2019, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and AGRICULTURAL INSTITUTE OF MARIN, a California corporation (hereinafter "**CONTRACTOR**").

RECITALS

WHEREAS, the **CITY** has determined that it is in its best interest to obtain management services for the organization and operation of the Downtown San Rafael Market (hereinafter "**MARKET**"); and

WHEREAS, the **CONTRACTOR** has experience in providing such management services and holds special technical skills to ensure a successful **MARKET**; and

WHEREAS, the **CITY** desires to employ the **CONTRACTOR** to provide such services and **CONTRACTOR** is willing and able to provide said services

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** The Community Services Director is hereby designated the **PROJECT MANAGER** for the **CITY**, and said **PROJECT MANAGER** shall supervise all aspects of the progress and execution of this Agreement.

B. **CONTRACTOR'S Project Director.** **CONTRACTOR** shall have overall responsibility for the progress and execution of this Agreement. Andrew Naja-Riese, CEO, is hereby designated as the **PROJECT DIRECTOR** for **CONTRACTOR**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute **PROJECT DIRECTOR**, for any reason, the **CONTRACTOR** shall notify the **CITY** within ten (10) business days of the substitution.

2. **DUTIES OF CONTRACTOR.**

CONTRACTOR shall perform the duties and/or provide services as follows: organization and operation of the **MARKET** from June 2019 through September 2019. The **MARKET** will be held on Thursday nights from 6:00 pm to 9:00 pm and will be located on 4th Street between, but not to exceed, Lootens Place and B Street, including the San Rafael City Plaza. Duties include but are not limited to the following:

- Hiring, training all personnel, entertainment, and labor
- Coordinating street closures with the **CITY's** Event Coordinator and Police Department
- Coordinating weekly event cleanup with contracted labor paid for by the **MARKET**
- Recruiting and scheduling market participants and entertainment
- Tracking financial data including revenue and expenditures for the event and providing that information to the City of San Rafael at the end of the season or as requested by the City of San Rafael
- Meeting State certification requirements and reporting
- Paying all expenses related to **MARKET** with the exception of Police overtime costs
- Advertising/marketing the **MARKET**
- Meeting with the Farmers Market Advisory Board on a regular basis.

3. COMPENSATION.

All compensation to **CONTRACTOR** shall be paid from **MARKET** gross receipts, collected by **CONTRACTOR**, and shall not be an obligation of the **CITY**. Net receipts will be retained by the **CONTRACTOR**.

4. TERM OF AGREEMENT.

The term of this Agreement shall commence on June 1, 2019 and end on November 30, 2019, with possibility of renewal in subsequent years.

5. TERMINATION.

A. **Discretionary.** Either party may terminate this Agreement without cause upon forty-five (45) days written notice mailed or personally delivered to the other party. The Agreement shall terminate on the date specified in the notice, which date shall be at least forty-five (45) days after the notice is given.

B. **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period; provided, however, if the nature of the failure is such that it cannot with the exercise of reasonable diligence be cured within such 15 day period, then the Agreement may not be terminated pursuant to this Section if the non-performing Party promptly commences such cure (in any event within such 15 day period) and thereafter pursues the same to completion with diligence and continuity; provided, further, however, if such failure is of a nature which adversely affects the health and safety of Downtown San Rafael, obstructs or impedes the flow of pedestrian and vehicular traffic in San Rafael, or adversely affects the appearance or marketability of Downtown San Rafael, and can with the exercise of reasonable diligence be cured within a shorter period of time, then the applicable cure period following notice shall be such shorter period of time. Either party may terminate this Agreement.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

D. **Return of Documents.** Upon termination, any and all CITY documents or materials provided to CONTRACTOR and any and all of CONTRACTOR's documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to CITY as soon as possible, but not later than thirty (30) days after termination.

6. INSPECTION AND AUDIT.

Upon reasonable notice, CONTRACTOR shall make available to CITY, or its agent, for inspection and audit, all documents and materials maintained by CONTRACTOR in connection with its performance of its duties under this Agreement. CONTRACTOR shall fully cooperate with CITY or its agent in any such audit or inspection.

7. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

8. INSURANCE.

A. **Scope of Coverage.** During the term of this Agreement, CONTRACTOR shall maintain, at no expense to CITY, the following insurance policies:

1. A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million dollars (\$1,000,000) dollars per occurrence.

3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, to cover any claims arising out of the CONTRACTOR's performance of services under this Agreement. Where CONTRACTOR is a professional not required to have a professional license, CITY reserves the right to require CONTRACTOR to provide professional liability insurance pursuant to this section.

4. If it employs any person, CONTRACTOR shall maintain worker's compensation insurance, as required by the State of California, with statutory limits, and employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.

B. Other Insurance Requirements. The insurance coverage required of the **CONTRACTOR** in subparagraph A of this section above shall also meet the following requirements:

1. Except for worker's compensation and employer's liability insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

2. The additional insured coverage under **CONTRACTOR'S** insurance policies shall be "primary and noncontributory" with respect to any insurance or coverage maintained by **CITY** and shall not call upon **CITY's** insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in **CONTRACTOR'S** policies shall be at least as broad as ISO form CG20 01 04 13.

3. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. By execution of this Agreement, **CONTRACTOR** hereby grants to **CITY** a waiver of any right to subrogation which any insurer of **CONTRACTOR** may acquire against **CITY** by virtue of the payment of any loss under such insurance. **CONTRACTOR** agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not **CITY** has received a waiver of subrogation endorsement from the insurer.

5. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years.

6. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement.

7. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of **CITY** (if agreed to in a written contract or agreement) before **CITY'S** own insurance or self-insurance shall be called upon to protect it as a named insured.

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **CITY** or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

C. Deductibles and SIR's. Any deductibles or self-insured retentions in **CONTRACTOR's** insurance policies must be declared to and approved by the **PROJECT**

MANAGER and City Attorney, and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or CITY or other additional insured party. At CITY's option, the deductibles or self-insured retentions with respect to CITY shall be reduced or eliminated to CITY's satisfaction, or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

D. **Proof of Insurance.** CONTRACTOR shall provide to the PROJECT MANAGER or CITY'S City Attorney all of the following: (1) Certificates of Insurance evidencing the insurance coverage required in this Agreement; (2) a copy of the policy declaration page and/or endorsement page listing all policy endorsements for the commercial general liability policy, and (3) excerpts of policy language or specific endorsements evidencing the other insurance requirements set forth in this Agreement. CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements from CONTRACTOR. Failure to exercise this right shall not constitute a waiver of the right to exercise it later. The insurance shall be approved as to form and sufficiency by PROJECT MANAGER and the City Attorney.

9. INDEMNIFICATION.

A. CONTRACTOR shall, to the fullest extent permitted by law, indemnify, release, and hold harmless CITY, its officers, agents, employees and volunteers (collectively, the "**City Indemnitees**"), from and against any claim, demand, suit, judgment, loss, liability or expense of any kind, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation, (collectively "**CLAIMS**"), arising out of CONTRACTOR'S performance of its obligations or conduct of its operations under this Agreement. The CONTRACTOR's obligations apply regardless of whether or not a liability is caused or contributed to by the active or passive negligence of the **City Indemnitees**. However, to the extent that liability is caused by the active negligence or willful misconduct of the **City Indemnitees**, the CONTRACTOR's indemnification obligation shall be reduced in proportion to the **City Indemnitees**' share of liability for the active negligence or willful misconduct. In addition, the acceptance or approval of the CONTRACTOR's work or work product by the CITY or any of its directors, officers or employees shall not relieve or reduce the CONTRACTOR's indemnification obligations. In the event the **City Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding arising from CONTRACTOR'S performance of or operations under this Agreement, CONTRACTOR shall provide a defense to the **City Indemnitees** or at CITY'S option reimburse the **City Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

B. The defense and indemnification obligations of this Agreement are undertaken in addition to and shall not in any way be limited by; the insurance obligations contained in this Agreement and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

10. NONDISCRIMINATION.

CONTRACTOR shall not discriminate, in any way, against any person on the basis of age,

sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

11. COMPLIANCE WITH ALL LAWS.

CONTRACTOR shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. **CONTRACTOR** shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. **CONTRACTOR** shall release, defend, indemnify and hold harmless **CITY**, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

12. NO THIRD PARTY BENEFICIARIES.

CITY and **CONTRACTOR** do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

13. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO **CITY**'s Project Manager:

Susan Andrade-Wax
City of San Rafael
618 B Street
San Rafael, CA 94901

TO **CONTRACTOR**'s Project Director:

Andrew Naja-Riese
Agricultural Institute of Marin
400 Smith Ranch Rd Ste D
San Rafael, CA 94903

14. INDEPENDENT CONTRACTOR.

For the purposes, and for the duration, of this Agreement, **CONTRACTOR**, its officers, agents and employees shall act in the capacity of an Independent Contractor, and not as employees of the **CITY**. **CONTRACTOR** and **CITY** expressly intend and agree that the status of **CONTRACTOR**, its officers, agents and employees be that of an Independent Contractor and not

that of an employee of **CITY**.

15. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the **CONTRACTOR** and the **CITY**.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the **CONTRACTOR** and the **CITY**.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

16. SET-OFF AGAINST DEBTS.

CONTRACTOR agrees that **CITY** may deduct from any payment due to **CONTRACTOR** under this Agreement, any monies which **CONTRACTOR** owes **CITY** under any ordinance, agreement, contract or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks or other amounts.

17. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

18. COSTS AND ATTORNEY'S FEES.

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, may recover its reasonable costs (including claims administration) and attorney's fees expended in connection with such action.

19. CITY BUSINESS LICENSE / OTHER TAXES.

CONTRACTOR shall obtain and maintain during the duration of this Agreement, a **CITY** business license as required by the San Rafael Municipal Code **CONTRACTOR** shall pay any and all state and federal taxes and any other applicable taxes. **CITY** shall not be required to pay for any work performed under this Agreement, until **CONTRACTOR** has provided **CITY** with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

20. SURVIVAL OF TERMS.

Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled and shall apply to both Parties' respective successors and assigns.

21. APPLICABLE LAW.

The laws of the State of California shall govern this Agreement.

22. COUNTERPARTS AND ELECTRONIC SIGNATURE.


This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Counterpart signature pages may be delivered by telecopier, email or other means of electronic transmission.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

CITY OF SAN RAFAEL

CONTRACTOR

JIM SCHUTZ, City Manager

By: 
Name: Andy Naja-Riesi
Title: CEO

ATTEST:

[If Contractor is a corporation, add signature of second corporate officer]

LINDSAY LARA, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney

By: Tanya Wolf Small
Name: Tanya Wolf Small
Title: CFD



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Bill Guerin,
Director of Public Works

City Manager Approval: _____

File No.: 18.01.88

TOPIC: JOINT HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) CYCLE 9 SIGNALIZED INTERSECTION IMPROVEMENT PROJECT WITH COUNTY OF MARIN

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT ALLOWING THE COUNTY OF MARIN TO ADMINISTER THE HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) FOR INTERSECTION IMPROVEMENT AT 14 LOCATIONS IN SAN RAFAEL

RECOMMENDATION: Adopt a resolution authorizing the City Manager to execute an agreement with the County of Marin to administer the Highway Safety Improvement Program (HSIP) project for signalized intersection improvements at 14 locations in San Rafael on behalf of the City.

BACKGROUND: The County of Marin, with the support of the eleven incorporated cities and towns in Marin County, was awarded a State grant from the Systemic Safety Analysis Report Program (SSARP). With this grant funding and the help of Parisi Transportation Consulting (Parisi), high-risk corridors, high-risk intersections, and locations of repeated pedestrian and bicycle collisions were identified within Marin County and safety improvements were proposed. The Marin County Travel Safety Plan and Systemic Safety Analysis reports on existing conditions and proposed improvements throughout the County, which include the following: adding backplates to signal heads, installing 12" signal heads, installing pedestrian countdown heads and push buttons, and adding advanced detection.

Specific to San Rafael, the County enlisted the help of Parisi to apply for HSIP Cycle 9 funding to implement the recommended safety improvements at the following intersections:

1. Fourth Street-Second Street/Marquard Avenue
2. Third Street/D Street
3. Third Street/A Street
4. Third Street/ Lincoln Avenue
5. Third Street/Tamalpais Avenue
6. Third Street/Irwin Street
7. Third Street/Grand Avenue
8. Second Street/C Street
9. Second Street/A Street
10. Second Street/Lincoln Avenue

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

11. Second Street/Tamalpais Avenue-Francisco Boulevard West
12. Second Street/Irwin Street
13. Bellam Boulevard/Francisco Boulevard East
14. Bellam Boulevard/Kerner Boulevard

ANALYSIS: Council is being asked to approve an agreement with the County whereby the County would use the grant funds and manage the project on behalf of the City. The City of San Rafael has high volumes of vehicle and pedestrian traffic, both at intersections and along corridors in the County of Marin. This may be due to higher pedestrian volumes around the Bettini Transit Center and throughout Downtown San Rafael. On Third Street, many pedestrians and bicyclists are crossing Third Street, traveling within and through San Rafael and elsewhere. Implementing these improvements should increase signal head visibility for drivers with the signal improvements and should make it very apparent to both pedestrians and drivers when the pedestrian has the right-of-way to cross with the pedestrian crossing count-down heads and push buttons.

FISCAL IMPACT: Because this is a HSIP Grant, the project is fully funded and there is not expected to be any fiscal impact associated with this item.

Fund Source	Amount
HSIP Grant	\$2,800,300

OPTIONS: The City Council has the following options to consider relating to this matter:

1. Adopt the resolution.
2. Do not adopt the resolution and forego signalized intersection improvements.

RECOMMENDED ACTION:

Adopt a resolution authorizing the City Manager to execute an agreement with the County of Marin to administer the Highway Safety Improvement Program (HSIP) project for signalized intersection improvements at 14 locations in San Rafael on behalf of the City.

ATTACHMENTS:

1. Resolution
2. Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT ALLOWING THE COUNTY OF MARIN TO ADMINISTER THE HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) FOR INTERSECTION IMPROVEMENT AT 14 LOCATIONS IN SAN RAFAEL

BE IT RESOLVED by the City Council of the City of San Rafael as follows:

WHEREAS, the County of Marin applied for the State's Cycle 9 Highway Safety Improvement Program funds; and

WHEREAS, the application included fourteen intersections located within the City Limits of San Rafael; and

WHEREAS, the County selected these locations based on the results of Marin County Travel Safety Plan and Systematic Safety Analysis; and

WHEREAS, the County was successful in receiving the grant amount of \$2,800,000 without a local match; and

WHEREAS, the County is willing to act as the City's liaison with the Local Assistance Office of the State to administer the grant through an interagency agreement; and

WHEREAS, the City staff reviewed the agreement and recommends the agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Rafael, that the agreement with the County of Marin allowing the County of Marin to administer the HSIP funds is hereby approved.

BE IT FURTHER RESOLVED that the City Manager is authorized and directed to execute the agreement, subject to final approval as to form by the City Attorney.

BE IT FURTHER RESOLVED that the Council hereby authorizes the Public Works Director to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on the 20th day of May 2019 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

File No.: 18.01.89

LINDSAY LARA, City Clerk

AGREEMENT

COUNTY OF MARIN AND CITY OF SAN RAFAEL
JOINT CYCLE 9 HIGHWAY SAFETY IMPROVEMENT PROGRAM
SIGNALIZED INTERSECTION IMPROVEMENT PROJECT

THIS AGREEMENT, made and entered into this ____ day of _____ 201__, by and between the COUNTY OF MARIN, hereinafter referred to as “COUNTY” and the CITY OF SAN RAFAEL, hereinafter referred to as “CITY,” both of the State of California;

WITNESSETH:

WHEREAS, the purpose of the Highway Safety Improvement Program (HSIP) is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal land; and

WHEREAS, the HSIP is one of the core components of the federal transportation bill, “Fixing America’s Surface Transportation Act (FAST)” (Section 148 of Title 23), enacted on December 4, 2015; and

WHEREAS, HSIP funds are eligible for work on any public road that improves safety and twenty-eight eligible project categories were identified in FAST; and

WHEREAS, COUNTY, in coordination with the Marin County Public Works Association and the eleven Marin County cities and towns, completed the 2018 Marin County Travel Safety Plan and Systemic Safety Analysis; and

WHEREAS, COUNTY, in coordination with the Marin County Public Works Association and the eleven Marin County cities and towns applied for a HSIP Cycle 9 grant to install safety improvements at 51 signalized intersections through the Marin County region; and

WHEREAS, based upon a review of existing and predicted fatal and serious injury collision locations, the grant application included proposed improvements at 51 signalized intersection improvement locations such as pedestrian countdown heads, pedestrian push buttons, 12” LED signal heads, signal head back-plates and advanced dilemma detection zones; and

WHEREAS, the Marin County Joint Cycle 9 HSIP Signalized Intersection Improvement Project grant application was selected with a designated grant award of \$2,800,300; and

WHEREAS, both COUNTY and CITY are desirous of performing intersection improvements and related work within their respective jurisdictions; and

WHEREAS, it is recognized that it would be advantageous to both COUNTY and CITY to complete their respective intersection improvements through a combined project (PROJECT) to be administered by COUNTY for work within each jurisdiction; and

WHEREAS, the same consultant for both CITY and COUNTY will prepare the plans specifications, and estimates, and shall provide construction management services for the PROJECT; and

WHEREAS, the same contractor for both CITY and COUNTY will construct/install the proposed improvements as per the approved plans for the PROJECT; and

WHEREAS, COUNTY shall be responsible for administering the Joint Cycle 9 HSIP Signalized Intersection Improvement Project grant and through the grant shall be responsible for the cost of administration, construction and construction management services for the portion of the Project that is within each of their respective jurisdictions; and

WHEREAS, CITY shall be responsible for ongoing future maintenance for improvement completed within their jurisdiction once the improvements have been completed;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, the parties hereto do hereby agree as follows:

A. COUNTY Shall:

1. Incorporate the plans and specifications, approved by all regulatory agencies, for CITY's intersection improvements and related work into COUNTY's own counterpart project.
2. Comply with the provisions of the Public Contracting Code, including advertising for bids, receiving and opening bids, and awarding a contract or rejecting all bids for the PROJECT to the lowest qualified bidder.
3. Have the right to reject all bids for the PROJECT.
4. Administer CITY's and COUNTY's portion of the construction contract and thereby provide services at COUNTY's sole discretion to include oversight of consultants, contractors, and accountings.
5. Be the liaison with the consultant preparing Plans, Specifications, and Estimate for both COUNTY's and CITY's portions of the PROJECT.
6. Be the liaison with the construction contractor and COUNTY will keep CITY updated with any changes within their jurisdiction.
7. Administer all Joint Cycle 9 HSIP Signalized Intersection Improvement Project Change Orders arising for work within COUNTY's and CITY's portion of the PROJECT.
8. Review Change Orders initiated by the Contractor for the work located within the portion of CITY PROJECT and confer with CITY to determine merit of requests for Change

Orders within CITY's portion of the PROJECT. County as administrator of the consultant contract shall make the final change order decision after conferring with the CITY.

9. Indemnify, defend and hold harmless CITY, its officers, agents and employees from and against any and all claims and losses whatsoever arising out of or connected with the COUNTY'S negligent performance of this Agreement by act or omission, or by willful misconduct, or by intentional failure to perform hereunder.

B. CITY Shall:

1. Provide timely review of all proposed draft improvement plans and specifications.
2. Provide to COUNTY, prior to the bid, approval of the plans, specifications and estimates for the portion of the PROJECT within CITY's jurisdiction designed by a consultant as described in A.5, which will be incorporated in the bid documentation. All documentation shall comply with all appropriate, local, state and federal practices.
3. Provide timely review of all proposed Change Orders within CITY's portion of the PROJECT so that construction may progress without delay or additional cost, and provide in a timely manner a written Change Order recommendation (approval or disapproval) to COUNTY.
4. For Change Orders for which CITY recommends approval and for which COUNTY determines would not be funded by the Joint Cycle 9 HSIP Signalized Intersection Improvement Project funds, CITY agrees to pay for the Change Order within 30 days of an invoice from COUNTY.
5. Provide COUNTY a no-cost encroachment permit or other document to allow work on CITY facilities, to the satisfaction of the CITY.
6. Indemnify, defend and save harmless COUNTY, its officers, agents and employees from and against any and all claims and losses whatsoever arising out of or connected with the CITY'S negligent performance of this Agreement by act or omission, or by willful misconduct, or by intentional failure to perform hereunder.
7. Provide timely review of final punch list provided by COUNTY and provide final acceptance of work in CITY jurisdiction so that construction and project closeout may progress without delay.
8. Maintain all improvements within CITY jurisdiction in accordance with local, state and federal funding requirements and acknowledge and accept full control, ownership, and maintenance responsibility for the improvements located in CITY.

C. REPRESENTATIVES:

Eric Miller, Principal Civil Engineer is the representative of COUNTY and will administer this Agreement for the COUNTY. Bill Guerin, Director of Public Works, is the authorized representative for CITY. Changes in designated representatives for either party shall occur only by advance written notice to the other party.

D. MISCELLANEOUS

1. Any dispute or claim in law or equity between COUNTY and CITY arising out of this Agreement shall be resolved by formal negotiation between parties. If no resolution is achieved by formal negotiations an arbitrator mutually chosen and paid for by both parties shall arbitrate the dispute.
2. Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decisions shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.
3. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
4. This Agreement may be modified at any time by mutual consent of the parties hereto.
5. This Agreement is governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

COUNTY OF MARIN

CITY OF SAN RAFAEL

By: _____
Director of Public Works

By: _____
Jim Schutz, City Manager

ATTEST:

By: _____
Lindsay Lara, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
County Counsel

By: _____
Robert F. Epstein, City Attorney



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Bill Guerin,
Director of Public Works

City Manager Approval: _____

File No.: 18.04.02

TOPIC: LUCAS VALLEY ROAD AT LOS GAMOS DRIVE TRAFFIC SIGNAL

SUBJECT: A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MAINTENANCE AGREEMENT WITH THE COUNTY OF MARIN FOR MAINTENANCE OF THE TRAFFIC SIGNAL AT THE INTERSECTION OF LUCAS VALLEY ROAD AT LOS GAMOS DRIVE

RECOMMENDATION: Adopt a resolution approving and authorizing the City Manager to execute a maintenance agreement with the County of Marin for maintenance of the traffic signal at the intersection of Lucas Valley Road at Los Gamos Drive.

BACKGROUND: On [September 17, 2018](#), the City Council held a public hearing and approved the Final Environmental Impact Report related to a Kaiser Permanente Medical Office Building at 1650 Los Gamos Drive. The project proposes: a) the conversion of an existing, 148,000 sq. ft. office building from general office uses to medical office uses; and b) the construction of a new 433-space, three-level parking structure for Kaiser Permanente patrons and staff. As a condition of approval for this permitted private development project, the City is requiring off-site improvements, including but not limited to, the installation of a new traffic signal at the intersection of Lucas Valley Road at Los Gamos Drive.

ANALYSIS: The intersection of Lucas Valley Road at Los Gamos Drive includes public right of way from the State of California Department of Transportation (i.e., Caltrans), County of Marin, and City of San Rafael. As such, a maintenance agreement is necessary to identify roles and responsibilities for maintenance of the new traffic signal. Caltrans staff has indicated they will not maintain the new traffic signal, leaving the County and City responsible for maintenance. The City has agreed to be the lead agency providing maintenance and will add this intersection to the current list of 90 traffic signals maintained by the City.

FISCAL IMPACT: Despite Caltrans owning a small portion of the underlying right of way at the intersection, the County currently maintains the east/west approaches of Lucas Valley Road while the City maintains one approach from Los Gamos Drive. Consequently, the County will bear two-thirds (2/3rds) of the maintenance costs with the City responsible for the remaining one-third (1/3rd).

FOR CITY CLERK ONLY

File No.:

Council Meeting:

Disposition:

Maintenance of the City's traffic signal system is performed by a third-party electrical contractor and includes quarterly, semi-annual, and annual inspections of each traffic signal. Routine maintenance for these visits is approximately \$500 per year per traffic signal. Furthermore, the electrical contractor aids with unanticipated items and/or repairs including responding to emergency calls, knockdown of signal poles, and troubleshooting. The costs associated with unanticipated maintenance varies by intersection each year but may range between \$500 for the contractor's time to troubleshoot problems to several thousand dollars depending on the nature of the work involved. After reviewing PG&E invoices for existing traffic signals, the estimated annual costs of electricity to power the new signal is \$500.

Based upon the foregoing information, anticipated costs of routine maintenance and electricity for the new traffic signal will be approximately \$1,500 per year, of which the City is responsible for one-third, or \$500. Traffic signal maintenance will be paid for from Gas Tax Funds (fund no. 206).

OPTIONS: The City Council has the following options to consider relating to this matter:

1. Adopt a resolution authorizing the City Manager to execute a maintenance agreement with the County of Marin for maintenance of the traffic signal at the intersection of Lucas Valley Road at Los Gamos Drive.
2. Do not adopt a resolution and provide further direction to staff. If the maintenance agreement is not executed, Kaiser Permanente, as the responsible party to construct and install the traffic signal, a portion of which will be within Caltrans right of way, will be unable to secure an encroachment permit from Caltrans to build all off-site improvements on Lucas Valley Road required by the City's conditions of approval. Without the traffic signal installed, Kaiser Permanente will not be permitted to have full occupancy of the new Medical Office Building.

RECOMMENDED ACTION: Adopt a resolution approving and authorizing the City Manager to execute a maintenance agreement with the County of Marin for maintenance of the traffic signal at the intersection of Lucas Valley Road at Los Gamos Drive.

ATTACHMENT:

1. Resolution
2. Agreement

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING
AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MAINTENANCE
AGREEMENT WITH THE COUNTY OF MARIN FOR MAINTENANCE OF THE
TRAFFIC SIGNAL AT THE INTERSECTION OF LUCAS VALLEY ROAD
AT LOS GAMOS DRIVE**

WHEREAS, Kaiser Permanente proposes to convert the existing general office building at 1650 Los Gamos Drive to a Medical Office Building requiring the installation of a new traffic signal at the intersection of Lucas Valley Road at Los Gamos Drive; and

WHEREAS, at the intersection of Lucas Valley Road and Los Gamos Drive, Lucas Valley Road is within the County of Marin's (County) jurisdiction and Los Gamos Drive is within the City's jurisdiction such that the County has jurisdiction over two legs/approaches of the intersection while the City has jurisdiction over one leg of the intersection; and

WHEREAS, City and County agree that the City will perform maintenance of the traffic signal; and

WHEREAS, City agrees to pay one-third and County agrees to pay two-thirds of maintenance expenses.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN

RAFAEL RESOLVES as follows:

1. The Council hereby approves and authorizes the City Manager to execute a maintenance agreement with the County of Marin for maintenance of the traffic signal at the intersection of Lucas Valley Road at Los Gamos Drive subject to final approval as to form by the City Attorney.

2. The Director of Public Works is hereby authorized to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on the 20th day of May 2019, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

**LUCAS VALLEY ROAD AT LOS GAMOS DRIVE
TRAFFIC SIGNAL MAINTENANCE AGREEMENT**

THIS AGREEMENT is made and entered into, by and between County of Marin, hereinafter referred to as "COUNTY" and the City of San Rafael, hereinafter referred to as "CITY", for the maintenance of the traffic signal located at the intersection of Lucas Valley Road and Los Gamos Drive in San Rafael, Marin County, hereinafter referred as "TRAFFIC SIGNAL".

WHEREAS, Kaiser Permanente developed an environmental document for their Medical Office Building improvement project located at 1650 Los Gamos Drive which indicated traffic impacts to the Lucas Valley Road and Los Gamos Drive intersection requiring the intersection to be signalized; and;

WHEREAS, Kaiser Permanente proposes to construct the TRAFFIC SIGNAL at the Lucas Valley Road and Los Gamos Drive intersection; and

WHEREAS, at the intersection of Lucas Valley Road and Los Gamos Drive, Lucas Valley Road is within the COUNTY's jurisdiction and Los Gamos Road is within the CITY's jurisdiction such that the COUNTY has jurisdiction over two legs/approaches of the intersection while the CITY has jurisdiction over one leg of the intersection; and

WHEREAS, as part of the TRAFFIC SIGNAL improvement plans, CITY and COUNTY agree that the CITY will perform maintenance of the TRAFFIC SIGNAL as herein described; and

WHEREAS, COUNTY agrees to compensate CITY in accordance with the terms of this AGREEMENT.

NOW THEREFORE, COUNTY and CITY mutually agree as follows:

1. This AGREEMENT shall be in effect in perpetuity unless modified or terminated by mutual agreement in writing by both parties.
2. CITY shall pay the cost of electric current required to operate the TRAFFIC SIGNAL. COUNTY will reimburse CITY for 2/3 (two-thirds) of electrical cost to operate the TRAFFIC SIGNAL.
3. CITY shall provide all maintenance required for TRAFFIC SIGNAL including routine maintenance, non-routine maintenance and emergency repairs. CITY currently contracts out traffic signal maintenance to a licensed electrical contractor and may continue to contract out these services.

- A. ROUTINE MAINTENANCE. Routine maintenance shall include,

without limitation hereby, a short interval service and annual service as outlined herein, and the annual replacement of TRAFFIC SIGNAL bulbs or cleaning of the faces of LED indications.

- I. CITY shall replace TRAFFIC SIGNAL LED bulbs as necessary in accordance with proper wattage for TRAFFIC SIGNAL.
- II. CITY shall maintain a written record of the date and time of all routine maintenance and provide COUNTY with a copy thereof upon request.

B. NON-ROUTINE MAINTENANCE. Non-routine maintenance shall be defined as all work not included in routine maintenance which is necessitated by TRAFFIC SIGNAL malfunctioning or not operating as planned (including any indication outages). CITY shall maintain a written record of the date and time of all non-routine maintenance and provide COUNTY with a copy thereof upon request, along with itemized statements as required in this AGREEMENT.

C. EMERGENCY MAINTENANCE. CITY shall also provide all emergency maintenance and repairs required for TRAFFIC SIGNAL. Emergency repairs shall include responding to a reported malfunctioning or damaged TRAFFIC SIGNAL. Emergency calls will be paid under non-routine maintenance. Emergency calls shall be performed in accordance with the following:

- I. The response by CITY to an emergency call shall be initiated within two (2) hours of receipt of notifications.
- II. Any damaged or inoperative signal shall not be left unattended. The signal may be placed on flashing status control while repairs are being completed.
- III. CITY shall be responsible for notifying the appropriate police/sheriff departments in the event that emergency traffic control is needed.
- IV. CITY shall maintain records and provide reports about emergency calls. A log of all emergency calls shall be maintained for a minimum of three years by CITY and shall indicate the following:
 - a. Name of person or agency reporting
 - b. Location
 - c. Nature of complaint
 - d. Time and Date of notification
 - e. Time and date of response
 - f. Action taken

4. CITY will inform COUNTY when alterations to existing signal installations are made, except in case of emergency when TRAFFIC SIGNAL is out of

operation.

5. CITY shall keep a record of all hours of labor and all hours of equipment used in maintaining and repairing the TRAFFIC SIGNAL and will submit an itemized statement for each written report attached to an executed claim voucher. CITY shall bill COUNTY annually at the beginning of each calendar year for reimbursement of COUNTY's share of electric costs under Section 2 and COUNTY's share of costs (as set forth in Section 6) for routine, non-routine and emergency maintenance described in Section 3 for the previous year.

6. COUNTY shall pay CITY for 2/3 (two-thirds) of the cost for routine, non-routine and emergency maintenance and repairs based on the actual hours of labor and equipment used. The rates shall be based on those specified in the traffic signal maintenance contract between CITY and its traffic signal electrical contractor in effect during the applicable year. Rates used for work on the TRAFFIC SIGNAL shall be the same as generally applied to work on other signals in the CITY.

7. COUNTY hereby grants CITY and CITY's contractors the right to enter upon COUNTY right-of-way as reasonably necessary for the performance of the work described in this AGREEMENT.

8. Mutual Indemnity and Insurance.

8.1 Claims Arising from Sole Acts or Omissions of CITY. CITY does hereby agree to defend, indemnify and hold harmless COUNTY from and against any third-party claim, demand, action or cause of action arising solely out of the acts or omissions of CITY in the performance of this AGREEMENT. CITY shall notify COUNTY promptly of any claim, action or proceeding and cooperate fully in the defense.

8.2 Claims Arising from Sole Acts or Omissions of COUNTY. COUNTY does hereby agree to defend, indemnify and hold harmless CITY from and against any third-party claim, demand, action or cause of action arising solely out of the acts or omissions of COUNTY in the performance of this AGREEMENT. COUNTY shall notify CITY promptly of any claim, action or proceeding and cooperate fully in the defense.

8.3 Claims Arising from Concurrent Acts or Omissions. COUNTY hereby agrees to defend itself, and CITY hereby agrees to defend itself from any claim, action or proceeding alleged to have arisen out of the concurrent acts or omissions of COUNTY and CITY. In such cases, COUNTY and CITY agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in Section 8.4 below.

8.4 Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, COUNTY and CITY shall be entitled to reimbursement and/or reallocation of defense costs including reasonable attorneys' fees, settlement payments, judgments and awards, consistent with such comparative fault.

8.5 Insurance

In addition, CITY shall require that any contractor utilized by CITY for any traffic signal maintenance covered by this AGREEMENT, and any of such contractor's subcontractors, obtain and maintain insurance meeting the following minimum requirements:

A. Workers' compensation insurance as per statutory requirements and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence.

B. Commercial general liability insurance covering bodily injury and property damage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Said commercial general liability insurance policy shall be endorsed as follows:

- I. The CITY and COUNTY and their respective officers and employees, shall be named as additional insureds for all liability arising out of the on-going and completed operations related to this agreement by or on behalf of the named insured.
- II. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.
- III. The insurance provided shall be primary and non-contributory coverage to the CITY and COUNTY with respect to any insurance or self-insurance programs maintained by the CITY and COUNTY.

C. Automobile liability insurance covering bodily injury and property damage in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Each policy of insurance required above shall be with a company holding a certificate of authority issued by California State Insurance Commissioner to do business in the state.

Each policy of insurance required above shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the CITY'S

Public Works Director and the COUNTY’S Department of Finance.

Properly executed endorsements and Certificates of Insurance clearly evidencing all coverages and limits required above shall be submitted to the CITY’S Public Works Director and County Department of Finance prior to the performance by such contractor or subcontractor of any traffic signal maintenance work covered by this AGREEMENT.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

This Agreement contains the entire agreement between the parties. This Agreement shall only be amended by an instrument in writing executed by both parties.

County of Marin:	City of San Rafael:
<hr/>	<hr/>
Print Name	Print Name
Approved as to form:	
<hr/>	<hr/>
Print Name	Print Name
County of Marin, Deputy County Counsel	San Rafael City Attorney




Agenda Item No: 6.a
Meeting Date: May 20, 2019

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager’s Office

Prepared by: Ethan Guy,
Principal Analyst

City Manager Approval: 

TOPIC: FLAVORED TOBACCO PRODUCT BAN ORDINANCE

SUBJECT: INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8.15 OF THE SAN RAFAEL MUNICIPAL CODE, ENTITLED “TOBACCO RETAIL SALES, ADVERTISING AND PROMOTION” TO REGULATE SALES OF FLAVORED TOBACCO PRODUCTS AND SALE OF TOBACCO PRODUCTS AT PHARMACIES

RECOMMENDATION:

Hold a public hearing to consider adoption of an ordinance banning the sale of Flavored Tobacco Products and prohibiting the sale of Tobacco Products at Pharmacies in San Rafael and pass the ordinance to print.

BACKGROUND:

On October 15, 2012, the City Council adopted Ordinance No. 1908 adding Chapter 9.04 to the San Rafael Municipal Code (SRMC) to regulate indoor and outdoor smoking within the City of San Rafael. Among other provisions, that ordinance prohibited smoking on sidewalks, pedestrian areas, and public places such as plazas in the Downtown area, except while actively passing on the way to another destination. As originally enacted, Chapter 9.04 did not apply to electronic cigarettes.

On April 18th, 2016, the City Council enacted Ordinance No. 1938 amending Chapter 9.04 to include the following elements:

1. An expanded definition of smoking to include electronic smoking devices;
2. A prohibition on the use of e-cigarettes in public places, but allowing them in private residences;
3. Elimination of the exception that allows smoking while actively passing throughout the entire Downtown area; and
4. Addition of pedestrian-friendly signage to the Downtown.

On April 15th, 2019 Staff presented to City Council an informational report on a potential Flavored Tobacco Ban in San Rafael. As part of this report, Staff included a draft ordinance amending SRMC

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

Chapter 8.15. which regulates “Tobacco Retail Sales, Advertisements and Promotion,” to include a ban on the sale of flavored tobacco products and a ban on tobacco sales in pharmacies. City Council directed Staff to return with the following:

- Consider modifications to the presented draft ordinance to include language providing exemptions for businesses that are primarily tobacco retailers and do not permit individuals under twenty-one (21) years of age on their premises;
- Provide additional data on analyzing the effectiveness of flavored tobacco bans and methods for youth access to flavored tobacco.

ANALYSIS:

Effectiveness of Flavored Tobacco Ban

At the April 15th Council Meeting, the Council directed Staff to return with further analysis regarding the effectiveness of flavored tobacco bans at curtailing youth tobacco use. Currently, there are only a few academic studies showing a direct correlation between flavored tobacco bans and youth tobacco use. The limited number of studies is a product of the relative infancy of flavored tobacco bans. Several studies are currently underway; however, their findings have not been released at this time.

Of the studies that are available, Staff reviewed the findings from two:

- *Flavored Tobacco Product Use among Youth and Young Adults: What if Flavors Didn't Exist?*¹

Conducted by the University of Texas School of Public Health, this study analyzed two surveys of 2,483 youth and 4,326 young adults which asked respondents e-cigarette-related questions covering a preference for flavored tobacco, and whether they would continue tobacco use if flavored tobacco was not available.

Researchers concluded that, “restricting flavors in tobacco products would not eradicate e-cigarette or other tobacco use among young people, but the potential for substantial reductions in the prevalence of young peoples’ e-cigarette and other tobacco use seems high if flavors were removed.”

- *Influence of Flavored Cigarette Ban on Adolescent Tobacco Use*²

As part of a National Institute of Health grant, this paper estimated the association between the U.S. Food and Drug Administration's (FDA) 2009 nationwide ban on flavored cigarettes and youth tobacco use. This ban did not apply to menthol cigarettes or tobacco products besides cigarettes.

Using data from the National Youth Tobacco Survey from 1999-2013, the results suggest the 2009 flavored cigarette ban did reduce youth tobacco use. However, the level of the decrease in youth tobacco use was likely hampered due to the availability of menthol cigarettes and other flavored tobacco products.

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5536860/>

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5401634/>

Youth Access to Flavored Tobacco

At the April 15th Council Meeting, Staff was also directed to return with further analysis regarding the main methods youth use to access flavored tobacco products. In the FDA's March 2019 draft guidance for industry regarding their *Modifications to Compliance Policy for Certain Deemed Tobacco Products*³, the following key findings were presented:

- In the 2016 National Youth Tobacco Survey, the three reasons youth respondents selected for their e-cigarette use: use by "friend or family member" (39.0%), availability of "flavors such as mint, candy, fruit, or chocolate" (31.0%), and the belief that "they are less harmful than other forms of tobacco such as cigarettes" (17.1%).⁴ According to data from the 2018 National Youth Tobacco Survey, 14.8 percent of U.S. middle and high school e-cigarette users under 18 years of age reported obtaining e-cigarettes in the past 30 days from a vape shop or other store that sells e-cigarettes, and 8.4 percent reported obtaining them from a gas station or convenience store. 6.5 percent of U.S. middle and high school e-cigarette users under age 18 reported obtaining their e-cigarettes in the past 30-days on the Internet.
- According to a report cited by the FDA, *How Do Adolescents Get Their E-Cigarettes and Other Electronic Vaping Devices?*⁵: "Most youth (78.2%) owned a vaping device. The most common sources were purchasing from a store or online (31.1%), buying from another person (16.3%), or giving someone money to purchase for them (15.0%). The majority (72.8%) had used someone else's vaping device in the past 30 days. Youth who vaped more often, did not own a vaping device, vaped in social situations, and had previously been refused purchase were more likely to frequently borrow others' devices."
- Evidence from Wave 4 (2016-2017) of the Population Assessment of Tobacco Health (PATH) Study revealed that 7.2 percent of youth (age 12 to 17) who have used electronic nicotine delivery systems (ENDS) products more than once in their lifetime reported that they usually get their ENDS products from the Internet. Likewise, a recent survey of 1,729 adolescents aged 15 to 17 found that, among adolescents who purchased their vaping device, 32.2 percent of them obtained the products online.
- The FDA conducted undercover enforcement efforts with respect to brick-and-mortar and online stores during the Summer of 2018. These efforts resulted in the issuance of more than 1,300 warning letters and civil money penalty (CMP) complaints to retailers who illegally sold flavored tobacco products to minors.⁶ These results indicate that age restrictions alone on flavored tobacco products do not act as a significant deterrent to access of these products.

As a result of these findings, the FDA has indicated in their draft guidance that they will prioritize enforcement of flavored tobacco products that are offered for sale in the United States. As a part of this prioritized enforcement, the FDA has identified the following types of products due to the greater risk of youth access:

- Products sold in locations that minors are able to enter at any time;
- Products sold online to minors after issuance of FDA guidance;

³ <https://www.fda.gov/media/121384/download>

⁴ <https://www.cdc.gov/mmwr/volumes/67/wr/mm6706a5.htm>

⁵ <https://www.ncbi.nlm.nih.gov/pubmed/30068216/>

- Products sold online with no limit on quantity; and
- Products sold online without independent, third-party age and identity verification.

Amendments to San Rafael Municipal Code Chapter 8.15

As recommended in the April 15th Staff Report, the following amendments to San Rafael Municipal Code Chapter 8.15 regulating “Tobacco Retail Sales, Advertisements and Promotion” are included in the attached ordinance, to ban the sale of flavored tobacco products:

- **Update Section 8.15.005-Definitions.** The ordinance would add several new definitions pertaining to flavored tobacco products and would expand the definition of “Tobacco Product” to include products from both tobacco leaf and nicotine.
- **Add New Section 8.15.110- Prohibition Against Sale or Offer for Sale of Flavored Tobacco Products.** The ordinance would add a new section to Chapter 8.15 specifically outlining the ban on sale or offer for sale of Flavored Tobacco Products.
- **Exemption of Certain Businesses-Section 8.15.110(C).** In response to the interest of some Councilmembers in a possible exemption for businesses that serve only adults, staff has also included for the Council’s consideration an exemption from the flavored tobacco ban for those businesses that meet all of following criteria:
 1. Do not permit any persons under twenty-one (21) years of age to be present on or enter the premises at any time; and
 2. Verify the age of all persons upon entry to the premises; and
 3. Generate more than fifty (50) percent of their gross receipts annually from the sale of tobacco products and paraphernalia.

At the April 15 Council meeting, several community members commented on the importance of flavored tobacco products to themselves and/or other adults they know in helping reduce or eliminate their reliance on other, more harmful tobacco products. As suggested by the Council comments, an exemption for adult-only businesses would appear to directly and effectively balance the City’s interest in maintaining access to flavored tobacco products for these and other adult users, while at the same time promoting the City’s interest in discouraging the use of and access to tobacco products by persons under 21 years of age in the City.

As recommended in the April 15th Staff Report, the following amendments to San Rafael Municipal Code Chapter 8.15 are included in the proposed ordinance, to ban the sale of tobacco products in pharmacies:

- **Update Section 8.15.005-Definitions.** The ordinance would include a definition of a “Pharmacy”.
- **New Section 8.15.120-Prohibition Against Tobacco Products Sales at Pharmacies.** The ordinance would add a new section specifically outlining the ban on sale of Tobacco Products at Pharmacies.

Effective Date

The proposed ordinance includes an effective date six months after the ordinance is enacted. The purpose of postponing the effective date is to allow retailers to sell their existing inventory. Additionally,

a postponed effective date would allow any retailer seeking an exemption from the ban sufficient time to make any necessary changes to their business practices in order to be in compliance with the exemption.

FISCAL IMPACT:

There are multiple ways to view the “Fiscal Impact” of the proposed ordinance. In reviewing the other similar flavored tobacco bans in other Marin jurisdictions, the most common focus is on the cost of enforcement. As discussed in the April 15th Staff Report, enforcement of the TRL program is conducted as part of a Memorandum of Understanding (MOU) with the Marin County Sheriff’s Department. Funds for this enforcement are provided each year with county general fund monies. Any expansion of the TRL ordinance, including a Flavored Tobacco ban, would be enforced through this mechanism at no additional cost to the City.

Another aspect of “Fiscal Impact” is in a broader sense of reduced economic burden. A 2009 report titled *The Cost of Smoking in California, 2009* estimated the economic burden associated with smoking. The report estimated that in 2009 the economic burden placed on Marin County was nearly \$139 million, or \$551 per resident \$4,814 per smoker, not considering inflation or increases in health care costs (**Table 1**).

Table 1. Cost of Smoking in Marin County, 2009⁷

	Amount	Per Resident	Per Smoker
Total	\$138,354,000	\$551	\$4,814
Direct Costs	\$94,700,000	\$377	\$3,295
Hospital	\$36,135,000	\$144	\$1,257
Ambulatory	\$23,093,000	\$92	\$803
Nursing Home Care	\$16,539,000	\$66	\$575
Prescriptions	\$12,918,000	\$51	\$449
Home Health	\$6,016,000	\$24	\$209
Lost Productivity	\$43,653,000	\$174	\$1,519
Illness	\$13,474,000	\$54	\$469
Premature Death	\$30,179,000	\$120	\$1,050

In addition, there may be a potential financial impact to retailers in a reduction in sales. These financial impacts would likely be limited only to businesses currently selling flavored tobacco products but would not be considered exempt from the ban once effective, as well as to pharmacies currently selling tobacco products.

There would also be a potential loss of sales tax revenue to the City if retailers do not make up the sales with other products. An analysis conducted California Department of Tax and Fee Administration (CDTFA) of Senate Bill 38, a proposed statewide flavored tobacco ban, notes few data sources are available to document consumer responses to banning flavored products statewide, so consumer impacts are highly uncertain. Even with this uncertainty, CDFTA projects an estimated revenue loss in FY2020-2021 of \$237 million in excises taxes and \$54.5 million in sales taxes statewide.⁸

Staff reached out to our sales tax consultants HdL who responded that they are unable to break out flavored tobacco product sales from other products sold at convenience stores or other locations. Looking at the overall figures, they estimated “the impacts on your tax revenue loss to be fairly de minimus.”

⁷ <http://tobaccofreeca.com/wp-content/uploads/2016/09/Cost-of-Smoking-2009-final-report-7-14-14.pdf>

⁸ https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB38

In an attempt to determine a rough estimate, staff additionally reviewed the City/County of San Francisco's Controller's Office Economic Impact Report on the "Banning the Sale of Flavored Tobacco Products."⁹ Extrapolating from San Francisco's analysis, staff estimates the potential sales tax loss could be in the range of \$25,000, if an exemption is included, to \$100,000, if there is no exemption. This range represents roughly a quarter of one percent of total sales tax collected by the City. However, several limitations to this analysis should be noted due to the high-degree of uncertainty, as discussed in the CDFTA and San Francisco analyses:

- Depending on if an exemption is included, flavored tobacco users may switch from an affected retailer to an exempted retailer or out-of-town & online retailers. If users switch to an exempted retailer then there is likely no net loss in flavored tobacco sales citywide. If users switch to out-of-town and online retailers, then there would be a net loss to local retailers.
- As only flavored tobacco products are affected by this ban, existing flavored tobacco users may replace flavored tobacco consumption with non-flavored tobacco products or potentially cessation devices. This switch in tobacco products could minimize a reduction in sales from a flavored tobacco ban as an increase in non-flavored tobacco sales or other products could occur.
- By reducing access to flavored tobacco products, tobacco usage will likely also decrease. While this usage reduction would lead to reduced direct tobacco sales, there would also likely be a corresponding societal cost savings associated with lower health care costs.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt ordinance as written.
2. Adopt ordinance with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Conduct a public hearing and pass the ordinance to print.

ATTACHMENTS:

1. Ordinance Amending SRMC 8.15- "Tobacco Retail Sales, Advertising and Promotion"
2. Ordinance (Redlined Version)
3. Public Correspondence

⁹ https://sfcontroller.org/sites/default/files/Documents/Economic%20Analysis/170441_economic_impact_final.pdf

ORDINANCE NO. _____

**AN ORDINANCE OF THE SAN RAFAEL CITY COUNCIL
AMENDING CHAPTER 8.15 OF THE SAN RAFAEL MUNICIPAL CODE,
ENTITLED "TOBACCO RETAIL SALES, ADVERTISING AND PROMOTION" TO
REGULATE SALES OF FLAVORED TOBACCO PRODUCTS AND SALE OF
TOBACCO PRODUCTS AT PHARMACIES**

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1. FINDINGS.

WHEREAS, tobacco use remains the leading cause of preventable death in the United States, killing more than four hundred eighty thousand people each year. It causes or contributes to many forms of cancer, as well as heart and respiratory diseases, among other health disorders. Tobacco use remains a public health crisis of the first order, in terms of the human suffering and loss of life it causes, the financial costs it imposes on society and the burdens it places on our health care system; and

WHEREAS, tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a "graduation strategy" to encourage new users to start with tobacco products with lower levels of nicotine and progress to products with higher levels of nicotine; and

WHEREAS, the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA) analyzed data from the 2016 National Youth Tobacco Survey to assess reasons youth use e-cigarettes. Among those who had ever used an e-cigarette, the most commonly selected reasons for use were: use by "friend or family member" (39.0%); availability of "flavors such as mint, candy, fruit, or chocolate" (31.0%); and the belief that "they are less harmful than other forms of tobacco such as cigarettes" (17.1%); and

WHEREAS, the 2016 National Youth Tobacco Survey also found that during the one-year period between 2017 and 2018, among high school students who currently used e-cigarettes, use of flavored e-cigarettes increased as well. 68% more high school students used flavored e-cigarettes. Use of any flavored e-cigarette went up among current users from 60.9 percent to 67.8 percent, and menthol use increased from 42.3 percent to 51.2 percent among all current e-cigarette users—including those using multiple products—and from 21.4 percent to 38.1 percent among exclusive e-cigarette users. Additionally, kids whose first tobacco product was flavored are more likely to become current tobacco users than those whose first product was tobacco-flavored; and

WHEREAS, the National Cancer Institute (NCI), and FDA released findings from the 2018 National Youth Tobacco Survey showing alarming increases in current use of any tobacco product among both middle and high school students between 2017 and 2018, primarily because of an increase in e-cigarette use. No significant changes occurred in current use of combustible tobacco products, such as cigarettes and cigars, during this period. The increases

in current use of any tobacco product and e-cigarettes have reversed a decline observed in recent years; and

WHEREAS, as stated in the FDA's March 2019 draft guidance for industry regarding their *Modifications to Compliance Policy for Certain Deemed Tobacco Products*, the FDA conducted undercover enforcement efforts with respect to brick-and-mortar and online stores during the Summer of 2018 which resulted in the issuance of more than 1,300 warning letters and civil money penalty (CMP) complaints to retailers who illegally sold flavored tobacco products to minors. Additionally, according to data from the 2018 NYTS, 14.8 percent of U.S. middle and high school e-cigarette users under 18 years of age reported obtaining e-cigarettes in the past 30 days from a vape shop or other store that sells e-cigarettes and 8.4 percent reported obtaining them from a gas station or convenience store; and

WHEREAS, according to the latest California Healthy Kids Survey the Electronic Cigarette Use Prevalence and Patterns has increased significantly from 2015-16 to 2017-18. In 2018 at San Rafael City Schools, seventeen percent (17%) of seventh-grade students have reported ever using electronic cigarettes and seventeen percent (17%) of tenth-grade students currently use e-cigarettes. The survey indicated that while current use of combustible tobacco products decreased by seventy-five percent (75%) among ninth grade students from 2015-16 to 2017-18, current electronic cigarette use increased by four hundred percent (400%) among ninth graders during that same period; and

WHEREAS, on February 5, 2014, CVS Caremark announced it will stop selling cigarettes and other tobacco products at its more than 7,600 CVS/pharmacy stores across the U.S. by October 1, 2014 consistent with the positions taken by the American Medical Association, American Heart Association, American Cancer Society, American Lung Association and American Pharmacists Association that have all publicly opposed tobacco sales in retail outlets with pharmacies; and

WHEREAS, the City Council finds that regulation of flavored tobacco products will help combat significant increases in youth tobacco and nicotine use attributed to the availability of flavored tobacco products such as e-cigarettes and vaping products; and

WHEREAS, testimony before the City Council indicates that a significant number of adults in the community have found that the use of flavored tobacco products has helped, or is helping, them reduce or eliminate their reliance on other more harmful tobacco products, and the City Council finds that it would promote the public health, safety and welfare to maintain access to such products in the City for these adults, while at the same time decreasing the availability of the products to the City's youth, by allowing retail sales of flavored tobacco products at certain adults only retail establishments;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 2. AMENDMENT OF MUNICIPAL CODE.

Chapter 8.15 of the San Rafael Municipal Code, entitled "Tobacco Retail Sales, Advertising and Promotion" is hereby amended to read in its entirety as follows:

Chapter 8.15 - TOBACCO PRODUCT RETAIL SALES, ADVERTISING AND PROMOTION

8.15.005 - Definitions.

The following words and phrases, whenever used in this chapter, shall have the meaning defined in this section unless the context clearly requires otherwise:

A. "Advertising display sign" means a sign, billboard, poster, freestanding sign, balloon, pennant or banner that is temporarily or permanently placed on or affixed to the ground, the sidewalk, a pole or post, a fence, or a building, or is displayed in the windows or doors of a commercial establishment, and that is used to advertise or promote products.

B. "Characterizing Flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a Characterizing Flavor.

C. "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a Tobacco Product during the processing, manufacture, or packing of the Tobacco Product.

D. "Distinguishable" means perceivable by either the sense of smell or taste.

E. "Flavored Tobacco Product" means any Tobacco Product that contains a Constituent that imparts a Characterizing Flavor.

F. "Labeling" means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.

G. "Mobile billboard" means any sign, placard, billboard, or other advertisement display upon or affixed to a vehicle which display is used to advertise a product illegal to sell to minors, when the supporting vehicle or trailer is parked within a public right-of-way or on private property and visible to the public for a duration of time and in a manner which clearly indicates that the sign is for advertising products illegal to sell to minors or which carry a specific brand name, logo, or indicia of a product illegal to sell to minors. For the purpose of this chapter, a mobile billboard shall not include any

advertisements on the side of a van, truck, or other vehicle which is primarily used for the transportation of goods or products.

H. "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold, or offered for sale, to a consumer.

I. "Person" means any individual person, firm partnership, association, corporation, company, organization, or legal entity of any kind.

J. "Pharmacy" means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescription products are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals.

K. "Promote" or "promotion" means a display of any logo, brand name, character, graphics, colors, designs, or recognizable color or pattern of colors, or any other indicia or product identification with, or similar to, or identifiable with, those used for any particular brand of Tobacco Product.

L. "Publicly visible location" means any outdoor location that is visible from any street, sidewalk, or other public thoroughfare, or any location inside a commercial establishment immediately adjacent to a window or door where such location is visible from any street, sidewalk, or other public thoroughfare.

M. "Tobacco product" means:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff and any Flavored Tobacco Product.
2. Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
3. Notwithstanding any provides of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such approved purpose.

N. "Tobacco Retailer" means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including but not limited

to pharmacies and stores that engage in the retail sale of food; "Tobacco Retailing" shall mean the doing of any of these things.

8.15.010 - Restriction on advertising Tobacco Products.

No person shall place or maintain, or cause or allow to be placed or maintained, in any manner, any advertising or promotion of Tobacco Products on an advertising display sign in a publicly visible location within five hundred feet (500') of the perimeter of an elementary or secondary school, high school, public playground or playground area in a public park (e.g., a public park with equipment such as swings and seesaws, baseball diamonds or basketball courts), day care center, public community center or public library.

8.15.020 - Exceptions.

The restrictions contained in Section 8.15.010 shall not apply to advertising or promotions for Tobacco Products that are:

- A. Located inside a commercial establishment, unless such advertising display sign or promotion is attached to, affixed to, leaning against, or otherwise in contact with any window or door in such a manner that it is visible from a street, sidewalk or other public thoroughfare.
- B. On vehicles, other than mobile billboards.
- C. On any sign located inside or immediately outside a commercial establishment if the sign provides notice that the establishment sells Tobacco Products, so long as the sign does not promote any brand of Tobacco Product.
- D. On Tobacco Product packaging.

Notwithstanding the foregoing, however, the provisions of Chapter 14.19 ("Signs") of this Code shall apply.

8.15.030 - Distribution of promotional items to minors.

No person may market, license, distribute, sell, or cause to be marketed, licensed, distributed or sold any item or service to a minor, which bears the brand name, alone or in conjunction with, any other word, logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical with, or similar to, or identifiable with, those used for any brand of Tobacco Product.

8.15.040 - Self-service displays.

It is unlawful for any person to sell, permit to be sold, offer for sale, or display for sale, any Tobacco Product by any means of self-service merchandising, including but not limited to self-service display, rack, countertop or shelf, or any means other than vendor-assisted sales. All Tobacco Products shall be offered for sale exclusively by means of vendor assistance, and all Tobacco Products shall be either in a locked case or in an area not accessible to the public prior to sale.

8.15.050 - Signs.

Any person, business, or Tobacco Retailer shall post plainly visible signs at the point of purchase of Tobacco Products which state "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED." The letters of said signs shall be at least one inch (1") high.

8.15.100 - Sale to minors prohibited.

No person, business, or tobacco retailer shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as twenty-one (21) years or greater.

8.15.110 – Prohibition Against Sale or Offer for Sale of Flavored Tobacco Products.

A. The sale or offer for sale, by any person or Tobacco Retailer of any Flavored Tobacco Product is prohibited and no person or Tobacco Retailer shall sell, or offer for sale, any Flavored Tobacco Product.

B. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor including, but not limited to, text, color, and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.

C. Exemptions. Prohibition Against Sale or Offer for Sale of Flavored Tobacco Products shall not apply to Tobacco Retailers that meet all of the following conditions:

1. Do not permit any persons under twenty-one (21) years of age to be present on or enter the premises at any time; and
2. Require the verification of age of all persons upon entry to the premises; and
3. Generate more than fifty (50) percent of gross receipts annually from the sale of tobacco products and paraphernalia.

8.15.120 – Prohibition Against Tobacco Products Sales at Pharmacies.

No person shall sell Tobacco Products in a pharmacy.

8.15.130 - Tobacco vending machines prohibited.

No person, business, or Tobacco Retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any vending machine for the purpose of selling or distributing any Tobacco Product.

8.15.200 - Requirement for Tobacco Retailer permit.

It is unlawful for any person to act as a Tobacco Retailer without first obtaining and maintaining a valid Tobacco Retailer's permit pursuant to this chapter for each location at which that activity is to occur. No permit may be issued to authorize Tobacco Retailers at other than a fixed location; peripatetic Tobacco Retailing and Tobacco Retailing from vehicles are prohibited. Permits are valid for one year. Each Tobacco Retailer must apply for the Tobacco Retailer's permit or for the renewal of the Tobacco Retailer's permit at the same time the applicant applies for, or renews their city business license.

8.15.210 - Application procedure.

A. Application for a Tobacco Retailer's permit shall be submitted in the name of the person or entity proposing to conduct retail sales of Tobacco Products and shall be signed by such person or an authorized agent thereof. All applications shall be submitted to the city and shall contain the following information:

1. The name, address, telephone and fax numbers of the applicant.
2. The business name, address, telephone and fax numbers of each location for which a tobacco retailer's permit is sought.
3. Such other information as the city deems reasonably necessary for implementation and enforcement of this chapter.

B. A fee for the Tobacco Retailer's permit shall be established by city council in its fee schedule resolution as amended from time to time. The applicant shall pay the fee at the time the application is submitted. The application shall be submitted at the same time as the applicant's initial application for or renewal of a city business license.

8.15.220 - Issuance of permit.

A. Upon the receipt of an application for a Tobacco Retailer's permit, the city shall issue a permit unless the Community Development Director, or designee, determines that evidence demonstrates one of the following bases for denial:

1. The application is incomplete or inaccurate.
2. The application seeks authorization for Tobacco Retailing by a person or at a location for which a suspension is in effect pursuant to Section 8.15.250 of this chapter.
3. The application seeks authorization for Tobacco Retailing that is otherwise unlawful under provisions of state or federal law or the provisions of the San Rafael Municipal Code.

8.15.230 - Display of permit.

Each permittee shall prominently display the permit at each location where Tobacco Retailing occurs.

8.15.240 - Permits nontransferable.

A Tobacco Retailer's permit is nontransferable. In the event a person to whom a permit has been issued changes business location or sells the business referenced in that person's permit, that person must apply for a new permit prior to acting as a Tobacco Retailer at the new location. The transferee of the permittee must apply for a permit in the transferee's name before acting as a Tobacco Retailer. Any permit reissued pursuant to this section shall expire on the date the previous permit for the business or person would have otherwise expired.

8.15.250 - Suspension or revocation of permit.

A. Grounds for Suspension or Revocation.

1. A Tobacco Retailer's permit shall be revoked if the Director of Community Development, or designee, finds, after not less than 10 days' notice and opportunity to be heard, that one or more of the bases for denial of a permit under Section 8.15.220 of this chapter exists. The revocation shall be without prejudice to the filing of a new application for a permit following correction of the conditions which required revocation.
2. A Tobacco Retailer's permit shall be suspended if the Director of Community Development, or designee, finds, after not less than 10 days' notice and opportunity to be heard, that the permittee or his or her agent or employee has violated any federal, state or local law governing the sale, promotion, advertisement or display of Tobacco Products.

B. Suspension of Permit.

1. If the Director of Community Development, or designee, finds that there are grounds for suspension of a permit, the permit shall be suspended for ninety (90) days unless (a) the permittee submits a training plan within a reasonable time established by the city, in form and content acceptable to the city, for the training of all sales employees in the laws pertaining to the sale, advertisement, and display of Tobacco Products to minors, and, techniques to ensure future compliance with said laws; and (b) the permittee files with the city, within such time as is reasonably established by the city, satisfactory evidence that the training described in the training plan has been completed.

2. Upon the second finding by the Director of Community Development, or designee, of a violation by a permittee or by any agent or employee of a permittee within any twelve (12) month period, the permit shall be suspended for one hundred twenty (120) days.

3. Upon each subsequent finding by the Director of Community Development, or designee, of a violation by a permittee or by any agent or employee of a permittee within any twelve (12) month period, the permit shall be suspended for one year.

C. Appeal of Suspension and/or Revocation. The decision is appealable pursuant to the provisions of Chapter 14.28 of the San Rafael Municipal Code.

8.15.260 - Penalties for violations.

A violation of any provision of this chapter is hereby declared a public nuisance and shall be punishable as provided for in Chapters 1.42, 1.44 and 1.46 of this code. These remedies shall be in addition to all other legal remedies, criminal or civil, which may be pursued by the city to address any violation of this chapter.

8.15.270 – No conflict with Federal or State law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

8.15.280 – Not applicable to cannabis businesses.

Notwithstanding anything in this chapter to the contrary, this chapter shall not be applicable to any matter regulated by Chapter 10.96 of this code entitled “Cannabis Business”.

DIVISION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance or its implementation would have a significant effect on the environment (14 Cal. Code Regs. Section 15061(b)(3)).

DIVISION 4. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

DIVISION 5. EFFECTIVE DATE; PUBLICATION.

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect six (6) months after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

GARY O. PHILLIPS, Mayor

ATTEST:

LINDSAY LARA, City Clerk

The foregoing Ordinance No. _____ was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 20th day of May 2019 and ordered passed to print by the following vote, to wit:

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

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the _____ day of _____, 2019.

LINDSAY LARA, City Clerk

ORDINANCE NO. _____

**AN ORDINANCE OF THE SAN RAFAEL CITY COUNCIL
AMENDING CHAPTER 8.15 OF THE SAN RAFAEL MUNICIPAL CODE,
ENTITLED "TOBACCO RETAIL SALES, ADVERTISING AND PROMOTION" TO
REGULATE SALES OF FLAVORED TOBACCO PRODUCTS AND SALE OF
TOBACCO PRODUCTS AT PHARMACIES**

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1. FINDINGS.

WHEREAS, tobacco use remains the leading cause of preventable death in the United States, killing more than four hundred eighty thousand people each year. It causes or contributes to many forms of cancer, as well as heart and respiratory diseases, among other health disorders. Tobacco use remains a public health crisis of the first order, in terms of the human suffering and loss of life it causes, the financial costs it imposes on society and the burdens it places on our health care system; and

WHEREAS, tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a "graduation strategy" to encourage new users to start with tobacco products with lower levels of nicotine and progress to products with higher levels of nicotine; and

WHEREAS, the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA) analyzed data from the 2016 National Youth Tobacco Survey to assess reasons youth use e-cigarettes. Among those who had ever used an e-cigarette, the most commonly selected reasons for use were: use by "friend or family member" (39.0%); availability of "flavors such as mint, candy, fruit, or chocolate" (31.0%); and the belief that "they are less harmful than other forms of tobacco such as cigarettes" (17.1%); and

WHEREAS, the 2016 National Youth Tobacco Survey also found that during the one-year period between 2017 and 2018, among high school students who currently used e-cigarettes, use of flavored e-cigarettes increased as well. 68% more high school students used flavored e-cigarettes. Use of any flavored e-cigarette went up among current users from 60.9 percent to 67.8 percent, and menthol use increased from 42.3 percent to 51.2 percent among all current e-cigarette users—including those using multiple products—and from 21.4 percent to 38.1 percent among exclusive e-cigarette users. Additionally, kids whose first tobacco product was flavored are more likely to become current tobacco users than those whose first product was tobacco-flavored; and

WHEREAS, the National Cancer Institute (NCI), and FDA released findings from the 2018 National Youth Tobacco Survey showing alarming increases in current use of any tobacco product among both middle and high school students between 2017 and 2018, primarily because of an increase in e-cigarette use. No significant changes occurred in current use of combustible tobacco products, such as cigarettes and cigars, during this period. The increases

in current use of any tobacco product and e-cigarettes have reversed a decline observed in recent years; and

WHEREAS, as stated in the FDA's March 2019 draft guidance for industry regarding their *Modifications to Compliance Policy for Certain Deemed Tobacco Products*, the FDA conducted undercover enforcement efforts with respect to brick-and-mortar and online stores during the Summer of 2018 which resulted in the issuance of more than 1,300 warning letters and civil money penalty (CMP) complaints to retailers who illegally sold flavored tobacco products to minors. Additionally, according to data from the 2018 NYTS, 14.8 percent of U.S. middle and high school e-cigarette users under 18 years of age reported obtaining e-cigarettes in the past 30 days from a vape shop or other store that sells e-cigarettes and 8.4 percent reported obtaining them from a gas station or convenience store; and

WHEREAS, according to the latest California Healthy Kids Survey the Electronic Cigarette Use Prevalence and Patterns has increased significantly from 2015-16 to 2017-18. In 2018 at San Rafael City Schools, seventeen percent (17%) of seventh-grade students have reported ever using electronic cigarettes and seventeen percent (17%) of tenth-grade students currently use e-cigarettes. The survey indicated that while current use of combustible tobacco products decreased by seventy-five percent (75%) among ninth grade students from 2015-16 to 2017-18, current electronic cigarette use increased by four hundred percent (400%) among ninth graders during that same period; and

WHEREAS, on February 5, 2014, CVS Caremark announced it will stop selling cigarettes and other tobacco products at its more than 7,600 CVS/pharmacy stores across the U.S. by October 1, 2014 consistent with the positions taken by the American Medical Association, American Heart Association, American Cancer Society, American Lung Association and American Pharmacists Association that have all publicly opposed tobacco sales in retail outlets with pharmacies; and

WHEREAS, the City Council finds that regulation of flavored tobacco products will help combat significant increases in youth tobacco and nicotine use attributed to the availability of flavored tobacco products such as e-cigarettes and vaping products; and

WHEREAS, testimony before the City Council indicates that a significant number of adults in the community have found that the use of flavored tobacco products has helped, or is helping, them reduce or eliminate their reliance on other more harmful tobacco products, and the City Council finds that it would promote the public health, safety and welfare to maintain access to such products in the City for these adults, while at the same time decreasing the availability of the products to the City's youth, by allowing retail sales of flavored tobacco products at certain adults only retail establishments;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 2. AMENDMENT OF MUNICIPAL CODE.

Chapter 8.15 of the San Rafael Municipal Code, entitled "Tobacco Retail Sales, Advertising and Promotion" is hereby amended to read in its entirety as follows:

Chapter 8.15 - TOBACCO PRODUCT RETAIL SALES, ADVERTISING AND PROMOTION

8.15.005 - Definitions.

The following words and phrases, whenever used in this chapter, shall have the meaning defined in this section unless the context clearly requires otherwise:

A. "Advertising display sign" means a sign, billboard, poster, freestanding sign, balloon, pennant or banner that is temporarily or permanently placed on or affixed to the ground, the sidewalk, a pole or post, a fence, or a building, or is displayed in the windows or doors of a commercial establishment, and that is used to advertise or promote products.

B. "Characterizing Flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a Characterizing Flavor.

C. "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a Tobacco Product during the processing, manufacture, or packing of the Tobacco Product.

D. "Distinguishable" means perceivable by either the sense of smell or taste.

E. "Flavored Tobacco Product" means any Tobacco Product that contains a Constituent that imparts a Characterizing Flavor.

CF. "Labeling" means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.

G. "Mobile billboard" means any sign, placard, billboard, or other advertisement display upon or affixed to a vehicle which display is used to advertise a product illegal to sell to minors, when the supporting vehicle or trailer is parked within a public right-of-way or on private property and visible to the public for a duration of time and in a manner which clearly indicates that the sign is for advertising products illegal to sell to minors or which carry a specific brand name, logo, or indicia of a product illegal to sell to minors. For the purpose of this chapter, a mobile billboard shall not include any

advertisements on the side of a van, truck, or other vehicle which is primarily used for the transportation of goods or products.

H. "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold, or offered for sale, to a consumer.

I. "Person" means any individual person, firm partnership, association, corporation, company, organization, or legal entity of any kind.

J. "Pharmacy" means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescription products are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals.

FK. "Promote" or "promotion" means a display of any logo, brand name, character, graphics, colors, designs, or recognizable color or pattern of colors, or any other indicia or product identification with, or similar to, or identifiable with, those used for any particular brand of Tobacco Product.

GL. "Publicly visible location" means any outdoor location that is visible from any street, sidewalk, or other public thoroughfare, or any location inside a commercial establishment immediately adjacent to a window or door where such location is visible from any street, sidewalk, or other public thoroughfare.

M. "Tobacco product" means:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff and any Flavored Tobacco Product.
2. Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
3. Notwithstanding any provides of subsections (1) an (2) to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such approved purpose.

N. "Tobacco Retailer" means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including but not limited

to pharmacies and stores that engage in the retail sale of food; "Tobacco Retailing" shall mean the doing of any of these things.

8.15.010 - Restriction on advertising Tobacco Products.

No person shall place or maintain, or cause or allow to be placed or maintained, in any manner, any advertising or promotion of ~~cigarettes or~~ Tobacco Products on an advertising display sign in a publicly visible location within five hundred feet (500') of the perimeter of an elementary or secondary school, high school, public playground or playground area in a public park (e.g., a public park with equipment such as swings and seesaws, baseball diamonds or basketball courts), day care center, public community center or public library.

8.15.020 - Exceptions.

The restrictions contained in Section 8.15.010 shall not apply to advertising or promotions for Tobacco Products that are:

- A. Located inside a commercial establishment, unless such advertising display sign or promotion is attached to, affixed to, leaning against, or otherwise in contact with any window or door in such a manner that it is visible from a street, sidewalk or other public thoroughfare.
- B. On vehicles, other than mobile billboards.
- C. On any sign located inside or immediately outside a commercial establishment if the sign provides notice that the establishment sells Tobacco Products, so long as the sign does not promote any brand of Tobacco Product.
- D. On Tobacco Product packaging.

Notwithstanding the foregoing, however, the provisions of Chapter 14.19 ("Signs") of this Code shall apply.

~~Applicant is required to comply with all provisions of city's sign ordinance Chapter 14.19.~~

8.15.030 - Distribution of promotional items to minors.

No person may market, license, distribute, sell, or cause to be marketed, licensed, distributed or sold any item or service to a minor, which bears the brand name, alone or in conjunction with, any other word, logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical with, or similar to, or identifiable with, those used for any brand of Tobacco Product.

8.15.~~100-040~~ - Self-service displays.

It is unlawful for any person to sell, permit to be sold, offer for sale, or display for sale, any Tobacco Product by any means of self-service merchandising, including but not limited to self-service display, rack, countertop or shelf, or any means other than vendor-assisted sales. All Tobacco Products shall be offered for sale exclusively by means of vendor assistance, and all Tobacco Products shall be either in a locked case or in an area not accessible to the public prior to sale.

8.15.~~110-050~~ - Signs.

Any person, business, or Tobacco Retailer shall post plainly visible signs at the point of purchase of Tobacco Products which state "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER TWENTY-ONE ~~EIGHTEEN~~ YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED." The letters of said signs shall be at least one inch (1") high.

8.15.~~120-100~~ - Sale to minors prohibited.

No person, business, or tobacco retailer shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as eighteen-twenty-one (~~18~~21) years or greater.

8.15.110 – Prohibition Against Sale or Offer for Sale of Flavored Tobacco Products.

A. The sale or offer for sale, by any person or Tobacco Retailer of any Flavored Tobacco Product is prohibited and no person or Tobacco Retailer shall sell, or offer for sale, any Flavored Tobacco Product.

B. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor including, but not limited to, text, color, and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.

C. Exemptions. Prohibition Against Sale or Offer for Sale of Flavored Tobacco Products shall not apply to Tobacco Retailers that meet all of the following conditions:

1. Do not permit any persons under twenty-one (21) years of age to be present on or enter the premises at any time; and

2. Require the verification of age of all persons upon entry to the premises: and
3. Generate more than fifty (50) percent of gross receipts annually from the sale of tobacco products and paraphernalia.

8.15.120 – Prohibition Against Tobacco Products Sales at Pharmacies.

No person shall sell Tobacco Products in a pharmacy.

8.15.130 - Tobacco vending machines prohibited.

No person, business, or Tobacco Retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any vending machine for the purpose of selling or distributing any Tobacco Product.

8.15.200 - Requirement for Tobacco Retailer permit.

It is unlawful for any person to act as a Tobacco Retailer without first obtaining and maintaining a valid Tobacco Retailer's permit pursuant to this chapter for each location at which that activity is to occur. No permit may be issued to authorize Tobacco Retailers at other than a fixed location; peripatetic Tobacco Retailing and Tobacco Retailing from vehicles are prohibited. Permits are valid for one year. Each Tobacco Retailer must apply for the Tobacco Retailer's permit or for the renewal of the Tobacco Retailer's permit at the same time the applicant applies for, or renews their city business license.

8.15.210 - Application procedure.

A. Application for a Tobacco Retailer's permit shall be submitted in the name of the person or entity proposing to conduct retail sales of Tobacco Products and shall be signed by such person or an authorized agent thereof. All applications shall be submitted to the city and shall contain the following information:

1. The name, address, telephone and fax numbers of the applicant.
2. The business name, address, telephone and fax numbers of each location for which a tobacco retailer's permit is sought.
3. Such other information as the city deems reasonably necessary for implementation and enforcement of this chapter.

B. A fee for the Tobacco Retailer's permit shall be established by city council in its fee schedule resolution as amended from time to time. The applicant shall pay the fee at the time the application is submitted. The application shall be submitted

at the same time as the applicant's initial application for or renewal of a city business license.

8.15.220 - Issuance of permit.

A. Upon the receipt of an application for a Tobacco Retailer's permit, the city shall issue a permit unless the Community Development Director, or designee, determines that evidence demonstrates one of the following bases for denial:

1. The application is incomplete or inaccurate.
2. The application seeks authorization for Tobacco Retailing by a person or at a location for which a suspension is in effect pursuant to Section 8.15.250 of this chapter.
3. The application seeks authorization for Tobacco Retailing that is otherwise unlawful under provisions of state or federal law or the provisions of the San Rafael Municipal Code.

8.15.230 - Display of permit.

Each permittee shall prominently display the permit at each location where Tobacco Retailing occurs.

8.15.240 - Permits nontransferable.

A Tobacco Retailer's permit is nontransferable. In the event a person to whom a permit has been issued changes business location or sells the business referenced in that person's permit, that person must apply for a new permit prior to acting as a Tobacco Retailer at the new location. The transferee of the permittee must apply for a permit in the transferee's name before acting as a Tobacco Retailer. Any permit reissued pursuant to this section shall expire on the date the previous permit for the business or person would have otherwise expired.

8.15.250 - Suspension or revocation of permit.

A. Grounds for Suspension or Revocation.

1. A Tobacco Retailer's permit shall be revoked if the city Director of Community Development, or designee, finds, after not less than 10 days' notice and opportunity to be heard, that one or more of the bases for denial of a permit under Section 8.15.220 of this chapter exists. The revocation shall be without prejudice to the filing of a new application for a permit following correction of the conditions which required revocation.

2. A Tobacco Retailer's permit shall be suspended if the city-Director of Community Development, or designee, finds, after not less than 10 days' notice and opportunity to be heard, that the permittee or his or her agent or employee has violated any federal, state or local law governing the sale, promotion, advertisement or display of Tobacco Products.

B. Suspension of Permit.

1. If the city-Director of Community Development, or designee, finds that there are grounds for suspension of a permit, ~~the following sanctions shall be imposed:~~

~~a. Upon a first finding by the city of a violation by a permittee or any agent or employee of a permittee within any twelve (12) month period,~~ the permit shall be suspended for ninety (90) days unless (a) : ~~(1)~~ the permittee submits a training plan within a reasonable time established by the city, in form and content acceptable to the city, for the training of all sales employees in the laws pertaining to the sale, advertisement, and display of Tobacco Products, ~~or tobacco paraphernalia~~ to minors, and, techniques to ensure future compliance with said laws; and (2b) the permittee files with the city, within such time as is reasonably established by the city, satisfactory evidence that the training described in the training plan has been completed.

2. Upon the second finding by the city-Director of Community Development, or designee, of a violation by a permittee or by any agent or employee of a permittee within any twelve (12) month period, the permit shall be suspended for one hundred twenty (120) days.

3. Upon each subsequent finding by the the-city-Director of Community Development, or designee, of a violation by a permittee or by any agent or employee of a permittee within any twelve (12) month period, the permit shall be suspended for one year.

C. Appeal of Suspension and/or Revocation. The decision is appealable pursuant to the provisions of Chapter 14.28 of the San Rafael Municipal Code.

8.15.260 - Penalties for violations.

A violation of any provision of this chapter is hereby declared a public nuisance and shall be punishable as provided for in Chapters 1.42, 1.44 and 1.46 of this code. These remedies shall be in addition to all other legal remedies, criminal or civil, which may be pursued by the city to address any violation of this chapter.

8.15.270 – No conflict with Federal or State law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

8.15.280 – Not applicable to cannabis businesses.

Notwithstanding anything in this chapter to the contrary, this chapter shall not be applicable to any matter regulated by Chapter 10.96 of this code entitled “Cannabis Business”.

DIVISION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance or its implementation would have a significant effect on the environment (14 Cal. Code Regs. Section 15061(b)(3)).

DIVISION 4. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

DIVISION 5. EFFECTIVE DATE; PUBLICATION.

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect six (6) months after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

GARY O. PHILLIPS, Mayor

ATTEST:

LINDSAY LARA, City Clerk

The foregoing Ordinance No. _____ was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 20th day of May 2019 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers

NOES: Councilmembers

ABSENT: Councilmembers

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the _____ day of _____, 2019.

LINDSAY LARA, City Clerk

From: [Anita Renzetti](#)
To: [Gary Phillips](#); [Maribeth Bushey](#); [Andrew McCullough](#); [John Gamblin](#); [Kate Colin](#)
Cc: [Lindsay Lara](#)
Subject: please stand strong on the Flavor/Menthol ban
Date: Thursday, May 09, 2019 1:31:43 PM

Dear San Rafael Councilmembers (and staff):

Thank you for your leadership in protecting Marin children and teens from Big Tobacco and the vaping industry. I lost my young husband (my teen stepdaughter's father) to smoking-related cancer.

I applaud how you care about youth when considering public health concerns, since that's so often when addiction starts. While the vaping industry claims that people need candy-flavored techno-toys/vaping products to quit smoking, this is simply a marketing ploy from an industry that wants to hook the next generation on nicotine.

Your courageous stance against predatory industries who target the most vulnerable in our communities gives me hope that fewer families will suffer the loss of a beloved family member addicted to nicotine while young.

As you move forward with the Flavor/Menthol ban, I respectfully request that all exemptions, including flavored vaping products, be removed. Individual packs of flavored cigarillos target Latinos and Hispanics in our county ([source](#)).

Your courageous stance against these predatory industries who target the most vulnerable in our communities gives me hope that fewer families will suffer the loss of a beloved family member addicted to nicotine while young.

Thank you!

Anita (Bischoff) Renzetti
San Rafael resident
415-847-8673 (c)

Ethan Guy

From: Jaime Rojas Jr [REDACTED]
Sent: Friday, May 03, 2019 1:23 PM
To: Ethan Guy
Subject: Tobacco Flavor Ban - Alternative Option for Consideration
Attachments: OCE_Inspection_Search_Report_FDA.csv; SF Controller Report_economic impact_June2017.pdf

Hello Ethan,

Hope you are doing well. Thank you again for taking my call last week regarding the proposed tobacco flavor ban. Since you are tasked to draft an ordinance to city council to include options, we at NATO hope you consider adding an option for the Council to consider:

- City Council to consider an alternative option of capping the number of tobacco retail stores in the city and grandfathering the current retailers (exception of the pharmacy stores who are already looking at removing all tobacco products off their shelves).

The reason we are asking for this alternative is that retailers are NOT the problem in San Rafael youth accessing tobacco products. The FDA does annual random retailer compliance checks throughout the country. In the past two years, **San Rafael retailers have a 100% compliance success rate (attached FDA results)**. Obviously youth are not accessing tobacco products from San Rafael retailers.

Where are youth accessing these tobacco products? Per the FDA, CA Health Department & Marin Health Department, the 3 most likely sources are:

1. Online Sales (very little ID verification if any)
2. Social Sources (family and friends)
3. Retailers (which San Rafael compliance checks prove otherwise)

We know that City Council did not direct staff to conduct an economic impact report on the potential loss of sales tax revenue and the loss of retailer revenue and jobs. The only jurisdiction in California that did an economic impact report was the City of San Francisco (attached 2017 report). The City concluded the following:

- The City will lose an estimated \$50 million annually in sales tax revenue on a flavor ban from approximately 750 retailers.

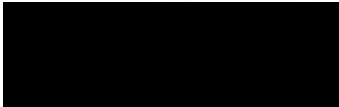
We can then estimate from San Francisco's economic impact report, San Rafael's retailer community is approximately 7% (54 retailers) of San Francisco's total number of retailers (750). So the **City of San Rafael is projected to lose \$3.5 million/annually in sales tax revenue with a flavor ban ordinance. By reducing tobacco tax revenue, San Rafael is also reducing tobacco tax grant money for youth education programs AND retailer code compliance in the future.**

We hope that this alternative option will be included in your report to the City Council for consideration. Please feel free to contact me should you have any questions.

Thank you again for your consideration.

Jaime

--
National Association of Tobacco Outlets
Legislative Consultant



www.rojascommunications.com



Banning the Sale of Flavored Tobacco Products: Economic Impact Report

Office of Economic Analysis

Item # 170441

June 13, 2017

Introduction

- The proposed legislation amends the San Francisco Health Code to prohibit local tobacco retailers from selling flavored tobacco products, including menthol cigarettes, flavored chewing tobacco, and flavored liquids containing nicotine designed to be used with electronic cigarettes.
- The law does not criminalize the possession or use of flavored tobacco, only its sale by retailers within the city.
- Unflavored tobacco product sales would not be affected. Tobacco products are considered to be flavored, if they are advertised as having a distinctive flavor.
- If passed, the law would go into effect on January 2018.
- Retailers in San Francisco are required to possess a permit to sell tobacco. The only penalty for violation of the ban is a potential of the suspension of tobacco sales permit, at the discretion of Director of Public Health.
- The Office of Economic Analysis has determined that if enacted, the proposed ban could have a material economic impact on the city's economy.

History of Flavored Tobacco Bans at the Federal, State & Local Levels

- Flavored tobacco bans, including both traditional and electronic cigarettes, have become increasingly common across the United States in recent years.
- On September 22, 2009, the FDA banned “characterizing flavors” in cigarettes such as an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee.
- The ban was authorized by the FDA under the Family Smoking Prevention and Tobacco Control Act, which is a part of a national effort by the FDA to reduce smoking in America.
- However, the FDA stopped short of prohibiting menthol in cigarettes or flavoring in other tobacco products such as e-cigarettes, cigars, smokeless tobacco, etc. The FDA law, however, does not prohibit states and localities from banning flavored tobacco products.
- On October 28, 2009, New York City banned the sale of most flavored tobacco products, exempting only certain flavors.
- On July 1, 2009 Maine banned the sale of flavored cigarettes & cigars in the state.
- On October 1, 2008, New Jersey banned the sale of flavored cigarettes but exempted menthol and clove cigarettes.

Use of Electronic Smoking Devices and Flavored Tobacco Products

- According to a 2016 study* the use of electronic smoking devices (e-cigarettes, e-hookah, hookah pens, vape pens) has dramatically increased over the last few years. Nationally, only 3.7% of adults currently use e-cigarettes but in California the rate is 5.8%. The breakdown of the CA rate by age shows that the prevalence rate is 9.4% for young adults (aged 18-24) whereas the rate is 7.4% for smokers aged 25-44 and 2.6% for smokers aged 45-65. Currently, no data is available at the county level but similar trends are likely observed at the city level.
- The report also cited that nationally, e-cigarettes prevalence rate among high schoolers is 13.4% and is considered the most common tobacco product use; whereas the rate for Californian youth (aged 12-17) was reported to be 13.7%. The study also showed that the average (male & female) prevalence rate among 7th, 9th and 11th grader was 8.0%, 13.3% and 15.4%, respectively.

* *California Tobacco Facts and Figures: Over 25 Years of Tobacco Control in California*, California Department of Public Health, California Tobacco Control Program, October 2016.
<https://archive.cdph.ca.gov/programs/tobacco/Documents/CDPH%20CTCP%20Refresh/Research%20and%20Evaluation/Facts%20and%20Figures/2016FactsFigures-Web.pdf>

Use of Menthol Cigarettes and Other Flavored Tobacco Products

- Menthol and other flavoring additives can mask the harshness and taste of tobacco, and thus may particularly appeal to youths and potential new smokers.
- According to a 2016 study*, nationally, 70% to 80% of all current middle and high school tobacco users have used at least one flavored tobacco product in the past 30 days. Nationally, about 25% to 30% of cigarette smokers use menthol cigarettes. The study also cited that 34.9% of adult California smokers usually smoke menthol cigarettes.
- The overall adult cigarette smoking rate for California was reported to be 11.6%; whereas San Francisco rate was 10.1% which is about 15% lower than the state. No county level rates are currently available for either menthol or e-cigarettes but it is likely that city exhibits similarly 15% lower rate for menthol and e-cigarettes as well.
- The study also pointed out the menthol cigarettes are disproportionately smoked by adolescents, African Americans, and individuals who identify themselves as LGBT. Over 55% of African American adults in California usually smoke menthol cigarettes.

* *California Tobacco Facts and Figures: Over 25 Years of Tobacco Control in California*, California Department of Public Health, California Tobacco Control Program, October 2016.

<https://archive.cdpH.ca.gov/programs/tobacco/Documents/CDPH%20CTCP%20Refresh/Research%20and%20Evaluation/Facts%20and%20Figures/2016FactsFigures-Web.pdf>

Population and Number of Potential Teen and Adult Smokers in the City

- Based on information from the California Health Information Survey, and the CDC’s Behavioral Risk Factors Surveillance System, and population information from the Census, we estimate the following prevalence of cigarette and electronic cigarette use.
- Adults are more than twice as likely to smoke as to use electronic cigarettes, while teens are nearly twice as likely to use electronic cigarettes as to smoke.

	Teen (Ages 12-17)	Adult (Ages 18+)
Population	34,309	754,145
Cigarette Smokers (flavored and unflavored)	1,548	78,459
Percentage of population	4.5%	10.4%
Electronic Cigarette Smokers	2,892	37,244
Percentage of population	8.4%	4.9%

Estimated Sales of Flavored Cigarettes In San Francisco

- Based on the prevalence information on the previous page, the OEA has estimated the value of flavored tobacco cigarettes that would be affected by the legislation at approximately \$50 million per year, as detailed in the table below.
- Much less research has been done on the consumption of electronic cigarettes, and we do not have an estimate of those sales in the city.

	Teen (Ages 12-17)	Adult (Ages 18+)
Population	34,309	754,145
Cigarette Smokers (flavored and unflavored)	1,548	78,459
Average packs consumed per smoker, annually	212	212
Average price of a pack of cigarettes	\$8.50	\$8.50
Percentage of packs affected by the ban (Menthol)	35%	35%
Total spending on affected cigarettes (\$ M)	\$1.0	\$49.5

Number and Composition of Affected Retailers in the City

- While we have estimates of the purchases made by San Francisco residents, we do not know how many of those purchases are made at San Francisco retailers who would be subject to the ban, as opposed to out-of-town or online retailers.
- Permitted tobacco retailers that sell cigarettes are required to pay the Cigarette Litter Abatement Fee to the City, to offset the City's cost of cleaning disposed cigarette butts.
- In the third quarter of 2016, the last quarter available, 726 local retailers paid the fee. Other permitted retailers, who sell flavored tobacco but do not sell cigarettes, do not pay the fee.
- Most of these retailers are small convenience stores or gasoline stations that sell fewer than 20 packs of cigarettes per day. We have no information on how many sell flavored cigarettes that would be subject to the ban, though in general, the California Department of Public Health reports that 35% of cigarettes sold are menthol-flavored, and thus would be covered by the ban.
- Because the City does not levy a fee on the sales of electronic cigarettes or nicotine-based liquids, we do not have any information on the sales of those products by San Francisco retailers.

Economic Impact Factors and Assessment

- The proposed ban on flavored tobacco products can be expected to have three primary effects on the local economy:
 1. Reduction in tobacco product use: By reducing access to flavored tobacco products that are particularly appealing to young people, it may reduce the future use of cigarettes and other affected tobacco products. The reduction of cigarette smoking, in particular, would lead to long-term health benefits. In this event, tobacco retailers would be harmed by reduced sales, but consumers, other retailers, and the public sector would benefit from replaced retail sales, improved health, and lower health care costs in the future.
 2. Switching from affected to unaffected tobacco products: Because some nicotine products are affected by the proposed ban, while others are not, existing users of flavored tobacco may replace the consumption of flavored tobacco products with unflavored. This switching behavior would likely occur most with cigarettes, since essentially all electronic cigarettes are affected. In this event, there will be essentially no impact on either consumers or retailers, since sales of one type of tobacco product would be replaced by another.
 3. Switching from affected retailers to online or out-of-town retailers: Electronic cigarettes, are widely available online, and our research suggests prices are roughly comparable to local retailers. If consumers choose to buy online, there would be a net loss to local retailers and the city's economy, without any countervailing benefit.
- Owing to an absence of detailed data on tobacco consumption in the city, we are unable to estimate the relative importance of these three responses to the legislation.

Staff Contact

Asim Khan, Ph.D., Principal Economist

asim.khan@sfgov.org

(415) 554-5369

Ted Egan, Ph.D., Chief Economist

ted.egan@sfgov.org

(415) 554-5268

Compliance Check Inspections of Tobacco Product Retailers Through 3/31/19 - Search Results

You searched for:

City contains: San Rafael

State is CA

Decision Date: 01/01/2017 through 01/01/2019

Retailer Name	Street Address	City	State	Zip	Minor Involved	Sale to Minor	Product Type	Inspection Date	Decision Date	Inspection Result	Link	Charges
BRUSHLESS & MINUTE MART.	1515 2ND ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/21/2017	No Violations Observed		N/A
IRWIN SHELL	834 IRWIN ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
SAFEWAY STORE 653	700 B ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
7-ELEVEN STORE 2231-14139	703 B ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
MINI-MARKET STORE	842 B ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
CHEVRON GAS	1320 2ND ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
SMOG PROS - ARCO GAS	1401 2ND ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
WINTON NEWS & LIQUORS	1149 4TH ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
4TH STREET SHELL	1833 4TH ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
UNITED LIQUORS	1556 4TH ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
CHEVRON EXTRA MILE	440 3RD ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
JASMINE MARKET	307 3RD ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
RITE AID #5957	471 3RD ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
WALGREENS #04625	830 3RD ST	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
COLONIAL LIQUORS	1015 TAMALPAIS AVE	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A
SILADA UNION 76	1125 LINCOLN AVE	SAN RAFAEL	CA	94901	Yes	No	N/A	Not available	4/19/2017	No Violations Observed		N/A

Marin Independent Journal

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2070419

CITY OF SAN RAFAEL
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CITY CLERK, ROOM 209
1400 FIFTH AVENUE, SAN RAFAEL, CA 94901
SAN RAFAEL, CA 94915-1560

PROOF OF PUBLICATION (2015.5 C.C.P.)

STATE OF CALIFORNIA County of Marin

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of FEBRUARY 7, 1955, CASE NUMBER 25566; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

05/10/2019

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated this 14th day of May, 2019.



Signature

PROOF OF PUBLICATION

Legal No. **0006337983**

CITY OF SAN RAFAEL NOTICE OF PUBLIC HEARING

CONSIDERATION OF AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL AMENDING CHAPTER 8.15 OF THE SAN RAFAEL MUNICIPAL CODE, ENTITLED "TOBACCO RETAIL SALES, ADVERTISING AND PROMOTION" TO ADD NEW RESTRICTIONS ON THE SALE OF TOBACCO PRODUCTS

DATE/TIME: Monday, May 20, 2019 at 7:00 p.m.

LOCATION: City Council Chambers, 1400 Fifth Avenue, San Rafael, CA

PURPOSE: To receive public comments and consider the adoption of an ordinance amending Chapter 8.15 of the San Rafael Municipal Code entitled "Tobacco Retail Sales, Advertising and Promotion" to include a ban on the sale of flavored tobacco products and the sale of tobacco in pharmacies in San Rafael. The proposed ordinance would ban the sale of tobacco products with a "characterizing flavor"—defined as a distinguishable taste or aroma other than tobacco imparted to a tobacco product—and expand the definition of a tobacco product to include any product containing, made, or derived from tobacco or nicotine. The proposed ordinance would also ban the sale of tobacco products at pharmacies.

IF YOU CANNOT ATTEND:

You may send a letter to Lindsay Lara, City Clerk of San Rafael, PO Box 151560 San Rafael, CA 94915-1560. You may also hand deliver prior to the meeting.

FOR MORE INFORMATION:

Contact Ethan Guy, Principal Analyst, at 415-485-2392, Monday through Friday 8 AM - 5 PM.

SAN RAFAEL CITY COUNCIL

LINDSAY LARA
CITY CLERK, CITY OF SAN RAFAEL

No. 645 May 10, 2019