



**REGULAR CITY COUNCIL MEETING  
MEETING AGENDA  
WEDNESDAY, JANUARY 27, 2016**

**Regular Meeting - 6:30 PM**

**City Hall – Beryl P. Robinson, Jr. Conference Room  
317 Broad Street, Nevada City, CA 95959**

**MISSION STATEMENT**

*The City of Nevada City is dedicated to preserving and enhancing its small town character and historical architecture while providing quality public services for our current and future residents, businesses and visitors.*

**Jennifer Ray, Mayor**

**Robert Bergman, Council Member**

**Evans Phelps, Vice Mayor**

**Terri Andersen, Council Member**

**Duane Strawser, Council Member**

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The City Council welcomes you to its meetings which are scheduled at 6:30 PM on the 2<sup>nd</sup> and 4<sup>th</sup> Wednesdays of each month. Your interest is encouraged and appreciated. This meeting is recorded on DVD and is televised on local public television Channel 17. Other special accommodations may be requested to the City Clerk 72 hours in advance of the meeting. Please turn off all cell phones or similar devices. Action may be taken on any agenda item. Agenda notices are available at City Hall. Materials related to an item on this Agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Hall at 317 Broad Street, Nevada City, CA during normal business hours.

**ANY MEMBER OF THE PUBLIC DESIRING TO ADDRESS THE COUNCIL ON ANY ITEM ON THIS AGENDA:** After receiving recognition from the Mayor, give your name and address, and then your comments or questions. Please direct your remarks to the Councilmembers. In order that all interested parties have an opportunity to speak, please limit your comments to the specific item under discussion. All citizens will be afforded an opportunity to speak, consistent with their Constitutional rights. Time limits shall be at the Mayor's discretion. **IF YOU CHALLENGE** the Council's decision on any matter in court, you will be limited to raising only those issues you or someone else raised at the meeting or Public Hearing described on this agenda, or in written correspondence delivered to the City Council at, or prior to, the meeting or Public Hearing.

**REGULAR MEETING – 6:30 PM - Call to Order**

**Roll Call:** Andersen, Bergman, Strawser, Vice Mayor Phelps, & Mayor Ray

**PLEDGE OF ALLEGIANCE**

**PROCLAMATION:**

**PRESENTATION:**

## BUSINESS FROM THE FLOOR

### 1. PUBLIC COMMENT

Under Government Code Section 54954.3, members of the public are entitled to address the City Council concerning any item within the Nevada City Council's subject matter jurisdiction. Comments on items NOT ON THE AGENDA are welcome at this time. Normally, public comments are limited to no more than three minutes each. **Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda.**

### 2. COUNCIL MEMBERS REQUESTED ITEMS AND COMMITTEE REPORTS:

### 3. CONSENT ITEMS:

All matters listed under the Consent Calendar are to be considered routine by the City Council and will be enacted by one motion in the form listed. There will be no separate discussion of these items unless, before the City Council votes on the motion to adopt, members of the Council, City staff or the public request specific items to be removed from the Consent Calendar for separate discussion and action.

- A. Subject:** Agreement with The Mercer Group, Inc. for Citywide Classification and Compensation Study  
**Recommendation:** Pass a Motion authorizing Mayor to sign an agreement with The Mercer Group, Inc. for an amount not to exceed \$9,850 for a citywide classification and compensation study.
- B. Subject:** Continuity of Nevada City Fire Department Operations  
**Recommendation:** Pass a motion 1) authorizing the transition of three limited-term firefighter positions to full-time employees to ensure continuity of fire department operations, compliance with state and federal pension and health care requirements, employee retention purposes, and to protect against a deterioration of the City's Insurance Services Office (ISO) rating; and 2) authorizing use of Measure L funds for Fire Department operations as necessary until public safety tax proceeds are received.
- C. Subject:** Amendment No. 1 to the Nevada City Management Employee Memorandum of Understanding (MOU) – Cell Phone Allowance  
**Recommendation:** Review and approve Amendment No. 1 to the Nevada City Management Employee Memorandum of Understanding for the incorporation of a cellular phone allowance.

### 4. APPROVAL OF ACTION MINUTES:

- A. City Council Meeting – January 13, 2016

### 5. DEPARTMENT REQUESTED ACTION ITEMS AND UPDATE REPORTS:

### 6. PUBLIC HEARINGS:

**7. OLD BUSINESS:**

- A. Subject:** An Ordinance of the City Council of Nevada City, California, Adding Chapter 17.140 to the Nevada City Municipal Code Entitled, “Marijuana Regulations” (Second Reading)  
**Recommendation:** Waive reading, read by title only, and adopt Ordinance 2016-XX adding Chapter 17.140 to the Nevada City Municipal Code entitled “Marijuana Regulations” related to marijuana cultivation.
- B. Subject:** A Resolution of the City of Nevada City approving ballot measure text to be submitted to the voters on the Initiative Measure to Enact Zoning Ordinance and General Plan Amendments to Permit and Restrict Home-Sharing Short-Term Rentals of Rooms in Single-Family Residences or Guest Houses by Owner Occupying Main Dwelling to be included with the General Municipal Election consolidated with the State-Wide Primary Election of June 7, 2016  
**Recommendation:** Adopt Resolution 2016-XX setting forth the exact form of the question to go on the ballot for the alternate Home-Sharing Short-Term Rentals Initiative Measure so it can go to the voters pursuant to Resolution No. 2015-53.
- C. Subject:** Report Back to City Council of Planning Commission Recommendation on Draft Ordinance Restricting Formula Businesses throughout the City  
**Recommendation:** Consider recommendation made by the Planning Commission and provide direction to staff.
- D. Subject:** Determination of Whether Additional Review of Commercial Street Boardwalk is Desired  
**Recommendation:** Provide direction on whether additional review is desired and, if desired, what information to include in report.

**8. NEW BUSINESS:**

**9. CORRESPONDENCE:**

**10. ANNOUNCEMENTS:**

**11. CITY MANAGER’S REPORT:**

**12. ADJOURNMENT**

**Certification of Posting of Agenda**

I, Corey Shaver, Administrative Supervisor for the City of Nevada City, declare that the foregoing agenda for the January 27, 2016 Regular Meeting of the Nevada City City Council was posted January 22, 2016 at the office of the City of Nevada City (City Hall). The agenda is also posted on the City’s website [www.nevadacityca.gov](http://www.nevadacityca.gov).

Signed this January 22, 2016 at Nevada City, California

\_\_\_\_\_, Corey Shaver, Administrative Supervisor

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**CITY OF NEVADA CITY  
City Council  
Long Range Calendar**

February 10, 2016	Regular City Council Meeting
February 15, 2016	Presidents’ Day Holiday – City Hall Closed
February 24, 2016	Regular City Council Meeting
March 9, 2016	Regular City Council Meeting
March 23, 2016	Regular City Council Meeting
March 31, 2016	Cesar Chavez Day Holiday – City Hall Closed

NOTE: This list is for planning purposes; items may shift depending on timing and capacity of a meeting.

**NOTICE:** *As presiding officer, the Mayor has the authority to preserve order at all City Council meetings, to remove or cause the removal of any person from any such meeting for disorderly conduct, or for making personal, impertinent, or slanderous remarks, using profanity, or becoming boisterous, threatening or personally abusive while addressing said Council and to enforce the rules of the Council.*

# REPORT TO CITY COUNCIL

City of Nevada City  
317 Broad Street  
Nevada City, CA 95959  
[www.nevadacityca.gov](http://www.nevadacityca.gov)

January 27, 2016

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**TITLE: Agreement with The Mercer Group, Inc. for Citywide Classification and Compensation Study**

**RECOMMENDATION:** Authorize Mayor to sign an agreement with The Mercer Group, Inc. for an amount not to exceed \$9,850 for a citywide classification and compensation study.

**CONTACT:** Catrina Olson, Assistant City Manager

**BACKGROUND / DISCUSSION:** Classification and compensation studies are performed to assess and ensure accurate and legally compliant class specifications and to maintain competitive and equitable pay. Over time, changes in City operations and staffing can affect the type, scope and level of work being performed. The City's current year budget includes approved funding to perform a classification and compensation study.

In late 2015, the City released a Request for Proposal (RFP) and received responses from four qualified firms. Interviews were held with each firm in early January. Staff is recommending the City Council approve an agreement with The Mercer Group, Inc. in an amount not to exceed \$9,850. The firm submitted the most cost-effective proposal and enjoys a strong reputation. The Mercer Group has also provided compensation work on behalf of the Public Agency Risk Sharing Authority of California (PARSAC), the City's risk sharing pool. It is anticipated the study will require approximately three months to complete. Completion of this study will assist the City in negotiating successor labor agreements which expire June 30, 2016.

**ENVIRONMENTAL CONSIDERATIONS:** Not applicable.

**FINANCIAL CONSIDERATIONS:** The City's current year budget incorporated \$15,000 in funding to complete the classification and compensation study. The study's expenses will be split between the General Fund (\$7,500), Water Fund (\$3,750) and Sewer Fund (\$3,750).

**ATTACHMENT:**

- ✓ Proposed agreement with The Mercer Group, Inc.

**CITY OF NEVADA CITY  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
THE MERCER GROUP, INC.**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of January, 2016 (“Effective Date”), by and between the CITY OF NEVADA CITY, a municipal corporation (“City”), and The Mercer Group, Inc., a Georgia-headquartered management consulting firm (“Consultant”).

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide a Classification and Compensation Study for the City of Nevada City, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit “A” (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the Scope of Services attached hereto as Exhibit “A”.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the time hereinafter specified. Evaluations of the work will be done by the City’s Chief Executive Officer (“City CEO”) or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or

(c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the Method of Billing described in Section 2.3 below. Consultant's total compensation shall not exceed Nine Thousand Eight Hundred Fifty Dollars (\$9,850.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, as described below. Said invoice shall be based on Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any

additional services approved and performed pursuant to this Agreement shall be designated as “Additional Services” and shall identify the number of the authorized change order, where applicable, on all invoices.

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|-----|--|------------------------|
| (a) | At completion of Phase I<br>(orientation, employee interviews,<br>and selection of benchmarks)           | 33% of contract amount |
| (b) | At completion of Phase II & III<br>(identification of comparable<br>classifications and data collection) | 33% of contract amount |
| (c) | At completion of Phase IV<br>(FLSA analysis/presentation of final report)                                | 33% of contract amount |

2.4. Records and Audits. Records of Consultant’s services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

### **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within fourteen (14) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit “D,” attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of six months, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City’s written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in

accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete research, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished data collection, classification analysis, and related documents/reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

## **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Nevada City and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Nevada City, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Nevada City shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Nevada City, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "E" and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

## **6.0. GENERAL PROVISIONS**

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City CEO or his or her designee shall be the representative

of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

The Mercer Group, Inc.  
3343 Highway 39 North  
Louisberg, NC 27549  
Tel: (919) 496-2080  
Fax: (919) 496-7995  
Attn: Mr. Phillip Robertson

IF TO CITY:

City of Nevada City  
317 Broad Street  
Nevada City, CA 95959  
Tel: (530) 265-2496  
Fax: (530) 265-0187  
Attn: Mr. Mark Prestwich

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Nevada County, California.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City,

including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard

to the correction.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

6.27. Non-Discrimination. During the performance of this Agreement, Consultant shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical or mental disability, medical condition, age, or marital status.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF NEVADA CITY,  
A municipal corporation

\_\_\_\_\_  
Mayor

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

CONSULTANT



\_\_\_\_\_  
Signature

Date:   1/20/2016

Phillip G. Robertson Sr. Vice President  
\_\_\_\_\_  
Name and Title

58-1877068  
Taxpayer ID Number

ATTEST:

\_\_\_\_\_  
City Clerk and ex-officio Clerk  
of the City of Nevada City

APPROVED AS TO FORM:

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

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

## EXHIBIT A – SCOPE OF SERVICES

### GENERAL SCOPE AND DELIVERABLES

1. **Classification Study Activities:** The study shall include but not be limited to:
  - ✓ Review of background materials including organizational charts, budgets, personnel rules, job descriptions, memorandums of understanding, employment agreements, and relevant information.
  - ✓ Conduct orientation and briefing session for all employees.
  - ✓ Develop and distribute a job analysis questionnaire to each employee.
  - ✓ Review and analyze the completed job-related questionnaire for all employees.
  - ✓ Conduct interviews with all (or a representative sample) employees.
  - ✓ Recommend and draft up-to-date, accurate class specifications in a format approved by the Assistant City Manager which reflect all current jobs and shall include:
    - Develop new classes as appropriate.
    - Recommend deletion of outdated or unnecessary classes.
    - Develop accurate ADA compliant language.
  - ✓ Review various job series for appropriateness.
  - ✓ Prepare final version of all class specifications electronically.
  - ✓ Present final draft report for review by key staff.
  - ✓ Provide periodic status reports on progress as requested.
  
2. **Compensation Study Activities:** The study shall include but not be limited to:
  - ✓ Review of current compensation, practices and related issues.
  - ✓ Recommend salary survey benchmarks in conjunction with relevant benchmark classifications.
  - ✓ Recommend and assist in establishing appropriate comparable cities.
  - ✓ Complete internal salary relationship analysis including the development of appropriate internal relationship guidelines (internal equity).
  - ✓ Assess each classification systematically in relation to comparable cities as appropriate.
  - ✓ Provide a written report of methods, techniques, and data for the assessment of each position.
  - ✓ Develop externally competitive and internally equitable salary recommendations for each job class included in the study.

### WORK PROGRAM/ADDITIONAL DELIVERABLES

#### Phase I

##### STEP 1. Orientation

Because of the significance of a classification and compensation study, a clear understanding of and agreement to the work plan is critical. Consultant shall begin the project by meeting with all appropriate City officials including but not limited to the City Manager, Assistant City Manager and department heads and others necessary to clarify the following issues:

- Specific issues regarding the current classification and pay structure(s);

- Specific issues regarding individual Departments (group meetings and individual meetings with each department head);
- Understanding of the objectives for the systems;
- Review of The Mercer Group, Inc. classification and analysis methodology, including specific forms such as the position questionnaire;
- Policies regarding review and employee appeal of recommendations;
- Begin development of a list of organizations for the "market analysis," including public and private employers (Labor and Management will participate in the process of development of the comparable organization list); and
- Implementation strategy for results of the study.

At the orientation, Consultant shall also obtain information on current practices. Consultant shall coordinate with the City Manager or designee to provide the initial communication to employees through group meetings, written explanations, or both, depending on the needs of the organization.

## **Phase II**

### **STEP 2. Classification Process**

The job analysis classification portion of the study will begin with the distribution of Position Questionnaires to all employees. The Position Questionnaire is typically distributed and reviewed during the Employee Group Orientation meetings. The Position Questionnaire is important to the Classification and Compensation process because the information obtained becomes the basis for:

The classification system;

The development of "benchmark" positions;

Consultant shall review and edit our questionnaire with Management to ensure its appropriateness.

Upon receipt of the questionnaires, Consultant shall interview positions for employees having submitted questionnaires to confirm and clarify the information.

At a minimum we must have a sufficient sample size of each class or job title to ensure a thorough understanding of each position. We will also conduct job audits when necessary.

**All reasonable accommodation will be made to ensure that all employees who wish to participate in the interview process will be given the opportunity to do so.** Employees who have the same job title and agree that they are performing the same job duties can interview as group with a sufficient sample size.

Employees who have the same job title and do NOT agree that they are performing the same job duties will be interviewed separately.

Consultant shall begin interviews in each department with the lowest classifications and work up to the Department Heads.

Interviews generally take 15 minutes for individuals and 30 minutes for groups. During the interview the Consultant will review the submitted questionnaire with the employee and ask clarification questions. This is also an opportunity for employees who communicate more effectively in an oral format the opportunity to discuss their position with the Consultant.

Upon completion of the position questionnaire and interview process, Consultant shall analyze classifications by the duties and responsibilities. Consultant shall provide an informal report to the principal client covering those issues which appear to be significant, if desired.

To develop the proper classifications and provide internal equity, Consultant shall use The Mercer Group Factor Evaluation System (FES). Such systems are used to provide numerical rankings for classifications and positions. A detailed description of the job measurement methodology is described below.

During the classification process, Consultant shall address the issues of parity among departments, appropriate titles, consolidation of classifications, creation of new classifications and logical career ladders.

After the completion of the interviews and the application of the FES, Consultant will meet with each Department Head to review the preliminary factoring for the position in her/his department. This is a time that the consultants will be able to obtain clarifications on issues with any positions that were not clear in the interview and questionnaire. These meetings help familiarize the Department Heads with how the classification system works. The preliminary factoring will also be reviewed with the principal client(s) from an organizational perspective.

After the recommendations have been approved, copies of the recommended class specifications, and title changes should be provided to incumbents for review. Should an employee feel that his/her recommended classification is inaccurate; an appeal may be made to the Review Committee. The make-up of the Review Committee will be established at project orientation. Consultant shall recommend a methodology to make the process fair and non-threatening to the individual employees.

### **FACTOR EVALUATION SYSTEM OVERVIEW**

Each functional position will be analyzed and assigned a level for all 10 factors outlined below, based on the completion of a position questionnaire followed by an interview. **In cases where employees hold the same position title but are of the opinion that their duties are materially different, separate interviews and factoring will be done.**

## **FACTOR 1. KNOWLEDGE REQUIRED BY THE POSITION**

Factor 1 measures the nature and extent of information or facts which the worker must understand to do acceptable work (e.g. steps, procedures, practices, rules, policies, theories principle, and concepts) and the nature and extent of the skills needed to apply that knowledge. To be used as a basis for selecting a level under this factor, a knowledge must be required and applied.

## **FACTOR 2. SUPERVISORY CONTROLS**

“Supervisory controls” covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee’s responsibility, and the review of completed work.

Controls are exercised by the supervisor in the way the assignments are made, instructions are given to the employee, priorities and deadlines are set, and objectives and boundaries are defined.

Responsibility of the employee depends upon the extent to which the employee is expected to develop the sequence and timing of various aspects of the work, to modify or recommend modification of instructions, and to participate in establishing priorities and defining objectives.

The degree of review of completed work depends upon the nature and extent of the review (close and detailed review of each phase of the assignment, detailed review of the finished assignment, spot-check of finished work for accuracy, or review only for adherence to policy).

## **FACTOR 3. SUPERVISION EXERCISED**

Factor 3 measures the knowledge that may be required to supervise or manage small or specialized organizational units, mid-level divisions, and major operations within the total organization or the entire organization.

## **FACTOR 4. GUIDELINES**

This factor covers the nature of guideline and the judgment needed to apply them. Guides may include manuals, established policies and procedures, engineering handbooks or the organization’s personnel manual. The guidelines may be related to the specific occupation rather than organizational. For instance, a CPA may work under specific guidelines imposed by the profession rather than the organization.

Individual jobs in different occupations vary in the specificity, application and availability of guidelines for performance of assignments. Consequently, the constraints and judgmental demand placed upon employees also vary. For example, the existence of specific instructions, procedures and policies may limit the opportunity of the employee to make or recommend decisions or actions. In the absence of procedures or under broadly stated objectives, employees in some occupations may use considerable judgment in researching literature and developing new methods.

## **FACTOR 5. COMPLEXITY**

This factor covers the nature, number, variety, and intricacy of tasks, steps, processes or methods in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work.

## **FACTOR 6. SCOPE AND EFFECT**

Scope and effect covers the relationship between the nature of the work, i.e. the purpose, breadth and the depth of the assignments and the effect of the work products or services both within and outside the organization.

Effect measures such things as whether the work output facilitates the work of others, provides timely services of a personal nature, or impacts on the adequacy of decisions.

## **FACTOR 7. PERSONAL CONTACTS**

This factor includes face-to-face contacts and telephone and radio dialogue with persons not in the supervisory chain. Levels described under this factor are based on what is required to make the initial contact, the difficulty of the communicating with those contacted, and the setting in which the contact takes place.

Above the lowest level, points should be credited under this factor only for contacts which are essential for successful performance of the work and which have a demonstrable impact on the difficulty and responsibility of the work performed.

The relationship of Factors 7 and 8 presumes that the same contacts will be evaluated for both factors. Therefore, use the personal contact which serves as the basis for the level selected for Factor 8 as the basis for selecting a level for Factor 7.

## **FACTOR 8. PURPOSE OF CONTACTS**

Purpose of personal contact range from factual exchanges of information to situations involving significant or controversial issues and differing view points, goals or objectives. The personal contacts which as the basis for the level selected for this factor must be the same as the contact which are the basis for the level selected in Factor 7.

## **FACTOR 9. PHYSICAL DEMANDS**

The "Physical Demands" factor includes physical characteristics and abilities (e.g. agility and dexterity requirements) and the physical exertion involved in the work (e.g. stooping, bending, climbing, walking, or running). To some extent the frequency or intensity of physical exertion must be considered, e.g. is the exertion continuous or on an infrequent basis.

## **FACTOR 10 WORK ENVIRONMENT**

The "Work Environment" factor considers the risks and discomfort in the employee's physical surroundings or the nature of the work assigned and the safety regulations required. Although the use of safety precautions can practically eliminate a certain danger or discomfort, such situation typically place additional demands upon the employee in carrying out safety regulations or wearing protective equipment.

## **Phase III**

### **STEP 3. Market Analysis**

Using the specifications developed through the Classification Process, Consultant shall work with the organization to select a representative number of positions to be used as "benchmarks" for a market comparison survey.

The survey instrument will be developed as part of the assessment and understanding of the needs of the organization. Consultant shall include a broad base of private and public organizations be used, which shall include 10-12 comparables. Consultant will work together with Management and Labor to identify the organizations to be included in this survey.

The survey instrument will be customized for the organization and left with the

organization for continued use in maintaining the system. All information will be analyzed by Consultant and a detailed report will be prepared regarding the responses. This analysis and report will be done on Excel spreadsheets and provided to the organization with training on how to update the spreadsheets in maintaining the system.

Consultant recommends the market analysis survey be repeated in its entirety at least once every two years with parts of it used more often. Consultant shall provide the organization with the instrument and training in the analysis of data.

Using the market research data, a set of specific recommendations regarding the level of Compensation for all classes will be developed. In this part of the study, Consultant shall:

Provide pay levels for all classes;

Provide recommendations on policy decisions such as range widths, new-hire level guidelines, and mechanisms for slotting; and

Provide alternative implementation strategies for the system, including the cost of each alternative.

## **Phase IV**

### **STEP 4. FLSA Analysis**

Once classifications (jobs) are identified for the new system each position will be preliminarily reviewed and analyzed for the appropriate FLSA designation of Exempt or Non-Exempt, keeping in mind that the final determination of the status must be made for each employee – **employees are exempt or non-exempt, not positions.**

The Mercer Group FLSA Expert is Randy Davis. Mr. Davis retired in 2000 from the U.S. Department of Labor; Wage and Hour Division and has been working with The Mercer Group, as a consultant and provides support expertise in the area of FLSA. He worked the last eleven years as Branch Chief for Fair Labor Standards in the Atlanta Region which included eight Southeastern states. Mr. Davis has been using his contacts at DOL to ensure a thorough understanding of new changes to FLSA not only from a legislative standpoint but from the people that will be enforcing these changes. Mr. Davis has the resources to research any questions or concerns there may be regarding FLSA designations.

### **STEP 5: Training and System Maintenance**

Training will be provided for all appropriate personnel in the administration of the new Compensation and Classification systems, including:

- The Factor Evaluation System for classification of new positions and reclassifications as they occur;
- The market survey instrument for continued update of the salary system;

and

- Implementation procedures.

#### STEP 6. Reporting and Documentation

Throughout the project Consultant shall provide the organization with written or oral updates, including:

- Status reports at each step of the process.
- Special reports or requests when policy decisions need to be made.
- Preliminary final report for review by appropriate officials.
- Final report.

Consultant shall make a presentation of findings and recommendations to management, staff and the governing board, as necessary.

#### RESULTS OF THE CLASSIFICATION PHASE:

- Classification standards for all classes and levels proposed
- Class specifications for all classifications
- FLSA designation for exempt or non-exempt status for each position
- Allocation of each position to an appropriate classification to ensure internal equity

#### RESULTS OF THE COMPENSATION PHASE:

- Development of comprehensive market survey instrument for continued use by the organization
- Development of appropriate salary guidelines
- Assignment of appropriate salary range to each classification
- Development of written guidelines of the total system.

# REPORT TO CITY COUNCIL

City of Nevada City  
317 Broad Street  
Nevada City, CA 95959  
[www.nevadacityca.gov](http://www.nevadacityca.gov)

January 27, 2016

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**TITLE: Continuity of Nevada City Fire Department Operations**

**RECOMMENDATION:** Pass a motion 1) authorizing the transition of three limited-term firefighter positions to full-time employees to ensure continuity of fire department operations, compliance with state and federal pension and health care requirements, employee retention purposes, and to protect against a deterioration of the City's Insurance Services Office (ISO) rating; and 2) authorizing use of Measure L funds for Fire Department operations as necessary until public safety tax proceeds are received.

**CONTACT:** Mark Prestwich, City Manager; Catrina Olson, Assistant City Manager

**BACKGROUND / DISCUSSION:** On June 10, 2015, the City Council eliminated rotating brownouts at Fire Station 54 that were implemented after the Nevada County Consolidated Fire District removed three firefighters from the station they had jointly co-staffed for more than 11 years. To pay for three new firefighters, the City temporarily reduced an administrative position to part-time status and received City Council authorization to utilize Measure L sales tax proceeds through June 30, 2016.

The City was fortunate to hire three firefighters that tested at the top of their class. However, the positions were authorized as limited-term positions through the remainder of the current fiscal year. Due to the City Council's direction on January 13, 2016 to prepare a dedicated public safety tax ordinance for consideration on the November 6, 2016 ballot, staff is recommending the City Council remove the limited-term nature of the positions to retain these talented firefighters, comply with state and federal pension and health care requirements, and ensure continuity of operations within the Fire Department. Staff is also recommending the City Council authorize use of Measure L proceeds for Fire Department operations as necessary until the public safety tax proceeds are received.

It is also advantageous to maintain the City's current Insurance Services Office (ISO) rating and mitigate any potential rating downgrade which could result in possible insurance cost increases to Nevada City residents and business owners. The recommended actions further protect against a deterioration of the City's ISO rating.

**ENVIRONMENTAL CONSIDERATIONS:** Not applicable.

**FINANCIAL CONSIDERATIONS:** The proposed action is projected to result in an increase of fire department expenditures of approximately \$28,000 in the current year and \$50,000 in fiscal year 2016/17. The passage of a dedicated special tax in November 2016 to sustainably fund three replacement firefighters will address the fact that Measure L expires March 31, 2018.

**ATTACHMENT:** None

# REPORT TO CITY COUNCIL

City of Nevada City  
317 Broad Street  
Nevada City, CA 95959  
[www.nevadacityca.gov](http://www.nevadacityca.gov)

January 27, 2016

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**TITLE: Amendment No. 1 to the Nevada City Management Employee Memorandum of Understanding (MOU) – Cell Phone Allowance**

**RECOMMENDATION:** Review and approve Amendment No. 1 to the Nevada City Management Employee Memorandum of Understanding for the incorporation of a cellular phone allowance.

**CONTACT:** Catrina Olson, Assistant City Manager

**BACKGROUND / DISCUSSION:**

The City recognizes that due to the nature of some positions it may provide a reduction in liability exposure and give more flexibility to provide some employees of this bargaining unit with a cellular phone allowance of \$40 per month in lieu of providing employees with City owned cellular phones and plans.

Currently the City provides one member of this employee group a City paid cellular phone and plan. In the transition to providing an allowance, the employee that currently has City owned equipment will be authorized to keep their equipment and will be responsible for obtaining their usage plan and any new phone or equipment purchases moving forward.

Each employee who receives a cellular phone allowance is responsible for maintaining their cellular phone for business purposes and respond to business calls with their cellular phone. The employee is also responsible to notify the City immediately in the event their cellular phone plan is cancelled or terminated.

In the circumstance the employee being provided a cellular phone allowance cancels or terminates their plan the City reserves the right to eliminate the benefit of the cellular phone allowance to that employee.

**FISCAL IMPACT:**

The transition from City provided cellular equipment and plans to providing a \$40 monthly allowance is a cost neutral benefit modification.

**ATTACHMENTS:**

- ✓ Amendment No. 1 to Nevada City Management Employee MOU – Cell Phone Allowance

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**CITY OF NEVADA CITY  
AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING**

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**TO:** Honorable Mayor and City Council

**FROM:** Mark Prestwich, City Manager  
Catrina Olson, Assistant City Manager / Finance & Administration

**SUBJECT:** Nevada City Management Employees Amendment No. 1 - Cell Phone Allowance

**DATE:** January 27, 2016

The MOU agreement No. 1 effective January 1, 2016 between the City of Nevada City and the Nevada City Management Employees is agreed as follows:

**Cell Phone Stipend.** Effective January 1, 2016 and upon the ratification of this amendment to the MOU effective July 1, 2014 the Management personnel that are currently provided a city paid cellular phone and plan will be transitioned to being provided a monthly cellular phone allowance of \$40 dollars. Each employee who receives a cellular phone allowance will be authorized to keep their current equipment and will be responsible for obtaining their own usage plan and any new phones or equipment purchases moving forward. Employees receiving the \$40 are further responsible for immediate notification to the City in the event their cellular plan is cancelled or terminated. In the event of cancellation or termination the City reserves the right to eliminate the benefit of the allowance to that employee.

\_\_\_\_\_  
Mark Prestwich, City Manager

\_\_\_\_\_  
Date

**Management Employees**

\_\_\_\_\_  
Catrina Olson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sam Goodspeed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Amy Wolfson

\_\_\_\_\_  
Date

**CITY OF NEVADA CITY  
DRAFT ACTION MINUTES  
REGULAR CITY COUNCIL MEETING OF JANUARY 13, 2016**

**NOTE:** This meeting is available to view on the City's website [www.nevadacityca.gov](http://www.nevadacityca.gov) – Go to **Quick Links** and Click on **Agendas & Minutes** and find the Archived Videos in the middle of the screen. Select the meeting date and Click on **Video** to watch the meeting. For website assistance, please contact Corey Shaver, Deputy City Clerk at (530) 265-2496, ext 133.

- City Council Meetings are available on DVD. To order, contact City Hall - cost is \$15.00 per DVD.
- Closed Session Meetings are not recorded.

**CLOSED SESSION – 6:15 PM**

Pursuant to Government Code Section 54956.9, the Consulting City Attorney is requesting a closed session conference to discuss and confer on a Settlement Authority Request regarding the pending Worker's Compensation claim of James Fowler against the City, Claim No. NCWA 556102.

Consulting City Attorney DeGraw reported out of Closed Session that a modification was made in the Settlement Authority.

**REGULAR MEETING – 6:30 PM - Call to Order**

**Roll Call:** Present: Andersen, Bergman, Vice Mayor Phelps, & Mayor Ray  
Absent: Strawser

**PLEDGE OF ALLEGIANCE**

**PROCLAMATION:** None

**PRESENTATION:** None

**1. BUSINESS FROM THE FLOOR-PUBLIC COMMENT** (Per Government Code Section 54954.3)

Please refer to the meeting video on the City's website at [www.nevdacityca.gov](http://www.nevdacityca.gov).

**2. COUNCIL MEMBERS REQUESTED ITEMS AND COMMITTEE REPORTS:**

Please refer to the meeting video on the City's website at [www.nevdacityca.gov](http://www.nevdacityca.gov)

**COUNCIL MEMBERS REQUESTED ITEMS AND COMMITTEE REPORTS:**

None

**3. CONSENT ITEMS:**

**A. Subject:** Fire Activity Report – September thru December 2015

**Recommendation:** Receive and file.

**B. Subject:** Accounts Payable Report – November 2015

**Recommendation:** Receive and file.

**Regular City Council Meeting**

**January 13, 2016**

**Page 2**

**C. Subject:** Fire Activity Report – September thru December 2015

**Recommendation:** Receive and file.

**D. Subject:** Accounts Payable Report – November 2015

**Recommendation:** Receive and file.

**E. Subject:** Notice of Completion for East Broad Street Sidewalk Project

**Recommendation:** Pass Resolution 2016-01 Authorizing the Mayor to Sign a Notice of Completion.

**F. Subject:** Calling General Municipal Election on June 7, 2016

**Recommendation:** Pass Resolution 2016-02 requesting the County of Nevada consolidate the regularly scheduled municipal election on June 7, 2016.

**G. Subject:** Standard Agreement Between the City of Nevada City and Caltrans

**Recommendation:** Review and authorize the City Manager to sign an agreement for \$25,000 through 12/15/17 between the City of Nevada City and Caltrans for brine solution.

**H. Subject:** Notice of Completion for 2015 Measure “S” Paving Improvements

**Recommendation:** Pass Resolution 2016-03 approving a Notice of Completion for the construction of 2015 Measure S paving and reconstruction and authorize Mayor to sign.

**Action:** Motion by Phelps, seconded by Bergman to approve Consent Items as presented.

**(Approved 4 – 0, Absent – Strawser)**

**4. APPROVAL OF ACTION MINUTES:**

A. City Council Meeting – December 9, 2015

**Action:** Motion by Andersen, seconded by Bergman to approve the December 9, 2015 Minutes as presented.

**(Approved 4 – 0, Absent – Strawser)**

**5. DEPARTMENT REQUESTED ACTION ITEMS AND UPDATE REPORTS:**

**A. Subject:** Nevada City Police Department Reserve Program Guidelines **Recommendation:** Approve the proposed Nevada City Police Department Reserve Program Guidelines.

**Action:** Motion by Phelps, seconded by Andersen to approve the proposed Nevada City Police Department Reserve Program Guidelines.

**(Approved 4 – 0, Absent – Strawser)**

**B. Subject:** Swimming Pool Rehabilitation Project Grant Application

**Action:** Motion by Bergman, seconded by Phelps to adopt Resolution 2016-04 Authorizing the City to submit a grant application for Land and Water Conservation Fund Swimming Pool Rehabilitation Project.

**(Approved 4 – 0, Absent – Strawser)**

**C. Subject:** First Quarter Financial Update, Fiscal Year (fy) 15/16

Received & Filed.

**6. PUBLIC HEARINGS:**

- A. Subject:** An Ordinance of the City Council of Nevada City, California, Adding Chapter 17.140 to the Nevada City Municipal Code Entitled, "Marijuana Regulations;" and Resolution Approving a Notice of Exemption (Ordinance Adding Chapter 17.140 entitled "Marijuana Regulations")  
**Recommendation:** Hold a public hearing and first reading of the proposed ordinance; consider a Resolution Approving a Notice of Exemption for the ordinance.

**Action:** Motion by Phelps, seconded by Andersen to adopt Resolution 2016-05 Approving a Notice of Exemption (Ordinance Adding Chapter 17.140 entitled "Marijuana Regulations:") for the ordinance.

**(Approved 4 – 0, Absent – Strawser)**

**Action:** Motion by Phelps, seconded by Bergman to hold a public hearing and first reading of the proposed ordinance.

**(Approved 4 – 0, Absent – Strawser)**

- B. Subject:** Transaction and Use Tax Options and Election Timing  
**Recommendation:** Hold a public hearing on both the proposed General Tax ordinance and the proposed Special Tax ordinance and either 1) hold a first reading of the General Tax ordinance or the Special Tax ordinance to preserve the ability to adopt in time for the June 7, 2016 election; or 2) provide alternate direction to the City Manager.

Direction provided to City Manager Prestwich to prepare a 3/8 cents Special Tax ordinance for the November 2016 election.

**7. OLD BUSINESS:**

- A. Subject:** Placement of Council-Requested Items on City Council Agenda.

Direction to be provided to City Manager.

**8. NEW BUSINESS:**

**9. CORRESPONDENCE:**

**10. ANNOUNCEMENTS:**

**11. CITY MANAGER'S REPORT:**

**12. ADJOURNMENT – 8:30 pm**

# REPORT TO CITY COUNCIL

**City of Nevada City**

317 Broad Street  
Nevada City, CA 95959

[www.nevadacityca.gov](http://www.nevadacityca.gov)

**January 27, 2016**

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**TITLE: An Ordinance of the City Council of Nevada City, California, Adding Chapter 17.140 to the Nevada City Municipal Code Entitled, “Marijuana Regulations” (Second Reading)**

**RECOMMENDATION:** Waive reading, read by title only, and adopt Ordinance 2016-XX adding Chapter 17.140 to the Nevada City Municipal Code entitled “Marijuana Regulations” related to marijuana cultivation.

**CONTACT:** Crystal Hodgson, Deputy City Attorney, Associate Attorney with Jones & Mayer, [cvh@jones-mayer.com](mailto:cvh@jones-mayer.com); (916) 771-0635.

## **BACKGROUND / DISCUSSION:**

At the City Council’s November 18, 2015 meeting, the City Attorney’s office explained the recently enacted Medical Marijuana Regulation and Safety Act (the “MMRSA”) and the provision of the MMRSA that requires the City to adopt an ordinance regulating **marijuana cultivation** to be effective by March 1, 2016, in order to preserve the City’s authority to regulate marijuana cultivation within its jurisdiction.

At that meeting, the City Council directed the Planning Commission to review and recommend approval of an ordinance that would add Chapter 17.140 to the Nevada City Municipal Code containing marijuana cultivation regulations. The draft ordinance prohibited all outdoor marijuana cultivation and permitted qualified patients and primary caregivers to cultivate 25 square feet or less of marijuana indoors in single family residential dwelling lots, after receiving a marijuana cultivation permit from the City Police Chief. The draft ordinance also contained regulations including the following requirements:

- Indoor cultivation may only occur in single family residences within residential zones;
- Indoor cultivation is prohibited in homes where minors reside;
- Indoor cultivation must occur only on uncarpeted areas, with proper lighting, shielded from public view from a public right-of-way;
- Structures used for indoor marijuana cultivation must have proper ventilation to prevent mold damage and plant odors or particles from becoming a public nuisance;

- Indoor marijuana cultivation may exceed twenty-five (25) square feet in a grower can demonstrate medical necessity to the Police Chief
- Marijuana may not be cultivation within 600 feet of a school.

Violations of the ordinance would constitute a public nuisance, a criminal infraction, or other civil action as allowed by law.

After holding a public hearing, the City Council heard a first reading of the proposed ordinance on January 13, 2016, and approved a Resolution approving a Notice of Exemption. If adopted following the second reading, the ordinance will become effective 30 days later.

### Planning Commission Recommendations

On December 10, 2015, the Planning Commission held a public hearing and considered the draft ordinance along with a Resolution Recommending Approval of a Notice of Exemption for the ordinance. The Planning Commission voted 4-1 to approve Resolution No. 2015-55 Recommending Approval of the Ordinance Adding Chapter 17.140 to the Nevada City Municipal Code entitled, "Marijuana Regulations" but directed staff to make the following changes to the ordinance:

- Add language to Section 17.140.040 (B)(2) clarifying that a primary caregiver may cultivate marijuana in his/her own residence for the use of the qualified patient they care for;
- Add language to Section 17.140.040 (C)(1) where appropriate to clarify whether single family dwelling units included mobile homes;
- Remove the requirement that marijuana cultivation may not occur in a residence whether persons under 18 years of age reside;
- Remove the requirement that marijuana cultivation could not occur on any carpeted area;
- To add language to Section 17.140.040 (C)(6) requiring that lighting used in indoor cultivation shall not shine outside the residence to annoy neighbors; and
- To clarify how the 600 foot distance requirement contained in Section 17.140.040(C)(17) would be measured from schools, childcare centers, or City parks.

Staff has made the Planning Commission's recommended changes along with other modifications including:

(1) a provision was added to Section 17.140.040 (C)(13) to explicitly prohibit the use, storage or discharge of hazardous chemicals in marijuana cultivation;

(2) the term “person with an identification card” was added alongside references to a “qualified patient” to clarify the City’s intent that all patients with recommendations from a physician to use medical marijuana, including those that had obtained an identification card from the County under the Medical Marijuana Program Act, are authorized by the City’s ordinance to grow marijuana subject to its other requirements; and

(3) the enforcement provisions that criminalized marijuana cultivation under the ordinance were removed, because a California Court of Appeal decision issued on December 1, 2015, in *Kirby v. County of Fresno*, held that cities and counties were permitted to ban or regulate cultivation but were preempted by the state’s marijuana laws including the Medical Marijuana Program Act, from criminalizing cultivation of marijuana.

The Planning Commission also approved a Resolution No. 2015-54 Recommending Approval of a Resolution Approving a Notice of Exemption for the ordinance.

#### Discussion Item

The proposed ordinance submitted for your review will amend the Zoning Title of the Nevada City Municipal Code, to add Chapter 17.140 entitled “Marijuana Regulations.” Therefore the City Council must hold a public hearing; a public hearing notice was duly published.

The ordinance requires a first and second reading. After holding a required public hearing, the City Council heard a first reading of the ordinance on January 13, 2016. A second reading and approval of the ordinance is now required before it can pass. The ordinance will become effective 30 days after approval.

As mentioned above, the City is authorized under state law to regulate the cultivation of marijuana within the City, as long as the City has some regulations of cultivation in place by March 1, 2016. City staff has drafted the proposed Ordinance, based on the direction of the City Council and the Planning Commission, which will allow some limited indoor cultivation of marijuana by qualified patients, persons with identification cards, and their primary caregivers. The ordinance aims to strike a balance between the allowing ease of access for qualified patients and persons with identification cards to marijuana for medical purposes and the needs of the community to reduce negative secondary effects of marijuana cultivation such as increased risk of crime, unauthorized access of minors, and nuisance odors, glare, etc.

If the proposed ordinance is approved, it will require the creation of a marijuana cultivation permit process and approval of a fee to cover the costs of administering the permit process.

## **ENVIRONMENTAL CONSIDERATIONS:**

On January 13, 2016, the City Council approved a Resolution Approving a Notice of Exemption finding that the adoption of the Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Section 15061(b)(3). The Resolution directs staff to file a Notice of Exemption after the ordinance is adopted.

## **FINANCIAL CONSIDERATIONS:**

The proposed Ordinance will establish a permit system for those permitted to cultivate marijuana under the Ordinance, whereby permittees will be required to pay a fee to cover administrative costs of the Ordinance. The fee will help offset the staff time and expenses in issuing permits, inspecting premises, enforcing the Ordinance against those not in compliance, and other costs of administering the Ordinance.

## **ATTACHMENTS:**

Exhibit A – Planning Commission Resolution Recommending Approval of a Notice of Exemption (Ordinance Adding Chapter 17.140 entitled “Marijuana Regulations”)

Exhibit B- Planning Commission Resolution Recommending Approval of an Ordinance Adding Chapter 17.140 to the Nevada City Municipal Code Entitled “Marijuana Regulations.”

Exhibit C –Resolution No. 2015-05 Approving of a Notice of Exemption (Ordinance Adding Chapter 17.140 to the Nevada City Municipal Code entitled “Marijuana Regulations”).

Exhibit D – Draft Ordinance No. XX of the City Council of Nevada City, California, Adding Chapter 17.140 to the Nevada City Municipal Code Entitled “Marijuana Regulations.”

**RESOLUTION NO. 2015-XX**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF NEVADA CITY, STATE OF CALIFORNIA,  
RECOMMENDING APPROVAL OF A NOTICE OF  
EXEMPTION  
(Ordinance Adding Chapter 17.140 entitled "Marijuana  
Regulations")**

WHEREAS, City planning and legal staff have reviewed the Ordinance Amending the Nevada City Municipal Code to add Chapter 17.140 entitled "Marijuana Regulations" ("Project") and determined that it is exempt from review under the California Environmental Quality Act pursuant to Title 14, Chapter 3, California Code of Regulations, Section 15061 (b)(3) - Activity is not subject to CEQA because there is no possibility the project will have a significant effect on the environment; and

WHEREAS, a Notice of Exemption has been prepared for the Project.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Nevada City as follows:

Section 1. Based on the review and determination of the Planning Department, the Planning Commission of the City of Nevada City finds that the Project is exempt from review under the California Environmental Quality Act.

Section 2. A Notice of Exemption is recommended for approval for the Project.

Section 3. Upon approval of the Project by the City Council, the City Clerk may file the Notice of Exemption with the County Clerk of Nevada County and, if the Project requires a discretionary approval from any state agency, with the State Office of Planning and Research, pursuant to the provisions of Section 21152(b) of the Public Resources Code and the State EIR Guidelines adopted pursuant thereto.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Nevada City at a public meeting held on the 10<sup>th</sup> of December, 2015.

\_\_\_\_\_  
\_\_\_\_\_, CHAIRMAN

ATTEST:

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

**NOTICE OF EXEMPTION**

TO:  **Office of Planning and Research**  
**1400 Tenth Street**  
**Sacramento, CA 95814**

FROM: **City of Nevada City**  
**317 Broad Street**  
**Nevada City, CA 95959**

**Nevada County Clerk/Recorder's Office**  
**Environmental Filings**  
**Eric W. Rood Administrative Center**  
**950 Maidu Avenue, Nevada City CA 95959**

**Project Title:** Ordinance Amending Nevada City Municipal Code to Add Chapter 17.140 entitled "Marijuana Regulations"

**Project Address:** 317 Broad Street, Nevada City, California 95959

**Project Location – City:** City of Nevada City

**Project Location – County:** Nevada

**Project Description:** The ordinance amends the Nevada City Municipal Code to add Chapter 17.140 containing marijuana cultivation regulations. Chapter 17.140 prohibits outdoor marijuana cultivation, and permits limited indoor cultivation by qualified patients and primary caregivers.

**Name of Public Agency Approving Project:** City of Nevada City

**Name of Person or Agency Carrying Out Project:** City of Nevada City

**Exempt Status: (Check One)**

- Ministerial (Section 21080(b)(1); 15268);
- Declared Emergency (Section 21080(b)(3); 15269(a));
- Emergency Project (Section 21080(b)(4); 15269(b)(c));
- "Common Sense" Exception (Section 15061(b)(3))
- Categorical Exemption. Type and section number:
- Statutory Exemptions. State code number:

**Reasons why project is exempt:** The project is an ordinance that amends the Nevada City Municipal Code to add Chapter 17.140 entitled "Marijuana Regulations." Chapter 17.140 prohibits all outdoor cultivation within the City, and allows qualified patient and primary caregivers to cultivate a limited amount of marijuana plants indoors, subject to the other requirements contained in the Chapter. The ordinance allows such a small amount of indoor marijuana to be grown by a select few qualifying individuals, and energy, water, and fertilizer/pesticide usage will be substantially similar to existing typical household non-marijuana indoor plant grows, so that there will be an overall negligible impact to the environment. Therefore, the project is exempt from CEQA as there is no possibility that the project will have a significant impact on the environment (Title 14, Chapter 3, Section 15061(b)(3).)

**Lead Agency Contact Person:** Amy Wolfson, City Planner **Number:** \_\_\_\_\_

**Signature & Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Signed by Lead Agency**     **Signed by Applicant**    **Date received for filing:** \_\_\_\_\_

RESOLUTION NO. 2015-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEVADA CITY, STATE OF CALIFORNIA, RECOMMENDING ADOPTION OF AN ORDINANCE ADDING CHAPTER 17.140 ENTITLED "MARIJUANA REGULATIONS"

The Planning Commission of the City of Nevada City finds and determines that:

Section 1.

A. The Ordinance Amending the Nevada City Municipal Code to add Chapter 17.140 entitled "Marijuana Regulations" ("Ordinance") is exempt from review under the California Environmental Quality Act pursuant to California Code of Regulations Section 15061 (b)(3) - Activity is not subject to CEQA because there is no possibility the Ordinance will have a significant effect on the environment; and

B. The activities permitted under the Ordinance are consistent with and implement the goals and policies of the Nevada City General Plan;

Section 2. The Planning Commission hereby recommends City Council approval of the Ordinance Amending the Nevada City Municipal Code to add Chapter 17.140 entitled "Marijuana Regulations" in the form attached hereto as Exhibit 1 and incorporated herein by this reference.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Nevada City at a public meeting held on the 10th of December, 2015.

AYES: PLANNING COMMISSIONERS:
NOES: PLANNING COMMISSIONERS:
ABSENT: PLANNING COMMISSIONERS:

\_\_\_\_\_, CHAIRMAN

ATTEST:

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

EXHIBIT "1"

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF NEVADA CITY, CALIFORNIA,  
ADDING CHAPTER 17.140 TO THE NEVADA CITY MUNICIPAL CODE  
ENTITLED "MARIJUANA REGULATIONS"**

WHEREAS, the City of Nevada City, pursuant to its police power, may adopt regulations to protect the health, safety and welfare of the public, Cal. Const. art. XI, § 7, Cal. Govt. Code § 37100, and thereby is authorized to declare what use or condition constitutes a public nuisance; and

WHEREAS, Section 38771 of the California Government Code 38771 authorizes the City through its legislative body to declare actions and activities that constitute a public nuisance; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the "CUA"), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of marijuana for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) (the "MMPA"), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act ("MMRSA"), effective January 1, 2016, which establishes a state licensing system for medical marijuana cultivation, manufacturing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, dispensing, and delivery within their jurisdictions. Under the MMRSA, cities and counties may continue to ban medical marijuana cultivation, manufacturing, dispensing, and delivery, in which case the new law would not allow or permit these activities within the cities and counties; and

WHEREAS, notwithstanding the CUA, the MMPA, and the MMRSA, marijuana remains a schedule I substance pursuant to Cal. Health & Saf. Code § 11054 (d)(13); and

WHEREAS, marijuana also remains a schedule I substance pursuant to federal law, 21 U.S.C. § 812, Schedule 1 (c)(10), and federal law does not provide for any medical use defense or exception (Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483 (2001)); and

WHEREAS, the California Supreme Court has established that neither the CUA nor the MMPA preempt local regulation in the case of City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013); and

WHEREAS, the MMRSA expressly allows cities and counties to ban marijuana cultivation consistent with current state law including the City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013);

WHEREAS, the MMRSA provides that if a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under the principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to the MMRSA, then commencing March 1, 2016, the state will be the sole licensing authority for medical marijuana cultivation applicants (Health & Safety Code section 11372.777(c)(4));

WHEREAS, the City intends by the adoption of this ordinance to regulate marijuana cultivation within the City for the express and specific purpose of preserving the City's authority to ban and/or adopt future regulations pertaining to marijuana cultivation as is required by California Health and Safety Code section 11372.777(c)(4), effective January 1, 2016, added by the MMRSA; and

WHEREAS, the City Council of the City of Nevada City finds that it is in the interest of the health, safety and welfare of the City to make prohibit outdoor marijuana cultivation and to limit and regulate the indoor cultivation of marijuana within the City;

WHEREAS, the City Council finds that the outdoor cultivation of marijuana significantly impacts, or has the potential to significantly impact, the City's jurisdiction. These impacts include the following:

- A. Public safety agencies, city residents, and other public entities have reported adverse impacts from outdoor marijuana cultivation, including disagreeable odors and release of pollen that can aggravate the respiratory system; increased risk of burglary and other property crimes; and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes.
- B. The creation of persistent strong odors as marijuana plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime.
- C. The unregulated cultivation of marijuana can adversely affect the health, safety and well-being of the city and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, smells and indoor electrical fire hazards that may result from unregulated marijuana cultivation, especially if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana can be cultivated in a concentrated place.
- D. Unlimited and unregulated indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.
- E. Children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including hospitals, schools,

church parks or playgrounds, childcare centers, recreation centers or youth centers. Cultivation of any amount of marijuana at, or near these sensitive uses presents unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

- F. The cultivation of marijuana in other cities has resulted in calls for service to the police department, including calls for robberies thefts, and physical assaults from marijuana that is grown outdoors;
- G. Marijuana growth poses significant safety risks for surrounding neighbors, including but not limited to, risks of violent confrontation in connection with attempts to steal marijuana, risk of fire from improperly wired electrical lights within structures growing marijuana, risk of guard dogs and security measures associated with structures and properties growing marijuana; and
- H. Staff and residents of the city have observed that the smell associated with marijuana cultivation is severe enough that it interferes with the use and enjoyment of property in the city.

WHEREAS, the City of Nevada City, California, pursuant to the provisions of the California Environmental Quality Act (hereinafter "CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) has determined that the Ordinance is exempt pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations; and

WHEREAS, the City Council finds that the provisions of this Ordinance are consistent with the City of Nevada City's General Plan; and

WHEREAS, the City Council finds that this Ordinance will not adversely affect property values and will not be detrimental to the City; and

WHEREAS, on **[INSERT DATE]**, 2015, following proper notice and public hearing, the City's Planning Commission adopted Resolution No. **[INSERT RESO. NO.]** recommending to the City Council the adoption of an Ordinance amending Title 17 of the Nevada City Municipal Code, relating to marijuana regulations; and

WHEREAS, the City Council has considered evidence presented by the Planning Commission and City Staff at a duly noticed public hearing held on **[INSERT DATE]**; and

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

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

**SECTION 1:** The City Council finds that all the facts, findings, and conclusions set forth above in this Ordinance are true and correct.

**SECTION 2:** Chapter 17.140 is hereby added to the Nevada City Municipal Code to read as follows:

## **Chapter 17.140 MARIJUANA REGULATIONS**

Sections:

- [17.140.010](#) Purpose.
- [17.140.020](#) Definitions.
- [17.140.030](#) Outdoor cultivation of marijuana.
- [17.140.040](#) Indoor cultivation of marijuana.
- [17.140.045](#) Cultivation permit.
- [17.140.050](#) Public nuisance.
- [17.140.055](#) Sale of medical marijuana prohibited.
- [17.140.060](#) Enforcement.
- [17.140.070](#) Penalty for violation.

### **17.140.010 Purpose.**

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The purpose and intent of this chapter are to require that medical marijuana be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, to provide for the health, safety and welfare of the public, to prevent negative impacts to property values, to prevent odor created by marijuana plants from impacting adjacent properties, to prevent crime associated with marijuana, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to nonpatients, minors, or illicit markets. Nothing in this chapter is intended to authorize the cultivation, possession, or use of marijuana for nonmedical purposes in violation of state or federal law. It is not the intent of this chapter to create conflict or inconsistency between this chapter and (A) the Constitutions of the United States or the state of California; (B) the federal Controlled Substances Act; or (C) California law.

### **17.140.020 Definitions.**

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For purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

“Abatement” means the removal of marijuana plants and improvements that support marijuana cultivation which occupy an area or cubic feet in excess of the area and cubic feet that is allowed under this chapter.

“Bedroom” means a room inside a residential building being utilized by any person primarily for sleeping purposes.

“Child care center” means any licensed child care center, daycare center, or child care home, or any preschool.

“Cultivated area” means any area indoors that is the greater of either (A) the total area of a property that is densely or primarily occupied by marijuana cultivation; or (B) one square foot per juvenile or mature marijuana plant indoors on the property.

“Cultivation” or “marijuana cultivation” means the planting, growing, harvesting, drying, or processing of marijuana plants, or any part thereof.

“Fully enclosed and secure structure” means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

“Indoors” means within a fully enclosed and secure structure.

“Marijuana” means the plant *Cannabis sativa* L. and any of its derivatives that is six inches in height or taller, grown in accordance with state law.

“Outdoors” means any location within the city of Nevada City that is not within a fully enclosed and secure structure.

“Parcel” means property assigned a separate parcel number by the Nevada County assessor.

“Premises” means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall constitute a single “premises” for purposes of this chapter.

“Primary caregiver” means a “primary caregiver” as defined in Section [11362.7\(d\)](#) of the Health and Safety Code, as may be amended from time to time.

“Qualified patient” means a “qualified patient” as defined in Section [11362.7\(f\)](#) of the Health and Safety Code.

“Rear yard” means the rear open space portion of any premises, whether fenced or unfenced.

“Residential structure” means any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation on a premises or legal parcel located within a zoning district that allows residential uses.

“School” means an institution of learning for persons under 21 years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school.

“Single-family dwelling” means a detached building designed for and/or occupied by one family which does not share walls with another dwelling.

“Solid fence” means a fence constructed of substantial material (such as wood or vinyl) that prevents viewing the contents from one side to the other.

### **17.140.030 Outdoor cultivation of marijuana.**

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All outdoor cultivation of marijuana within the city is prohibited. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the city of Nevada City to cause or allow such parcel to be used for the outdoor cultivation of marijuana.

### **17.140.040 Indoor cultivation of marijuana.**

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A. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel in the city of Nevada City to cause or allow such parcel to be used for the cultivation of marijuana plants within a fully enclosed and secure structure on the parcel, except as provided in subsections (B) and (C) of this section.

B. Who Is Permitted to Cultivate Marijuana Indoors.

1. Only a person who is at least 18 years old and either a qualified patient or a primary caregiver may engage in indoor cultivation of medical marijuana.
2. Residency Requirement. The qualified patient or primary caregiver shall reside full-time on the premises where the indoor cultivation of medical marijuana occurs.
3. Permission of Owner. Tenants shall obtain the written permission, with notarized signature of the property owner(s) prior to cultivating marijuana. Such written permission shall be submitted to the city together with the completed cultivation permit application.
4. Permit Required. Prior to engaging in any indoor cultivation of marijuana pursuant to this chapter, a qualified patient or primary caregiver shall obtain a cultivation permit from the city’s Chief of Police or his or her designee, pursuant to the requirement of Section [17.140.045 of this Chapter](#).

C. Indoor Cultivation Standards. Marijuana cultivated indoors, within the city of Nevada City, shall be in conformance with the following standards:

1. Indoor cultivation of marijuana is permitted only on parcels with single-family residential units.
2. Marijuana cultivation is permitted only within fully enclosed and secure structures inaccessible to minors. If the fully enclosed and secure structure is a residence, it shall be a single-family dwelling. No cultivation may occur in duplexes, triplexes, or other multifamily dwellings. A fully enclosed and secure structure used for the cultivation of marijuana that is separate from the main residence on a premises must maintain a minimum 10-foot setback from any property line or the minimum set-back required

under any other applicable provision of this Title 17 if such set-backs exceed 10 feet, and the area surrounding the structure must be enclosed by a solid fence at least six feet in height.

3. Marijuana cultivation may not occur in both a detached structure and inside a residence on the same parcel. Only one cultivation area is allowed per parcel.

4. Marijuana cultivation may not occur in a residence where persons under 18 years of age reside, whether full- or part-time.

5. Marijuana cultivation areas in a structure shall not be accessible to persons under 18 years of age. Cultivation areas shall be secured by lock and key or other security device which prevents unauthorized entry.

6. Indoor cultivation of marijuana shall not exceed 25 square feet, regardless of how many qualified patients or primary caregivers are residing at the premises, unless the Chief of Police or his or her or designee has approved a request under subsection (D) of this section.

7. Marijuana cultivation shall not occur on any carpeted area.

8. Marijuana cultivation lighting shall not exceed 1,200 watts and shall comply with the California Building, Electrical and Fire Codes as adopted by the city.

9. The use of gas products (CO<sub>2</sub>, butane, etc.) or generators for marijuana cultivation or processing is prohibited.

10. Marijuana cultivation for sale is prohibited.

11. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.

12. The residence shall be occupied and is required to maintain a functioning kitchen and bathroom(s), and the use of primary bedrooms are for their intended purpose. These rooms shall not be used for marijuana cultivation.

13. Any marijuana cultivation area located within a residence shall not create a humidity or mold problem in violation of Nevada City building and state health and safety codes.

14. Any structure used for the cultivation of medical marijuana must have proper ventilation to prevent mold damage and to prevent marijuana plant odors or particles from becoming a public nuisance to surrounding properties or the public. A public nuisance may be deemed to exist if the cultivation produces odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public.

15. The marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products or wastes.

16. Use, storage, or discharge into City wastewater facilities of any hazardous chemicals in the cultivation of marijuana is strictly prohibited. "Hazardous chemicals" shall include, but is not limited to, any chemical or substance that is prohibited by the Federal Environmental Protection Agency or the California Department of Food and Agriculture.

17. Water usage for cultivation of marijuana under this Chapter shall not exceed any limitations imposed by federal, state, or local water restrictions.

18. The marijuana grower shall pay any applicable city taxes relating to marijuana.

19. Marijuana cultivation may not occur within 600 feet of a school, childcare center, or City park.

D. Indoor Marijuana Cultivation in Excess of 25 Square Feet. Any proposed marijuana cultivation by an individual that may exceed the cultivation area standard maximum of 25 square feet per residence shall require administrative review by the Chief of Police or his or her designee, and shall meet the criteria set forth above, as well as the additional criteria set forth in subsections (D)(1) through (3) of this section:

1. Documentation of medical need, such as a physician's recommendation; and

2. Inspection of the cultivation area by the chief of police or his or her designee to confirm that no health or safety concerns are present; and

3. The chief of police or his or her designee may require additional specific standards to meet the California Building Code and Fire Code, including, but not limited to, installation of fire suppression sprinklers.

#### **17.140.045 Cultivation permit.**

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A. Prior to commencing any indoor medical marijuana cultivation, a qualified patient or primary caregiver must obtain a medical marijuana cultivation permit from the Chief of Police or his or her designee. The form of permit application and renewal application shall be developed by the Chief of Police or his or her designee, shall be completed by the applicant, signed and notarized by the applicant, and shall contain the following information:

1. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where medical marijuana will be cultivated.

2. When the applicant is not the sole owner of the property, the written permission of the owner's consent to allow marijuana cultivation to occur on the premise with the owner's notarized signature.

3. The name of each qualified patient or primary caregiver who participates in the medical marijuana cultivation.
4. A copy of a current valid medical recommendation or county-issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver.
5. The physical site address of where the medical marijuana will be cultivated.
6. A signed consent form, acceptable to the city, authorizing city staff, including the Chief of Police or his or her designee, to conduct a quarterly inspection of the detached, fully enclosed and secure structure or area of the residence used for the cultivation of marijuana upon 24 hours' notice.

B. The initial permit shall be valid for one year and each renewal permit shall be valid for one year.

C. To the extent permitted by law, any personal or medical information submitted with a medical marijuana cultivation permit application or permit extension shall be kept confidential and shall only be used for purposes of administering this chapter.

D. The Chief of Police, or his or her designee, may, in his or her discretion, deny any application for a medical marijuana cultivation permit, or extension thereof, where he or she finds, based on articulated facts, that the issuance of such permit, or extension thereof, would be detrimental to the public health, safety, or welfare. A prior criminal conviction for a drug-related offense by the permit applicant shall be grounds for denial. The Chief of Police shall deny an application for a medical marijuana cultivation permit, or extension thereof, that does not demonstrate satisfaction of the minimum requirements of this chapter. Such denial shall be given to the applicant in writing and shall describe the grounds for the denial.

E. A person who is denied a marijuana cultivation permit under this section may appeal such denial to the Planning Commission within 10 days of the date the Chief of Police issues the written denial required by subsection (D) of this section.

F. Upon timely request by the person requesting the marijuana cultivation permit, the appeal hearing process and related procedures of a denial of its permit pursuant to this section shall proceed pursuant to the provisions of Section 17.88.050 of this Title.

G. The Chief of Police or his or her designee may charge a fee or fees required to be paid upon filing of an application for permit(s) as provided by this chapter, which fees shall not exceed the reasonable cost of administering this chapter.

H. Permittees shall comply with all state laws, guidelines, and license requirements applicable to marijuana cultivation including those set forth and promulgated under the Medical Marijuana Regulation and Safety Act. Failure to comply with any state law, regulations, or license requirement pertaining to marijuana cultivation shall be grounds for City

permit revocation. Nothing in this chapter shall be construed to allow a permittee to cultivate marijuana within the City of Nevada City in violation of state law.

#### **17.140.050 Public nuisance.**

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It is hereby declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel within the city of Nevada City to create a public nuisance in the course of cultivating marijuana plants or any part thereof. A public nuisance may be deemed to exist if such activity produces:

- A. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public;
- B. Repeated responses (more than three times in a one-year time period) to the parcel from law enforcement officers;
- C. Repeated disruption (more than three times in a one-year time period) to the free passage of persons or vehicles in the neighborhood;
- D. Excessive noise in violation of applicable city noise standards in the general plan or municipal code;
- E. Any other impacts on the neighborhood which are disruptive of normal activity in the area.

#### **17.140.055 Sale of medical marijuana prohibited.**

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It shall be unlawful for any person cultivating medical marijuana pursuant to this chapter to sell or offer for sale the marijuana permitted to be grown under this chapter.

#### **17.140.060 Enforcement.**

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- A. The violation of this chapter is hereby declared to be a public nuisance. Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed the amount provided in Penal Code Section [19](#), as may be amended from time to time, by imprisonment in the county jail not to exceed six months, or by both a fine and imprisonment.
- B. A violation of this chapter may be abated by the city attorney, or outside counsel retained by the City, by the prosecution of a civil action for injunctive relief and by the abatement procedure set forth in Chapter 8.04.
- C. Abatement Procedure. The Chief of Police, or his or her designee (hereafter the “enforcement official”), is hereby authorized to order the abatement of any violation of this chapter by following the abatement procedure as defined in Chapter [8.04](#). In addition, the enforcement official may require the property owner or tenant to personally abate/remove all medical marijuana plants and improvements to the property that exceed the limits set by this chapter.

#### **17.140.070 Penalty for violation.**

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A. Cultivation of marijuana on parcels within the city that does not comply with this chapter is a misdemeanor subject to the penalties and enforcement as provided in Section [1.12.010](#).

B. The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others, including those in Section [1.12.010](#) and Chapter [8.04](#), and none of these penalties and remedies prevents the city from using any other remedy at law or in equity which may be available to enforce this chapter or to abate a public nuisance.

**SECTION 3:** Any provision of the Nevada City Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

**SECTION 4:** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable. The City Council of the City of Nevada City declares that it would have adopted all the provisions of this ordinance that remain valid if any provisions of this ordinance are declared invalid.

**SECTION 5:** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

APPROVED FOR INTRODUCTION AT A REGULAR MEETING on the \_\_\_\_th day of \_\_\_\_\_, 2015, by the following vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:

PASSED, APPROVED, AND ADOPTED this \_\_\_\_th day of \_\_\_\_\_, 2015, by the following vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:

\_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_, City Clerk

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

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ ) ss.  
CITY OF \_\_\_\_\_ )

I, \_\_\_\_\_, City Clerk of \_\_\_\_\_, do hereby certify that the foregoing ordinance was introduced on the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2015, was regularly adopted at a meeting thereof on the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2015 and was published/posted pursuant to law.

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**RESOLUTION NO. 2015-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEVADA CITY, STATE OF CALIFORNIA, APPROVING A  
NOTICE OF EXEMPTION  
(Ordinance Adding Chapter 17.140 to the Nevada City Municipal  
Code entitled "Marijuana Regulations")**

WHEREAS, City planning and legal staff have reviewed the Ordinance Amending the Nevada City Municipal Code to add Chapter 17.140 entitled "Marijuana Regulations" ("Project") and determined that it is exempt from review under the California Environmental Quality Act pursuant to Title 14, Chapter 3, California Code of Regulations, Section 15061 (b)(3) - Activity is not subject to CEQA because there is no possibility the project will have a significant effect on the environment; and

WHEREAS, a Notice of Exemption has been prepared for the Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Nevada City as follows:

Section 1. Based on the review and determination of the Planning Department, the City Council of the City of Nevada City finds that the Project is exempt from review under the California Environmental Quality Act.

Section 2. A Notice of Exemption is approved for the Project.

Section 3. Upon approval of the Project by the City Council, the Deputy City Clerk may file the Notice of Exemption with the County Clerk of Nevada County and, if the Project requires a discretionary approval from any state agency, with the State Office of Planning and Research, pursuant to the provisions of Section 21152(b) of the Public Resources Code and the State EIR Guidelines adopted pursuant thereto.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Nevada City at a public meeting held on the \_\_\_ of January, 2016.

\_\_\_\_\_  
\_\_\_\_\_,MAYOR

ATTEST:

By: \_\_\_\_\_  
CITY CLERK

**NOTICE OF EXEMPTION**

TO:  **Office of Planning and Research**  
**1400 Tenth Street**  
**Sacramento, CA 95814**

**FROM: City of Nevada City**  
**317 Broad Street**  
**Nevada City, CA 95959**

**Nevada County Clerk/Recorder's Office**  
**Environmental Filings**  
**Eric W. Rood Administrative Center**  
**950 Maidu Avenue, Nevada City CA 95959**

**Project Title:** Ordinance Amending Nevada City Municipal Code to Add Chapter 17.140 entitled "Marijuana Regulations"

**Project Address:** 317 Broad Street, Nevada City, California 95959

**Project Location – City:** City of Nevada City

**Project Location – County:** Nevada

**Project Description:** The ordinance amends the Nevada City Municipal Code to add Chapter 17.140 containing marijuana cultivation regulations. Chapter 17.140 prohibits outdoor marijuana cultivation, and permits limited indoor cultivation by qualified patients, persons with identification cards, and primary caregivers.

**Name of Public Agency Approving Project:** City of Nevada City

**Name of Person or Agency Carrying Out Project:** City of Nevada City

**Exempt Status: (Check One)**

- Ministerial (Section 21080(b)(1); 15268);
- Declared Emergency (Section 21080(b)(3); 15269(a));
- Emergency Project (Section 21080(b)(4); 15269(b)(c));
- "Common Sense" Exception (Section 15061(b)(3))
- Categorical Exemption. Type and section number:
- Statutory Exemptions. State code number:

**Reasons why project is exempt:** The project is an ordinance that amends the Nevada City Municipal Code to add Chapter 17.140 entitled "Marijuana Regulations." Chapter 17.140 prohibits all outdoor cultivation within the City, and allows qualified patients, persons with identification cards, and primary caregivers to cultivate a limited amount of marijuana plants indoors, subject to the other requirements contained in the Chapter. The ordinance allows such a small amount of indoor marijuana to be grown by a select few qualifying individuals, and energy, water, and fertilizer/pesticide usage will be substantially similar to existing typical household non-marijuana indoor plant grows, so that there will be an overall negligible impact to the environment. Therefore, the project is exempt from CEQA as there is no possibility that the project will have a significant impact on the environment (Title 14, Chapter 3, Section 15061(b)(3).)

**Lead Agency Contact Person:** Amy Wolfson, City Planner **Number:** \_\_\_\_\_

**Signature & Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Signed by Lead Agency**     **Signed by Applicant**    **Date received for filing:** \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF NEVADA CITY, CALIFORNIA,  
ADDING CHAPTER 17.140 TO THE NEVADA CITY MUNICIPAL CODE  
ENTITLED “MARIJUANA REGULATIONS”**

WHEREAS, the City of Nevada City, pursuant to its police power, may adopt regulations to protect the health, safety and welfare of the public, Cal. Const. art. XI, § 7, Cal. Govt. Code § 37100, and thereby is authorized to declare what use or condition constitutes a public nuisance; and

WHEREAS, Section 38771 of the California Government Code 38771 authorizes the City through its legislative body to declare actions and activities that constitute a public nuisance; and

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (21 U.S.C. Section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana possession, cultivation and distribution; and

WHEREAS, the People of the State of California have enacted Proposition 215, the Compassionate Use Act of 1996 (codified at Health and Safety Code Section 11362.5 et seq.) (the “CUA”), which exempts qualified patients and their primary caregivers from criminal prosecution under enumerated Health and Safety Code sections for use of marijuana for medical purposes; and

WHEREAS, the California Legislature enacted Senate Bill 420 in 2003, the Medical Marijuana Program Act (codified at Health and Safety Code Section 11362.7 et seq.) (the “MMPA”), as amended, which created a state-wide identification card scheme for qualified patients and primary caregivers; and

WHEREAS, on October 11, 2015, the Governor signed into law Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, collectively referred to as the Medical Marijuana Regulation and Safety Act (“MMRSA”), effective January 1, 2016, which establishes a state licensing system for medical marijuana cultivation, manufacturing, delivery, and dispensing, regulating these activities with licensing requirements and regulations that are only applicable if cities and counties also permit marijuana cultivation, manufacturing, dispensing, and delivery within their jurisdictions. Under the MMRSA, cities and counties may continue to ban medical marijuana cultivation, manufacturing, dispensing, and delivery, in which case the new law would not allow or permit these activities within the cities and counties; and

WHEREAS, notwithstanding the CUA, the MMPA, and the MMRSA, marijuana remains a schedule I substance pursuant to Cal. Health & Saf. Code § 11054 (d)(13); and

WHEREAS, marijuana also remains a schedule I substance pursuant to federal law, 21 U.S.C. § 812, Schedule 1 (c)(10), and federal law does not provide for any medical use defense or exception (Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Oakland Cannabis Buyers’ Coop., 532 U.S. 483 (2001)); and

WHEREAS, the California Supreme Court has established that neither the CUA nor the MMPA preempt local regulation in the case of City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013); and

WHEREAS, the MMRSA expressly allows cities and counties to ban marijuana cultivation consistent with current state law including the case of City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729 (2013);

WHEREAS, the MMRSA provides that if a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under the principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to the MMRSA, then commencing March 1, 2016, the state will be the sole licensing authority for medical marijuana cultivation applicants (Health & Safety Code section 11372.777(c)(4));

WHEREAS, the City intends by the adoption of this ordinance to regulate marijuana cultivation within the City for the express and specific purpose of preserving the City's authority to ban and/or adopt future regulations pertaining to marijuana cultivation as is required by California Health and Safety Code section 11372.777(c)(4), effective January 1, 2016, added by the MMRSA; and

WHEREAS, the City Council of the City of Nevada City finds that it is in the interest of the health, safety and welfare of the City to prohibit outdoor marijuana cultivation and to limit and regulate the indoor cultivation of marijuana within the City;

WHEREAS, the City Council finds that the outdoor cultivation of marijuana significantly impacts, or has the potential to significantly impact, the City's jurisdiction. These impacts include the following:

- A. Public safety agencies, city residents, and other public entities have reported adverse impacts from outdoor marijuana cultivation, including disagreeable odors and release of pollen that can aggravate the respiratory system; increased risk of burglary and other property crimes; and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes.
- B. The creation of persistent strong odors as marijuana plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime.
- C. The unregulated cultivation of marijuana can adversely affect the health, safety and well-being of the city and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, smells and indoor electrical fire hazards that may result from unregulated marijuana cultivation, especially if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana can be cultivated in a concentrated place.
- D. Unlimited and unregulated indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.
- E. Children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including hospitals, schools,

church parks or playgrounds, childcare centers, recreation centers or youth centers. Cultivation of any amount of marijuana at, or near these sensitive uses presents unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

- F. The cultivation of marijuana in other cities has resulted in calls for service to the police department, including calls for robberies thefts, and physical assaults from marijuana that is grown outdoors;
- G. Marijuana growth poses significant safety risks for surrounding neighbors, including but not limited to, risks of violent confrontation in connection with attempts to steal marijuana, risk of fire from improperly wired electrical lights within structures growing marijuana, risk of guard dogs and security measures associated with structures and properties growing marijuana; and
- H. Staff and residents of the city have observed that the smell associated with marijuana cultivation is severe enough that it interferes with the use and enjoyment of property in the city.

WHEREAS, the City does not intend by enacting this ordinance to either burden any defense to a criminal prosecution set forth in the CUA, the MMPA, or the MMRSA, or any other state law, or to criminalize any activities otherwise permitted by the state legislature through the CUA, the MMPA, or the MMRSA, or any other state law.

WHEREAS, the City of Nevada City, California, pursuant to the provisions of the California Environmental Quality Act (hereinafter "CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) has determined that the Ordinance is exempt pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations; and

WHEREAS, the City Council finds that the provisions of this Ordinance are consistent with the City of Nevada City's General Plan; and

WHEREAS, the City Council finds that this Ordinance will not adversely affect property values and will not be detrimental to the City; and

WHEREAS, on December 10, 2015, following proper notice and public hearing, the City's Planning Commission adopted Resolution No. 2015-55 recommending to the City Council the adoption of an Ordinance amending Title 17 of the Nevada City Municipal Code, relating to marijuana regulations and Resolution No. 2015-54 Recommending Approval of a Notice of Exemption for the ordinance; and

WHEREAS, the City Council has considered evidence presented by the Planning Commission and City Staff, including Planning Commission Resolution Nos. 2015-54 and 2015-55, at a duly noticed public hearing held on January 13, 2016; and

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

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

**SECTION 1:** The City Council finds that all the facts, findings, and conclusions set forth above in this Ordinance are true and correct.

**SECTION 2:** Chapter 17.140 is hereby added to the Nevada City Municipal Code to read as follows:

**Chapter 17.140  
MARIJUANA REGULATIONS**

Sections:

- [17.140.010](#) Purpose.
- [17.140.020](#) Definitions.
- [17.140.030](#) Outdoor cultivation of marijuana.
- [17.140.040](#) Indoor cultivation of marijuana.
- [17.140.045](#) Cultivation permit.
- [17.140.050](#) Public nuisance.
- [17.140.055](#) Sale of marijuana prohibited.
- [17.140.060](#) Enforcement.

**17.140.010 Purpose.**

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The purpose and intent of this chapter are to require that medical marijuana be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, to provide for the health, safety and welfare of the public, to prevent negative impacts to property values, to prevent odor created by marijuana plants from impacting adjacent properties, to prevent crime associated with marijuana, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to nonpatients, minors, or illicit markets. Nothing in this chapter is intended to authorize the cultivation, possession, or use of marijuana for nonmedical purposes in violation of state or federal law. It is not the intent of this chapter to create conflict or inconsistency between this chapter and (A) the Constitutions of the United States or the state of California; (B) the federal Controlled Substances Act; or (C) California law.

**17.140.020 Definitions.**

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For purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

“Abatement” means the removal of marijuana plants and improvements that support marijuana cultivation which occupy an area or cubic feet in excess of the area and cubic feet that is allowed under this chapter.

“Bedroom” means a room inside a residential building being utilized by any person primarily for sleeping purposes.

“Child care center” means any licensed child care center, daycare center, or child care home, or any preschool.

“Cultivated area” means any area indoors that is the greater of either (A) the total area of a property that is densely or primarily occupied by marijuana cultivation; or (B) one square foot per juvenile or mature marijuana plant indoors on the property.

“Cultivation” or “marijuana cultivation” means the planting, growing, harvesting, drying, or processing of marijuana plants, or any part thereof.

“Fully enclosed and secure structure” means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

“Indoors” means within a fully enclosed and secure structure.

“Marijuana” means the plant *Cannabis sativa* L. and any of its derivatives that is six inches in height or taller, grown in accordance with state law.

“Outdoors” means any location within the city of Nevada City that is not within a fully enclosed and secure structure.

“Parcel” means property assigned a separate parcel number by the Nevada County assessor.

“Premises” means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall constitute a single “premises” for purposes of this chapter.

“Person with an identification card” means “person with an identification card” as defined in Section 11362.7 (c) of the Health and Safety Code, as may be amended from time to time.

“Primary caregiver” means a “primary caregiver” as defined in Section [11362.7\(d\)](#) of the Health and Safety Code, as may be amended from time to time.

“Qualified patient” means a “qualified patient” as defined in Section [11362.7\(f\)](#) of the Health and Safety Code, as may be amended from time to time.

“Rear yard” means the rear open space portion of any premises, whether fenced or unfenced.

“Residential structure” means any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation on a premises or legal parcel located within a zoning district that allows residential uses.

“School” means an institution of learning for persons under 21 years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school.

“Single-family dwelling” means a detached building designed exclusively for occupancy by one family. A single family dwelling includes a manufactured home certified under the National Manufactured Housing Construction and Safety Standards of 1974 (42 U.S.C. Sections 5401 et seq.) on a foundation system, pursuant to Section 18551 of the Health and Safety Code, on lots zoned for conventional single family residential dwellings.

“Solid fence” means a fence constructed of substantial material (such as wood or vinyl) that prevents viewing the contents from one side to the other.

### **17.140.030 Outdoor cultivation of marijuana.**

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All outdoor cultivation of marijuana within the city is prohibited. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the city of Nevada City to cause or allow such parcel to be used for the outdoor cultivation of marijuana.

### **17.140.040 Indoor cultivation of marijuana.**

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A. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel in the city of Nevada City to cause or allow such parcel to be used for the cultivation of marijuana plants within a fully enclosed and secure structure on the parcel, except as provided in subsections (B) and (C) of this section.

B. Who Is Permitted to Cultivate Marijuana Indoors.

1. Only a person who is at least 18 years old and is a qualified patient, person with an identification card, or a primary caregiver may engage in indoor cultivation of medical marijuana.
2. Residency Requirement. The person authorized by this chapter to cultivate marijuana, whether a qualified patient, person with an identification card, or primary caregiver, shall reside full-time on the premises where the person cultivates marijuana.
3. Permission of Owner. Tenants shall obtain the written permission, with notarized signature of the property owner(s) prior to cultivating marijuana. Such written permission shall be submitted to the city together with the completed cultivation permit application.
4. Permit Required. Prior to engaging in any indoor cultivation of marijuana pursuant to this chapter, a qualified patient, person with an identification card, or primary caregiver shall obtain a cultivation permit from the city’s Chief of Police or his or her designee, pursuant to the requirement of Section [17.140.045 of this Chapter](#).

C. Indoor Cultivation Standards. Marijuana cultivated indoors, within the city of Nevada City, shall be in conformance with the following standards:

1. Indoor cultivation of marijuana is permitted only on parcels with single-family residential dwelling units or mobile homes located on single-family residential lots.
2. Marijuana cultivation is permitted only within fully enclosed and secure structures inaccessible to minors. If the fully enclosed and secure structure is a residence, it shall be a single-family dwelling or a mobile home located on a single-family residential lot. No cultivation may occur in duplexes, triplexes, or other multifamily dwellings. A fully enclosed and secure structure used for the cultivation of marijuana that is separate from the main residence on a premises must maintain a minimum 10-foot setback from any property line or the minimum set-back required under any other applicable provision of this Title 17 if such set-backs exceed 10 feet, and the area surrounding the structure must be enclosed by a solid fence at least six feet in height.
3. Marijuana cultivation may not occur in both a detached structure and inside a residence on the same parcel. Only one cultivation area is allowed per parcel.
4. Marijuana cultivation areas in a structure shall not be accessible to persons under 18 years of age. Cultivation areas shall be secured by lock and key or other security device which prevents unauthorized entry.
5. Indoor cultivation of marijuana shall not exceed 25 square feet, regardless of how many qualified patients, persons with identification cards, or primary caregivers are residing at the premises, unless the Chief of Police or his or her or designee has approved a request under subsection (D) of this section.
6. Marijuana cultivation lighting shall not exceed 1,200 watts and shall be shielded to confine light and glare to the interior of the allowable structure. All lighting use in the cultivation of marijuana shall comply with the California Building, Electrical and Fire Codes as adopted by the city.
7. The use of gas products (CO<sub>2</sub>, butane, etc.) or generators for marijuana cultivation or processing is prohibited.
8. Marijuana cultivation for sale is prohibited.
9. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.
10. The residence shall be occupied and is required to maintain a functioning kitchen and bathroom(s), and the use of primary bedrooms are for their intended purpose. These rooms shall not be used for marijuana cultivation.

11. Any marijuana cultivation area located within a residence shall not create a humidity or mold problem in violation of Nevada City building and state health and safety codes.

12. Any structure used for the cultivation of medical marijuana must have proper ventilation to prevent mold damage and to prevent marijuana plant odors or particles from becoming a public nuisance to surrounding properties or the public. A public nuisance may be deemed to exist if the cultivation produces odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public.

13. The marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products or wastes.

14. Use, storage, or discharge into City wastewater facilities of any hazardous chemicals in the cultivation of marijuana is strictly prohibited. "Hazardous chemicals" shall include, but is not limited to, any chemical or substance that is prohibited by the Federal Environmental Protection Agency or the California Department of Food and Agriculture.

15. Water usage for cultivation of marijuana under this Chapter shall not exceed any limitations imposed by federal, state, or local water restrictions.

16. The marijuana grower shall pay any applicable city taxes relating to marijuana.

17. Marijuana cultivation may not occur within 600 feet of a school, childcare center, or City park. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school, childcare center, or City park to the closest property line of the lot on which the marijuana cultivation is to be located without regard to intervening structures.

D. Indoor Marijuana Cultivation in Excess of 25 Square Feet. Any proposed marijuana cultivation by an individual that may exceed the cultivation area standard maximum of 25 square feet per residence shall require administrative review by the Chief of Police or his or her designee, and shall meet the criteria set forth above, as well as the additional criteria set forth in subsections (D)(1) through (3) of this section:

1. Documentation of medical need, such as a physician's recommendation; and

2. Inspection of the cultivation area by the chief of police or his or her designee to confirm that no health or safety concerns are present; and

3. The chief of police or his or her designee may require additional specific standards to meet the California Building Code and Fire Code, including, but not limited to, installation of fire suppression sprinklers.

## **17.140.045 Cultivation permit.**

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A. Prior to commencing any indoor medical marijuana cultivation, a qualified patient, person with an identification card, or primary caregiver must obtain a medical marijuana cultivation permit from the Chief of Police or his or her designee. The form of permit application and renewal application shall be developed by the Chief of Police or his or her designee, shall be completed by the applicant, signed and notarized by the applicant, and shall contain the following information:

1. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where medical marijuana will be cultivated.
2. When the applicant is not the sole owner of the property, the written permission of the owner's consent to allow marijuana cultivation to occur on the premise with the owner's notarized signature.
3. The name of each qualified patient, person with an identification card, or primary caregiver who participates in the medical marijuana cultivation.
4. A copy of a current valid medical recommendation for each qualified patient identified as required above, or county-issued medical marijuana card for each person with an identification card, or if the applicant is a primary caregiver, then a copy of a current valid medical recommendation for any qualified patient of the primary caregiver or county-issued medical marijuana card for each person with an identification card that the primary caregiver is responsible for.
5. The physical site address of where the medical marijuana will be cultivated.
6. A signed consent form, acceptable to the city, authorizing city staff, including the Chief of Police or his or her designee, to conduct a quarterly inspection of the detached, fully enclosed and secure structure or area of the residence used for the cultivation of marijuana upon 24 hours' notice.

B. The initial permit shall be valid for one year and each renewal permit shall be valid for one year.

C. To the extent permitted by law, any personal or medical information submitted with a medical marijuana cultivation permit application or permit extension shall be kept confidential and shall only be used for purposes of administering this chapter.

D. The Chief of Police, or his or her designee, may, in his or her discretion, deny any application for a medical marijuana cultivation permit, or extension thereof, where he or she finds, based on articulated facts, that the issuance of such permit, or extension thereof, would be detrimental to the public health, safety, or welfare. A prior criminal conviction for a drug-related offense by the permit applicant shall be grounds for denial. The Chief of Police shall deny an application for a medical marijuana cultivation permit, or extension thereof, that does not demonstrate satisfaction of the minimum requirements of this chapter. Such denial shall be given to the applicant in writing and shall describe the grounds for the denial.

E. A person who is denied a marijuana cultivation permit under this section may appeal such denial to the Planning Commission within 10 days of the date the Chief of Police issues the written denial required by subsection (D) of this section.

F. Upon timely request by the person requesting the marijuana cultivation permit, the appeal hearing process and related procedures of a denial of its permit pursuant to this section shall proceed pursuant to the provisions of Section 17.88.050 of this Title.

G. The Chief of Police or his or her designee may charge a fee or fees required to be paid upon filing of an application for permit(s) set by resolution of the City Council, which fees shall not exceed the reasonable cost of administering this chapter.

H. Permittees shall comply with all state laws, guidelines, and license requirements applicable to marijuana cultivation including those set forth and promulgated under the Medical Marijuana Regulation and Safety Act. Failure to comply with any state law, regulations, or license requirement pertaining to marijuana cultivation shall be grounds for City permit revocation. Nothing in this chapter shall be construed to allow a permittee to cultivate marijuana within the City of Nevada City in violation of state law.

#### **17.140.050 Public nuisance.**

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It is hereby declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel within the city of Nevada City to create a public nuisance in the course of cultivating marijuana plants or any part thereof. A public nuisance may be deemed to exist if such activity produces:

- A. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public;
- B. Repeated responses (more than three times in a one-year time period) to the parcel from law enforcement officers;
- C. Repeated disruption (more than three times in a one-year time period) to the free passage of persons or vehicles in the neighborhood;
- D. Excessive noise in violation of applicable city noise standards in the general plan or municipal code;
- E. Any other impacts on the neighborhood which are disruptive of normal activity in the area.

#### **17.140.055 Sale of marijuana prohibited.**

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It shall be unlawful for any person cultivating marijuana pursuant to this chapter to sell or offer for sale the marijuana permitted to be grown under this chapter.

#### **17.140.060 Enforcement.**

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A. Any violation of this chapter is hereby declared to be a public nuisance.

B. A violation of this chapter may be abated by the city attorney, or other counsel retained by the City, by the prosecution of a civil action for injunctive relief and/or by the abatement procedure set forth in Chapter 8.04.

C. The Chief of Police, or his or her designee (hereafter the "enforcement official"), is hereby authorized to order the abatement of any violation of this chapter by following the abatement procedure as defined in Chapter 8.04. In addition, the enforcement official may require any person owning, leasing, occupying, or having charge or possession of any parcel or property to personally abate and/or remove all medical marijuana plants and improvements to the parcel and/or property that exceed the limits set by this chapter.

D. The remedies provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others, including Chapter 8.04, and none of these remedies prevents the city from using any other remedy at law or in equity which may be available to enforce this chapter or to abate a public nuisance.

**SECTION 3:** Any provision of the Nevada City Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

**SECTION 4:** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable. The City Council of the City of Nevada City declares that it would have adopted all the provisions of this ordinance that remain valid if any provisions of this ordinance are declared invalid.

**SECTION 5:** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

APPROVED FOR INTRODUCTION AT A REGULAR MEETING on the \_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:

PASSED, APPROVED, AND ADOPTED this \_\_\_\_th day of \_\_\_\_\_, 2016, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Jennifer Ray, Mayor

ATTEST:

\_\_\_\_\_  
Neil Locke, City Clerk

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ ) ss.  
CITY OF \_\_\_\_\_ )

I, \_\_\_\_\_, City Clerk of \_\_\_\_\_, do hereby certify that the foregoing ordinance was introduced on the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2015, was regularly adopted at a meeting thereof on the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2015 and was published/posted pursuant to law.

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

# REPORT TO CITY COUNCIL

City of Nevada City  
317 Broad Street  
Nevada City, CA 95959  
[www.nevadacityca.gov](http://www.nevadacityca.gov)

January 27, 2016

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**TITLE:** A Resolution of the City of Nevada City approving ballot measure text to be submitted to the voters on the Initiative Measure to Enact Zoning Ordinance and General Plan Amendments to Permit and Restrict Home-Sharing Short-Term Rentals of Rooms in Single-Family Residences or Guest Houses by Owner Occupying Main Dwelling to be included with the General Municipal Election consolidated with the State-Wide Primary Election of June 7, 2016

**RECOMMENDATION:** Adopt Resolution 2016-XX setting forth the exact form of the question to go on the ballot for the alternate Home-Sharing Short-Term Rentals Initiative Measure so it can go to the voters pursuant to Resolution No. 2015-53.

**CONTACT:** Hal DeGraw, Consulting City Attorney

**BACKGROUND / DISCUSSION:** When presented with certification of an adequate number of sufficient signatures on a second initiative permitting and restricting Home-Sharing short-term rentals, like Airbnbs and VRBOs, the City Council decided to submit that initiative measure to the voters at the next election. Resolution No. 2015-53 was adopted to accomplish this. By Resolution 2016-02 the City requested consolidation of the regularly scheduled municipal election with the general state-wide primary election to be held on June 7, 2016. There is one step necessary to place the matter on the June 7th ballot – adoption of a resolution by the City setting forth the exact form of the question of a measure to appear on the ballot to accompany the full text of the measure. The language should be impartial and informative within the 75 word-limit restriction.

Attached hereto is a proposed resolution to accomplish this final step.

**ENVIRONMENTAL IMPACT:** California courts have held that CEQA does not apply to voter-sponsored (petition) initiatives and CEQA Guidelines §15378(b)(3) now provides such initiatives are not “projects” subject to environmental review.

**FISCAL IMPACT:** Hosted and Home-Sharing Short-Term Rentals become subject to paying Transient Occupancy Tax when the regulations allowing them become effective.

**ATTACHMENTS:**

- Resolution 2016-XX approving ballot measure text.

## RESOLUTION NO. 2016-XX

### **A RESOLUTION OF THE CITY OF NEVADA CITY APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS ON AN INITIATIVE MEASURE TO ENACT ZONING ORDINANCE AND GENERAL PLAN AMENDMENTS TO PERMIT AND RESTRICT HOME-SHARING SHORT-TERM RENTALS OF ROOMS IN SINGLE FAMILY RESIDENCES OR GUEST HOUSES BY OWNER OCCUPYING MAIN DWELLING TO BE INCLUDED WITH THE GENERAL MUNICIPAL ELECTION CONSOLIDATED WITH THE STATE-WIDE PRIMARY ELECTION OF JUNE 7, 2016**

**WHEREAS**, the City Council of the City of Nevada City, when presented with a signed initiative petition to allow Hosted Short-Term Rentals in Nevada City Residential Zones at a regular scheduled meeting on November 18, 2015, decided to adopt the Initiative without change pursuant to California Elections Code §9215 by Resolution No. 2015-51, completing such adoption on December 9, 2015 by adoption of Resolution No. 2015-52 amending the General Plan per the Initiative and by adoption of Ordinance No. 2015-12 adding a new Section 17.72.080 of Chapter 17.72 to the Municipal Code per the Initiative; and

**WHEREAS**, the City Council of the City of Nevada City, when presented with another different signed initiative petition to permit and restrict Home-Sharing Short-Term Rentals at a regular scheduled meeting on December 9, 2015, elected to submit that Initiative to the voters at the general municipal election on June 7, 2016 by passing and adopting Resolution No. 2015-53, a Resolution of the City of Nevada City Submitting an Initiative Measure to Enact Zoning Ordinance and General Plan Amendments to Permit and Restrict Home-Sharing Short-Term Rentals of Rooms in Single-Family Residences or Guest Houses by Owner Occupying Main Dwelling and Council Action Thereon to the Voters at the General Municipal Election on June 7, 2016, which Resolution further directed preparation and submittal for approval of such resolutions and orders as may be necessary for implementation; and

**WHEREAS**, the City Council of the City of Nevada City on January 13, 2016, passed and adopted Resolution 2016-02 requesting consolidation of regularly scheduled municipal election with the general state-wide primary election to be held on June 7, 2016; and

**WHEREAS**, Resolution No. 2015-53 by attachment sets forth the Ballot Title and Summary of the measure Prepared by the City Attorney for the Home-Sharing Short-term Rental Initiative and the full text of the measure, but that Resolution does not set forth the form of the question to appear on the ballot:

**NOW THEREFOR IT IS HEREBY RESOLVED** by the City Council of the City of Nevada City approves for submittal to the voters at the June 7, 2016 Primary election the following question:

Shall the City of Nevada City replace its recently enacted hosted short-term rental regulations resulting from adoption (effective January 8, 2016) of a prior voter initiative with provisions of an alternative voter initiative which continues to permit on-line type home-sharing short-term rentals, like Airbnbs and VRBOs, of two units in single-family residences and guest houses only if the owner occupies the main dwelling, together with other more restrictive zoning regulations and related General Plan amendments?

YES \_\_\_\_\_ NO \_\_\_\_\_

**PASSED AND ADOPTED** at a regular scheduled meeting of the City Council held on this 27<sup>th</sup> day of January, 2016 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
**Jennifer Ray, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Niel Locke, City Clerk**

# REPORT TO CITY COUNCIL

City of Nevada City

317 Broad Street

Nevada City, CA 95959

[www.nevadacityca.gov](http://www.nevadacityca.gov)

January 27, 2016

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**TITLE: Report Back to City Council of Planning Commission Recommendation on Draft Ordinance Restricting Formula Businesses throughout the City**

**RECOMMENDATION:** Consider recommendation made by the Planning Commission and provide direction to staff.

**CONTACT:** Amy Wolfson, City Planner

**BACKGROUND / DISCUSSION:** In late 2014, the City Council expressed interest in the regulation of formula businesses within City limits and requested a review of options by June 1, 2015. Several meetings have been held to date and the matter was eventually referred to the Planning Commission for further consideration (a summary is provided below).

- **December 10, 2014** - Report to City Council by City Manager Mark Prestwich providing information on a study of smaller California cities with such ordinances. The Council reviewed the information submitted and directed staff to develop a strategy on outreach to the merchants and businesses.
- **April 30, 2015** – The City Council held a town hall meeting to provide information to the public about formula ordinances in other communities, answer questions about possible approaches to formula ordinances, and receive general feedback on such an ordinance. Approximately 40 citizens and staff were in attendance.
- **May 27, 2015** – City Council meeting where discussion took place on refinement of possible formula ordinance options. The staff report for this meeting included a 'Matrix of Formula Ordinance Options' (attached) ranging from least restrictive to most restrictive. The Council agreed they preferred Option B (plus/minus) as to their approach to a proposed Formula Ordinance. After discussion, the Council referred the matter to the Planning Commission for their review and discussion.
- **June 25, 2015** – At a Special Planning Commission Meeting, Commissioners made recommendations to staff as to the manner in which a proposed formula ordinance should be framed. It was the Commission's preference that a formula ordinance be applied citywide, but that some flexibility be in place for certain industries. Staff was directed to develop a draft ordinance that prohibited some uses while allowing specified uses with approval of a Conditional Use Permit.
- **October 29, 2015** – At a Special Planning Commission Meeting, Commissioners reviewed a draft ordinance prepared by staff (attached), which reflected the preferred direction expressed by the Commission at the previous June 25, 2015 meeting.

The Nevada City General Plan Land Use Element recognizes the importance of local entrepreneurship, such as restaurants and specialty shops, to the viability of the City's tourist-oriented economy. The draft ordinance considered by the Planning Commission, and presently before the Council, prohibits formula restaurant and retail establishments entirely throughout the City. Specified service businesses are proposed to be permissible with a Conditional Use Permit, requiring the adoption of specified findings that seek to preserve Nevada City's small-town character. The Planning Commission recommended denial of the draft formula ordinance at the October 29 Special Meeting.

Commissioners deliberated over the ordinance language at length and all expressed the importance of regulating formula business in some manner. However, Commissioners were split on the most appropriate method of regulation. Among the concerns conveyed by the majority was that the draft ordinance fails to achieve the ultimate goal of preserving the City's character, but rather endeavors only to discourage a faction of business without promoting aspects that are supportive of preserving the local character. Commissioners preferred an approach that bolstered existing ordinances with design controls that set out to preserve the small-town aspects and welcoming attitude prevalent in existing local businesses. It was suggested that a preservation ordinance may be a more appropriate means of regulating formula businesses by promoting the preservation of the historic character rather than discouraging certain business-types within the City. Another concern included whether the definition of formula business should encompass interior space given that the City has not historically regulated the interior design of businesses. A counter motion was provided which recommends that Council direct staff to research opportunities to strengthen existing ordinance sections in a manner that achieves some of the goals of the draft ordinance while simultaneously promoting those characteristics the City would like to see portrayed by new businesses. The Commission's summary minutes are attached.

**SUMMARY OF PLANNING COMMISSION ACTION:** *MOTION 1* by Commissioner Meek, Second by Commissioner Thiem, that the Planning Commission recommends the draft ordinance as presented to the City Council. **VOTE:** **Ayes:** Meek; **Nos:** Lauters, Thiem, Croul, Parent (1-4).

*MOTION 2* by Commissioner Thiem, Second by Commissioner Parent, that the Planning Commission recommends that Council direct staff to research opportunities to strengthen existing ordinance sections in a manner that achieves some of the goals of the draft ordinance while simultaneously promoting those characteristics the City would like to see portrayed by new businesses. **VOTE:** **Ayes:** Lauters, Thiem, Croul, Parent; **Abstain:** Meek (4-0, 1 abstention)

**ENVIRONMENTAL CONSIDERATIONS:** Not applicable at this time.

**FINANCIAL CONSIDERATIONS:** None.

**ATTACHMENTS:**

- 1) October 15, 2015 Planning Commission Staff Report (includes Draft Ordinance)
- 2) October 29, 2015 Planning Commission Summary Minutes
- 3) Matrix of Formula Ordinance Options (May 27, 2015)
- 4) List of supporters and letter from David Painter (submitted May 27, 2015)



# City of Nevada City

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**TO:** Planning Commission  
**FROM:** Amy Wolfson, City Planner  
**HEARING DATE:** October 15, 2015  
**RE:** Draft Ordinance Restricting Formula Businesses in Nevada City

## **ACTION REQUESTED**

Review and provide recommendation to the City Council to adopt an ordinance pertaining to the regulation of formula businesses within Nevada City.

## **BACKGROUND**

The City Council has expressed interest in adopting an ordinance pertaining to the regulation of formula businesses within City limits. The Nevada City General Plan Land Use Element recognizes the importance of diversifying economically while maintaining characteristics that distinguish Nevada City from other jurisdictions. The City's small-town scale and specialty shops and restaurants are among the distinguishing features that are essential to the viability of the City's thriving tourist-oriented economy. The General Plan also recognizes that non-tourist oriented businesses, those devoted to local service and general merchandise retail (i.e. financial institutions, automotive supply, salon service, and routine retail sales such as hardware and clothing stores), have failed to grow appreciably and may be in decline. The proposed formula business ordinance reflects the City's general philosophy that preserving the City's character and scale is vital in its endeavor to enhance the tourism economy and is also vital in maintaining its small-town charm valued by its residents.

To date, four public meetings have been held for the purpose of developing a formula ordinance that meets the needs of the community:

1. **December 10, 2014** – In response to one of the City Council's 12-month strategic goals, City Manager Mark Prestwich presented a report to the City Council providing information on a study of smaller California cities with such ordinances. The Council reviewed the information submitted and directed staff to develop a strategy on outreach to the merchants and businesses.
2. **April 30, 2015** – The City Council held a town hall meeting to provide information to the public about formula ordinances in other communities, answer questions about possible approaches to formula ordinances, and receive general feedback on such an ordinance. Approximately 40 citizens and staff were in attendance. A majority of attendees expressed support for a fairly restrictive ordinance. However, a few citizens favored more flexible standards through implementation of a Conditional Use Permit process.
3. **May 27, 2015** – City Council meeting where discussion took place on refinement of possible formula ordinance options. After discussion, the Council directed the City Manager to forward the matter to the Planning Commission for their review and discussion. The staff report for this meeting (attached) included a 'Matrix of Formula Ordinance Options' being options ranging from least restrictive to most restrictive. The Council agreed they preferred Option B (plus/minus) as to

their approach to a proposed Formula Ordinance. The Council requested the Commission review the matter and bring the matter back to the Council.

4. **June 25, 2015** – At a Special Planning Commission Meeting, Commissioners made recommendations to staff as to the manner in which a proposed formula ordinance should be framed. It was the Commission’s preference that a formula ordinance be applied City-wide, but that some flexibility be in place for certain industries. Staff was directed to develop a draft ordinance that prohibited some uses while allowing specified uses with approval of a Conditional Use Permit. Staff was also directed to clearly define the term “formula Business.”

**DRAFT ORDINANCE**

The draft ordinance before you reflects the direction of Planning Commissioners combined with the sentiments of elected officials and the community, as understood by staff. The ordinance prohibits formula restaurant and retail establishments entirely throughout the City. Specified service businesses are proposed as permissible with a Conditional Use Permit, requiring the adoption of specified findings that seek to preserve Nevada City’s small-town character.

Staff has provided a list of business types that may warrant consideration for allowing pursuant to a Conditional Use Permit (CUP). As currently written, these service-oriented business types are not included in the language that allows businesses with a CUP process, though could be interpreted as a permitted service under the “not limited to” clause of the ordinance.

**ENVIRONMENTAL REVIEW**

The project would be exempt from environmental review pursuant to Sections 15061(b)(3) of the California Environmental Quality Act (CEQA). Exemption applies to activities covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The adoption of a formula business ordinance does not qualify as a project, defined in the CEQA Guidelines as an action which “...has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment....” Adoption of the proposed code amendment will not result in either a direct or indirect change in the environment and merely sets policy related to the type of businesses permitted within City limits.

**PLANNING COMMISSION RECOMMENDATION:**

Staff recommends that the Planning Commission, after hearing from the public and consideration, recommend the draft ordinance for adoption to the City Council, with any modifications.

**ATTACHMENTS:**

1. Proposed Draft Ordinance
2. Council meeting minutes excerpt from May 27, 2015
3. Chamber of Commerce Letter, May 20, 2015
4. List of Potential Service Oriented Formula Businesses

**ORDINANCE NO. 2015-\_\_\_****AN ORDINANCE OF THE CITY OF NEVADA CITY ADDING  
CHAPTER 17.70 TO THE NEVADA CITY MUNICIPAL CODE RESTRICTING  
AND REGULATING FORMULA BUSINESSES**

**WHEREAS**, Nevada City is dedicated to preserving and enhancing its small town character and historical architecture while providing quality public services for our current and future residents, businesses and visitors; and

**WHEREAS**, over the years Nevada City has thrived and prospered by maintaining a special look and feel unique among Mother Lode towns by enacting and implementing ordinances and standards that assist in retaining much of the tradition and architecture while balancing the community's priceless history with the need for a thriving contemporary economy; and

**WHEREAS**, part of that special look and feel is attributable to the unique and diverse local businesses in Nevada City that are different from those formula businesses commonly located in urban malls and shopping centers; and

**WHEREAS**, the uniqueness, diversity and economic vitality of the City's commercial areas and the quality of life in Nevada City could be compromised by unrestricted allowance of formula businesses in its business zones:

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Nevada City as follows:

**SECTION I:**

There is hereby added to the Nevada County Municipal Code, Chapter 17.70 which is to read as follows:

**Chapter 17.70  
FORMULA BUSINESS RESTRICTIONS AND REGULATIONS**

**17.70.01 Purpose**

The purpose of this chapter is to restrict and regulate the location and design of formula business establishments to maintain the unique and historic character of Nevada City, the diversity and distinctiveness of its commercial areas, and the small town quality of life for its residents and visitors while preserving and protecting the economic vitality of local businesses.

**17.70.02 Application**

The regulations in this chapter apply City-wide to any proposed commercial development meeting the definition of a Formula Business that is not expressly conditionally permitted with a use permit by this chapter.

### **17.70.03 Definitions**

For the purpose of this chapter, certain terms and words are defined as set out in this chapter:

“Formula Business” shall mean a commercial business or use which, by ownership, franchise, contractual or other arrangement, established or recognized business practice, or membership affiliation, that maintains, as part of a group of ten or more similar businesses located outside Nevada City, any of the following:

1. Business name common to similar businesses located elsewhere;
2. Appearance, business presentation or other similar features, which make the business substantially similar to other businesses located elsewhere;
3. Use of a trademark or logo common to similar businesses located elsewhere (not including logos or trademarks used to indicate participation in a buying group or cooperative of smaller independent businesses to obtain volume pricing, including but not limited to, National Automotive Parts Association (NAPA) or Independent Grocers Alliance (IGA), or to reflect mention by rating organization, including, but not limited to, AAA, Mobile, Michelin or internet sites like Trip Advisor);
4. Standardized services or uniforms common to similar businesses, chains or franchises located elsewhere;
5. Interior décor common to similar businesses located elsewhere; or
6. Architecture, exterior design, interior décor or signs common to similar businesses located elsewhere.

“Restaurant” that can be determined to be a Formula Business means an eating establishment devoted to the preparation and offering of food and beverages for sale to the public for consumption either on or off the premises, including cafes, coffee houses, and fast food and drive-through establishments.

“Retail Commercial Establishments” that can be determined to be a Formula Business means all businesses selling goods or merchandise of any kind to the public at retail, including discount and factory stores.

“Service Businesses” that can be determined to be a Formula Business means businesses that only provide services for a fee rather than goods. Businesses selling goods from a showroom in addition to providing services shall be considered “Retail Commercial Establishments”.

### **17.70.03 Formula Businesses Prohibited and Restricted**

A. Prohibited: Notwithstanding other provisions of Title 17 Zoning, all Restaurants and Retail Commercial Establishments determined to be Formula Businesses are prohibited in all zones in Nevada City.

B. Restricted: Where specified as a permitted use in the zone where they are proposed to be located and determined to be necessary to the economic vitality of the city, Service Businesses and Formula Businesses that are normally conducted as a branch or as part of a chain or franchise meeting the definition of a Formula Business rather than

an individual business, may be permitted as conditional uses with a use permit upon making the required additional special findings required in subsection C. Such conditional uses include, but are not limited to:

1. Banks and financial institutions;
2. Automobile service or fueling stations, garages, tire repair shops and auto supply stores;
3. Health and fitness clubs; and
4. Boutique hotels or motels, with locally unique names and identities.

C. Required findings for approval of use permits: In order to approve or conditionally approve any application for a use permit for a Formula Business allowed herein as a conditional use, the following special findings must be made:

1. That the proposed use is necessary to preserve Nevada City's economic vitality and will not create an undue concentration of such Formula Businesses in the area.
2. That the proposed use will contribute to an appropriate balance of business sizes and presents a scale and design in harmony with the historic, small town character of Nevada City;
3. That the proposed development is consistent with and will enhance Nevada City's history of independent, unique, and single location businesses, thus contributing to the uniqueness of the town;
4. That the proposed development does not detract from, but complements and enhances the architectural integrity and eclectic combination of architectural styles of Nevada City evoking the Mother Lode era; and
5. That the sign for the proposed use does not include any trademark or logo identifying it as a Formula Business.

D. This section is in addition to other regulations set forth elsewhere in this title. In the event of a conflict between the provisions of this section and any other regulations in this title, the provisions of this section shall prevail.

E. Businesses and uses lawfully commenced prior to the effective date of the ordinance adopting this chapter shall be allowed to continue as nonconforming uses subject to Chapter 17.76.

## SECTION II:

This Ordinance shall become effective thirty (30) days after the adoption date thereof and within fifteen (15) days of the passage of this Ordinance, the City Clerk shall publish this Ordinance in the Union, a newspaper of general circulation.

**PASSED AND ADOPTED** at a regularly scheduled meeting of the City Council of Nevada City held this \_\_\_ day of \_\_\_\_\_, 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Jenifer Ray, Mayor

**ATTEST:**

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Niel Locke, City Clerk

Regular Meeting of the City Council of Nevada City  
May 27, 2015  
Page 3 of 3

**C. Subject:** Refinement of Possible Formula Ordinance Options

**Public Comment**

**Teresa Mann**, owner of JJ Jackson's – read a letter from the Chamber of Commerce providing their comments and support to the City's proactive approach to have a community discussion of this issue and establish an ordinance that works for all.

**Kirk Valentine**, owner of Nevada Classic Café – Supports an ordinance against formula businesses coming to Nevada City; keep the quaintness of the town as is.

**Laurie Oberholtzer** – Agrees with Kirk; let's do it before it's too late.

**Susan Shaw**, owner of Main Street Antiques – Supports an ordinance against formula businesses.

**Peter Morrow** – Supports an ordinance; good idea.

Public Comment – Closed

**Minute Order:** Council directs staff to forward this matter to the Planning Commission for their review/discussion as it involves zoning issues using Option B (plus/minus) approach per the Formula Ordinance Matrix and bring back to Council.

**8. CORRESPONDENCE:**

None

**9. ANNOUNCEMENTS:**

None

**10. CITY MANAGER'S REPORT:**

City Manager Prestwich stated the Drought Action Plan adopted report is based on the 2013-14 water usage; outdoor watering and reducing 25% is required; will come back to Council with specific strategies on water conservation.

**11. ADJOURNMENT:**

**Action:** Motion by Strawser, seconded by Phelps to adjourn – 8:30 PM  
(Approved 5 - 0)

\_\_\_\_\_  
Terri Andersen, Mayor

Attest:

\_\_\_\_\_  
Niel Locke, City Clerk

CC MIN EXCERPT MAY 27 2015

RECEIVED

MAY 20 2015

CITY OF NEVADA CITY



# Nevada City Chamber of Commerce

**NEVADA CITY**  
*“National Register  
of Historic Places”*

*Designated September 23, 1985*

May 20, 2015

Nevada City Council  
317 Broad Street  
Nevada City, CA 95959

Re: Proposed Formula Business Ordinance

Honorable Mayor Anderson & City Council Members:

The Nevada City Chamber of Commerce has been involved in discussions with council members and the recent Town Hall meeting regarding the proposed Formula Business Ordinance. We have had several detailed discussions at our Board level and formed a committee to research how other communities have addressed the issue. We have read and reviewed the ordinances in place for many communities across the United States.

We are very supportive of preserving the unique character and historic importance of our City. We also believe that our demographics and parking constraints downtown have resulted in our community not being ideally suited for or meeting the “formula” for many of these types of businesses. We believe that the establishment of our nationally registered historic district and the enforcement of our design guidelines have created a distinct and eclectic visual appearance that needs to be maintained. We are also concerned about the long-term economic vitality of our community’s commercial districts and want to promote as much as possible job creation and the ability to provide for the day-to-day necessities of our residents within our City limits. We do not want an ordinance that could cause us to miss opportunities for satisfying a retail need that would also through sales tax generation help balance our City’s budget.

- We believe the Downtown Historic District should be the first step in establishing these restrictions. We see obvious differences in our downtown commercial district and the Seven Hills Business District.

- We are concerned about the outright banning of certain types of businesses or named chains. We support the ordinance addressing all types of retail, including restaurants, but believe that formula businesses should be allowed to apply for a conditional use permit which would only be granted if the business could demonstrate real benefit to the community without damaging our diversity of businesses, not create an over saturation of a type of business, comply with all existing City ordinances and also contribute to the economic vitality of the City.
- We want to be sure that any ordinance does not cause harm to any existing business or landowner. We have many existing businesses and properties that could possibly not comply with an ordinance – either because of size or business affiliations.
- We agree that some types of businesses need to be exempt from the ordinance or treated differently such as gas stations, banks, real estate brokerages and lodging.

We support the City's proactive approach to have a community discussion of this issue and establish an ordinance that we can all support. We look forward to continuing our involvement in these discussions. We believe that there is a solution that can provide the protections we all want and yet maintain a business friendly environment in the City.

Sincerely,

NEVADA CITY CHAMBER OF COMMERCE

  
Gary Tittle, Treasurer

**List of Potential Service Oriented Formula Businesses**

Auto and truck dealers, e.g. Chevy, Ford, etc.  
Auto rentals, e.g. Hertz, Avis, Enterprise  
Association offices, e.g. AAA  
Cable TV and satellite companies, e.g. Comcast, Dish  
Cellular and phone, e.g. AT&T, Sprint, Verizon  
Department stores, e.g. Sears  
Employment agencies, e.g. Adeco, Rush Personnel Services  
Garage doors and openers, e.g. Genie  
Hardware retail, e.g. True Value, Ace  
Hearing aids and assistive devices, e.g. Audibel  
Hospitals, e.g. Dignity Health  
Income Tax services, e.g. H&R Block  
Insurance companies, e.g. State Farm, Allstate, Geico, Farmers  
Internet access providers  
Moving and storage, e.g. Bekins, Red Ball  
Non-profit offices, e.g. Sierra Club, American Rivers  
Pest control companies, e.g. Orkin, Western Exterminators, Terminix  
Plumbers, e.g. Mr. Rooter  
Printer/copier repair e.g. Canon  
Realtors, e.g. Network, Intero  
Rentals, e.g. U-Haul  
Shipping & mailing services, e.g. Postnet  
Title Companies  
Water services, e.g. Culligan  
Window & door stores, e.g. Marvin



# City of Nevada City

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*SPECIAL MEETING*  
**PLANNING COMMISSION MINUTES**  
**THURSDAY, OCTOBER 29, 2015 1:30 PM**  
**Council Chambers – City Hall**  
**317 Broad Street - Nevada City, CA 95959**

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**•AUDIENCE MEMBERS DESIRING TO ADDRESS THE PLANNING COMMISSION ON ITEMS ON THE AGENDA:** After recognition by the Chair, state your name, address and your comments or questions. Please direct your remarks to the Commission. So that all interested parties may speak, please limit your comments to the item under discussion. All citizens will be given the opportunity to speak, consistent with Constitutional rights. Time limits are at the discretion of the Chair. **•If you challenge** the Commission’s decision on any matter in court, you will be limited to raising only those issues you or someone else specifically raised or delivered in writing to the Planning Commission at or prior to the meeting. **•Requests for disability-related modifications or accommodations** may be made by contacting the City Planner and should be made at least 72 hours prior to the meeting.

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**Mission Statement**

*The City of Nevada City is dedicated to preserving and enhancing its small town character and historical architecture while providing quality public services for our current and future residents, businesses and visitors.*

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** Chair Brad Croul, Vice-Chair Pamela Meek, Commissioners Dan Thiem, John Parent, Stuart Lauters

**APPROVAL OF MINUTES** October 15, 2015 Regular Meeting as revised, correcting typos

**Motion: Approve the October 15, 2015 minutes as revised**

**Moved:** P. Meek    **Second:** D. Thiem    **Vote:** 4-ayes, 1-abstain

**HEARING FROM THE PUBLIC:** Comments on items not on the agenda are welcome and are limited to three minutes. However, action or discussion by the Commission may not occur at this time.

**Linda Chaplain:** Recommended beatification of the City pool landscaping.

**Niel Locke:** Announced Nisenan Heritage Days on November 6&7people; presented the cultural significance of the staff with a white feather used for peaceful tribal trespass

**SIGN APPLICATION**

1. **309 Broad Street -- Cindy Giardina** – Proposed supplementary signage to hang beneath previously approved signage for “Golden Era” cocktail lounge; double-sided, 2.6 square feet (main sign: 17.6 square feet)

**Present Representative(s):** Cindy Giardina,

**Commissioner Discussion:** ensued regarding how the signage would be attached and the consensus was that the supplementary signage was consistent with the main

**Public:** Niel Locke encouraged the Commissioners to see the business.

**Motion:** Approve revised signage as presented today

**Moved:** J.Parent    **Second:** D. Thiem **Vote:** 4-ayes, 0-nos, 1-abstain

**TREE REMOVAL APPLICATION**

1. **508 Broad Street – Elizabeth Ely and David Ferrier** – Removal of seven trees

**Discussion:** Commissioners discussed the merits of leaving or removing trees and agreed that the retaining wall installation appeared to be necessary. The applicant was encouraged to provide additional landscaping to take its place.

**Present Representative(s):** Elizabeth Ely and Davis Ferrier, owners

**Motion:** Approve the removal of 7 cedar trees at 505 Broad Street

**Moved:** P. Meek      **Second:** D. Thiem      **Vote:** 5-ayes, 0nos

**ARCHITECTURAL REVIEW (Outside Historical District, but buffering)**

1. **108 Grove Street – Rick Ewald, Owner** – Architectural Review application to review the proposed residence to replace the existing fire-damaged residence (continued from October 15, 2015 meeting).

**Present Representative(s): Rick Ewald**

Two neighbor provided letter in support of the project prior to the hearing date: 1)William and Shirley Elliot at 122 Grove Street and 2) Tobias Cole at 119 Grove Street

The applicant provided one additional letter of support at the hearing from Caralyn and Steve Davis at 206 Nevada Street.

One neighbor provided a letter outlining concerns: John and Pamela Luding at 112 Grove Street expressed a preference for the existing wood shingle siding as opposed to the horizontal siding, concerns with the change from a hip-style to a gable-style roof design, and concerns with the lack of a front door on the street side of the residence.

**Commissioner Discussion:** Commissioner Meek echoed many concerns expressed by the Ludings and expressed a preference for retaining the existing architecture to the extent possible. Other commissioners found the gable roof design acceptable given the topography of the site and the existing screening vegetation. Some also had concerns with the proposed alcove which follows the original foundation and previously delineated a front door. There was concern that the visual impact of an alcove suggests a entry where none would exist. Further concern was expresses for the horizontally oriented window in the alcove, as well as a desire for thicker trim around the windows.

Applicant made a request to remove the existing chimney which is threatening collapse. The commissioners agreed that this portion of the demolition is acceptable provided that the applicant submit to staff a scope of work prepared by the engineer detailing what would need to occur to achieve this.

**Motion:** Continue the hearing to the November 19 meeting in order to allow the applicant a chance to address some of the Commissioner’s concerns.

**Moved:** D. Thiem      **Second:** S. Lauters      **Vote:** 5-ayes, 0-nos

**CITY COUCIL RECOMMENDATION:**

A request for recommendations to the City Council regarding a proposed draft ordinance regulating formula businesses throughout the City.

**Public Testimony:**

Staff read a letter from Chuck Durrett, Local Architect which supported the adoption of the formula ordinance but noted some concerns that this type of regulation may have on the community.

Sally Harris of the 600 Block of Spring Street and also a business owner, spoke in support of the ordinance as currently drafted citing the community support provided at previous meetings.

**Discussion:** The Commissioners discussed the decision to leave out strict size restrictions. Commissioner Thiem didn’t feel that the draft ordinance would achieve the goals expressed by the community to ensure personal connection to the places the community does business. The Ordinance would oppress a faction of business without promoting or encouraging local business ownership. A majority of the Commissioners felt a more comprehensive approach that looks at how to encourage what the community wants rather than just prohibits what is not wanted. Commissioner Meek felt that the Conditional Use Permit process would address the concerns expressed by other commissioners. Commissioner Thiem expressed his desire to bolster existing ordinances to preserve the character and look of the town without an outright ban that essentially amounts to picking “winners” and “losers” to invest City.

Niel Locke provided testimony regarding the City of Carmel which has a McDonalds that was relegated to very restrictive design standards.

Commissioners are overall supportive of the goals of the Ordinance but would like to see them incorporated as part of a more comprehensive approach which emphasizes the promotion of appropriate business types as opposed to the prohibition of inappropriate business types

**Motion 1:** Recommend approval of the ordinance as presented regarding logo signage to the City Council

**Moved:** P. Meek

**Second:** D. Thiem

**Vote:** 1-aye, 4-nos (motion denied)

**Motion 2:** Recommend that Council direct staff to research opportunities to strengthen existing ordinance sections to in a manner that achieves some of the goals of the draft ordinance

**Moved:** D. Thiem

**Second:** J. Parent

**Vote:** 4-ayes, 1-abstain (motion carried)

**PLANNING COMMISSION LIAISON REPORTS** – Reports on previously approved projects – **informational only**

Dead trees at Pinecrest Condos

New antennas at the existing monopine on Helling Way

Re-routing of gas line, residential

A couple like-for-like re-roof, outside HD

**TRAINING / DISCUSSION:** **City Planner Reports - informational only and no action will be taken**

1. “The Grove” Subdivision
2. Subdivide KVMR/Nevada Theatre parcel

**STAFF APPROVALS AND DETERMINATIONS – (for information only):**

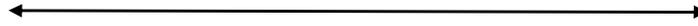
**CORRESPONDENCE:**

**ANNOUNCEMENTS:** **Next Regular Meeting – November 19, 2015**

**ADJOURNMENT:** **Moved:** P. Meek, **Second:** J. Parent

## Matrix of Formula Ordinance Options

*Least Restrictive*



*Most Restrictive*

	<b>Option A</b>	<b>Option B</b>	<b>Option C</b>
<b>Application of Formula Ordinance</b>	Historic District	Historic District or Citywide	Citywide
<b>Types of Formula Businesses Regulated</b>	Restaurants Only	All Retail	All Formula Businesses
<b>Regulatory Approach</b>	Conditional Use Permit and/or Cap	Conditional Use Permit and/or Cap - Possibly some prohibitions	Prohibit

We, the undersigned support a city wide ordinance to restrict Formula Stores and to promote and protect locally owned and operated business in Nevada City.

<u>Name</u>	<u>Business</u>	<u>Title</u>
Jennifer Jaquet	S.O.A.P.	Sales Assoc.
Inga Frydendal	S.O.A.P.	Sales Assoc.
Chris Hammond	Nevada City Video	assistant manager
Michelle Gummow	Humble Fabrics	CO/OWNER
Cassidy Peterson	Copper River Bag Co.	manager
Thomas Moore	Magic Theatre	Asssistant Manager
Nathan Collins	Magic Theatre	Clerk
Kirk Miller	NC Resident	520 E Broad St
ALLEN POIRSON	NC HOMEOWNER	316 NEVADA STREET
Quan Y. Mo-Falgoutte	Bel Capelli Salon	Receptionist.
Christy Kinnard	Bel Capelli Salon	Stylist
Kellie Stoekke	Bel Capelli Salon	owner
Laura Brush	Bel Capelli Salon	Stylist.
Kaycie Hajduk	Bel Capelli Salon	stylist
Andrea Baron	abstract	clothing store.
Alex Blesberg	Fur Traders	clothing
Bo Wolfson	Maiden Lane	clothing
	Titanium Rings Studio	Jewelry Design

We, the undersigned, support a city wide ordinance to restrict Formula Stores and to promote and protect locally owned and operated business in Nevada City.

<u>Name</u>	<u>Business</u>	<u>Title</u>
Amanda Spathelf	Jemigans.	Bartender
John Park	S.P.D.	clerk
Wes Pankov	S.P.D	Clerk
Kelly Johnson	DeKinos N.C. Pharmacy	owner
Kay Byberg	Second Time Around	owner
Tim Mery	Nevada County Heavy Art.	Owner
GENO SALERNO	OL REPUBLIC	BARTENDER
CHRIS MCGOVERN	REAL WHEELS	OWNER
Heather Zelle	Twist Salon	owner
Jamee Zelle	Twist Salon	owner
Joy Bratton	Fit Culture Studio	owner
Susan Murphy	FOUR PAWS ANIMAL CLINIC	owner

# Dave Painter's Letter

## SPD

Nevada City is a unique town. We all know that. There is no need to go over all the reasons we love this place and why we want to maintain an atmosphere that has evolved over the last 150 years. There are similar communities in California and across the country, and they share a common feature. When you walk their streets, you will not find franchises and "box stores." The storefronts are reserved for shops and businesses that maintain the integrity of the town and enhance the experience of residents and visitors. Franchises and "box stores" are easy to find. They are everywhere. Some work very hard at developing a character and to a degree are successful, but many are soulless. There is a kind of anonymity that takes over when you pass through their doors. It's not that the atmosphere is unfriendly, it's just that there is no real feeling. No emotional attachment. You don't really care one way or the other. When I go into a business, I like knowing that I'm dealing with the person who owns it or at least to know s/he is somewhere close by. I know that I will be treated well and fairly and that the money I spend stays in our community. The business owners are residents, and we all share common experiences. We support the many schools, churches, arts organizations and other non-profits that enrich our lives and support those in our community who need our help. There is a place for the franchises, "box stores," and multi-national companies, just as there is for internet storefronts; however, none of these offer the comfort and general, good feeling of a "Broad Street". The 7 Hills Business District may not have the charm of downtown but it's very much a part of the city, offering a wide selection of independently owned businesses that prosper and contribute greatly to our local economy. If a ban on franchises and "box stores" should be implemented it must be city wide.

# REPORT TO CITY COUNCIL

City of Nevada City  
317 Broad Street  
Nevada City, CA 95959  
[www.nevadacityca.gov](http://www.nevadacityca.gov)

January 27, 2016

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**TITLE: Determination of Whether Additional Review of Commercial Street Boardwalk is Desired**

**RECOMMENDATION:** Provide direction on whether additional review is desired and, if desired, what information to include in report.

**CONTACT:** Amy Wolfson, City Planner

**BACKGROUND/DISCUSSION:** At the City Council's August 12, 2015 meeting, Council Member Duane Strawser and Vice Mayor Evans Phelps requested a discussion about the Commercial Street Boardwalk be placed on a future City Council agenda.

Staff has compiled the attached Boardwalk Timeline (2011-2015) summarizing the history of the Boardwalk. As noted in the timeline, the Boardwalk began as a pilot project to allow for review and determine any environmental impacts. In October 2012, the City Council voted to move forward with formal environmental review. A formal Negative Declaration was approved February 4, 2014.

A previous City Council request to circulate a boardwalk survey to businesses and property owners in fall 2014 was not initiated. Staff is seeking direction on when to review and what information to include in a future report if it is desired by the City Council.

**ENVIRONMENTAL CONSIDERATIONS:** The City Council approved a Negative Declaration on February 5, 2014 finding the project was exempt from the California Environmental Quality Act (CEQA).

**FINANCIAL CONSIDERATIONS:** Not applicable.

**ATTACHMENTS:**

- ✓ Boardwalk Timeline (2011-2015)
- ✓ Correspondence Received
  - Letter from Pete's Pizza
  - Letter from Nevada City Chamber of Commerce
  - Letter from Adeline Harris

## **BOARDWALK TIMELINE** **2011 - 2015**

**March, 2011**, the Planning Commission reviewed the pilot project and architecture of the Boardwalk and adopted a Notice of Exemption pursuant to CEQA, to allow for a six-month review period to determine any significant environmental impacts. The boardwalk was installed in August of 2011, to be reviewed over a six month period (September 2011 to March of 2012).

**March of 2012**, Council approved the extension of the first 6-month review period be extended for another six months (April to September 2012) to allow the boardwalk use to undergo a full year of use, events and weather.

**October 2012, the City Council** voted to allow the boardwalk to continue for another year and to move forward with the environmental review of the project. This environmental review is the result of the monitoring of the Boardwalk by City staff since October, 2012.

**Fall of 2013 staff** completed the environmental review and has completed a draft Negative Declaration for the Boardwalk project. CEQA requires a 30-day notice for interested agencies to review the document and respond with any comments.

**Advisory Review Committee met on January 7, 2013** to review the environmental document and made a recommendation of adoption to the Planning Commission.

**Planning Commission held a public hearing on January 16, 2014** to consider the environmental document and obtain public comments. A copy of the draft meeting minutes are attached which include written comments submitted at the meeting.

The Commission directed staff to obtain confirmation from the Fire Chief that the boardwalk was installed compliant with any fire codes. The Fire Chief provided his written confirmation stating the boardwalk complies with Fire Codes.

After hearing from the public, the Planning Commission voted unanimously (5-0) to recommend to the Council adoption of the negative declaration prepared for the Boardwalk project.

### **February 5, 2014 – City Council Meeting**

The Council reviewed the environmental document and the project.

- 1. Environmental document: Action:** Motion by Bergman, seconded by Strawser to approve Negative Declaration A-G as presented. **(Approved 4 – 0, Absent Ray)**
  
- 2. Boardwalk Project: Action:** Motion by Bergman, seconded by Harris for the boardwalk to continue for a one year period and to direct staff to circulate a boardwalk survey study to businesses and property owners in the Fall to bring back to Council along with the City Manager and Police Chief to report to Council.  
**(Approved 3 – 1 – 0, Harris, Strawser, Bergman - Noes Andersen – Absent Ray)**

Each review by the Commission or Council included surveys conducted by the public and/or the Sustainability Team (Reinette Senum, contact). Each meeting was well attended and meeting minutes are available.

RECEIVED

AUG 19 2015

CITY OF NEVADA CITY

August 19, 2015

Hon. Jennifer Ray and the City Council of Nevada City:

My husband, Aaron Flores, and I owned Pete's Pizza located on Commercial Street in Nevada City. We closed our restaurant a few weeks ago and since that date have been asked by numerous people why we did so. We feel that it is fair to answer that question and to put to rest all the rumors and inaccuracies that have been in the wind.

In July of 2011 we opened Pete's Pizza on Commercial Street in Nevada City. Our plan was to offer the same quality of pizza products that we had offered for 6 years at our original location in Grass Valley. From the day that we opened, our restaurant was a stunning success. We served the local population and tourists, employed young people, provided reasonably priced quality food and felt good about what we were doing.

When the Boardwalk was installed, we supported it. It was and is a beautiful structure and the intentions and intended uses were admirable. Properly managed, the Boardwalk could have been an asset to Commercial Street and to the larger community. Unfortunately, that has not been the case. Soon after the Boardwalk opened it appeared to us that a group of people seemed to claim it for their own. This group of people paid no attention to the non smoking signs, bought and sold illegal drugs in plain view, argued, kept their belongings and animals under and upon the Boardwalk. From time-to-time one or another of the groups that "claimed" the Boardwalk would object to other groups or just residents and tourists from using the Boardwalk and fights would erupt. There were physical altercations and public intoxication abound. This is continuing today.

Our income began to drop in 2013 as the Boardwalk became toxic and as of the date that we were forced to close had dropped to below what was sustainable. In order to be absolutely clear about this, our retail income was fine and we had a good business until the Boardwalk was intolerable and we heard from our patrons "We don't go to Commercial Street anymore. We can't stand walking by the Boardwalk." (I still hear this a few times a week at least.) Once the Boardwalk was installed people began to use our restroom to inject drugs, bathe and dye their hair, vandalized our bathroom, stole from us, smoked near our front door, refused to allow local people and tourists to use the tables in front, harbored vicious dogs, harassed our employees and turned what

was originally a beautiful space into a blighted area. We have closed our business because of the Boardwalk and the ongoing battle to do day-to-day business in a normal, healthy environment.

Respectfully,



Lorri Flores and Aaron Flores

was originally a beautiful space into a blighted area. We have closed our business because of the Boardwalk and the ongoing battle to do day-to-day business in a normal, healthy environment.

Respectfully,



Leri Flores and Aaron Flores

PETE'S PIZZA & TAP HOUSE  
PETE'S PIZZA NEVADA CITY  
114 W MAIN STREET  
GRASS VALLEY, CA 95946  
PH# 530.205.6529  
email PETESP122AGV@YAHOO.COM

John Jennifer Ray &  
Nevada City Council



# Nevada City Chamber of Commerce

**NEVADA CITY**  
*“National Register  
of Historic Places”*

*Designated September 23, 1985*

August 18, 2015

Honorable Mayor Ray & City Council Members:

The Chamber Board of Directors would like to express our support for the Commercial Street Boardwalk as a key part of the vision for a vibrant Commercial Street entertainment/hospitality district. We feel that it is a purely positive feature and that its current status as under review/evaluation is a distraction from the real issue. We urge the Council to grant the Boardwalk permanent acceptance.

Many business people, visitors and local residents agree that the true challenge is the homeless population and that it has been with us for decades. When Nevada City “cleans up” one gathering place, the indigents simply move to another. The result is that we have some very tidy and attractive public spaces and unchanged behavior.

The homeless population is a challenge, it was present before the Boardwalk, and will still be present if the Boardwalk is removed. We’ll have to go back to stepping over drunks on the sidewalk or walking in the street to avoid doing so.

What is needed is to focus our efforts on the anti-social behavior, rather than on the locations where it takes place. It is the vagrancy, drug-dealing, smoking, public intoxication and belligerence that require our attention, perhaps through a higher priority on enforcement, possibly including new statutes/regulations/ordinances if the current regulations do not provide a handle for enforcement.

Let’s imagine what lower Commercial Street would be like with comfortable outdoor seating, a well-lit evening environment, and a clear understanding that the inappropriate behavior will not be ignored.

It will take a shared vision, which we have, and a correct focus, which has so far eluded us.

Sincerely,  
NEVADA CITY CHAMBER OF COMMERCE

Paul Sieving, President

**132 Main Street Nevada City, CA 95959 • PH: (530) 265-2692 • FAX: (530) 265-3892**  
**www.nevadacitychamber.com e-mail info@nevadacitychamber.com**

December 3, 2015

Dear Nevada City Council,

I write to you as a concerned 34 year resident of Nevada City. I have a thriving short- term rental unit on my property on Boulder St. This unit is loved by neighbors, friends, friends of friends, and visitors. Due to its close proximity to the main dwelling, I would never consider renting it as a long-term unit. Under the initiative presented to you by the Committee to Support Measure to Protect Neighborhoods from Vacation Rental Impacts, this unit would be illegal.

I was born and raised in this community and have always known it to be a place where residents unite for the common good of the town. In my experience as a NC Host, I have witnessed a divisive movement from the Neighbor Protectors/Friends (whatever they chose to call themselves). Not only is this sad, it is not reminiscent of the binding fabric of our town I have long known and loved.

NC Hosts is a self-organized group with the mission to provide the best model for short-term rentals. We come from varied business and personal backgrounds, many with experience in local hospitality, events and community groups. Many of us operate successful short-term rentals, hosting many, many stays over many years. We have not had one single complaint. In short, we know and love this town, and know and love the business of short-term rentals.

We have sought input from friends, neighbors, and others interested in allowing short-term rentals in the City. We have also met with the core group representing the Neighborhood Protection Initiative. As positive as the response has been from our neighbors, sadly the interaction with Laurie and her Neighborhood Protectors has been the opposite. It is clear to us that they do not want our units to be legalized.

In July, NC Hosts and the 'Neighborhood Protectors' met to see if a compromise could be achieved. In this session NC Hosts were presented with a stringent list of demands. Given their comments and behavior, we do not feel that they represented the greater community of Nevada City. They made it clear that what they would be only willing to approve something akin to a pension in rural Europe, but nothing akin to existing popular units. We would have been willing to continue the discussion if someone on their committee had genuine and legitimate concerns about adverse impacts on the neighborhood of hosted short-term rentals. In our opinion, NO compromise of any form was on the table. Despite that, we diligently worked to incorporate their strongest concerns into the NC Hosts initiative. We also provided the wiggle room for the City to best decide how to implement our initiative

We have tried to compromise. We have tried to mediate. We would be willing to mediate again. However, it is our firm opinion that 1) NC Protectors do not represent the average community view on short term rentals; 2) the NC Protectors seek to illegalize MOST of existing short term rentals under the guise of being "pro" short term rentals.

City Council Members – you have been voted by the public to lead our town. Not just by your vote, but by your character in all political matters. I ask you to clear your head of political allies, connections, friends and neighbors in either group, to look at each initiative with wide-open eyes, and an unbiased mind. Then and only then, decide if the Neighborhood Protection initiative works toward the better good of our beloved town. I am certain that it doesn't.

Sincerely,  
Adeline Harris  
220 Boulder St