2017-01 Administrative Enforcement and Civil Remedies for Safety Regulations
2017-02 Cable Systems & Digital Infrastructure
2017-03 California Building Standards
2017-04 Mobile Food Vending
2017-05 Personal Cannabis Cultivation Regulations
2017-06 Medical Cannabis - Amendment to Chapter 9.22 of Title 9 Muni Code
2017-07 Alcoholic Beverages, Regulating Consumption - Amendment to Chapter 9.16
2017-08 Fireworks Ban Added to Chapter 8.34 Municipal Code
2017-09 Rezone 2 Acre Portion Owned by Nevada City Tech Center - 500 Providence Mine Rd.
2017-10 Medical Cannabis Dispensaries - Amendments
2017-11 Annexation of 54.32 Acres - NW City Limits
2017-12 Homeless Housing Facilities - Amending Section 17.12.175

ORDINANCE NO. 2017-01

AN ORDINANCE OF THE CITY OF NEVADA CITY ADOPTING AND ADDING CHAPTER 1.22 TO TITLE 1 AND CHAPTER 9.28 TO TITLE 9 OF THE NEVADA CITY MUNICIPAL CODE TO ESTABLISH ADMINISTRATIVE ENFORCEMENT AND CIVIL REMEDIES FOR SAFETY VIOLATIONS

WHEREAS, Title 9 of the Nevada City Municipal Code titled Public Peace, Morals and Welfare identifies certain kinds of conduct compromising public health and safety as unlawful and provides penalties for violations; and

WHEREAS, the City of Nevada City has become aware that there are other ongoing behaviors and activities constituting safety violations that compromise public health and safety and should be prohibited; but that are not yet made unlawful under the existing prohibitions of Title 9; and

WHEREAS, it would be desirable to provide administrative enforcement and summary abatement to compel private property owners to prevent or cause such conduct to cease on their property and there is no such administrative enforcement remedy provided for in Title 1 of the Nevada City Municipal Code.

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

SECTION I:

Chapter 1.22 Administrative Enforcement as set forth in Exhibit "A", attached hereto and incorporated by such reference, is hereby adopted and added to Title 1 of the Nevada City Municipal Code.

SECTION II:

Chapter 9.28 Conduct on Private Property as set forth in Exhibit "B", attached hereto and incorporated by such reference is hereby adopted, and added to Title 9 of the Nevada City Municipal Code.

SECTION III:

It is the intent of the City Council of the City of Nevada City to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions,

paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other entity or circumstance. The City Council of the City of Nevada City hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION IV:

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 regular meeting of the City Council of the City of Nevada City on the 11th day of January, 2017 by the following

AYES: PHELPS, STRAWSER, MOBERG, SENUM, PARKER

NOES: NONE

ABSTAIN:

ABSENT:

Evans Phelps

Evans Phelps, Mayor

ATTEST: Niel Locke

Niel Locke, City Clerk

Exhibit A

Chapter 1.22

ADMINISTRATIVE ENFORCEMENT

Sections:

1.22.010	**Authority of enforcement officer.**
1.22.020	**Notice of violation.**
1.22.030	**Authority to order abatement or impose administrative fine.**
1.22.040	**Time allowed for abatement.**
1.22.050	**Imposition of fines and/or penalties.**
1.22.060	**Payment and collection of administrative penalty.**
1.22.070	**Appeal of notice of violation or other enforcement action.**
1.22.080	**Enforcement stayed during appeal.**
1.22.090	**Appeals hearings.**
1.22.100	**Decisions of the hearing officer and administrative order.**
1.22.110	**Judicial review.**
1.22.120	**Recovery of costs of abatement.**
1.22.130	**Cost accounts.**
1.22.140	**Imposition of liens or special assessments.**
1.22.150	**Summary abatement procedure.**
1.22.160	**Enforcement methods provided herein not exclusive.**

1.22.010 Authority of enforcement officer.

An enforcement officer shall have the authority to gain compliance with this code, including the power to issue a notice of violation ("NOV") as described below, the power to inspect public and private property, the power to record a notice of violation against any property related to the violation, and the power to carry out the provisions of an

abatement order. An enforcement officer may also issue an abatement order or impose any penalty permitted under this code or any other applicable law as described below.

1.22.020 Notice of violation.

A. Whenever an enforcement officer finds that a provision of this code has been violated, including, but not limited to, a failure to comply with a condition imposed by any agreement, entitlement, permit, license or environmental document issued or approved by or on behalf of city, city's redevelopment agency, or a failure to comply with any other laws the violation of which constitutes a nuisance condition, and such officer elects to pursue administrative enforcement pursuant to this chapter, he or she may issue the responsible party a NOV. The information on the NOV may include an order requiring the responsible party to appear at a hearing and show cause why a penalty should not be imposed or why such nuisance should not be abated by city at the responsibly party's expense. Such NOV shall be served on the responsible party in the manner described in subsection B of this section. The enforcement officer shall include the following information in the NOV:

1. The date and location of the violation, including the address or other description of the location where the violation occurred or is occurring and a brief description of the conditions observed that constitute a violation;
2. The name(s) of the responsible party(ies), if known;
3. The code section(s) being violated and a description of the section(s);
4. Actions required to correct, abate or mitigate the nuisance condition, and a period of time during which action(s) shall be commenced and completed, considering the factors listed in Section 1.22.040 of this chapter;
5. An order prohibiting the continuation or repeated occurrence of a nuisance condition or violation of this code described in the NOV;
6. A statement that the person upon whom the NOV is served may appeal the determination that there is/are violation(s) as alleged, that the person who was served with the NOV is the responsible party, or that the amount of any administrative fine imposed is warranted. The NOV will instruct the person being served as to the proper procedure and timeframe for submitting an appeal;
7. The signature of the citing enforcement officer and city contact information (address, telephone number) for additional information.

B. The NOV shall be served upon the responsible party or owner personally or by U.S. mail, first class postage prepaid, and if by such mail, it shall be sent to the last known address listed on the most recent tax assessor's records. In the case of personal service, service shall be deemed complete at the time of such delivery. In the case of service by first class mail, service shall be deemed complete at the time of deposit into the U.S. mail. Where service is by first class mail, a copy of the NOV shall be conspicuously posted at the affected property when reasonably practicable for a period of not less than three calendar days prior to the first date that commencement of corrective action or abatement is to be undertaken. The failure to receive a NOV

sent via first class mail shall not affect the validity of any enforcement proceedings under this chapter.

C. Proof of service shall be certified by a written declaration under penalty of perjury executed by the person effecting service, declaring the date, time, and manner of service, and the date and place of posting, if applicable. The declaration shall be affixed to a copy of the NOV and retained by the enforcement officer.

D. The failure of a NOV to satisfy all of the requirements of this provision shall not affect the validity of any other enforcement proceedings under this code.

E. An NOV is not required if the enforcement officer determines that summary abatement is required, pursuant to Section 1.22.150 of this chapter

1.22.030 Authority to order abatement or impose administrative fine.

Subject to the provisions of Section 1.14.010 of this chapter, an enforcement officer shall have the authority to impose the remedies under this chapter, including issuing an abatement order and/or imposing a penalty on the responsible party. Any abatement order or penalty may be included in the NOV or may be sent to the responsible party through a separate notice. If notice of an abatement order or penalty is sent via separate notice, the service of the notice shall follow the procedures described in Section 1.22.000.B of this chapter. If an order to abate a nuisance condition is issued to the responsible party, the order shall advise the party that a failure to abate the nuisance condition in the manner and by the time specified may result in a subsequent order allowing the city to abate, or cause to be abated, the nuisance condition at the responsible party's expense.

1.22.040 Time allowed for abatement.

If an abatement order is issued, the time allowed for abatement shall be a "reasonable time" based upon the circumstances of the particular violation, taking into consideration the means required to abate the violation, the period of time that the violation has existed, and the potential threat to public health and safety created by the violation. If the violation pertains to building, plumbing, electrical, mechanical or other similar structural or zoning issues and does not pose an imminent or immediate threat of harm to persons or property, or to public health, welfare or safety, the responsible party shall be provided not less than fifteen days in which to abate or otherwise remedy the violation. The determination of timely compliance, abatement, mitigation or elimination of the violation shall be made by the enforcement officer or other authorized city official.

1.22.050 Imposition of fines and/or penalties.

Any nuisance condition or violation of any provision of this code, including a failure to comply with a condition imposed by any agreement, entitlement, permit, license or environmental document issued or approved by or on behalf of city or city's redevelopment agency, or a failure to comply with any county, state or federal law may subject the responsible party to a penalty imposed pursuant to city's general police powers, and/or Government Code Sections 36901 and 53069.4.

A. The amount of any penalty that may be imposed for a violation that would otherwise be an infraction shall not exceed the amounts set forth in Government Code Section 36900(b), as amended from time to time. The amount of any penalty that may be imposed for all other violations (i.e., violations that would otherwise be misdemeanors) shall not exceed one thousand dollars per day. In determining the amount of a penalty, the following factors should be taken into consideration:

1. Duration of the violation;
2. Frequency, reoccurrence, or number of violations by the same person;
3. Seriousness of the violation and/or its impact on the community and/or the degree of culpability of the responsible party;
4. Justification, if any, for the existence, or continuance, of the violation;
5. Whether the violation is susceptible to restoration or other mitigation;
6. Good faith efforts to mitigate the violation or to come into compliance, pursuant to the terms of the NOV or abatement order;
7. Sensitivity of any affected resource;
8. Any profits or other economic benefit realized by the responsible party resulting, directly or indirectly, from the violation;
9. The city's schedule of administrative penalties; and
10. Such other factors as justice may require.

B. Each and every day during any portion of which a nuisance conditions exists or continues may be deemed a separate and distinct violation for purposes of setting the amount of penalty to be imposed. Any penalty imposed will accrue on a daily basis from the date the penalty becomes effective until the violation is corrected.

C. Any penalty amount is a debt owed to city. In addition to all other means of enforcement, a penalty may be enforced as a personal obligation of the responsible party. If the violation is in connection with real property, a penalty may also be enforced by imposition of a lien or special assessment upon the real property, as described in Section 1.22.140 of this chapter. Any lien or special assessment imposed upon real property shall remain in effect until the penalty is paid in full.

D. The hearing officer, in its discretion, may suspend the imposition of any applicable penalty for a period of time not to exceed sixty days during which the responsible party has demonstrated a willingness to comply with the order, or has applied for permits required to achieve compliance and such permit applications are actively pending before, or have already been issued by, city, the state, or other appropriate governmental agency, or under any other circumstances that would justify a suspension of the penalty.

1.22.060 Payment and collection of administrative penalty.

A. If a penalty is imposed and the responsible party fails to appeal the penalty as specified in Section 1.22.070 of this chapter, the responsible party shall pay the amount of the penalty within thirty days of service of the NOV or order imposing same, unless an extension of time is requested by the party against whom the penalty is imposed and the request is granted by the manager of issuing department/division. Any penalty imposed shall be payable to city, or to a collection agency if the penalty has been assigned to a collection agency pursuant to subsection C of this section.

B. If the amount of any penalty imposed for a violation relating to an affected property has not been satisfied in full within sixty days of the date due and has not been successfully challenged by appeal or in court, the penalty amount may become a special assessment or lien against the affected property, as provided in Section 1.22.140 of this chapter. If city elects to make any penalty a special assessment or lien against the affected property, a statement of the amount due, and any additional costs or expenses that might be recoverable as part of the enforcement action, shall be prepared and submitted to the city council for confirmation in accordance with the procedures described in Section 1.22.130 of this chapter.

C. Notwithstanding subsection B of this section, the amount of any unpaid penalty may be collected by commencement of a civil action to collect such penalty, or in any other manner provided by law for the collection of debts, including assignment of the debt to a collection agency. Subject to the requirements of this chapter and other applicable law, amounts assigned for collection are subject to collection agency rules, regulations and policies. City shall be entitled to recover any and all costs associated with collection of any such penalty.

D. The payment of a penalty by or on behalf of any responsible party shall not relieve such party from the responsibility of correcting, removing or abating the nuisance condition, or performing restoration where required, nor prevent further proceedings under this chapter or any other authority to achieve the correction, removal or abatement of the nuisance, or any required restoration.

1.22.070 Appeal of NOV or other enforcement action.

A. A person or entity named as the responsible party in a NOV, abatement order, or other enforcement action may appeal the determination that there is/are violation(s) as alleged in the NOV, that the person or entity who was served with the NOV or abatement order is the responsible party, that a penalty or the amount of a penalty is warranted, or any other terms of an abatement order.

B. Any person appealing a NOV, abatement order, or penalty must obtain a "Request for Hearing" form from the city clerk located at the Nevada City City Hall, 317 Broad Street, Nevada City, California 95959 and return it to the city clerk fully completed within fifteen days from the date of service of the NOV or notice of the abatement order or penalty.

C. At the time of returning the request for hearing form to the city clerk, the person or entity requesting the appeals hearing shall pay an appeals processing fee of two

hundred dollars and shall deposit in advance the amount of any fine. No appeal shall proceed without payment of the fee at the time the appeal is filed provided that the city clerk may waive or defer the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the notice and order, and other factors indicating good faith attempts to comply.

D. Failure to timely submit a completed request for hearing form or to pay the appeals processing fee of two hundred dollars and advance deposit of any fine constitutes a waiver of the right to appeal, a failure to exhaust administrative remedies and shall preclude judicial review.

1.22.080 Enforcement stayed during appeal.

Enforcement of a NOV, abatement order or penalty shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

1.22.090 Appeals hearings.

A. An appeals hearing based on a request for hearing shall be set for a date not less than ten days nor more than sixty days from the date the request for hearing form is filed unless the enforcement officer determines that the matter is urgent or that good cause exists for an extension of time, in which case the hearing date may be shortened or extended, as warranted by the circumstances.

B. A hearing under authority of this section shall be conducted according to the procedures set forth herein. The failure of the responsible party or other interested party to appear at the hearing shall constitute a waiver of the right to such hearing and a failure by such party to exhaust his/her administrative remedies:

1. When a request for hearing is filed, the city clerk shall set the time and place for hearing pursuant to subsection A of this section, and shall serve a notice of hearing either personally or by U.S. mail, first class postage prepaid, to the appellant at the address provided in the request for hearing form. The time for such hearing shall be no sooner than ten days from the date of service of the notice of hearing.

2. At the place and time set forth in the notice of hearing, the hearing officer shall conduct a hearing on the alleged violations. Any responsible party or other interested person(s) may appear and offer evidence as to whether a violation has occurred and/or whether the violation continues to exist, whether the person cited in the NOV is the responsible party for any such violation, or any other matter pertaining thereto. Evidence presented by the enforcement officer or other official of the city tending to show that a violation occurred and that the person named on the NOV is the responsible party shall establish a prima facie case that a violation, as charged, actually existed and that the person named in the NOV is the responsible party for the violation. The burden of proof shall then be on the responsible party to refute such evidence. The standard to be applied for meeting such burden shall be a preponderance of evidence.

3. The hearing officer will consider written or oral testimony or other evidence regarding the violation presented by the responsible party, the owner, the occupant, any officer, employee, or agent of the city, and any other interested party. Evidence offered during a hearing must be credible and relevant in the estimation of the hearing officer, but formal rules governing the presentation and consideration of evidence will not apply.
4. The hearing officer shall conduct the hearing, order the presentation of evidence, and make any rulings necessary to address procedural issues presented during the course of the hearing.
5. After receiving all of the evidence presented, the hearing officer may then deliberate and consider what action, if any, should be taken, or may adjourn the hearing and take the matter under consideration.

1.22.100 Decision of the hearing officer and administrative order.

A. Within ten days following the conclusion of the hearing, the hearing officer shall make a decision regarding the issues presented during the course of the hearing, and the decision shall be based on a preponderance of the evidence. After making its decision, the hearing officer may issue an administrative order. If the hearing officer finds that no violation occurred, that the violation was corrected within the specified time period, or that the person cited is not the responsible party, the administrative order shall reflect those facts.

B. The responsible party and any interested party requesting a copy of an administrative order shall be served with a copy of said order in the same manner as used for service of a notice of hearing as described in subsection 1.22.090.B.1 of this chapter. Proof of service of the administrative order shall be certified by a written declaration under penalty of perjury executed by the person effecting service, declaring the date, time, and manner that service was made.

C. An administrative order shall become effective and enforceable immediately after announcement or service of such order unless the order includes a later effective date. It shall include a statement of the right to have the order judicially reviewed in the manner and in the timeframes specified in Section 1.22.110 of this chapter.

D. An administrative order may include any combination of the following remedies:

1. Impose a penalty, subject to Government Code Sections 36900(b) and 53069.4;
2. Issue a "cease and desist" order requiring the responsible party, or any agent, representative, employee, or contractor of the responsible party, to immediately stop any act, conduct, or condition, that is a violation of this code. A cease and desist order issued pursuant to this section shall be effective upon issuance and shall be served on the responsible party in the manner specified in subsection 1.22.020.B of this chapter;
3. Require the responsible party to correct or eliminate any violation, including a proposed schedule for correction or elimination of said violation within a reasonable time. If a violation pertains to building, plumbing, electrical, or any

other structural or zoning issues and the violation does not create an immediate threat to health or safety, the responsible party shall be provided at least fifteen calendar days to correct, abate, or otherwise remedy the violation;

4. Require the responsible party, or authorize city, to restore a site or location that has been damaged or disturbed as a result of a violation of this code to a pre-violation condition. Any order authorizing city to undertake restoration efforts shall include provisions for the city to recover all restoration costs and expenses, including administrative expenses, from the responsible party;

5. Require the responsible party, or authorize the city, to mitigate any damage or disturbance to protected or environmentally sensitive areas as a result of any violation, including without limitation, off-site replacement of damaged or destroyed natural resources where on-site restoration or mitigation is not feasible, as determined by the city. Any order authorizing the city to undertake mitigation efforts shall include provisions for the city to recover all costs of abatement, including mitigation costs and expenses, from the responsible party;

6. Impose conditions that restrict or regulate the development of, use of, or activity on real property where a nexus exists between the violation(s) and the development, use or activity. Conditions may be imposed until the violations are fully abated. Restrictions and regulations on current or future development, use or activity may include site restoration and/or the suspension or revocation of any entitlements issued by city;

7. Authorize the city to abate or cause the abatement of a nuisance condition where the responsible party has refused or has otherwise neglected to take steps to correct or eliminate said conditions. Costs may be recovered by the city as a personal obligation and/or through a lien or a special assessment on the affected property as provided in Section 1.22.120 of this chapter;

8. Sustain, modify, or overrule an abatement order issued by an enforcement officer;

9. Any other order or remedy that serves the interests of justice.

E. The city may seek to enforce any administrative order by confirmation from a court of competent jurisdiction. Any administrative order that is judicially confirmed may be enforced through normal enforcement measures, including without limitation, criminal contempt proceedings upon a subsequent violation of such order.

1.22.110 Judicial review.

A. Any responsible party who is aggrieved by a decision of a hearing officer, or of a board, commission, department, agency, or person authorized to render such a decision on behalf of city pursuant to this chapter, and who has exhausted the administrative remedies provided in this code, or any other applicable law, shall have the right to seek judicial review of such decision by filing a petition for writ of mandate in accordance with Code of Civil Procedure Section 1094.5. A petition for writ of mandate must be filed within ninety days after the administrative decision becomes final (as determined in Code of Civil Procedure Section 1094.6). Notwithstanding

these time limits, where a shorter time limitation is provided by any other law, including that set forth in Government Code Section 53069.4 (see subsection E of this section), such shorter time limit shall apply.

B. Written notice of the time limitation in which a party may seek judicial review of an administrative decision shall be given to all responsible parties in the matter by city in substantially the following form:

"Judicial review of this decision may be sought by following the procedure outlined in Code of Civil Procedure Section 1094.5. Judicial review must be sought not later than the 90th day following the date on which this decision becomes final, except that where a shorter time is provided by any State or Federal law, such shorter time limit shall apply."

C. This section shall not be deemed to revive any cause of action or grounds for relief through a special proceeding that is barred by law or equity.

D. All costs of preparing a record that may be recovered by a local agency pursuant to Code of Civil Procedure Section 1094.5(a) or successor statute shall be paid by the petitioner prior to delivery of the record to petitioner.

E. Any responsible party against whom a penalty has been imposed and who has exhausted the administrative remedies provided in this code or other applicable law may obtain judicial review of said penalty pursuant to Government Code Section 53069.4 by filing an appeal to the Nevada County Superior Court, subject to the time limits described therein. Any such appeal shall be filed as a limited civil case. Written notice of the subject time limits shall be given to all responsible parties against whom a penalty is imposed in substantially the following form:

"The time within which judicial review of the Penalty imposed by this Order must be sought is governed by Government Code Section 53069.4. Judicial review must be sought not later than 20 days after service of the Order imposing or confirming such Penalty."

1.22.120 Recovery of costs of abatement.

City may elect to recover its costs to abate nuisance conditions, including without limitation, the costs of any appeals hearing (including staff time necessary to prepare for and attend an appeals hearing), any re-inspections required to determine or confirm that compliance has been achieved, production of all staff reports, environmental tests or measurements that are deemed necessary or appropriate by the enforcement officer, third party inspection(s) or consultant services as deemed necessary by the city and any attorney's fees incurred in pursuing enforcement. If city elects at the initiation of an administrative enforcement action or proceeding to seek recovery of attorney's fees, pursuant to Government Code Section 38773.5(b), then the prevailing party shall be entitled to recover attorney's fees in an amount not to exceed the amount of attorney's fees incurred by city in such action. Recovery by City of the costs of enforcement shall be in addition to any penalty imposed on the responsible party.

1.22.130 Cost accounts.

A. If any order authorizes city to abate a nuisance condition, the city official responsible for such abatement shall keep an accounting of the cost of abatement along with any other recoverable costs, and shall render a written report ("the Cost Report") to the city council showing the cost of removing and/or abating the nuisance condition and describing the work performed. The cost report shall be agendized as a "public hearing" item by the city clerk at a subsequent city council meeting following the required notice periods.

B. At least ten days prior to the submission of the cost report to the city council, the city clerk shall cause a copy of the cost report to be mailed to the responsible party and/or to the owner of the property where the nuisance condition existed. If the nuisance concerns real property, a copy of the cost report shall be mailed to the owner(s) at the address shown for such owner(s) on the last tax roll. The city clerk shall also cause a notice of hearing to be mailed to the same person(s) or entity receiving a copy of the cost report. The notice of hearing shall set forth the date, time and location of the city council meeting at which the cost report shall be submitted to the city council.

C. At the time and place fixed for receiving and considering the cost report, the city council shall hear a summary of the cost report and any objections by the responsible party or property owner against whom such costs are being charged or against whose property an abatement lien or special assessment may be imposed. After considering the cost report and any objections thereto, the city council may make such modifications to the cost report as it deems appropriate, after which the report shall be confirmed by order of the city council.

D. A copy of a council order confirming costs against the responsible party shall be served on the responsible party within ten days of such order in the manner described in Section 1.22.020.B of this chapter. Any responsible party against whom costs of abatement and any other costs are awarded by council order shall have the right to seek judicial review of such order by filing a petition for writ of mandate in accordance with Code of Civil Procedure Section 1094.5. Such petition must be filed within sixty days of service of the order.

1.22.140 Imposition of liens or special assessments.

A. Any penalty imposed for violations of this code, including any other codes or statutes that have been incorporated into this code, any administrative costs or other expenses of enforcement, and the cost or expenses associated with the abatement of a nuisance condition that are levied in accordance with this chapter, whether imposed or levied judicially or administratively, may be enforced by the recordation of a lien against the property of the owner of the real property where the nuisance condition existed. Any such lien shall be recorded in the office of the Nevada County recorder, and from the date of recording shall have the force, effect, and priority of a judgment lien. A lien authorized by this subsection shall specify the amount of the lien, that the lien is being imposed on behalf of city, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on

which the lien is imposed, and the name and address of the record owner of the parcel.

B. Before recordation of a lien authorized by this section, a notice of lien shall be served on the responsible party and/or owner of record of the parcel of land on which the nuisance existed, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of lien shall be served in the same manner as a summons in a civil action. If the owner of record cannot be found, after a diligent search, the notice of lien may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation published in Nevada County.

C. Any fee imposed on city by the county recorder for costs of processing and recording the lien as well as the cost of providing notice to the owner in the manner described herein may be recovered from the owner in any foreclosure action to enforce the lien following recordation.

D. As an alternative to the lien procedure described above, any penalty imposed for violations of this code, including any other codes or statutes that have been incorporated into this code, and any costs of enforcement or administration or expenses associated with the abatement of any nuisance levied in accordance with this chapter, whether imposed or levied judicially or administratively, may become a special assessment against the real property where the nuisance condition(s) existed. Any special assessment imposed on real property pursuant to this section may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ordinary municipal taxes. Notice of any special assessment that is levied on real property pursuant to this section shall be given to the owner by certified mail, and shall contain the information set forth in Government Code Section 38773.5(c). All laws applicable to the levy, collection, and enforcement of municipal taxes, including those described in Government Code Section 38773.5(c), shall be applicable to such special assessment.

1.22.150 Summary abatement procedure.

Notwithstanding any other provision of this code, whenever, in the reasonable judgment of the enforcement officer, the existence or continuance of any violation of this code or any nuisance condition poses an imminent or immediate threat of harm to persons or property, or to public health, welfare or safety, an enforcement officer may act immediately and without prior notice or hearing to abate such violation or condition. The expense or cost resulting from such summary abatement shall be enforceable as a personal obligation of the responsible party and may be imposed as a lien or a special assessment on real property, as described in Section 1.22.140 of this chapter.

1.22.160 Enforcement methods provided herein not exclusive.

Nothing in this chapter shall prevent city from initiating any other legal or equitable proceeding to obtain compliance or to discourage noncompliance with the provisions of

this code. The enforcement procedures described in this chapter are intended to be alternative methods of obtaining compliance or discouraging noncompliance and are expressly intended to be in addition to any other remedies provided by law or this code. If is the intent of the city council that the immunities prescribed in Penal Code Section 836.5 and Government Code Section 820.2 shall be applicable to the enforcement officer, and any other public officers or employees, acting in the course and scope of employment pursuant to this chapter.

Exhibit B

Chapter 9.28

CONDUCT ON PRIVATE PROPERTY

Sections:

9.28.010	**Purpose.**
9.28.020	**Definitions.**
9.28.030	**Scope of application.**
9.28.040	**Dual responsibility.**
9.28.050	**Authority.**
9.28.060	**Private right of action.**
9.28.070	**Safety violations.**
9.28.080	**Safety violations prohibited.**
9.28.090	**Notice of safety violation.**
9.28.100	**Notice of administrative citation.**
9.28.110	**Right to a hearing.**
9.28.120	**Safety violation enforcement and fines.**
9.28.130	**Property owner notification.**

9.28.010 - Purpose.

The purpose of this chapter is to provide administrative and civil remedies against property owners who permit, allow, or fail to prevent ongoing behaviors and/or activities to occur on their properties that compromise public health and/or safety. It is not the purpose of this chapter to subject property owners to any legal liability resulting from a tenant's actions occurring away from the owner's property.

9.28.020 - Definitions.

The following words and phrases, when used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

"Administrative expenses" shall include, but not be limited to:

1. The costs associated with any hearings before a hearing officer, including, but not limited to, all expenses and charges of the hearing officer relating to any hearing.

2. City's personnel costs, direct and indirect, incurred in enforcing this chapter and in preparing for, participating in, or conducting any hearings subject to this chapter, including, but not limited to, attorney's fees.
3. The cost incurred by the city in documenting the safety violations, including, but not limited to, the actual expense and costs of the city responding to the safety violation(s); investigating and enforcing statutory crimes related to the safety violation, including, but not limited to, court appearances; conducting inspections; attending hearings; and preparing notices, administrative citations, and orders.

"Chief of police" shall mean the chief of police or his/her designee.

"City" means the City of Nevada City.

"Drug related nuisance" means any activity related to the possession, sale, use, or manufacturing of an illegal drug or narcotic that creates an unreasonable interference with the comfortable enjoyment of life, property, or the safety and welfare of the residents of the property, the neighborhood, or the public. These activities include, but are not limited to, any activity commonly associated with illegal drug use and dealing, such as noise, steady foot and vehicle traffic day and night to a particular property, possession of weapons, drug loitering (as defined in California Health and Safety Code Section 11532), possession of stolen property, identity theft, possession of property with serial numbers removed, evidence of forgery or fraud, or other drug related activities.

"Enforcement officer" means any person authorized by the chief of police pursuant to this chapter to enforce violations of this chapter.

"Gang related crime" means any crime motivated by gang membership in which the perpetrator, victim, or intended victim is a known member of a gang.

"Hearing officer" means any person appointed pursuant to chapter 1.22 of the Nevada City Municipal Code to preside over hearings, including those hearings required by this chapter.

"Notice of safety violation" means the notice provided to a property owner and/or tenant indicating that a safety violation has occurred on the property, and that the property owner and tenant may be subject to fines for any additional safety violations.

"Owner" and "property owner" have the same meaning and may be used interchangeably and shall mean the owner or owners of record of the subject real property as shown on the latest equalized tax assessment roll of Nevada County or as otherwise actually known to the chief of police.

"Person" means individual(s), corporations, associations, partnerships, limited liability companies, trustees, lessees, agents and assignees.

"Real property" or "property" have the same meaning and may be used interchangeably and shall mean the lot or parcel of land for which the owner has legal ownership or exercises custody or control thereof.

"Safety violation" means those activities set forth in Section 9.28.070.

"Tenant" means that person(s), visitor(s), or transient(s) utilizing, leasing, residing at, or occupying the real property in question regardless of whether a lease or contract exists between the parties; such occupancy may last for any limited period of time.

"Verifiable safety violation" means:

1. A safety violation observed by a peace officer, as peace officer is defined in the California Penal Code; or
2. A call for law enforcement service to the Nevada City police department by a known person who is identifiable, and provides information to support the existence of a safety violation; or
3. A call for service to the Nevada City police department by an unknown person if the event is substantiated by an identifiable witness or peace officer, as defined by the California Penal Code.

"Visitor" means a person other than the owner or a person holding any possessory interest in the property occupying or using the real property with the knowledge and consent of the owner or the tenant.

9.28.030 - Scope of application.

A. The provisions of this chapter shall apply to all real property whether owner occupied or a rental property, whether residential, commercial, industrial, improved, or unimproved, throughout the city wherein any of the safety violations are found to exist.

B. A criminal conviction is not required for establishing the occurrence of a safety violation pursuant to this chapter.

C. The remedies set forth in this chapter are cumulative and additional to any and all other legal remedies available whether set forth elsewhere in the Nevada City Municipal Code, or any applicable, state or federal laws, rules or regulations.

9.28.040 - Dual responsibility.

A. Every person owning, possessing, or having charge or control of real property within the city is required to manage that property and control the environment thereon in a manner so as not to violate the provisions of this chapter. If the property is not owner occupied, both the owner of real property and the occupying tenant shall be liable for safety violations as set forth in detail herein, regardless of any contract or agreement with any third party regarding the property.

B. Every tenant, occupant, lessee, or holder of any possessory interest in real property shall:

1. Comply with all federal, state, and local laws applicable to the property.
2. Supervise or cause to be supervised anyone utilizing, residing at, or occupying the property, with or without consent of the owner, consistent with this chapter.
3. Maintain the property in a manner so as not to violate the provisions of this chapter

9.28.050 - Authority.

The chief of police shall be responsible for administering and enforcing the provisions of this chapter. The chief of police shall have the authority to designate employees as enforcement officers in conformance with this chapter to assist with enforcement responsibilities of this chapter, including, but not limited to, the issuance of notices of safety violations and/or administrative citations as provided for herein.

9.28.060 - Private right of action.

Notwithstanding any other provision in this chapter to the contrary, if a tenant's conduct or action gives rise to any citation and order under Section 9.28.070 below, a property owner shall have the right, in addition to any other remedies that the property owner may have under the applicable lease, rental agreement, or the California Code of Civil Procedure, to use the citation and order as evidence of a nuisance for purposes of any eviction proceeding.

9.28.070 - Safety violations.

A. Safety violation shall mean any of the following activities or behaviors that occur on a property, or have found to originate from the property or by persons connected to the property:

1. The illegal sale of controlled substances and other illegal drugs and substances which creates a public nuisance as defined in Civil Code Sections 3479 and 3480;
2. The illegal use of controlled substances and other illegal drugs and substances which creates a public nuisance as defined in Civil Code Sections 3479 and 3480;
3. The frequent gathering, or coming and going, of people on the property who have an intent to purchase or use controlled substances;
4. The occurrence of prostitution or the unlawful activities of a criminal street gang, as defined in Penal Code Section 186.22;
5. The repeated making or continuing, or causing to be made, of any noise in violation of standards set forth in Chapter 8.20, which disturbs the peace and quiet of the neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitivity residing in the area;
6. The firing of gunshots or brandishing of weapons by a resident of the property, or by a guest of a resident (except as permissible by law);
7. The occurrence of malicious mischief including vandalism or actions that damage property or cause or attempt to cause personal injury;
8. Arrests or detentions for drunkenness linked to the property or for providing alcoholic beverages to, or permitting consumption of, alcoholic beverages by any person under twenty-one years of age on the property;
9. Harassment of other persons wherein such harassment involves repeated threats of physical harm to others or actions which may cause physical harm to others or to those who report illegal activity or safety violations related to the property.

10. The occurrence of any other criminal activity not specified in this section which threatens the life, health, safety or welfare of the residents of the property, the neighborhood, or the public.

11. Allowing property to degrade to such an extent as to create a safety, environmental or health hazard to those residing therein or to the surrounding community.

B. A safety violation shall be deemed to have originated from a property when it occurs at the property, or the safety violation is verifiable and has occurred within one hundred feet of the property.

9.28.080 - Safety violations prohibited.

A. It is hereby declared a violation of this chapter for a property owner with actual or constructive knowledge, whether through the owner or owner's agent, lessee, sub-lessor, sub-lessee, or occupant, to allow, permit or fail to prevent a safety violation to occur on the real property of the owner.

B. It is hereby declared a violation of this chapter for a tenant to allow, permit or fail to prevent a safety violation to occur on the real property where he/she resides.

9.28.090 - Notice of safety violation.

A. After the chief of police determines four or more verifiable safety violations have occurred within any twelve-month period, the chief of police has the authority to issue a written notice of safety violation to the owner of the property and the tenant. The notice of safety violation shall be served upon the owner of said property by regular mail, to the mailing address indicated on the last equalized assessment roll of the Nevada County Assessor's Office. The notice of violation shall be sent to the tenant by regular mail addressed to the property, or alternatively posted at the property. The service of a notice of violation, as provided in this section, shall be prima facie evidence that the owner or tenant is the person in control of the property and has knowledge of and the conduct or behavior at the property.

B. The notice of safety violation shall include, but not be limited to, the following information:

1. The property where the safety violation occurred, including the tenant's name where known;
2. The evidence of the safety violations occurring on the property and the sections of the Municipal Code being violated;
3. The dates of previous verifiable safety violations and any prior responses by the police department to reports of nuisance or safety violations on the property.

C. The notice shall set forth a reasonable time limit not to exceed thirty days for correcting the safety violation and nuisance and may also set forth:

1. Suggested methods of correction or abatement, including information regarding meeting with the police department and potential methods of correction which may include, but are not limited to, the following:
    a. Provision of additional interior or exterior lighting;
    b. The posting of security personnel on the property;
    c. Installation of appropriate fencing;
    d. Posting of signs on the property, and provisions in rental applications and agreements, which state that illegal use of controlled substances and other nuisance-creating behaviors on the property shall be grounds for eviction;
    e. Directing that the property be managed in a manner consistent with federal, state or local law;
    f. Hiring of a competent resident manager who has experience, education and training in rental property management;
    g. Posting a sign on the property setting forth the name, address and daytime and evening telephone numbers of the owner or of a local property manager who is authorized to make decisions relating to management of the property;
    h. Obtaining education and training in rental property management;
    i. Implementation of a property management program including elements such as effective applicant screening, appropriate rental agreements, and appropriate use of eviction procedures;
    j. Removal of graffiti; and
2. Notice that administrative penalties and/or administrative costs will be assessed against the responsible person in the event there are further safety violations.

D. The chief of police may grant an extension of time to correct and address a safety violation if, in his/her opinion, good cause for an extension exists. Indicia of good faith may include prompt responses to city communications and requests, active professional property management, and other steps taken to remedy the conditions contributing to the safety violation(s).

9.28.100 - Notice of administrative citation.

A. If the chief of police determines that a subsequent verifiable safety violation exists after the thirty-day period for remedying the safety violation that led to the notice of safety violation, or any extension thereof or that a verifiable safety violation has recurred within twelve months of a notice of safety violation, the chief of police may impose an administrative citation. In the event administrative citations or costs are imposed by the chief of police, the property owner and/or tenant shall be notified in writing of the amount of the administrative citation imposed in accordance with the provisions set forth in this chapter, and this code.

B. In addition to imposing administrative citations or costs, the chief of police or his authorized designee may issue a notice of safety violation.

9.28.110 - Right to a hearing.

A. The property owner may appeal citations issued pursuant to this chapter, pursuant to the procedures set forth in Chapter 1.22 of this code.

B. The hearing shall be scheduled and conducted pursuant to Chapter 1.22 of the this code.

9.28.120 - Safety violation enforcement and fines.

A. A failure to cure the safety violations in violation of this chapter, or additional safety violations after receipt of a notice of violation may result in either or both of the following actions and/or fines:

1. Issuance of administrative citation(s) and/or an order to abate the safety violation(s) with a fine for each and every safety violation not to exceed one thousand dollars ($1,000.00) for each violation, plus any administrative expenses incurred in the enforcement of this chapter. Each day the safety violation(s) continue shall be deemed a new violation subject to additional citations and fines.
2. Institution of a civil action by the city attorney pursuant to Health and Safety Code Section 11570, et seq., and Penal Code Sections 186.22a or 11225, et seq., for injunctive relief, closure of the property for up to one year, and civil penalties in an amount not to exceed twenty-five thousand dollars ($25,000.00), which shall constitute a lien on the property. In any civil action brought pursuant to this chapter, the court may award reasonable attorney fees and costs to the prevailing party.

B. Fines will not be enforced, nor will civil action be commenced, if the chief of police determines that the owner is making a good faith effort to abate the safety violation(s).

C. When a notice of safety violation or administrative citation have been issued, the owner of the property and any tenant shall be jointly and severally responsible for each successive safety violation incident occurring on the property and shall be jointly, severally and individually responsible for payment of any and all costs associated with each successive safety violation.

D. The property owner and/or tenant may appeal administrative citations issued pursuant to this chapter by following the procedures set forth in Chapter 1.22 of this code.

9.28.130 - Property owner notification program.

A. Property owners in the city may apply with the police department for notification when the Nevada City Police Department responds to a response call, verifiable safety violation, or other incident at a property. The owner will need to provide proof of ownership of the property at the time of enrolling in the property owner notification program. Property owners enrolled in the program have a duty to notify the police department upon change of ownership of the property.

B. By establishing a property owner notification program, the city in no way guarantees that an owner will receive notification each time the police department responds to the property; instead, this enrollment is voluntary and a courtesy to the property owners.

C. The police chief shall be responsible for administering the program, and may establish rules, procedures and an application in order to carry out this program.

ORDINANCE NO. 2017-02

AN ORDINANCE OF THE CITY OF NEVADA CITY REPEALING AND RE-ADOPTING AS AMENDED CHAPTER 5.28 OF THE NEVADA CITY MUNICIPAL CODE REGULATING CABLE SYSTEMS AND OPEN VIDEO SYSTEMS TO IMPLEMENT THE STATE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006

WHEREAS, Chapter 5.28 of the Nevada City Municipal Code regulated cable systems and open video systems at a time when franchises for cable television providers were issued and regulated locally; and

WHEREAS, the California legislature subsequently enacted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) making the California Public Utilities Commission (CPUC) the sole franchising authority and converting local franchises to State franchises upon expiration on June 27, 2016; and

WHEREAS, it is necessary for the City to revise its Municipal Code provisions relating to Cable Systems and Open Video Systems to reflect and implement the revised franchising regulations to continue receiving franchise fees and public education and government (PEG) fees, and to delete superseded provisions reflecting regulations related to locally issued franchises and open video systems.

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

SECTION I:

Chapter 5.28 Cable Systems and Open Video Systems, together with Appendices A and B, are hereby revoked and repealed, being replaced by the updated amended provisions adopted by this Ordinance.

SECTION II:

There is hereby added to the Nevada City Municipal Code a new updated Chapter 5.28 Cable Systems and State Video Service Franchises amended to read as set forth in Exhibit "A", attached hereto and incorporated by such reference.

SECTION III:

It is the intent of the City Council of the City of Nevada City to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section,

subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other entity or circumstance. The City Council of the City of Nevada City hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION IV:

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 the regular meeting of the City Council of the City of Nevada City on the 11th day of January 2017, by the following vote:

AYES: Phelps, Strawser, Moberg, Senum, Parker

NOES: None

ABSTAIN: None

ABSENT: None

Evans Phelps

Evans Phelps, Mayor

ATTEST: Niel Locke

Niel Locke, City Clerk

Chapter 5.28

CABLE SYSTEMS AND STATE VIDEO SERVICE FRANCHISES

Sections:

5.28.005	**Definitions.**
5.28.010	**General.**
5.28.020	**Special rules applicable to state video service franchises.**
5.28.030	**Repealed.**
5.28.040	**Miscellaneous.**

5.28.010 - Definitions.

For the purposes of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined in this chapter shall have the same meaning as in Title 47 of the United States Code (Sections 521 et seq.), and, if not defined therein, the California Public Utilities Code (CPUC) Sections 5800-5970, and if not defined therein, their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include " are not limiting. The words "shall" and "will" are mandatory, but use of those terms grants no private rights to any person with respect to the County or City. References to governmental entities or officials, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to in this chapter are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

"Access," "PEG access," or "PEG use" means the availability of a cable system or open video system for public, education or government use (including institutional network use) by various agencies, institutions, organizations, groups, and individuals, including city of Nevada City and its designated access providers, to acquire, create, and distribute programming not under a franchisee's editorial control, including, but not limited to:

1. "Public access" or "public use" means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their communications;
2. "Education access" or "education use" means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their communications;

3. "Government access" or "government use" means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their communications.

"Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

"Basic service" means any service tier regularly provided to all subscribers which includes the retransmission of local television broadcast signals.

"Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. Sections 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

"Cable communications system" refers to cable system.

"Cable service" means:

1. The one (1) way transmission to subscribers of (a) video programming, or (b) other programming service; and
2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Cable system" is defined as set forth in Section 522(7) of Title 47 of the United States Code.

"Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television signal whether in an analog or digital format. The definition does not restrict the use of any channel to the transmission of analog television signals or one (1) way transmission.

"City" means the city of Nevada City and all departments, divisions, and agencies established by state law or by the city of Nevada City Municipal Code.

"City manager" means the city of Nevada City executive officer or his/her designee.

"Construction, operation or repair" and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.

"County" means the County of Nevada and all departments, divisions, and agencies established by state law or by the Nevada County General Code.

"CPUC" refers to the California Public Utilities Code.

"Downstream channel" means a channel designed and activated to carry a transmission from the headend to other points on a cable communications system, including interconnections.

"FCC" means the Federal Communications Commission.

"Franchise" means an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of any network in the right-of-way capable of providing video service to subscribers, as defined in CPUC 5830(f).

"Franchise area" means the area of the city of Nevada City that a franchisee is authorized to serve by the terms of its franchise or by operation of law.

"Franchisee" means a person holding a cable communications system franchise.

"Franchise Fee" means the fee adopted pursuant to CPUC Section 5840 paid in consideration of the grant and exercise of a franchise to construct, install, operate, or provide cable system services.

"Gross revenues" means all revenue actually received by the holder of a state franchise as defined in CPUC Section 5860(d). "License" means the legal authorization, terminable at will, to use a particular, discrete, and limited portion of the public rights-of-way to construct, operate, or repair a cable system.

"Nevada County Administrator" means the Nevada County Executive Officer or his/her designee.

"Operator," when used with reference to a system, means a person:

1. Who directly or through one (1) or more affiliates provides service over a cable communications system and directly or through one (1) or more affiliates owns a significant interest in such facility; or
2. Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility.

"OVS" means an open video system previously provided for pursuant to Section 5.28.030.

"Person" means and includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not Nevada County nor the city of Nevada City.

"Public property" means any property that is owned or under the control of the city of Nevada City that is not a public right-of-way, including, for purposes of this chapter, but not limited to, buildings, parks, poles, structures in the public rights-of-way such as utility poles and light poles, or similar facilities or property owned by or leased to the city of Nevada City.

"Public rights-of-way" means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter existing, within the city of Nevada City which may be properly used for the purpose of installing, maintaining, and operating a cable communications system; and any other property that a franchisee is entitled by state or federal law to use by virtue of the grant of a franchise.

"Revocation" means Nevada County's or the city of Nevada City's affirmative act of terminating a franchise.

"School" means any accredited primary school, secondary school, college, and university.

"Subscriber" means Nevada County or the city of Nevada City or any person who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system with franchisee's express permission, whether or not a fee is paid for such service.

"Termination" means the conclusion of a franchise by any means, including, but not limited to, by expiration of its term, abandonment, or revocation.

"Transfer" means any transaction in which:

1. All or a portion of any facilities or any rights to use or operate facilities located in the public rights-of-way are sold, conveyed, transferred, assigned, encumbered or leased, in whole or in part, directly or indirectly, by one (1) or more transactions to another person, whether voluntarily or by operation of law or otherwise; or
2. There is any change, acquisition, or transfer in the identity of the person in control of the franchisee, or any person that controls the franchisee, including, without limitation, forced or voluntary sale, merger, consolidation, or receivership; or
3. The rights or obligations under the franchise are sold, conveyed, transferred, assigned, encumbered or leased, in whole or in part, directly or indirectly, by one (1) or more transactions to another person, whether voluntarily or by operation of law or otherwise.

"Unaffiliated video programming provider" or "UVPP" means any person who uses capacity on a franchised cable system to deliver cable service or other communications service (as that term is used in 47 U.S.C. Section 542(h)) to subscribers and who is not an affiliate of the franchisee.

"Upstream channel" means a channel designed and activated to carry transmissions from a point on the cable system, other than the headend, to the headend or another point on the cable system.

"User" means a person or the city of Nevada City utilizing a channel, capacity or equipment and facilities for purposes of producing or transmitting video, voice and data materials contrasted with receiving it in the capacity of a subscriber.

5.28.010 - General

A. Franchise Required. No person may construct or operate a cable communications system in the city of Nevada City without first obtaining a franchise; provided that the following shall not be required to obtain a franchise under this chapter:

1. Nevada County or the city of Nevada City; or
2. A UVPP that is only delivering cable service or other communications service (as that term is used in 47 U.S.C. Section 542(h)) to subscribers.

B. Possessory Interest of Public Property. A franchise granted pursuant to Article 2 of the Nevada County General Code or this chapter shall notify the franchisee of potential tax liability for property taxes pursuant to California Revenue and Tax Code Section 107.6.

C. Failure to Obtain a Franchise. Consistent with the requirements of due process, a person's failure to obtain a franchise as required by this chapter may, in the City's discretion, result in:

1. Forfeiture, by operation of law, of the person's facilities located in the public rights-of-way that are not authorized by an existing franchise; and/or
2. A City or County order and/or court order that the facilities be removed, and that penalties and damages be paid as set forth in the County General Code or in state law.

D. Existing Franchises. Franchisees existing as of the effective date of the ordinance codified in this chapter shall, in addition to all the obligations and duties prescribed by the terms of their existing franchises, be subject to the substantive and procedural requirements herein, except as prohibited by applicable law. Nothing in this chapter is intended to invalidate a lawful, existing franchise or to waive any obligations imposed by such a franchise.

E. Administration of Chapter; Adoption of Regulations.

1. Adoption of Regulations. The city of Nevada City may from time to time adopt regulations to implement the provisions of this chapter.
2. Delegation. The city manager or its designees are hereby authorized to administer the provisions of this chapter and any franchise issued to operate within the incorporated area of the city of Nevada City, and to provide any notices (including noncompliance notices) and to take any action on the city of Nevada City's behalf that may be required under this chapter or under applicable law.
3. No Waiver. The failure of Nevada County or the city of Nevada City, upon one (1) or more occasions, to exercise a right or to require compliance or performance under a franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.
4. Administration of Public, Educational and Government Access. Nevada County may designate one (1) or more entities, including itself and/or the city of Nevada City, to control and manage the use of public, educational and government access channels, facilities and equipment.

F. General Conditions upon Construction, Operation and Repair.

1. Franchisee Must Follow Local Rules. The construction, operation, and repair of cable communications systems shall be performed in compliance with all laws, ordinances, departmental rules, regulations, and practices affecting such system. By way of example, and not limitation, this includes zoning and safety codes, construction standards, regulations for providing notice to persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the rights-of-way. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care

in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

2. No Permit without Franchise. A franchise is required before a permit may be issued for work associated with the construction of a cable communications system. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon the city of Nevada City's demand.

3. Permits Must be Obtained. Construction, operation, or repair of a cable communications system in the city of Nevada City shall not commence until all required permits have been obtained from the proper ~~city of Nevada~~ City officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of the city of Nevada City, any work and/or construction undertaken that is not completed in compliance with the city of Nevada City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed.

4. No Interference. Interference with the use of the public rights-of-way by others, including others that may be installing cable communications systems, must be minimized. The city of Nevada City may require a person using the rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the rights-of-way.

5. Plans for and Publicizing Work. Work shall be publicized as the city of Nevada City may direct from time to time. The publication of work may be used to notify the public and operators of other communications systems, of the impending work, in order to minimize inconvenience and disruption to the public.

   a. Each franchisee shall provide the city of Nevada City a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the city that will be affected.

   b. The ~~city~~ City manager may from time to time, when the ~~city~~ City receives an application for a permit to use a particular route, or upon the ~~city~~ City manager's own initiative, designate by published order a route or proposed route for installation of communications facilities and may (i) require all persons who wish to emplace underground facilities along that route or any part thereof to install them during a specified period, provided all costs are shared equitably and (ii) otherwise prohibit initial emplacement of such facilities along the route or any part thereof for twenty-four (24) months or after such other longer period as is necessary to protect the public interest.

6. Existing Poles to be Used. To the extent possible, operators of cable communications systems shall use existing poles and conduit. Additional poles may not be installed in the right-of-way; nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the city manager.

   To minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of rights-of-way capacity, or to protect environmentally sensitive areas, the ~~city~~ City manager may require as a condition of issuing any rights-of-way permit for erection of new poles or construction of underground conduit, the installation of which requires excavation of or along any traveled way that the franchisee, licensee, or holder of the rights-of-way permit provide pole space or empty conduits in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the city and/or other franchisees and licensees.

7. Undergrounding.

   a. Whenever all existing utilities are located underground in an area in the city of Nevada City, every cable communications system operator in the same area must locate its cable communications system underground.

b. Whenever the owner of a pole locates or relocates underground within an area of the city of Nevada City, every cable communications system operator in the same area shall concurrently relocate its facilities underground.

c. The City may, for good cause shown, exempt a particular system or facility or group of facilities from the obligation to locate or relocate facilities underground, where relocation is impractical, or where the ~~city~~ City and the subscriber's interest can be protected in another manner. Nothing in subsection (F)(7)(a) of this section prevents the city of Nevada City from ordering communications facilities to be located or relocated underground.

8. Prompt Repairs. Any and all public rights-of-way, other public property, or private property that is disturbed or damaged during the construction, operation, maintenance or repair of a cable communications system shall be promptly repaired by the operator. Public property and public rights-of-way must be restored to the satisfaction of the city of Nevada City or to a condition as good or better than before the disturbance or damage occurred.

9. Movement of Facilities for Government.

a. A cable communications system operator shall, by a time specified by the city of Nevada City, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the city of Nevada City by reason of traffic conditions; public safety; public right-of-way construction and repair (including regrading, resurfacing or widening); public right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the cable communications system. Collectively, such matters are referred to below as the "public work."

b. Except in the case of emergency, the city of Nevada City shall provide written notice describing where the public work is to be performed at least one (1) week prior to the deadline by which a cable communications system operator must protect, support, temporarily disconnect, relocate or remove its facilities. However, in an emergency, or where a cable communications system creates or is contributing to an imminent danger to health, safety, or property, the city of Nevada City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the cable communications system without prior notice, and charge the cable communications system operator for costs incurred.

10. Movement for Others.

a. To accommodate the construction, operation, or repair of the facilities of another person authorized to use the streets or public property, a franchisee shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The franchisee must be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time by which its work must be completed. The city of Nevada City may resolve disputes as to responsibility for costs associated with removal, relaying, or relocation of facilities among entities authorized to install facilities in the streets or on public property if such entities are unable to do so themselves.

b. A cable communications system operator shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A cable communications system operator shall be given not less than seven (7) days' advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same.

11. Abandonment in Place.

a. A cable communications system operator may abandon any property in place in the public rights-of-way upon written notice to the city of Nevada City. However, if, within ninety (90)

days of the receipt of written notice of abandonment, the city of Nevada City determines that the safety, appearance, functioning or use of the public rights-of-way and facilities in the public rights-of-way will be adversely affected, the property must be removed by a date specified by the city of Nevada City.

b. A cable communications system operator that abandons its property must, upon request, transfer ownership of the properties to the city of Nevada City at no cost, and execute necessary quitclaim deeds and indemnify the city of Nevada City against future costs associated with mitigating or eliminating any environmental hazard associated with the abandoned property.

12. System Subject to Inspection. Every cable communications system shall be subject to inspection and testing by the city of Nevada City. Each operator must respond to requests for information regarding its system and plans for the system as the city of Nevada City may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.

13. Underground Services Alert. Each operator of a cable communications system that places facilities underground shall be a member of the regional notification center for subsurface installations (underground services alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall locate its facilities for the city of Nevada City at no charge.

14. Plan for Construction. Every franchise shall specify for the city of Nevada City a construction schedule that will apply to any required construction, upgrade, or rebuild of the cable communications system. The schedule shall provide for the prompt completion of the project, shall show its timetable for construction of each phase of the project, with benchmarks for deliverables and the areas of the city of Nevada City that will be affected. The city of Nevada City shall have the right to impose penalties on the operator for a failure to meet the accepted timetable and benchmarks.

15. Use of facilities by the city of Nevada City. The city of Nevada City shall have the right to install and maintain, free of charge, upon any poles or in any conduit owned by a franchisee any wire and pole fixtures that do not unreasonably interfere with the cable service operations of the franchisee.

G. Protection of City of Nevada City and Residents.

1. Indemnity Required. No ~~franchise~~ permit issued for work associated with construction of a cable communications system shall be valid or effective until and unless the city of Nevada City obtains an adequate indemnity from the franchisee. The indemnity must:

a. Release the city of Nevada City from and against any and all liability and responsibility in or arising out of the construction~~, operation or maintenance~~ of the cable communications system. ~~Each cable communications system operator must further agree not to sue or seek any money or damages from the city of Nevada City in connection with the above-mentioned matters;~~ and

b. Indemnify and hold harmless the city of Nevada City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the city of Nevada City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the cable communications system operator, or its agents, independent contractors or employees related to or in any way arising out of the construction, ~~operation or repair~~ of the system~~;~~.

~~c. Provide that the covenant and representations relating to the indemnification provision shall survive the term of the franchise or other authorization and continue in full force and effect as to the party's responsibility to indemnify.~~

2. ~~Insurance Required. A franchisee (or those acting on its behalf) shall not commence construction or operation of the system without obtaining insurance in amounts and of a type satisfactory to the city of Nevada City. The required insurance must be obtained and maintained for the entire period the franchisee has facilities in the rights-of-way. If the franchisee, its contractors, or subcontractors do not have the required insurance, the city of Nevada City may order such entities to stop operations until the insurance is obtained and approved.~~

3. ~~Proof. Certificates and endorsements of insurance, reflecting evidence of the required insurance and naming the city of Nevada City as an additional insured, and other proofs as the city of Nevada City may find necessary, shall be issued to the city of Nevada City. For persons issued franchises after the effective date of the ordinance codified in this chapter, certificates and other required proofs shall be filed within thirty (30) days of the issuance of a franchise, prior to the commencement of construction, at policy renewal, and whenever there is any change in coverage. For entities that have facilities in the public rights-of-way as of the effective date of this chapter, the certificate and endorsements shall be issued within sixty (60) days of the effective date of this chapter, at policy renewal, and whenever there is any change in coverage, unless a pre-existing franchise provides for filing of certificates in a different manner. In the event that the insurance will terminate or lapse during the term of the franchise or license, then in that event, the cable communications system operator shall furnish, at least thirty (30) days prior to the expiration of such insurance, a new or renewed certificate of insurance as proof that the required coverage has been obtained.~~

4. ~~Endorsement Contents. Endorsements shall contain a provision that coverages afforded under these policies will not be canceled, modified, suspended or non-renewed unless at least thirty (30) days' prior written notice has been given to the city of Nevada City. Endorsements shall name the city of Nevada City and its officers, employees, agents and volunteers as additional insureds and shall specify that the franchisee's policy is primary, the city of Nevada City's insurance is excess and non-contributing and shall contain a cross-liability clause. The endorsement shall also declare its "SIR" or deductibles, which amounts must be acceptable to the city of Nevada City. Policies shall be issued by companies authorized to do business under the laws of the state of California. Financial ratings must be no less than "A VII" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide, or as otherwise approved by the city administrator.~~

5. ~~Insurance Amounts. A cable communications system operator (and those acting on its behalf to construct or operate the system) shall maintain the following minimum insurance. The city of Nevada City shall be named as an additional insured on the general liability and automotive policies; those insurance policies shall be primary and contain a cross-liability clause.~~

   a. ~~Comprehensive general liability insurance to cover bodily injury, death, and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:~~

~~Bodily Injury~~	
~~Each Occurrence~~	~~$1,000,000~~
~~Annual Aggregate~~	~~$3,000,000~~
~~Property Damage~~	
~~Each Occurrence~~	~~$1,000,000~~

~~Annual Aggregate~~	~~$3,000,000~~
~~Personal Injury~~	
~~Annual Aggregate~~	~~$3,000,000~~

~~Completed operations and products liability shall be maintained for two (2) years after the termination of the franchise or license (in the case of the cable communications system owner or operator) or completion of the work for the cable communications system owner or operator (in the case of a contractor or subcontractor).~~

~~Property damage liability insurance shall include coverage for the following hazards: X - explosion, C - collapse, U - underground.~~

~~b. Workers' compensation insurance shall be maintained during the life of this contract to comply with statutory limits for all employees, and in the case any work is sublet, each cable communications system operator shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each cable communications system operator. Each cable communications system operator and its contractors and subcontractors shall maintain during the life of this policy employers' liability insurance. The following minimum limits must be maintained:~~

~~Workers' Compensation~~	~~Statutory Limits~~
~~Employer's Liability~~	~~$1,000,000 per occurrence~~

~~c. Comprehensive Auto Liability.~~

~~Bodily Injury~~	
~~Each Occurrence~~	~~$1,000,000~~
~~Annual Aggregate~~	~~$3,000,000~~
~~Property Damage~~	
~~Each Occurrence~~	~~$1,000,000~~
~~Annual Aggregate~~	~~$3,000,000~~

~~Coverage shall include owned, hired, and non-owned vehicles. In every franchise or license agreement, the city of Nevada City shall reserve the right to require any other insurance coverage it deems necessary depending upon exposures.~~

~~6~~2. Construction Bonds. Every ~~operator of a~~franchisee constructing a cable communications system within the city of Nevada City for which a permit is required shall obtain and maintain bonds during periods of ~~rebuild or upgrade of~~constructing the cable system to ensure the faithful performance of its responsibilities under this chapter and any franchise. The amount of the performance and payment bonds shall be set by the ~~city~~ City manager, but shall not be less than ten (10) percent of the estimated cost of constructing or (in the case of existing systems) upgrading the system, and including a sufficient amount to cover the removal of facilities and/or restoration of city facilities within the right-of-way. ~~The bond is not in lieu of any additional bonds that may be required through the permitting process~~. The bond shall be in a form acceptable to the city attorney. Bonds must be obtained prior to the effective date of any ~~franchise, transfer or franchise renewal~~permit, unless the ~~city~~ City manager specifically provides otherwise.

~~7. Security Fund. Every cable communications system operator shall establish and maintain a cash security fund or provide the city of Nevada City an irrevocable letter of credit in the amount of one hundred thousand dollars ($100,000.00) to secure the payment of fees owed, to secure any other performance promised in a franchise, and to pay any taxes, fees or liens owed to the city of Nevada City. The letter of credit shall be in a form and with an institution acceptable to the city of Nevada City's city manager and in a form acceptable to the city attorney. Should the city of Nevada City draw upon the cash security fund or letter of credit, the cable communications system operator shall, within fourteen (14) days, restore the fund or the letter of credit to the full required amount. This security fund/letter of credit may be waived or reduced by the city of Nevada City for a franchisee where the city of Nevada City determines in its discretion that a particular franchisee's operations are sufficiently limited that a security fund/letter of credit is not necessary to secure the required performance. The city of Nevada City may from time to time require a franchisee to change the amount of the required security fund/letter of credit to reflect changed risks to the city of Nevada City and to the public, including delinquencies in taxes or other payments to the city. The cash security fund or letter of credit must be obtained prior to the effective date of any franchise, license, transfer or franchise renewal, unless a franchise specifically provides otherwise.~~

~~H. Enforcement and Remedies.~~

~~1. Franchise Violation—Notice and Procedures. Before revoking a franchise or issuing an order to assess liquidated damages, the city of Nevada City shall follow the procedures set forth below:~~

~~a. The city of Nevada City shall notify a cable communications system operator in writing of any alleged violation ("violation notice") of a franchise or this chapter. The violation notice shall:~~

~~i. Identify the violation;~~

~~ii. Direct the cable communications system operator to cure the violation or show cause why the violation cannot or should not be cured; and~~

~~iii. State the time for the cable communications system operator's response, which shall be at minimum thirty (30) days from the date of issuance of the violation notice, except for violations that present a danger to public health, safety or welfare, in which case the time for response may be shortened.~~

~~b. Within the time period designated for response, the cable communications system operator shall respond in writing to the city of Nevada City indicating that:~~

~~i. The cable communications system operator intends to contest the violation notice and describing all facts relevant to its claim; or~~

ii. The cable communications system operator has completely cured the violation, in which case the cable communications system operator shall provide documentation demonstrating that the violation has been completely cured; or

iii. The cable communications system operator has begun to correct the violation; however, the violation cannot be corrected immediately despite the cable communications system operator's continued due diligence, in which case the operator shall describe in detail the steps already taken and operator's proposed plan and time schedule for completely curing the violation. Correction of the violation is not complete until all damages and penalties owed are paid in full.

c. If the cable communications system operator contests the violation notice or the city of Nevada City determines that the cable communications system operator has failed to completely cure the violation, to submit an acceptable plan to cure the violation, or to work diligently to cure the violation, the county shall schedule a hearing before the city council ("violation hearing"). The city of Nevada City shall provide the cable communications system operator written notice of the violation hearing at least twenty (20) days prior to the hearing ("hearing notice").

d. The hearing notice shall indicate:

i. The time and place of the violation hearing;

ii. The nature of the violation; and

iii. The cable communications system operator's right to present oral and written testimony at an open and public meeting.

e. At the violation hearing, the city council shall hear and consider evidence from the cable communications system operator, city staff and members of the public regarding the alleged violation. The operator shall be given an opportunity to present any and all evidence relating to the alleged violation.

f. If, based upon the evidence presented at the violation hearing, the city council finds that the cable communications system operator has violated a franchise, the enabling ordinance codified in this chapter or any applicable state or federal law, the city council may issue an order assessing liquidated damages if provided for by the operator's franchise, or, subject to subsection (H)(2) of this section and the terms of the cable communications system operator's franchise, revoke or shorten the franchise.

2. Revocation and Termination. The city council may revoke a franchise or reduce the term of a franchise if it finds, after complying with procedures set forth above, that a cable communications system operator has violated this chapter or its franchise or license; has defrauded or attempted to defraud the city of Nevada City or subscribers; or has attempted to evade the requirements of this chapter or its franchise or license. Except as to violations that are impossible to cure, and as provided in subsections (H)(3) and (4) of this section, the franchise may only be revoked if the franchisee:

a. Was given notice of the default; and

b. Thirty (30) days to cure the default; and

c. The franchisee failed to cure the default, or to propose a schedule for curing the default acceptable to the city of Nevada City where it is impossible to cure the default in thirty (30) days.

3. Exception for Certain Acts. No opportunity to cure is required for repeated violations, and fraud and attempted fraud shall be deemed incurable. Further, the city of Nevada City may declare a franchise forfeited without opportunity to cure where a franchisee:

a. Voluntarily stops providing service it is required to provide; and

b. Transfers the franchise without the prior consent of the city of Nevada City.

4. Exception for Bankruptcy. A franchise will terminate automatically by force of law one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the franchise may be reinstated within that one hundred twenty (120) day period, if:

   a. Such assignment, receivership or trusteeship has been vacated; or

   b. Such assignee, receiver or trustee has fully complied with the terms and conditions of this chapter and the franchise, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this chapter and the franchise.

   In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, the city of Nevada City may revoke the franchise following a public hearing before the city council by serving notice upon the franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges thereunder will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

   a. The city of Nevada City has approved the transfer of the franchise to the successful bidder; and

   b. The successful bidder has covenanted and agreed with the county to assume and be bound by the terms and conditions of the franchise and this chapter.

5. Effect of Termination or Forfeiture. Upon termination or forfeiture of a franchise, whether by action of the city of Nevada City as provided above, or by passage of time, the franchisee must stop using the cable communications system for the purposes authorized by the franchise. The city of Nevada City may take possession of some or all of franchisee's facilities, or require the franchisee or its bonding company to remove some or all of the franchisee's facilities from the city of Nevada City and restore affected property to its same or better condition. This provision does not permit the city of Nevada City to remove facilities that are used to provide another service for which the franchisee holds a valid franchise issued by the city of Nevada City.

6. Remedies Cumulative. Remedies provided for under this chapter, or under a franchise shall be cumulative. Recovery by the city of Nevada City of any amounts under insurance, the performance bond, the security fund or letter of credit, does not limit a franchisee's duty to indemnify the city of Nevada City; or relieve a franchisee of its franchise obligations or limit the amounts owed to the county.

7. Liquidated Damages Required in Franchise. A franchise granted pursuant to this chapter shall require liquidated damages, in an amount to be specified in the franchise, for specified breaches of the franchise including, but not limited to, failure to commence construction, failure to meet construction plan benchmarks, failure to comply with rebuild plan benchmarks, failure to commence service, and material breach of franchise obligation(s). The franchise shall also provide that the county may withdraw liquidated damages owed from the franchisee's security deposit, after complying with the procedures set forth in subsection (N)(8) of this section. Liquidated damages shall commence on that date that performance was due and/or failed, and continue until the franchisee demonstrates to the satisfaction of the city of Nevada City that the franchisee has fully performed its obligations giving rise to the payment of liquidated damages. Any obligation to pay liquidated damages does not in any way affect the franchisee's obligation to pay franchise fees or perform other obligations in the franchise and such liquidated damages do not constitute franchise fees and are not subject to any limitations on franchise fees contained in 47 U.S.C. Section 542(b). Any obligation to pay liquidated damages are not costs of satisfying franchise requirements as provided in 47 C.F.R. Section 76.925. Franchisee agrees it will not pass the cost of any liquidated damages to subscribers through subscriber rates or itemize or otherwise identify on subscriber bills any obligation franchisee may have to pay liquidated damages.

8. Penalties, Fines and Other Monetary Sanctions.

a. Penalties. In addition to any other remedies provided for in this chapter or otherwise available by law, the city of Nevada City shall have the power to impose monetary penalties in the event a cable communications system operator violates any provision of this chapter, a franchise, or any regulation lawfully adopted thereunder. The amounts of such penalties shall be specified in the franchise and shall be based on the following principles:

i. Penalties shall exceed the financial benefits to a franchisee delaying or failing to comply with the applicable requirement;

ii. Even where such benefits are not easily discernible, the penalties shall be high enough to have a significant deterrent effect on a franchisee; and

iii. Penalties shall be sufficient to protect the city of Nevada City and other affected parties against loss of revenues resulting from violations.

b. Other Monetary Sanctions. A franchise shall also provide for fines, liquidated damages and other monetary sanctions, the amounts of which shall also reflect the foregoing principles.

c. Private Suit Against Franchisee.

i. Any person or organization adversely affected by a violation, or by a pattern and practice of violations, shall have the right to sue a franchisee in a court of competent jurisdiction for damages and for injunctive and other relief to require enforcement of the franchise. Organizations shall be entitled to sue on behalf of themselves or their members.

ii. The remedy herein provided shall be in addition to any remedies provided by law.

iii. Except in emergency situations in which immediate relief is required, private litigants shall notify the city attorney not fewer than ten (10) days prior to filing suit. However, suit by the city of Nevada City shall not preempt the private litigant's right to proceed.

d. Except as otherwise provided in this chapter, any person who violates any provisions of this chapter shall be subject to a fine not to exceed five hundred dollars ($500.00) for each offense; each day of said violation shall constitute a separate offense.

I. Books and Records.

1. Generally. Each cable communications system operator shall provide the city of Nevada City access to books and records related in whole or in part to the construction, operation, or repair of the cable communications system, or a group of systems of which the system is a part, so that the city of Nevada City may inspect and copy these books and records. The records include, but are not limited to, revenue records, and other records related to compliance with any provision of this chapter or a franchise. A franchisee is responsible for obtaining or maintaining the necessary possession or control of all such books and records, so that it can produce the documents upon request. Books and records must be maintained for a period of four (4) years, except that a franchise may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The phrase "books and records" shall be read expansively to include information in whatever format stored.

2. Production. Books and records requested shall be produced at the city of Nevada City by a time and at a location in the city of Nevada City designated by the city manager. However, if the requested books and records are too voluminous, or for security reasons cannot be copied and moved, then the franchisee may request that the inspection take place at some other location mutually agreed to by the city of Nevada City and the franchisee, provided that:

a. The franchisee must make necessary arrangements for copying documents selected by the city of Nevada City after its review; and

b. The franchisee must pay all travel and additional copying expenses incurred by the city of Nevada City (above those that would have been incurred had the documents been produced

~~in the city of Nevada City) in inspecting those documents or having those documents inspected by its designee.~~

~~J~~H. Reports.

~~1. Obligation to Submit. The City manager may from time to time direct a franchisee to prepare reports and to submit those reports by a date certain, in a format prescribed by the city manager, in addition to those required by this chapter.~~

~~2~~1. Quarterly ~~Reports~~Statement. ~~Unless an exemption is granted by the city manager, within~~ Within forty-five (45) days of the end of each calendar quarter, a franchisee shall submit a ~~report~~ statement to the city of Nevada City ~~containing the following information~~as required by subsection J(2) hereof:

~~a. The number of service calls (calls requiring a truck roll) received during the prior quarter and the percentage of service calls compared to the subscriber base; and~~

~~b. The total estimated hours of known outages as a percentage of total hours of operation. An outage is a loss of sound or video on any signal, or a significant deterioration of any signal affecting two (2) or more subscribers.~~

~~3.~~2 Annual Reports. The ~~city~~ City manager may require a cable communications system operator to submit a report containing the following information within ninety (90) days after the end of the operator's fiscal year:

a. A fully audited or certified revenue report from the previous calendar year for the cable communications system, and a certified statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding year and a detailed explanation of the method of computation showing:

i. Gross revenues by category (e.g., basic pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other), and

ii. What, if any, deductions were made from gross revenues in calculating the franchise fee (e.g., bad debt, credits and refunds), and the amount of each deduction;

~~b. A report showing, for each applicable customer service standard, the franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where the franchisee concludes it did not comply fully, the franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and nature of all the customer service complaints received and an explanation of their dispositions;~~

~~c. An ownership report, indicating all persons who at the time of filing control or own an interest in the franchisee of ten (10) percent or more.~~

~~4. Contemporaneous Reports. Within ten (10) days of their receipt or (in the case of documents created by the franchisee or its affiliate) filing, a franchisee shall provide the city of Nevada City:~~

~~a. Notices of deficiency or forfeiture related to the operation of the system; and~~

~~b. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the franchisee or by any partnership or corporation that owns or controls the franchisee directly or indirectly.~~

~~K~~I. Maps Required. Each franchisee shall maintain accurate maps and improvement plans which show the location, size, and a general description of all facilities installed in the public rights-of-way and any power supply sources (including voltages and connections) within the incorporated area of the city of Nevada City. Maps shall be based upon post-construction inspection to verify location. Each franchisee shall provide a map to the city of Nevada City showing the location of its facilities within the city of Nevada City, in such detail and scale as may be reasonably directed by the city engineer and update the map at least annually, and whenever the facility expands or is relocated. Copies of maps

shall be provided in hard copy and on disk, in a commercially available electronic format specified by the city engineer.

~~L. Other Records Required. Unless the city manager waives the requirement, a franchisee shall at all times maintain:~~

~~1. Complaint Records. Records of all complaints received, their nature and resolution. The term "complaints" refers to complaints about any aspect of the franchisee's operations;~~

~~2. Outage Records. Records of outages known to the franchisee, their cause and duration;~~

~~3. Complaint Response. Records of service calls for repair and maintenance indicating the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved;~~

~~4. Installation Records. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended;~~

~~5. Customer Service. Records sufficient to show whether the franchisee has complied with each customer service standard that applies to it.~~

~~M. Exemptions. The city manager may temporarily exempt any franchisee from its obligations under subsections I through L of this section if the city manager determines that the requirement would be unduly burdensome or unnecessary, and that the city of Nevada City and subscriber interests may be adequately protected in some other manner.~~

~~N. Privacy. A franchisee shall take all reasonable steps required so that it is able to provide reports, books and records to the city of Nevada City, including by providing appropriate subscriber privacy notices. Each franchisee shall be responsible for redacting data that applicable law prevents it from providing to the city of Nevada City. Nothing in this section shall be read to require a franchisee to violate state or federal subscriber privacy laws.~~

~~O~~J. Procedures for Paying Franchise Fees and Fees in Lieu of Franchise Fees.

1. Fees Paid Quarterly. The franchise fee paid pursuant to Section 5.28.020 of this shall be paid quarterly unless otherwise specified in a franchise. Payment for each quarter shall be made to city of Nevada City not later than forty-five (45) days after the end of each calendar quarter.

2. Quarterly Statement. Unless a franchise provides otherwise, a franchisee or other entity subject to a fee under Section 5.28.020 of this chapter shall file with the city of Nevada City within forty-five (45) days of the end of each calendar quarter a statement showing gross revenues during the preceding quarter and the number of subscribers served.

3. Acceptance of Payment Not a Release. No acceptance by the city of Nevada City of any payment shall be construed as an accord that the amount paid is in fact the correct amount; nor shall such acceptance of such payment be construed as a release of any claim the city of Nevada City may have for additional sums payable.

4. Fee Not in Lieu of Taxes. The franchise fee under Section 5.28.020 of this chapter is not a payment in lieu of any tax, fee or other assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable communications system operators or their services, but not including a tax, fee, or assessment which is unduly discriminatory against operators or subscribers).

~~5. Failure to Pay Franchise Fee. In the event that a fee payment is not received by the city of Nevada City on or before the due date set forth in the code or in a franchise, or the fee owed is not fully paid, the person subject to the fee will be charged interest from the due date at an interest rate equal to three (3) percent above the rate for three (3) month federal treasury bills at the most recent United States Treasury Department sale of such treasury bills occurring prior to the due date of the franchise fee payment.~~

65. Final Statement of Gross Revenues. Within ninety (90) days of the date a franchisee ceases operations under a franchise (whether because of franchise termination, transfer, bankruptcy or for any other reason), the franchisee shall file a final statement of gross revenues covering the period from the beginning of the calendar year in which the operations commenced to the date operations ceased. The statement shall contain the information and be audited or certified as required by subsection ~~(J)(3)(a)~~H of this section.

(Ord. 2016- ; Ord. 2004-07 Exh. A § 1, 2004)

5.28.020 - Special rules applicable to state video service franchises.

A. Additional Definitions.

For the purposes of this section, in addition to those listed in the prior Section, the following terms, phrases, words, and abbreviations shall have the meaning given herein.

"DIVCA" refers to the "Digital Infrastructure and Video Competition Act" adopted by the State of California in 2006 and embodied in California Public Utilities Code section 5800 et seq., which transferred authority for issuing franchises to cable television providers from local entities to the Public Utilities Commission, while authorizing local governmental entities to be responsible for administration and implementation of certain provisions of DIVCA and establish financial support provisions for PEG channel facilities.

"Gross Revenues", consistent with the definition in DIVCA section 5860(d), means all revenues actually received by the holder of a state franchise or its affiliates that are derived from the operation of the holder's network to provide cable service or video service within the incorporated areas of the city of Nevada City.

"Incumbent Cable Operator" as defined in DIVCA section 5830(i) means a cable operator or OVS serving subscribers under a franchise in a particular city, county or city and county franchise area on January 1, 2007.

"Material Breach" as defined in DIVCA section 5900(j) means any substantial and repeated failure of a video service provider to comply with service quality and other standards specified in California Public Utilities Code section 5900(a).

"PEG Access" or "PEG" means the availability of a cable or State Franchise Holder's system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including organizations, groups, or individual members of the general public, educational institutions, and the City and the County and its designated access providers, to acquire, create, and distribute programming not under a State Franchise Holder's editorial control.

"PEG support fees" means the fees adopted pursuant to Article 2.A of Chapter II of the Nevada County General Code and this Subsection G of Section.

"PUC" means the California Public Utilities Commission.

"State Franchise Holder" means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the incorporated areas of Nevada City.

B. General.

1. Purpose. This section is applicable to video service providers who have been awarded a state video franchise under DIVCA to provide cable or video services in any location(s) within the incorporated boundaries of the City. It is the purpose of this section to implement within the provisions of DIVCA and the rules of the PUC promulgated thereunder applicable to a "local

franchising entity" or a "local entity" as defined in DIVCA within the incorporated boundaries of the city of Nevada City regulations that are similar to those adopted by the County for the unincorporated areas.

2. Rights reserved.

   a. The rights reserved to the City under this section are in addition to all other rights of the City, whether reserved by this section or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.

   b. Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:

      i. compliance with applicable requirements for the privilege of transacting or carrying on a business within the City, including, but not limited to, compliance with the conditions that the City may establish before facilities may be constructed or, or providing, non-video services;

      ii. any permit or authorization required in connection with operations on or in public rights-of-way ro public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits, and street cut permits; and

      iii. any permit, agreement or authorization for occupying any other property of the City or any private person to which access is not specifically granted by the state franchise.

3. Compliance with City Ordinances. Nothing contained in this section shall be construed so as to exempt a State Franchise Holder from compliance with all ordinances, rules and regulation of the City now in effect or which may be hereafter adopted which are consistent with this section or California Public Utilities Code sections 5800 et seq., or any obligations under any franchise issued by the City insofar as those obligations may continue to be enforced thereunder.

4. Compliance with DIVCA. When a video service provider holding a state franchise provides notice pursuant to section 5840(m) of DIVCA that it is commencing to provide video service to the County, a holder of a local franchise is entitled to seek a state franchise pursuant to section 5930(c) and upon issuance of a state franchise by the PUC for the franchise area, the local franchise shall terminate.

C. Franchise Fees.

1. Amount. Any State Franchise Holder operating within the incorporated areas of the City shall pay to the City a franchise fee equal to five percent (5%) of the gross revenues that may be subject to a franchise fee under CPUC section 5860.

2. Payment of Franchise Fees. The franchise fee required pursuant to this section shall be paid quarterly in a manner consistent with California CPUC section 5860. The State Franchise Holder shall deliver to the City, by check or other means, which shall be agreed to by the City, a separate payment for the state franchise fee not later than forty-five (45) days after the end of each calendar quarter. Each payment shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the City.

3. Examination of Business Records. The City may examine the business records of the holder of a state franchise in a manner consistent with CPUC section 5860(i)

4. Late payments. In the event a State Franchise Holder fails to make payments required by this section on or before the due dates specified herein, the City shall impose, pursuant to DIVCA section 5860(h), a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

D. Customer Service.

1. Customer Service Standards. A State Franchise Holder shall comply all the Sections set forth in Section G-II.2.A.5.A of the County General Code, including, without limitation to the extent

consistent with DIVCA, all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, including any such federal or state standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this subsection shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards..

2. Penalties for Violations of Standards. The City shall enforce compliance of State Franchise Holders within the incorporated areas of the City with respect to the state and federal customer service and consumer protection standards to the same extent and in the same manner as provided by the County in the unincorporated areas as set forth in Section G-II.A.5.B.

E. Permits and Construction.

1. Except as otherwise expressly provided in this chapter, all provisions of the Nevada City Municipal Code and all City administrative rules and regulations developed to any of these provisions, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a State Franchise Holder on any City public rights-of-way, public property, or City easement.

2. Permits. Prior to commencing any work for which a permit is required by the Nevada City Municipal Code, a State Franchise Holder shall apply for and obtain a permit in accordance with the provisions of Title 15 of the Nevada City Municipal Code and shall comply with all other applicable laws and regulations, including, but not limited to, all applicable requirements of Division 13 of the California Public Resources Code, section 21000, et seq. (the California Environmental Quality Act) and Title 14, Chapter 3 of the California Code of Regulations, section 15000 et seq. (Guidelines for California Environmental Quality Act). Any work requiring City land use permits, building permits and/or grading permits shall be applied for and approved or denied in accordance with the provisions of the Nevada City Municipal Code, including the appeal process.

3. The issuance of an encroachment permit is not a franchise, and does not grant any vested rights in any location in the public rights-of-way, or in any particular manner of placement within the rights-of-way. Without limitation, a permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, in accordance with applicable law.

F. Emergency Alert System. Each State Franchise Holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the State Franchise Holder's network. To the extent consistent with CPUC section 5880, each State Franchise Holder shall install and maintain an audio override on all channels for transmission of emergency messages and alerts and provide for character generated information to be superimposed on all channels for the hearing impaired.

G. Public, Educational, and Government Access Channel Capacity, Support, Interconnection, and Signal Carriage.

1. PEG Channel Capacity.

a. There are currently four (4) PEG access channels activated in Nevada County. A State Franchise Holder shall designate a sufficient amount of capacity on its network to allow the provision of four (4) PEG channels to satisfy the requirement of Section 5870 of the California Public Utilities Code, within the time limits specified therein.

b. A State Franchise Holder shall provide an additional PEG channel when the County satisfies the standards set forth in Section 5870(d) of the California Public Utilities Code or any entity designated by the County to manage one or more of the PEG channels.

c. All State Franchise Holders shall comply with the provisions of DIVCA related to PEG channels. Without limiting the foregoing, the PEG channels shall be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated from other

channels carried on the basic service tier and channel numbers for the PEG channels shall be the same channel numbers used by the Incumbent Cable Operator, unless prohibited by Federal Law, and shall provide picture and sound quality, channel accessibility, and location equal to, or substantially equal to, that provided by the Incumbent Cable Operator. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by Federal Law.

2, PEG Support.

a. Amount of PEG support fee. Any State Franchise Holder shall pay to the ~~County~~ City~~or if directed by the County, to the County's designated PEG provider,~~ a PEG fee equal to one and four-tenths percent (1.4%) of gross revenues, an amount equivalent to the level of PEG funding remitted by the Incumbent Cable Operator ~~to the County's designated PEG provider during the period of January 1, 2006 to December 30, 2006~~cumulatively to the County of Nevada and the cities of Nevada City and Grass Valley during the most recently completed franchise periods.

b. The PEG support fee shall be used in a manner that is consistent with state and federal law.

c. A State Franchise Holder shall remit the ~~Peg~~ PEG support fee quarterly, within forty-five (45) days after the end of each calendar quarter. Each payment shall be accompanied by a summary detailing how the PEG support fee was calculated.

d. In the event that a State Franchise Holder fails to pay the PEG support fee when due, or underpays the proper amount due, the State Franchise Holder shall pay interest pursuant to DIVCA section 5860(h) at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%), or the maximum rate specified by state law.

3. Interconnection. Each State Franchise Holder and each Incumbent Cable Operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under CPUC section 5870(h). Each State Franchise Holder and Incumbent Cable Operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a State Franchise Holder and an Incumbent Cable Operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the County may require the Incumbent Cable Operator to allow each State Franchise holder to interconnect its network with the Incumbent Cable Operator4's network at a technically feasible point on the State Franchise holder's network as identified by the State Franchise Holder. If no technically feasible point of interconnection is available, each State Franchise Holder shall make interconnection available to each PEG channel originator programming a channel in the County and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by each State Franchise Holder unless otherwise agreed to by the parties.

H. Notices.

1. Each State Franchise Holder or applicant for a state franchise shall file with the County a copy of all applications or notices that the State Franchise Holder of applicant are required to file with the California Public Utilities Commission.

2. Unless otherwise specified in this Section, all notices or other documentation that a State Franchise Holder is required to provide to the County under this Section or the California Public Utilities Code shall be provided both to the County Manager and the County staff person in charge of cable and telecommunications, or their successors or designees and, to the extent they concern operations within the incorporated areas of Nevada City, to the City Manager.

(Ord. 2016- ;Ord. 2004-07 Exh. A § 2, 2004)

5.28.030 - Open video systems - Repealed

(Ord. 2004-07 Exh. A § 3, 2004)

5.28.040 - Miscellaneous.

A. Captions. The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter.

B. Calculation of Time. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this chapter or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

C. Severability. If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder of this chapter shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the city of Nevada City and shall thereafter be binding on the Franchisee and the city of Nevada City.

D. Connections to Cable System; Use of Antennae.

1. Subscriber Right to Attach. To the extent consistent with federal law, subscribers shall have the right to attach VCRs, receivers, and other terminal equipment to a franchisee's cable system. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.

2. Removal of Existing Antennae. A Franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit installation of a new antenna, provided that such antenna is connected with an appropriate device and complies with applicable law.

E. Discrimination Prohibited.

1. No Retaliatory Actions. A cable communications system operator shall not discriminate among persons or the city of Nevada City or take any retaliatory action against a person or the city of Nevada City because of that entity's exercise of any right it may have under federal, state, or local law; nor may the cable communications system operator require a person or the city of Nevada City to waive such rights as a condition of taking service.

2. Employment and Hiring Practices. A cable communications system operator shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, sexual orientation, age, disability, religion, ethnic background, or marital status. A cable communications system operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, and hiring practices, as the same may be amended from time to time.

F. Transitional Provisions.

1. Persons Operating Without a Franchise. The cable communications system operator of any facility installed as of the effective date of the ordinance codified in this chapter, for which a franchise is required under this chapter, shall have three (3) months from the effective date of the ordinance codified in this chapter to file one (1) or more applications for a franchise. Any cable communications system operator timely filing such an application under this subsection shall not be subject to a penalty for failure to have such a franchise so long as said application remains pending; provided, however, nothing herein shall relieve any cable communications system

operator of any liability for its failure to obtain any permit or other authorization required under other provisions of the city of Nevada City Municipal Code, and nothing in this chapter shall prevent the city of Nevada City from requiring removal of any facilities installed in violation of the city of Nevada City Municipal Code.

2. Persons Holding Franchises. Any person holding an existing franchise for a cable communications system may continue to operate under the existing city of Nevada City Municipal Code provisions to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the franchise; and provided further that such person shall be subject to the other provisions of this chapter to the extent permitted by law.

3. Persons with Pending Applications. Pending applications shall be subject to this chapter. A person with a pending application shall have thirty (30) days from the effective date of the ordinance codified in this chapter to submit additional information to comply with the requirements of this chapter governing applications.

(Ord. 2016- ; Ord. 2004-07 Exh. A § 4, 2004)

~~Appendix A~~

~~Customer Service Standards~~

~~The Franchisee shall comply with the customer service and reporting requirements in this section, or as amended. These requirements include but are not limited to the requirements set forth in FCC regulations, including 47 C.F.R. § 76.309 and other applicable law. To the extent the provisions of this section differ from applicable FCC regulations or any applicable law, the provision or provisions that impose the highest standard or greatest legal duties or obligations upon the Franchisee shall take precedence, unless a different order of precedence is expressly set herein.~~

~~1. Office Availability.~~

~~1.1 Each Franchisee wilt maintain offices at a convenient locations in Western Nevada County that will be open for walk-in traffic at least ten (10) hours per day (except legal holidays) Monday through Friday, with some evening hours, and at least five (5) hours on Saturday to allow Subscribers to pay bills, drop off equipment and to pick up equipment.~~

~~1.2 Each Franchisee will perform service calls, installations, and disconnects at least ten (10) hours per day Monday through Saturday, except legal holidays, provided that a Franchisee will respond to outages twenty-four (24) hours a day, seven (7) days a week.~~

~~2. Telephones. All Call Response statistics shall be measured on the basis of call response statistics in all call centers that serve Subscribers. If the call centers serve Subscribers located in other communities, the Franchisee shall insure that call center representatives do not give priority or preferential treatment to Subscribers located in other communities.~~

~~A. Definition of Call Response terms:~~

~~(i) "Answer time" is the interval between when the Franchisee receives a call and when an interactive voice response (IVR) or agent answers.~~

~~(ii) "Speed of answer" is the amount of time between when the customer is transferred into the agent queue from either an IVR or an agent arid the time an agent answers.~~

~~(iii) "Calls abandoned" is the percentage of calls in any agent queue that are abandoned.~~

~~(iv) "Trunks busy" represents the percentage of time customers receive a busy signal when they call customer service during normal business hours.~~

~~2.1 Each Franchisee will establish a publicly listed local toll-free telephone number. Customer service representatives must answer the phone at least ten (10) hours per day, Monday through Saturday, except legal holidays, for the purpose of receiving requests for service,~~

~~inquiries, and complaints from Subscribers. After such business hours the phone will be answered so that customers cart register complaints and report service problems on a twenty-four (24) hour per day, seven (7) day per week basis, and so that the Franchisee can respond to service outages as required herein..~~

~~2.2 Standards for Call Response.~~

~~2.2.1 Answer time will not exceed thirty (30) seconds or four (4) rings. Under normal operating conditions the Franchisee shall meet this requirement at least ninety (90) percent of the time.~~

~~2.2.2 The average speed of answer shall not exceed thirty (30) seconds. Under normal operating conditions the Franchisee shall meet this requirement at least ninety (90) percent of the time.~~

~~2.2.3 The percentage of calls abandoned shall not exceed three (3) percent under normal operating conditions.~~

~~2.2.4 Subscribers shall receive a trunks busy signal less than three (3) percent of the time under normal operating conditions.~~

~~2.3 Call Response Reports.~~

~~2.3.1 Franchisee shall submit reports on call response statistics every calendar quarter, except as otherwise provided in this section.~~

~~2.3.2 If any of a Franchisee's quarterly call response statistics fail to demonstrate compliance with any applicable requirement, the Franchisee must thereafter submit monthly reports on all call response times until the Franchisee requests and the city of Nevada City approves resuming quarterly reporting.~~

~~2.3.3 Information in the reports about call response times shall be determined on the basis of the simple average of results during business hours under normal operating conditions for the entire reporting period, and any report submitted at the end of a calendar quarter shall report the total number of calls during the proceeding quarter and the average call response times during that quarter.~~

~~2.4 Other Reports.~~

~~2.4.1 A Franchisee shall submit reports on all customer service standards identified in this section during each successive calendar quarter for the term of the Franchise except as otherwise might be provided herein. If a Franchisee's reports for two (2) quarters within a calendar year fail to demonstrate that the Franchisee has complied with any customer service standard in paragraphs 2.0 through 2.3.3 of this section, the Franchisee shall thereafter submit monthly reports about performance of each such requirement until it reports three (3) consecutive months with less than five (5) percent deviation from any minimum required standard unless the Franchisee demonstrates to city of Nevada City's satisfaction that the deviation occurred when it was not operating under normal operating conditions as defined in 47 C.F.R. § 76.309 and reports on the nature and duration of such normal operating conditions.~~

~~2.4.2 Timing. A Franchisee shall submit reports within thirty (30) days after the close of the applicable reporting period. Each report shall include data from the applicable reporting period.~~

~~2.4.3 Each of the reporting requirements in this section is self-executing and the Franchisee agrees that city of Nevada City does not need to provide additional notice or an opportunity to cure in order to establish that the Franchisee has committed a breach of these requirements for the purposes of the Franchisee's obligation to pay liquidated damages as described in this section.~~

~~2.4.4 Compliance. If a monthly or quarterly report indicated that a Franchisee has failed to meet any of the minimum required standards, the Franchisee shall provide a written explanation of the deviation within ten (10) business days of the report, including steps being taken to cure~~

~~the deviation, and the time expected to implement the cure. A Franchisee must cure within thirty (30) days unless a longer period is agreed to in writing by city of Nevada City, which agreement shall not be unreasonably withheld.~~

~~3. Scheduling Work.~~

~~3.1 All appointments for service, installation, or disconnection will be specified by date. Each Franchisee will set a specific time at which the work will be done, or offer a choice of time blocks, which will not exceed four (4) hours in length. A Franchisee may also, upon request, schedule service installation calls outside normal business hours, for the express convenience of the customer.~~

~~3.2 If at any time an installer or technician is late for an appointment and/or believes a scheduled appointment time will be missed, an attempt to contact the customer will be made before the time of appointment and the appointment rescheduled at a time convenient to the customer, if rescheduling is necessary. It is the Operator's burden to prove it met the appointment.~~

~~3.3 The Franchisee will offer and fully describe to Subscribers who have experienced a missed appointment (where the missed appointment was not the Subscriber's fault) that the Subscriber may choose between the following options:~~

~~3.3.1 Installation or service call free of charge, if the appointment was for an installation or service call for which a fee was to be charged;~~

~~3.3.2 One (1) month of the most widely subscribed to service tier free of charge for other appointments; and~~

~~3.3.3 An opportunity to elect remedies under California Civil Code 1722, if applicable.~~

~~3.4 If the Franchisee makes reasonable and no less than three (3) attempts to confirm an appointment during the scheduled appointment time or appointment window and is unsuccessful in obtaining such confirmation, the Franchisee may assume that the customer has cancelled the appointment.~~

~~4. Service Standards.~~

~~4.1 Under normal operating conditions, requests for service, repair, and maintenance must be acknowledged by a trained customer service representative within twenty-four (24) hours, or before the end of the next business day, whichever is earlier.~~

~~4.2 A Franchisee will respond to all other inquiries (including billing inquiries) within five (5) business days of the inquiry or complaint.~~

~~4.3 Under normal operating conditions, repairs and maintenance for outages or service interruptions must be completed within twenty-four (24) hours after the outage or interruption becomes known to Franchisee where the Franchisee has adequate access to facilities to which it must have access it order to remedy the problem.~~

~~4.4 Under normal operating conditions, work to correct all other service problems must be begun by the next business day after notification of the service problem, and must be completed within five (5) business days from the date of the initial request.~~

~~4.5 When normal operating conditions do not exist, a Franchisee will complete the work in the shortest time possible.~~

~~4.6 A Franchisee will not cancel a service or installation appointment with a customer within twenty-four (24) hours of the appointment or after the close of business on the business day preceding the scheduled appointment, whichever is earlier.~~

~~4.7 Requests for additional outlets, service upgrades or other connections (e.g. DMX, VCR, A/B switch) separate from the initial installation will be performed within seven (7) business days after an order has been placed.~~

~~4.8 Under normal operating conditions, the service standards set out in Sections 4.1 through 4.7 will be met at least ninety-five (95) percent of the time, measured on a quarterly basis.~~

~~4.9 The failure of the Franchisee to hire sufficient staff or to properly train its staff will not justify a Franchisee's failure to comply with this provision.~~

~~5. Disabled Services. With regard to Subscribers with disabilities, upon Subscriber request, each Franchisee will arrange for pickup and/or replacement of converters or other Franchisee equipment at the Subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).~~

~~6. Notice to Subscribers Regarding Service. A Franchisee will provide each Subscriber at the time service is installed, and annually thereafter, clear and accurate written information:~~

~~6.1. On placing a service call, filing a complaint, or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);~~

~~6.2 Showing the telephone number of Western Nevada County office responsible for administering the Cable Television Franchise;~~

~~6.3 Detailing current rates and charges (which must include any senior, disabled or other discounts offered and the least expensive tier of service available), channel positions, services provided, delinquent Subscriber disconnect and reconnect procedures; information regarding the availability of parental control devices, the conditions under which they will be provided and the cost (if any) charged;~~

~~6.4 Describing conditions that must be met to qualify for discounts;~~

~~6.5 Describing any other of the Franchisee's policies in connection with its Subscribers; and~~

~~6.6 Describing any discounts, services, or specialized equipment available to Subscribers who are seniors or with disabilities; explaining how to obtain them; and explaining how to use any accessibility features.~~

~~7. Notices to City of Nevada City. Franchisee will provide city of Nevada City with copies of all notices provided to its Subscribers pursuant to this article.~~

~~8. Changes in Noticed Information. Franchisee will provide the City Manager (or designee) at least sixty (60) days, and all Subscribers at least thirty (30) days, written notice of any material changes in the information required to be provided under this article, except that if federal law establishes a shorter notice period and preempts this requirement, the federal requirement will apply.~~

~~9. Truth in Advertising. Each Franchisee will take appropriate steps to ensure that all written Franchisee promotional materials, announcements, and advertising of residential Cable service to Subscribers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, a Franchisee will take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers in advance of taking the order.~~

~~9.1 Each Franchisee will maintain a file open for public inspection containing all notices provided to Subscribers under these customer service standards, as well as all promotional offers made to Subscribers. The notices and offers will be kept in the file for at least one (1) year from the date of such notice or promotional offer.~~

~~10. Interruptions of Service. A Franchisee shall inform Subscribers and city of Nevada City, three (3) days prior to any scheduled or planned interruption of service for planned maintenance or construction; provided, however, that planned maintenance that does not require more than one (1) hour interruption of service and/or that occurs between the hours of 12:00 a.m. and 6:00 a.m. will not require such notice to Subscribers, and notice to city of Nevada City must be given no less than twenty-four (24) hours before the anticipated service interruption.~~

~~11. Prorated Billing. A Franchisee's first billing statement after a new installation or service change will be prorated as appropriate and will reflect any security deposit.~~

~~12. Billing Statement.~~

~~12.1 A Franchisee's billing statement must be dear, concise, and understandable; must itemize each category of service and equipment provided to the Subscriber; and must state clearly the charges therefor.~~

~~12.2 A Franchisee's billing statement must show a specific payment due date not earlier than the later of:~~

~~12.2.1 Fifteen (15) days after the date the statement is mailed; or~~

~~12.2.2 The tenth (10th) day of the service period for which the bill is rendered.~~

~~12.3 A late fee or administrative fee (collectively referred to below as a "late fee") may not be imposed for payments earlier than twenty-seven (27) days after the due date specified in the bill.~~

~~12.4 A late fee may not be imposed unless the Subscriber is provided written notice at least ten (10) days prior to the date the foe is imposed that a fee will be imposed, the date the fee will be imposed and the amount of the fee that will be imposed if the delinquency is not paid. A late fee may not be imposed unless the outstanding balance exceeds $10.00 and may not exceed $5.00.~~

~~12.5 Subscribers will not be charged a late fee or otherwise penalized for any failure by a Franchisee, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made. Payments will be considered timely if postmarked on the due date.~~

~~12.6 A Franchisee's bill must permit a Subscriber to remit payment by mail or in person at the Franchisee's local office.~~

~~13. Credit for Service Impairment.~~

~~13.1 A Subscriber's account will be credited a prorated share of the monthly charge for the service upon Subscriber request if a Subscriber is without service or if service is substantially impaired for any reason for a period exceeding four (4) hours during any twenty-four (24) hour period; or automatically if the loss of service or impairment is for twenty-four (24) hours or longer.~~

~~13.2 A Franchisee need not credit Subscriber where it establishes that a Subscriber will obtain a refund for a loss of service or impairment caused by the Subscriber or by Subscriber-owned equipment (not including, for purposes of this section, in-home wiring installed by the Franchisee).~~

~~14. Biting Complaints. Franchisee will respond to all written billing complaints from Subscribers within thirty (30) days.~~

~~15. Billing Refunds. Refunds to Subscribers will be issued no later than:~~

~~15.1 The earlier of the Subscriber's next billing cycle following resolution of the refund request, or thirty (30) days; or~~

~~15.2 The date of return of all equipment to Franchisee, if Cable service has been terminated.~~

~~16. Credits for Cable Service. Credits for Cable service will be issued no later than the Subscriber's next billing cycle after the determination that the credit is warranted.~~

~~17. Disconnection/Downgrades.~~

~~17.1 A Subscriber may terminate service at any time.~~

~~17.2 A Franchisee will promptly disconnect from the Franchisee's Cable System or downgrade any Subscriber who so requests. No charges for service may be made after the Subscriber requests disconnection. No period of notice before voluntary termination or downgrade of Cable service may be required of Subscribers by any Franchisee. There will be no~~

~~charge for disconnection, except for the collection fee authorized by state law, and any downgrade charges will conform to applicable law.~~

~~18. Security Deposit. Any security deposit and/or other funds due a Subscriber that disconnects or downgrades service will be returned to the Subscriber within thirty (30) days or in the next billing cycle, whichever is later, from the date disconnection or downgrade was requested except in cases where the Subscriber does not permit the Franchisee to recover its equipment, in which case the amounts owed will be paid to subscribers within thirty (30) days of the date the equipment was recovered, or in the next billing cycle, whichever is later.~~

~~19. Disconnection Due to Nonpayment.~~

~~19.1 A Franchisee may not disconnect a Subscriber's Cable service for non-payment unless:~~

~~19.1.1 The Subscriber is delinquent in payment for Cable service;~~

~~19.1.2 A separate, written notice of impending disconnection, postage prepaid, has been sent to the Subscriber at least twenty (20) days before the date on which service may be disconnected, at the premises where the Subscriber requests billing, which notice must identify the names and address of the Subscriber whose account is delinquent, state the date by which disconnection may occur if payment is not made, arid the amount the Subscriber must pay to avoid disconnection, and a telephone number of a representative of the Franchisee who can provide additional information concerning and handle complaints or initiate an investigation concerning the services and charges in question;~~

~~19.1.3 The Subscriber fails to pay the amounts owed to avoid disconnection by the date of disconnection; and~~

~~19.1.4 No pending inquiry exists regarding the bill to which Franchisee has not responded in writing.~~

~~19.2 If the Subscriber pays all amounts due, Including late charges, before the date scheduled for disconnection, the Franchisee will not disconnect service. Service may only be terminated on days in which the customer can reach a representative of the Franchisee either in person or by telephone.~~

~~19.3 After disconnection (except as noted below), upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee will promptly reinstate service.~~

~~20. Immediate Disconnection. A Franchisee may immediately disconnect a Subscriber if:~~

~~20.1 The Subscriber is damaging, destroying, or unlawfully tampering with or has damaged or destroyed or unlawfully tampered with the Franchisee's Cable System;~~

~~20.2 The subscriber is not authorized to receive a service, and is facilitating, aiding or abetting the unauthorized receipt of service by others; or~~

~~20.3 Subscriber-installed or attached equipment is resulting in signal leakage that is in violation of FCC rules.~~

~~20.4 After disconnection, the Franchisee will restore service after the Subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and all amounts owed the Franchisee for damage to its Cable System or equipment. Provided that, no reconnection fee may be imposed on a Subscriber disconnected pursuant to this article if the leakage was the result of the Franchisee's acts or omissions; or in any case unless the Franchisee notifies the Subscriber of the leakage at least three (3) business days in advance of disconnection, and the Subscriber has failed to correct the leakage within that time.~~

~~21. Franchisee's Property. Except as applicable law may otherwise provide, a Franchisee may remove its property from a Subscriber's premises within thirty (30) days of the termination of service. If a Franchisee fails to remove its property in that period, the property will be deemed~~

~~abandoned unless the Franchisee has been denied access to the Subscriber's premises, or the Franchisee has a continuing right to occupy the premises under applicable law.~~

~~22. Deposits. A Franchisee may require a reasonable, non-discriminatory deposit on equipment provided to Subscribers. Deposits will be placed in an interest-bearing account and the Franchisee will return the deposit plus interest earned to the date the deposit is returned to the Subscriber, less any amount the Franchisee can demonstrate should be deducted for damage to such equipment.~~

~~23. Parental Control Option. Without limiting a Franchisee's obligations under federal law, a Franchisee must provide parental control devices at no charge to all Subscribers who request them that enable the Subscriber to block the video and audio portion of any channel or channels of programming.~~

~~24. Penalties. Pursuant to California Government Code § 63088.2, and any successor statute or regulation, penalties will be assessed against a Franchisee for any breach of Sections 1-23 of these customers service standards.~~

~~25. Notwithstanding the requirements of this article the City Manager is authorized to relieve a Franchisee of its obligations under this article if:~~

~~25.1 Franchisee shows that there is an alternative standard that is substantially similar to that established by this article;~~

~~25.2 In light of the number of customers served by a Cable System Operator, the requirements of this article are, in the City Manager's sole discretion, unduly burdensome and there is an alternative way to serve the same interest.~~

ORDINANCE NO. 2017-03

AN ORDINANCE OF THE CITY OF NEVADA CITY AMENDING TITLE 15 OF THE NEVADA CITY MUNICIPAL CODE TO ADOPT THE 2016 CALIFORNIA BUILDING STANDARDS, WITH LOCAL AMENDMENTS SIMILAR TO THOSE ADOPTED BY NEVADA COUNTY BY ORDINANCE NO. 2424

WHEREAS, the local climatic, geological, and topographical conditions in Nevada City are the same as or substantially similar to those in western County of Nevada where it is located, and

WHEREAS, the City of Nevada City contracts with the County of Nevada for its building inspection services, making it desirable to have the same building standards and amendments applicable within the City of Nevada City as those applicable in the County, and

WHEREAS, the County of Nevada has reviewed and on December 13, 2016 has adopted by Ordinance No. 2424 building standards, local amendments, and findings applicable to the unincorporated areas after review and report by the County Building Director; and

WHEREAS, the City Council of the City of Nevada City concurs with the adopted purpose, amendments and findings adopted therein and desires to adopt the same amendments to be applicable within the City boundaries upon the same findings, except as specified herein, leaving in effect those provisions of Title 15 having special application only to the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEVADA CITY HEREBY ORDAINS AS FOLLOWS:

SECTION I: Legislative Purpose

A. The State of California revises its building standards on a triennial basis. The building standards are intended to regulate and govern the conditions and maintenance of all property, buildings and structures by providing standards for supplied utilities, facilities and other physical things and conditions essential to ensure that structures are safe, sanitary, and fit for occupation and use.

B. It is the purpose and the intent of this Ordinance to make substantive revisions to Title 15 (Building and Construction) of the Nevada City Municipal Code to ensure conformity with the 2016 edition of the California Building Standards, to wit, the California Building Code and Division II Scope and Administration thereof, the California Residential Code, the California Green Building Standards Code, the California Plumbing Code, the California Electrical Code, the California Fire Code, the California Mechanical Code, the California Energy Code, the California Referenced Standards Code, the California Existing Building Code, the 2013 California Historical Building Code, the 1997 Uniform Housing Code, the 1997 Uniform Code for the Abatement of Dangerous Buildings, the 2015 International Swimming Pool and Spa Code, and the 2015 International Property Maintenance Code and modifications thereto as adopted by the County of Nevada by Ordinance No.2424 and by the City of Nevada City

herein. A copy of the 2016 edition of the California Building Standards and included Codes is on file in the Nevada County Building Department and available on-line.

C. Pursuant to Health and Safety Code Section 17958.5, *et seq.*, local jurisdictions may make such changes or modifications in the requirements contained in the provisions of the California Building Standards Code, as are reasonably necessary because of local climatic, geological, or topographical conditions. Nevada County's amendments to the 2016 California Building Standards, which have been made in response to unique climatic, geological, or topographical conditions in Nevada County, are codified in Chapter V of the Nevada County Land Use and Development Code and by this Ordinance are adopted by the City of Nevada City with modifications applicable within the City's jurisdiction. Local amendments to the California Building Standards Code shall not become effective until the modifications and findings have been filed with the Building Standards Commission.

SECTION II:

Chapters 15.04 and 15.08 of the Nevada City Municipal Code enacted by Ordinance No. 2014-01 to adopt and amend the 2013 edition of the California Building Standards are hereby revoked and repealed, except as re-enacted by the updated provisions adopted by this Ordinance. By way of clarification, Section 15.16.10 enacted by Ordinance No. 2008-06 and re-codified as "Chapter 15.16 Very High Fire Hazard Severity Zones" by Ordinance No. 2012-04 remained in effect and are left in effect and readopted by this ordinance. Further, the amendment of subsection A of Section 17.80.100 by enacted Ordinance 2014-01 and reading "A. In addition to the requirements of the California Building Codes and amendments thereto adopted by the City requiring that a grading plan be approved by the Building Department in certain circumstances, the City Engineer shall also have authority to approve grading plans." shall remain in effect and is readopted by this Ordinance.

SECTION III:

Chapters 15.04 and 15.08 of the Nevada City Municipal Code are amended and reenacted as set forth in Exhibit "A", attached hereto and incorporated by such reference.

SECTION IV. Findings

A. The City Council hereby finds and declares that the amendments to the 2016 California Building Standards, as codified in Chapter L-V of the Nevada County Land Use and Development Code pursuant to Nevada County Ordinance No. 2424 and as modified herein, are reasonably necessary because of local climatic, geological, and topographical conditions, topographical variations and the high risk of forest fires within the City and County. Said amendments are deemed more restrictive than the published 2016 California Building Standards.

B. The City Council hereby finds and declares that this Ordinance is exempt from California Environmental Quality Act (CEQA) review pursuant to the CEQA guidelines, including §15378(b)(5) as an organizational or administrative governmental activity that will not result in direct or indirect physical changes to the environment, and §15060(c)(2) as an activity that does not create a potential for direct or reasonably foreseeable indirect physical change in the environment.

SECTION V:

If any provision of this Ordinance is held unconstitutional or otherwise invalid, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and effect.

SECTION VI:

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

Passed and Adopted at the regular meeting of the City Council of the City of Nevada City on the 25th day of January, 2017 by the following vote:

AYES: **PHELPS, MOBERG, SENUM, PARKER**

NOES: **NONE**

ABSENT: **STRAWSER**

ABSTAIN: **NONE**

Evans Phelps

Evans Phelps, Mayor

ATTEST:

Niel Locke

Niel Locke, City Clerk

Exhibit A

Chapter 15.04

Sections:

15.04.005 Purpose.
15.04.010 Definitions.
15.04.015 California Codes adopted.
15.04.020 California amendments adopted.
15/04.025 Copies of Codes and County amendments
15.04.030 Compliance with environmental health, zoning, encroachment requirements and other regulations.
15.04.035 Building Standards Board of Appeals.
15.04.040 Building Accessibility Standards Board of Appeals.
15.04.045 Work exempt from permit; building permit.
15.04.050 Work exempt from permit; building permit.
15.04.100 Savings clause

15.04.005 Purpose.

This Chapter is enacted for the purpose of providing minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures, regulated equipment, grading and construction activities that result in a land disturbance on private property within this jurisdiction in conformity with the 2016 edition of the California Building Standards and consistent with and complementary to standards adopted by the County of Nevada. Nothing in the codes hereinafter adopted shall be construed to prevent any person from performing his own building, mechanical, plumbing or electrical work when performed with the permits in compliance with this Chapter.

15.04.010 Definitions.

For the purpose of this Chapter, the following terms and words used herein or in any of the codes or ordinances adopted by reference therein, unless the context directs otherwise, shall have the meaning ascribed to them by this Section:

"Board of appeals", "housing advisory" and "appeals board" and any other references to an appellate body in any of the uniform codes or County amendments adopted by reference by this Chapter mean such entities as may be designated by the city council of Nevada City by resolution.

"Building official", "administrative authority", "responsible official", "chief building inspector", "plumbing official", "mechanical official", "electrical official" and similar references to a chief administrative position mean the building official for Nevada

County under contract to furnish such services to Nevada City or such other entity as the city council of Nevada City may designate.

"City", "agency" or "jurisdiction" means the City of Nevada City. "Clerk of this jurisdiction" means the city clerk. "Governing body", "legislative body", "city council", "council" or "appointing authority" means the city council of Nevada City. "Technical codes" means those codes and publications adopted by Nevada City containing the provisions for design, construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of buildings and structures and building service equipment.

"County" means the County of Nevada.

15.04.015 California Codes adopted.

Subject to the modifications and amendments contained in this Chapter, the following codes and standards are adopted and incorporated into the Municipal Code of the City of Nevada City by reference and have the same legal effect as if set forth herein:

A. Division II, Scope and Administration, 2016 California Building Code.

B. The 2016 edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, Part 12 (California Referenced Standards Code), in whole thereof.

C. The 2016 edition of the California Building Code, known as the California Code of Regulations, Title 24, Part 2 (California Building Code), incorporating the International Building Code, 2015 Edition, of the International Code Council, the whole thereof with State amendments, including appendixes "C", "H", "I" and "J" and amendments adopted by the County of Nevada as adopted and modified pursuant to the following Section.

D. The 2016 edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, Part 9 (California Fire Code), incorporating the International Fire Code, 2015 Edition, of the International Code Council, the whole thereof with State amendments, save and except article 86 thereof, including appendix chapters and amendments adopted by the County of Nevada as adopted and modified pursuant to the following Section.

E. The 2016 edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, Part 5 (California Plumbing Code), incorporating the Uniform Plumbing Code, 2015 Edition, of the International Association of Plumbing and Mechanical Officials, the whole thereof with State amendments, including appendix chapters adopted by the County of Nevada as adopted and modified pursuant to the following Section.

F. The 2016 edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, Part 4 (California Mechanical Code), incorporating the Uniform Mechanical Code, 2015 Edition, of the International Association of Plumbing and Mechanical Officials, the whole thereof with State amendments, including appendix chapters adopted by the County of Nevada as adopted and modified pursuant to the following Section.

G. The 2016 edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, Part 3 (California Electrical Code), incorporating the National Electrical Code, 2014 Edition, of the National Fire Protection Association, the whole thereof with State amendments, including annex chapters and amendments adopted by the County of Nevada as adopted and modified pursuant to the following Section..

H. The 2016 edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, Part 2.5 (California Residential Code), incorporating the International Residential Code, 2015 Edition, of the International Code Council, the whole thereof with State amendments, including Appendixes "H", "J", "K" and "S" and amendments as adopted and modified pursuant to the following Section.

I. The 2016 edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, Part 11 (California Green Building Standards Code), the whole thereof with State amendments.

J. The 2016 edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, Part 6 (California Energy Code) in whole thereof, with State Amendments.

K. The 2013 edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, Part 8 (California Historical Building Code), the whole thereof with State amendments.

L. The 2016 edition of the California Building Standards Code, known as the California Code of Regulations, Title 24, Part 10 (California Existing Building Code), incorporating the International Existing Building Code, 2015 Edition, of the International Code Council, the whole thereof with State amendments.

M. The 2015 International Property Maintenance Code of the International Code Council.

N. The 1997 Uniform Code for the Abatement of Dangerous Buildings of the International Conference of Building Officials.

O. The 1997 Uniform Housing Code of the International Conference of Building Officials.

P. The International Swimming Pool and Spa Code, 2015 Edition with the amendments set forth in Article 9 of this Chapter.

15.04.020 County amendments adopted.

Subject to the modifications and amendments contained in this Title, the Nevada County amendments to the 2016 California Building Standards adopted by Nevada County Ordinance No. 2424 on December 13, 2016 are adopted and incorporated into the Municipal Code of the City of Nevada City by reference and have the same legal effect as if set forth herein. Excluded from this adoption shall the following provisions adopted by the county by Ordinance No. 2424 for inclusion in the Nevada County Land Use and Development Code :

A. The County amendment in section L-V 5.8 in Chapter V, Article 5 providing for fire agency appeals to the Board of Supervisors;
B. The County amendments in Chapter V, Article 11 adopting more comprehensive exemptions from grading permit requirements for landform grading for agriculture; and
C. Any regulations regarding the construction of limited density owner-built dwellings contained in the California Code of Regulations, Title 25, Chapter 1, Article 8, which has not been adopted by the City

15.04.025 Copies of Codes and County and City amendments.

Pursuant to Nevada County Land Use and Development Code *Sec.* L-V 1.5, the Nevada County Building Department maintains on file copies of the Codes and Standards referred to in Section 15.04.010 of this Chapter. Copies of Nevada County Ordinance No. 2424 adopting the County amendments referred to in the preceding section are on file with the County of Nevada and shall be maintained at City Hall as well, together with copies of this City Ordinance.

15.04.030 Compliance with environmental health, zoning, encroachment requirements and other regulations prerequisite to a building permit.

In addition to the applicable requirements in Sec. L-V 1.7. A-D, subsection A of Sec, L-V 1.8 and Sec. L-V 1.9 of the Nevada County Land Use and Development Code, no grading or building permit shall be issued for property located in the City until the land use is approved by the City.

15.04.035 Building and Accessibility Standards Board of Appeals.

A. In order to hear and decide appeals of discretionary orders, decisions or determinations made by the Building Official relative to the application and interpretation of the provisions of the technical codes or the Historical Building Code or relative to the enforcement of the California Access to Public Accommodations by Physically Disabled Persons regulations within the City, the city council may, on a case-by-case basis or for designated periods of time, either designate the Nevada County Building and Accessibility Standards Board of Appeals created pursuant to Section 113.1, as modified by Sec. L-V 2.1 of the Nevada County Land Use and Development Code, to act as the Nevada City Building and Accessibility Standards Board of Appeals or may create its own Building and Accessibility Standards Board of Appeals subject to the same

regulations as a County Board with each council member appointing one member who is not an employee of the City and is qualified by experience and training to pass on the matters appealed, including, but not limited to building construction, building service equipment and grading, with each appointed member to serve at the pleasure of the appointing council member. The Building Official making the decision appealed from may be an ex officio member and serve as secretary to the Board of Appeals but shall have no vote in the matter.

B. The option for the city council to create its own Building and Accessibility Standards Board of Appeals for decisions relating to property and buildings within the City as provided herein shall be available as an alternative to the provisions adopted by the County for appeals regarding all codes adopted herein where the county adopted provisions refer back to Section L-V 2.1 or 2.2 of the Nevada County Land Use and Development Code, whether or not specifically provided for in this Article.

15.04.040 Not used.

15.04.045 Work exempt from permit; building permits (amend).

The work exempted in paragraph 1 of section 105.2 is amended to read as follows rather than as amended by Sec. L-V 2.3 of the Nevada County Land Use and Development Code:

1. One-story detached accessory buildings without electrical, mechanical or plumbing not intended for habitation, subject to the requirements of Nevada City Municipal Code Sec. 17.80.010, provided it is less than or equal to no more than 160 square feet in area and the projected roof area does not exceed 200 square feet. One structure per parcel.

15.04.050 Work exempt from permit; building permits (add).

The work exempted in paragraph 14 of added to Section 105.2 by Sec. L-V 2.4 of the Nevada County Land Use and Development Code is amended to read as follows and that exempted in paragraph 15 added by Sec. L-V 2.5 of the Nevada County Land Use and Development Code is not adopted:

14. Detached trellis or arbor accessory to single family residential property provided it is no more than 160 square feet in area and the projected roof area does not exceed 200 square feet.

15.04.100 Savings clause.

The regulations set forth in this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other regulations pertaining to this chapter, set forth by the State of California or elsewhere in the City's code.

Chapter 15.08

FIRESAFETY STANDARDS AND CALIFORNIA FIRE CODE AMENDMENTS

Sections:

15.08.005 Purpose.
15.08.010 Definitions.
15.08.015 California Fire Code and county amendments adopted.
15.08.020 Responsibility for enforcement and review.
15.08.025 Penalties.
15.08.030 Board of Appeals.
15.08.100 Savings clause

15.08.005 Purpose.

This Chapter prescribing regulations governing fire prevention is enacted to provide increased protection from fire to residents and property within the city of Nevada City in conformity with the 2016 edition of the California Building Standards and consistent with and complementary to standards adopted by the County of Nevada. It is also intended to encourage a greater degree of uniformity between the local fire department and other fire protection districts and departments in the imposition of fire safety regulations on new construction and existing buildings, while respecting the autonomy of the local fire protection districts and departments. Nothing in this Code is intended to amend the provisions regarding sprinkler systems set forth in section 8.30 of the Nevada City Municipal Code.

15.08.010 Definitions.

For the purpose of this Chapter, the following terms and words used herein or in any of the codes or ordinances adopted by reference therein, unless the context directs otherwise, shall have the meaning ascribed to them by this Section:

"Board of appeals" and any other references to an appellate body in any of the uniform codes or County amendments adopted by reference by this Chapter mean such entities as may be designated by the city council of Nevada City by resolution.

Chief', "fire chief", "city fire chief' and "chief of the fire department" mean the fire chief of the Nevada City Fire Department or his authorized designee.

"City", "agency" or "jurisdiction" means the City of Nevada City.

"Fire break" means a continuous strip of land upon which all rubbish, weeds, grass, or other growth that could be expected to burn when dry, has been abated or otherwise removed in order to prevent the surface extension of fire from one area to another.

15.08.015 California Fire Code and county amendments adopted.

Subject to the modifications and amendments contained in this Chapter, the 2016 California Fire Code and County amendments thereto were adopted by Sections 15.04.015 and 15.04.020 and incorporated into the Municipal Code of the City of Nevada City.

15.08.020 Responsibility for enforcement and review.

To clarify responsibility for enforcement and review as provided for in Nevada County Land Use and Development Coded Sec. L-V 5-4 within the City's jurisdiction:

A. Except as otherwise required by controlling state law, enforcement of fire safety laws, standards and regulations and review of projects for compliance therewith shall be enforced within the incorporated areas of the City by the city fire chief or the authorized representative thereof.
B. Whenever any application is made to the City for issuance of any discretionary land use permit or other land use entitlement, the City fire chief or authorized deputy, with enforcement responsibility pursuant to this Chapter, shall have the final authority and responsibility for review of such application for compliance with the requirements of this chapter. This review shall include the preparation of comments and appropriate mitigation measures and/or conditions of approval to assure compliance with all applicable fire safety laws, standards and regulations. To facilitate such review, copies of all such applications shall be promptly provided to the City fire chief or authorized deputy.

15.08.025 Appointment of fire marshal.

The amendment to the California Fire Code in sec. L-V 5.6 of Nevada County Land Use & Development Code is further amended within the City's jurisdiction to provide that the fire code official shall be appointed by the chief appointing authority of the jurisdiction and within the city's jurisdiction references to the County Fire Marshal shall refer to that appointed official.

15.08.030 Penalties.

In addition to the penalties provided for in the California Fire Code and in subsections

A and B of Sec. L-V 5.7 of the County amendments thereto are added the following:

C. Violations of any provisions of this chapter and the 2016 California Fire Code and County and City amendments thereto shall constitute a public nuisance and said conditions may be abated in accordance with existing laws and ordinances.

D. The remedies provided herein are not exclusive, and are in addition to any other remedy or penalty provided by law.

15.08.035 Fire Agency Appeals.

Provisions regarding appeals from determinations interpreting provisions of the California Fire Code made by the City fire chief shall be amended to read as follows rather than as amended by Sec. L-V 5.8 of the Nevada County Land Use and Development Code to supplement the basic requirements found in Section 108 the California Fire Code:

A Appeals from decisions to approve or not to approve permits pursuant to this Chapter or determinations interpreting provisions of the California Fire Code, as amended and adopted, made by the City fire chief regarding permits within the city, may be taken to the city council or the city council may, on a case-by-case basis or for designated periods of time, create its own Nevada City Fire Code Board of Appeals to hear the appeal with members nominated by the city fire chief in accordance with the member composition provisions set forth in Section A 101.2, *et seq.,* of Appendix A of the California Fire Code, and as confirmed by the city council.

B. In the event a Nevada City Fire Code Board of Appeals is created to hear and decide an appeal, the City fire chief, or his designee, shall be an ex-officio member and serve as secretary to the Board, but shall have no vote on any matter before the Board and the decision and findings shall be rendered to the City fire chief with a duplicate copy to the appellant.

15.08.040 Open burning additional restrictions.

In addition to restrictions on burning in the California Fire Code and county amendments as adopted by the city, open burning is further restricted by Chapter 8.08 of the Nevada City Municipal Code.

15.08.045 Auxiliary power generator.

In addition to the requirements of Sec. 605.3.3 of the California Fire Code and county amendments as adopted by the City, any new structure or remodel that has electrical power supplied by a secondary or auxiliary power unit with automatic startup and/or automatic power transfer capabilities shall have an auxiliary power disconnect

accessible to fire department personnel. The auxiliary power disconnect switch shall be located within three (3) feet of the main power disconnect switch and identified with a permanently mounted, weather proof label marked "AUXILIARY POWER DISCONNECT".

15.08.100 Savings clause.

The regulations set forth in this Chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other regulations pertaining to this Chapter, set forth by the State of California or elsewhere in the City's code.

ORDINANCE 2017-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEVADA CITY, CALIFORNIA, ADDING CHAPTER 10.44 ENTITLED "MOBILE FOOD VENDING" TO THE NEVADA CITY MUNICIPAL CODE REGULATING MOBILE FOOD VENDING ON PUBLIC AND PRIVATE PROPERTY

WHEREAS, the City Council has received input from residents and businesses seeking appropriate City regulations in regulating mobile food vending within public rights-of-way and on private property to promote the public health, safety and welfare; and

WHEREAS, pursuant to California Vehicle Code Section 22455, the City desires to enact health and safety regulations governing the operation of mobile food vending vehicles within the City of Nevada City; and

WHEREAS, the City recognizes that mobile food vending vehicles benefit the City by providing services to those who live and work in areas where food may not be readily available, and they offer an entrepreneurial opportunity for the people in the City to open a small business and provide unique foods that may not be available at brick-and-mortar restaurants; and

WHEREAS, the City needs to protect the public by ensuring that mobile food vending vehicles are operated in a safe manner and do not create nuisances in City neighborhoods. The City desires to enact reasonable regulation that ensure the mobile food vending vehicles are operated according with health laws of the state; do not block or hinder vehicle or pedestrian traffic on the streets and sidewalks; do not cause public safety problems by contributing to crowding nears school and entertainment establishments; and do not disturb the quiet use and enjoyment of the residential neighborhoods; and

WHEREAS, at its December 15, 2016 regular meeting, the Planning Commission of the City of Nevada City reviewed the Ordinance and having found it consistent with the City's General Plan and other zoning regulations, recommended its approval to the City Council; and

WHEREAS, the City Council finds the Ordinance consistent with the actions, goals, objectives, policies, and programs of the City of Nevada City General Plan in that incorporation of provisions for allowing mobile food vending diversifies the economy of the City by attracting additional types of economic development while maintaining reasonable traffic levels on local streets to protect residents from safety hazards.; and

WHEREAS, the City Council finds that the ordinance would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City, because it is an amendment to the Nevada City Municipal Code that establishes regulations for mobile food vending to ensure they are operating according to health and safety standards adopted by the state and that their operation does not pose a safety risks to motorists or pedestrians; and

WHEREAS, the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment because the City anticipates only a limited few number of mobile food vendors will operate within the City at any one given time, and so their impact on the environment will be collectively minimal. The Ordinance is therefore exempt from the environmental review requirements of the

California Environmental Quality Act pursuant to Section 15061(b) (3) of Title 14 of the California Code of Regulations.

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

SECTION 1.

A. The California Vehicle Code Section 22455 allows municipalities to regulate mobile food vending in order to protect public safety and Article XI, Section 7 of the California Constitution extends to municipalities the police power authority to regulate in furtherance of public health and welfare.

B. Mobile food vending and catering trucks create the potential for safety hazards, such as blocking sight distances at intersections and crosswalks, encouraging pedestrians to cross streets mid-block to reach a vending vehicle, and causing additional conflicts between drivers and pedestrians.

C. The act of looking for prospective buyers while operating a mobile food-vending vehicle may make the operator less attentive to pedestrian and vehicular traffic. When done on public roadways, this poses obvious traffic and safety risks to the public, which the City seeks to prevent.

D. Mobile food vendors who fail to park their vehicles correctly during a transaction attract prospective buyers onto public roadways, creating a further traffic and public safety hazard.

E. The City has an important and substantial public interest in providing regulations to prevent safety, traffic and health hazards, as well as to preserve the peace, safety and welfare of the community.

SECTION 2. Chapter 10.44 entitled "Mobile Food Vending," of Title 10 (Vehicles and Traffic) of the Nevada City Municipal Code is hereby to read as follows:

10.44 Mobile Food Vending

10.44.010. Purpose.

This Chapter 10.44 is adopted pursuant to the authority granted to the City of Nevada City by Section 22455 of the California Vehicle Code, which permits local authorities to regulate the type of vending and the time, place and manner of vending from vehicles upon the street in order to promote public safety.

The City finds the regulations adopting herein are necessary to protect the public by ensuring that mobile food vending vehicles are operated in a safe manner and do not create nuisances in City neighborhoods. The City also finds that these regulations are necessary to ensure the mobile food vending vehicles are operated according with health laws of the state; do not block or hinder vehicle or pedestrian traffic on the streets and sidewalks; do not cause public safety problems by contributing to crowding nears school and entertainment establishments; and do not disturb the quiet use and enjoyment of the residential neighborhoods.

10.44.020 Definitions.

For purposes of this Chapter, the following words or phrases shall have the following meanings:

"Food" or "food products" means any type of edible substance or beverage.

"Mobile food vendor" means a person that operates or assists in the operation of a vending vehicle.

"Vend" or "vending" means to sell, offer for sale, display, barter, exchange, or otherwise give food or food products from a vending vehicle.

"Vendor" means a person who vends, including an employee or agent of a vendor.

"Vending" vehicle means any self-propelled, motorized device or vehicle by which any person or property may be propelled or moved upon a highway, from which food or food products are sold, offered for sale, displayed, bartered, exchanged or otherwise given, excepting a device moved exclusively by human power, or which may be drawn or towed by a self-propelled, motorized vehicle. Vending vehicle does not include a vehicle that only delivers food or beverage products ordered by home delivery customers.

10.44.030. Mobile Food Vendors In The Public Right-of-Way.

A mobile food vendor may locate its vehicle in the public right-of-way as long as the mobile food vendor adheres to the following time, place, and manner restrictions:

A. The vending is in full compliance with all parking and Vehicle Code provisions, which apply to the location at which it is parked.

B. Mobile food vendors located in the Historical District shall display at least one "no smoking" sign.

C. The mobile food vendor has a valid permit, certificate or other required approval from the Nevada County Department of Environmental Health including visible display of food grade cards (if issued); the mobile food vendor has available for review the most recent and current Nevada County Vehicle Inspection Report; and, the mobile food vendor operates in compliance with the California Retail Food Code, including California Health and Safety Code section 114315 (a) which mandates that a "food facility shall be operated within 200 feet travel distance of an approved and readily available toilet and handwashing facility, or as otherwise approved by the enforcement agency, to ensure that restroom facilities are available to facility employees whenever the mobile food facility is stopped to conduct business for more than a one-hour-period."

D. The mobile food vendor has a valid business license from the City. As part of its application for a business license, the mobile food vendor shall furnish to the City evidence of insurance, as deemed acceptable in the reasonable discretion of the City, against liability for death or injury to any person as a result of ownership, operation, or use of its vending vehicles.

E. All vending vehicles shall be inspected by the Nevada City Fire Department prior to issuance or renewal of a business license involving use of the vending vehicle. All vending trucks shall comply with National Fire Protection Association (NFPA) 96. Business license must be renewed at City Hall; applications are subject to Nevada City Fire Department inspection per NFPA 96.

F. No Mobile Food Vendor may operate a vehicle:

1. Within 25 feet from the outer edge of any driveway or vehicular entrance to public or private property. The 25 feet is to be measured from the front or back of the mobile vending vehicle (whichever is closer to the driveway or vehicular entrance) to the outer edge of the driveway or vehicular entrance.

2. Within 25 feet of any street intersection as defined by Vehicle Code Section 365 (and as amended).

3. Within 25 feet of a bus stop during the hours when buses are operating.

4. Between the hours of 7:00 a.m. and 5:00 p.m. of any school day session, while located within 300 feet of the nearest property line of any property in which a school grades K to 12 building is located.

5. Within 25 feet of a marked crosswalk or a stop bar.

6. Between peak traffic hours of 5:00p.m. and 7:00p.m on a two-way street that does not have a minimum street width of forty-two (42) feet (measured from curb face to curb face), and on a one-way street that does not have a minimum width of 21-feet. At no time shall a food vendor operate on a two-way street that does not have a minimum width of thirty-eight (38) feet, or on a one-way street that does not have a minimum width of nineteen (19) feet. In the event that a curb face does not exist, the City Engineer shall determine the street width.

7. Within 400 feet of another mobile food vendor.

G. The mobile food vendor shall not encroach onto a public sidewalk or parkway with any part of its vending vehicle or any other equipment or furniture related to the operation of its business.

H. The vending vehicle or patrons do not obstruct pedestrian or vehicular traffic. Vendors must provide a minimum pedestrian clearance of four feet on sidewalks at all times.

I. Vending is prohibited on the exposed street and/or vehicular traffic side of the vending vehicle.

J. The mobile food vendor shall maintain clearly designated noncombustible waste receptacles on board the vending vehicle which will reasonably accommodate the immediate waste needs, of the mobile food vendor's patrons generated by the mobile food vendor's sales. All mobile food vendors shall maintain the area surrounding their vehicles free of trash and other debris and shall not dispose of trash from their operation in city owned trash receptacles.

K. No hookups to electricity, water, or sewer.

L. The mobile food vendor shall not discharge any liquid (e.g. grease, oil, water, etc.) onto or into City streets, storm drains, catch basins, sewer facilities.

M. The mobile food vendor shall be subject to the noise provisions set forth in Chapter 8.20 of the Nevada City Municipal Code.

N. All food products sold or provided from the vending vehicle shall comply with all applicable food labeling requirements established by the State of California and the mobile food vendor must obtain all required permits, including without limitation, health permits, to sell or provide such items.

O. Mobile food vendors operating on public rights-of-way may not use portable or a-frame signs.

10.44.040. Mobile Food Vendors on Private Property.

A. Mobile food vendors may not operate on private property within residential zones. However, they are permitted to operate on public rights-of-way as authorized by California Vehicle Code section 22455 and as authorized by section 10.44.030 of this Chapter.

B. All mobile food vendors operating on private property must have written consent of the property owner to operate on that site.

C. If mobile food vendors are operating on private property where a business is also located, their operation shall not obstruct the use of the parking lot by employees of the business.

D. Mobile food vendors operating within parking lots shall obtain written permission of the property owner that designates the hours the vendor may operate within the parking lot and the appropriate location for the vending operation. No property owner shall allow a mobile food vendor to operate within his or her parking lot if doing so shall prevent the owner from meeting City parking standards for the business.

E. All mobile food vehicles shall be located on a properly paved or graveled surface. No mobile food vendor shall be located within a landscaped or dirt area.

F. Vending vehicles, including those operated at events on public school property, shall maintain a valid Nevada County Department of Environmental Health permit and a valid City business license.

G. The mobile food vendor shall maintain clearly designated noncombustible waste receptacles which will reasonably accommodate the immediate waste needs, of the mobile food vendor's patrons are generated by the mobile food vendor's sales. All mobile food vendors shall maintain the area surrounding their vehicles free of trash and other debris and shall not dispose of trash from their operation in city owned trash receptacles.

H. If a mobile food vendor operates and/or parks for more than one hour at the location, the mobile food vendor must have written documentation that their employees and customers have permission to use a readily available toilet and hand washing facility that is located within two hundred feet travel distance from the location where the vending vehicle is engaged in operations and/or is parked. Mobile food vendors operating on private property shall be situated on locations within the private property that ensure safe pedestrian and vehicular ingress and egress to and from the property where they are located, including, but not limited to, compliance with the following requirements:

1. Mobile food vendors may not operate within 25 feet from the outer edge of any driveway or vehicular entrance to the public or private property.

10.44.050. Compliance with State and Local Laws.

Mobile food vendors shall comply with all applicable state and local laws.

SECTION 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 5. This ordinance shall take effect thirty (30) days after its final passage and within fifteen (15) days after its passage, the City Clerk of the City of Nevada City shall certify to the passage and adoption of this ordinance and to its approval by the Mayor and City Council and shall cause the same to be published in a newspaper in the manner required by law.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Nevada City on the 25th day of January, 2017 by the following vote:

AYES: **PHELPS, MOBERG, SENUM, PARKER**

NOES: **NONE**

ABSENT: **STRAWSER**

ABSTAIN: **NONE**

Evans Phelps

Evans Phelps, Mayor

ATTEST:

Niel Locke

Niel Locke, City Clerk

STATE OF CALIFORNIA – GOVERNMENT OPERATIONS AGENCY GOVERNOR EDMUND G. BROWN JR.

BUILDING STANDARDS COMMISSION
2525 Natomas Park Drive, Suite 130
Sacramento, California 95833-2936
(916) 263-0916 FAX (916) 263-0959

April 10, 2017

Mr. Hal DeGraw
City Attorney
City of Nevada City
317 Broad Street
Nevada City, CA 95959

RE: Ordinance #2017-03

Dear Mr. DeGraw:

This letter is to advise you of our determination regarding the referenced ordinance with express findings received from your agency on February 09, 2017.

Our review finds the submittal to contain one ordinance, No. 2017-03, modifying provisions of the 2016 California Building Standards Code in Title 24, California Code of Regulations (code), and express findings complying with Health and Safety Code Sections 17958.7 and 18941.5. The code modifications are accepted for filing and are enforceable. This letter attests only to the satisfaction of the cited law for filing of local code amendment supported by an express finding with the California Building Standards Commission (CBSC). CBSC is not authorized by law to evaluate the merit of the code modification or the express finding.

Local modifications to the code are specific to a particular edition of the code. They must be readopted and filed with CBSC in order to remain in effect when the next triennial edition of the code is published.

On a related matter, should your city receive and ratify Fire Protection District ordinances making modifications to the code, be advised that Health and Safety Code Section 13869.7(c) requires such ratified ordinances and express findings to be filed with the Department of Housing and Community Development, Division of Codes and Standards, State Housing Law Program, rather than CBSC. Also, ordinances making modifications to the energy efficiency standards of the code may require approval from the California Energy Commission pursuant to Public Resources Code Section 25402.1(h)(2).

If you have any questions or need any further information, you may contact me at (916) 263-0916.

Sincerely,

Enrique M. Rodriguez
Associate Construction Analyst

cc: CBSC Chron
Local Filings

ORDINANCE NO. 2017-05

AN ORDINANCE OF THE CITY COUNCIL OF NEVADA CITY, CALIFORNIA, ADDING CHAPTER 17.140 TO THE NEVADA CITY MUNICIPAL CODE ENTITLED "PERSONAL CANNABIS CULTIVATION 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, 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. The California legislature adopted an amendment to the Medical Marijuana Regulation and Safety Act on June 27, 2016, retitling the law the Medical Cannabis Regulation and Safety Act ("MCRSA"). Under the MCRSA, 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, on November 8, 2016, the electorate of the State of California enacted a new law by initiative Prop 64, referred to as the Adult Use of Marijuana Act ("AUMA"), which decriminalizes under state law specified marijuana activities including the possession and use of limited amount of marijuana by adults twenty-one (21) years of age or older and also the cultivation of no more than 6 marijuana plants on the grounds of a private residence by persons twenty-one (21) years of age or older. Under the AUMA, local governments may prohibit outdoor marijuana cultivation for non-medical use, and may adopt reasonable regulations on the indoor cultivation of marijuana for non-medical use, but they may not prohibit indoor cultivation.

WHEREAS, notwithstanding the CUA, the MMPA, the MCRSA, and the AUMA, 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 MCRSA 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 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 Cannabis 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 cannabis 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 Cannabis plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable Cannabis plants and creating an increased risk of crime.

C. The unregulated cultivation of Cannabis can adversely affect the health, safety and well-being of the city and its residents. Comprehensive regulation of premises used for Cannabis 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 Cannabis cultivation, especially if the amount of Cannabis cultivated on a single premises is not regulated and substantial amounts of Cannabis can be cultivated in a concentrated place.

D. Unlimited and unregulated indoor cultivation of substantial amounts of Cannabis 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 Cannabis use, and the presence of Cannabis 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 Cannabis at, or near these sensitive uses presents

unique risks that the Cannabis 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 Cannabis cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of Cannabis 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 Cannabis plants.

F. The cultivation of Cannabis in other cities has resulted in calls for service to the police department, including calls for robberies thefts, and physical assaults from Cannabis that is grown outdoors;

G. Cannabis growth poses significant safety risks for surrounding neighbors, including but not limited to, risks of violent confrontation in connection with attempts to steal Cannabis, risk of fire from improperly wired electrical lights within structures growing Cannabis, risk of guard dogs and security measures associated with structures and properties growing Cannabis; and

H. Staff and residents of the city have observed that the smell associated with Cannabis 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 MCRSA, or any other state law, or to criminalize any activities otherwise permitted by the state legislature through the CUA, the MMPA, or the MCRSA, 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 January 26, 2017, following proper notice and public hearing, the City's Planning Commission adopted Resolution No. 2017-04 recommending to the City Council the adoption of an Ordinance amending Title 17 of the Nevada City Municipal Code, relating to Cannabis regulations and Resolution No. 2017-03 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. 2016-04 and 2017-03, at a duly noticed public hearing held on March 22, 2017; 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
PERSONAL CANNABIS CULTIVATION REGULATIONS

Sections:

17.140.010 Purpose.

17.140.020 Definitions.

17.140.030 Outdoor cultivation of Cannabis.

17.140.040 Indoor cultivation of Cannabis.

17.140.045 Cultivation permit.

17.140.050 Public nuisance.

17.140.055 Sale of Cannabis prohibited.

17.140.060 Enforcement.

17.140.010 Purpose.

The purpose and intent of this chapter are to require that Cannabis, grown for any purposes including medical or non-medical use, 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 Cannabis plants from impacting adjacent properties, to prevent crime associated with Cannabis, and to ensure that Cannabis grown for medical purposes remains secure and does not find its way to nonpatients, minors, or illicit markets. 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.

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

"Abatement" means the removal of Cannabis plants and improvements that support Cannabis maintained in violation of this Chapter 17.140.

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

"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 Cannabis cultivation; or (B) one square foot per juvenile or mature Cannabis plant indoors on the property.

"Cultivation" or "Cannabis cultivation" means the planting, growing, harvesting, drying, or processing of Cannabis 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.

"Cannabis" 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.

"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 Cannabis prohibited.

All outdoor cultivation of Cannabis 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 Cannabis.

17.140.040 Indoor cultivation of Cannabis.

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 Cannabis plants within a fully enclosed and secure structure on the parcel, except in compliance with this Section 17.140.040.

B. All Cannabis cultivation authorized by authorized by Health and Safety Code Section 11362.1 shall be conducted indoors only and is subject to the restrictions set forth in Health and Safety Code Section 11362.2, all other state regulations, and the following City regulations:

1. Cannabis cultivation is permitted only within fully enclosed and secure structures inaccessible to minors. A fully enclosed and secure structure used for the cultivation of Cannabis 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.

2. Cannabis cultivation may not occur in both a detached structure and inside the primary residential structure on the same parcel. Only one cultivation area per private residence is allowed per parcel.

3. Cannabis 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.

4. Indoor cultivation of Cannabis shall not exceed 25 square feet, unless authorized by the Chief of Police as part of a request for cultivation for medical necessity under subdivision (C) of this Section. .

5. Cannabis 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 Cannabis shall comply with the California Building, Electrical and Fire Codes as adopted by the city.

6. The use of gas products (CO_2, butane, etc.) or generators for Cannabis cultivation or processing is prohibited.

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

8. 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 Cannabis cultivation.

9. Any Cannabis 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.

10. Any structure used for the cultivation of medical Cannabis must have proper ventilation to prevent mold damage and to prevent Cannabis 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.

11. The Cannabis 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.

12. Use, storage, or discharge into City wastewater facilities of any hazardous chemicals in the cultivation of Cannabis 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.

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

14. The Cannabis grower shall pay any applicable city taxes relating to Cannabis.

C. Cannabis Cultivation for Medical Necessity. Any person within the City who is a qualified patient, person with an identification card, or primary caregiver and at least twenty-one (21) years of age may apply to the Chief of Police for authorization to cultivate more than six (6) living plants per private residence if he or she can demonstrate that there is medical necessity or the qualified patient or person with an identification card (or the primary caregiver on behalf of the foregoing) to cultivate more than six (6) living plants per private residence. The Chief of Police's determination shall be based on the following:

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.

4. Upon a determination that there is a medical necessity to allow the applicant to cultivate more than six (6) living plants at a private residence, the Chief of Police shall issue a determination in writing to the applicant that shall be valid for a period of one (1) year. It shall be the responsibility of the applicant to apply for another authorization to the Chief of Police annually.

5. In no event shall the maximum number of living Cannabis plants cultivated on the grounds of a single private residence at one time exceed eighteen (18) living plants.

17.140.050 Enforcement.

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 Cannabis 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.

PASSED AND ADOPTED at the regular meeting of the City Council of the City of Nevada City on the 22nd day of March, 2017, by the following vote:

AYES: **PHELPS, STRAWSER, MOBERG, SENUM, PARKER**

NOES: **NONE**

ABSTAIN: **NONE**

ABSENT: **NONE**

Evans Phelps

Evans Phelps, Mayor

ATTEST:

Niel Locke

Niel Locke, City Clerk

ORDINANCE NO. 2017-06

AN ORDINANCE AMENDING CHAPTER 9.22 OF TITLE 9 OF THE NEVADA CITY MUNICIPAL CODE ENTITLED "PROHIBITING MEDICAL MARIJUANA DISPENSARIES," AND RENAMING IT "MEDICAL CANNABIS DISPENSARIES AND OTHER CANNABIS BUSINESSES AND ACTIVITY"; ADDING CHAPTER 17.142 ENTITLED "MEDICAL CANNABIS USES AND ACTIVITY" TO THE NEVADA CITY MUNICIPAL CODE; AND AMENDING CHAPTER 17.36 ENTITLED "LOCAL BUSINESS ZONE," CHAPTER 17.40 ENTITLED "GENERAL BUSINESS ZONE," AND CHAPTER 17.48 ENTITLED "LIGHT INDUSTRIAL ZONE"

WHEREAS, the City of Nevada City is a general law city organized pursuant to Article XI of the California Constitution; and

WHEREAS, pursuant to the authority granted the City by Article XI, Sections 5 and 7 of the California Constitution, the City has the power to make and enforce within its limits all ordinances and regulations in respect to municipal affairs not in conflict with general laws; and

WHEREAS, comprehensive zoning regulations and regulations upon the use of land and property lie within the City's police powers; and

WHEREAS, on November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (CUA), codified at California Health and Safety Code section 11362.5, the intent of which was to enable persons with a demonstrated need for marijuana for medical/therapeutic purposes, as recommended by a health care provider, to obtain and to use marijuana, or marijuana-derived compounds, under limited and specified circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 codified as California Health and Safety Code section 11362.7 et seq. and entitled the "Medical Marijuana Program Act" (MMPA) became law to clarify the scope of the CUA. Pursuant to California Health and Safety Code section 11362.77(a), a qualified patient or primary caregiver was permitted to possess no more than eight (8) ounces of dried marijuana plant material per patient. In addition, they were also able to maintain no more than six mature or twelve immature marijuana plants per patient unless a doctor authorized an additional amount; and

WHEREAS, the CUA is limited in scope in that it only provides a defense from criminal prosecution for possession and cultivation of medical marijuana to qualified patients and their primary caregivers. The MMPA also is limited in scope in that it establishes a statewide identification program and affords qualified patients, persons with recommendation cards, and their primary caregivers, an affirmative defense to certain enumerated criminal sanctions that would otherwise apply to transporting, processing, administering or distributing marijuana; and

WHEREAS, on October 9, 2015, Governor Brown signed into law the Medical Marijuana Regulation and Safety Act (MMRSA) which consisted of three interrelated pieces of legislation (SB 643, AB 243, and AB 266), intended to provide a comprehensive regulatory framework for the licensing, control, and taxation of medical marijuana related businesses in California; and

WHEREAS, effective June 27, 2016, SB 837 changed the name of the Medical Marijuana Regulation and Safety Act to the Medical Cannabis Regulation and Safety Act ("MCRSA").

WHEREAS, the MCRSA expressly protects a City's local licensing practices, zoning authority, and other local actions taken under the City's constitutional municipal and police powers; and

WHEREAS, the MCRSA contains statutory provisions that:

(1) Allow local governments to enact ordinances expressing their intent to allow or prohibit the cultivation of cannabis and their intent to administer or not administer a conditional permit program pursuant to California Health and Safety Code section 11362.777 for the cultivation of cannabis;

(2) Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances or enforcement of local permit or licensing requirements regarding cannabis per California Business and Professions Code section 19315(a);

(3) Expressly provide that the Act does not limit the civil or administrative authority or remedies of a local government provision of law regarding cannabis including, but not limited to, a local government's right to make and to enforce within its limits all regulations not in conflict with general laws per California Business and Professions Code section 19316(c);

(4) Specifically requires, as a condition of state licensure, compliance with any and all local requirements for all cannabis-related operations;

WHEREAS, the California Supreme Court has made clear that neither the CUA nor the MMPA expressly or impliedly preempts the authority of cities or counties, under their traditional land use and police powers, to allow, restrict, limit or entirely exclude facilities that distribute medical marijuana. The MMPA allowed cities and counties to adopt local ordinances that regulate the location, operation or establishment of medical marijuana collectives and to enforce such ordinances. (City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729; Health and Safety Code section 11362.83). The same authority encompasses the regulation, operation, or establishment of marijuana cultivation. (Maral v. City of Live Oak (2013) 221 Cal.App.4th 975.) That authority remains undisturbed under MCRSA; and

WHEREAS, cannabis remains an illegal substance under the Federal Controlled Substances Act, 21 USC 801 et seq., which makes it unlawful for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense cannabis. The Federal Controlled Substances Act contains no statutory exemption for the cultivation of cannabis for medical purposes. Federal law lists cannabis as a Schedule I drug, meaning that it has a high potential for abuse, it has no currently accepted medical use in treatment, and there is a lack of accepted safety for use under medical supervision; and

WHEREAS, despite this classification and treatment under federal law, federal executive and law enforcement agencies have issued memoranda and other guidelines allowing for the development of state-specific regulatory schemes that include the provision of cannabis and cannabis-derived products for medical purposes, as long as the administration of those schemes is consistent with the aims of federal law; and

WHEREAS, the City has received inquiries from individuals and incorporated entities inquiring about the ability to open medical cannabis related businesses within the City, including dispensaries, cultivation locations, and manufacturing/processing businesses. Other than a general prohibition of dispensaries and cultivation, the City has not yet adopted land use controls or regulations or other requirements for the operation of these businesses once established; and

WHEREAS, without sufficient regulations and standards in effect and which are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety, and welfare of current and future residents of the City, from the establishment of medical cannabis related businesses in the City in a manner which is likely to lead to confusion, public harm, and possible violation of federal executive guidelines; and

WHEREAS, the California Attorney General's 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be impacted negatively by nuisance activity such as loitering, or more significant levels of crime; and

WHEREAS, Nevada City Municipal Code Section 17.04.040 provides that no land may be used for any purpose other than as permitted and in conformance with the City's zoning laws and other ordinances; and

WHEREAS, the City Council recognizes that the investigation and research of the therapeutic uses for medical cannabis and natural cannabis-derived compounds continues to progress, with at least some demonstrated positive impact on users following the advisement and encouragement of their health care providers, for a variety of ailments, including severely debilitating and terminal illnesses; and

WHEREAS, the City Council recognizes, upon consultation with law enforcement, that supply chains for medical cannabis and cannabis-related products as they currently exist, in the absence of state and local regulatory schemes, can and do benefit criminal elements to the detriment of residents of the State of California, the County of Nevada, and very likely the City of Nevada City, without full regard for public safety, health, and welfare issues; and

WHEREAS, the City Council recognizes the individual freedom and privacy interests that surround the choice of what to take into one's body, following consultation with one's chosen health care provider(s), and for one's own health-related purposes, and in a manner that is responsible in its impacts on others in the community, including children; and

WHEREAS, the City Council also recognizes its obligation to provide guidance on appropriate community standards of health, safety, and welfare, and, where appropriate, to protect residents—especially residents of particularly vulnerable populations like children—from violation and abuse of those community standards; and

WHEREAS, the City Council desires to establish reasonable land use controls and reasonable regulations on the operation of medical cannabis related businesses which are intended to operate in conjunction with the zoning and land use regulations of the City of Nevada City, and which are intended to address the negative impacts, nuisance impacts, and criminal impacts of unregulated cannabis-related businesses; and

WHEREAS, medical cannabis related businesses will be subject to the zoning and land use regulations of the zoning district in which such business establish and operate, as set forth in Chapter 17 of the Nevada City Municipal Code (the Nevada City Zoning Code), and as otherwise established by the City; and

WHEREAS, the City Council finds that the activities permitted under this ordinance are consistent with and implement the goals and policies of the Nevada City General Plan; and

WHEREAS, the City Council finds that the adoption of this ordinance is not a "project" under California Environmental Quality Act (CEQA), because the ordinance will allow for the establishment of medical cannabis dispensaries to operate in a similar manner as traditional pharmacies which will not cause a direct physical change in the environment nor a reasonably foreseeable indirect physical change in the environment (Public Resources Code section 21065) (See *Union of Medical Marijuana Patients Inc. v. City of San Diego (California Coastal Commission) (2016) 2016 Cal.App. LEXIS 864.*)

WHEREAS, the City Council finds that even if the ordinance if found to be a Project Under CEQA, the adoption of this ordinance is exempt from environmental review under pursuant to the following sections of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3:

A. The ordinance is exempt under Section 15061(b) (3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The ordinance permits medical cannabis dispensaries which businesses will have impacts similar to traditional pharmacies which are already authorized within the City. Furthermore, the ordinance contains requirements that prevent any potential impacts on the environment that may be unique to businesses involving medical cannabis. For example, the ordinance establishes prohibitions on nuisance odors, glare, excess energy usage, and establishes safety protections to prevent crime or deterioration of the business area into blight. Further, there is no possibility that this ordinance would create cumulative impacts that are significant because this ordinance only allows medical cannabis dispensaries in limited zones within the City, does not authorize construction or other related activities or any other activities that are not already permitted, except that the ordinance allows the same activities but with a different material (medical cannabis) that is being sold for medical use; there are no other significant impacts that could occur as a result of this ordinance, and there are no unusual circumstances that would cause any such significant impacts;

B. The ordinance is also exempt under Section 15183 (projects consistent with a community plan, general plan, or zoning) since the type of business permitted by the ordinance is consistent with those contemplated by general plan and zoning, such as traditional pharmacies;

C. The ordinance is also exempt under CEQA Guidelines Section 15301 (existing facilities) since the permitted medical cannabis dispensary business under the ordinance may locate in existing facilities, and any additions to structures would be expected to be also exempt under 15301; and

D. The ordinance is exempt under Section 15303 (new construction or conversion of small structures). A medical cannabis dispensary will be established in an urban area, and given the build out of the existing city, and sufficient existing leasable property, the amount of construction that would occur is minimal to non-existent, and any such construction would be less than the thresholds established in Section 15303.

NOW THEREFORE, The City Council of the City of Nevada City does ordain as follows:

SECTION 1.Chapter 9.22 of the Nevada City Municipal Code entitled "Medical Marijuana Dispensaries," is hereby repealed in its entirety, shall be retitled "Medial Cannabis Dispensaries and other Cannabis Businesses and Activity" and replaced with the following language:

Chapter 9.22 MEDICAL CANNABIS DISPENSARIES AND OTHER CANNABIS BUSINESSES AND ACTIVITY.

9.22.010. General Provisions.

A. Purpose and Intent.

It is the purpose and intent of this Chapter to accommodate the needs of medically-ill persons in need of cannabis for medical purposes, as advised and recommended by their health care provider(s), while imposing regulations on the use of land to protect the City's neighborhoods, residents, and businesses from negative impacts. It is a further purpose and intent of this Chapter to regulate the cultivation, manufacturing, processing, testing, transporting, delivery, and distribution of cannabis and cannabis-related products in a manner which is responsible, which protects the health, safety, and welfare of the residents of Nevada City, and to enforce rules and regulations consistent with state law. In part to meet these objectives, an annual permit shall be required in order to own and/or to operate a medical cannabis business within Nevada City. Nothing in this Chapter is intended to authorize the possession, use, or provision of cannabis for purposes which violate state or federal law. The provisions of this Chapter are in addition to any other permits, licenses and approvals which may be required to conduct business in the City, and are in addition to any permits, licenses and approval required under state, county, or other law.

B. Legal Authority.

Pursuant to Sections 5 and 7 of Article XI of the California Constitution, and the provisions of the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"), the City of Nevada City is authorized to adopt ordinances that establish standards, requirements and regulations for local licenses and permits for cannabis and cannabis-related activity. Any standards, requirements, and regulations regarding health and safety, security, and worker protections established by the State of California, or any of its departments or divisions, shall be the minimum standards applicable in the City of Nevada City to cannabis, and/or cannabis-related activity.

C. Compliance with Laws.

It is the responsibility of the owners and operators of the medical cannabis business to ensure that it is, at all times, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder. Nothing in this Chapter shall be construed as authorizing any actions which violate federal, state law or local law with respect to the operation of a medical cannabis business. It shall be the responsibility of the owners and the operators of the medical cannabis business to ensure that the medical cannabis business is, at all times, operating in a manner compliant with all applicable federal, state and local laws, the 2008 Attorney General Guidelines, any subsequently enacted state law or regulatory, licensing, or certification requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of

approval of the medical cannabis business permit. Nothing in this Chapter shall be construed as authorizing any actions which violate federal or state law with regard to the operation of a medical cannabis business.

9.22.020. Definitions.

When used in this Chapter, the following words shall have the meanings ascribed to them as set forth herein. Any reference to California statutes includes any regulations promulgated thereunder, and is deemed to include any successor or amended version of the referenced statute or regulatory provision.

(a) "Cannabis" means all parts of the Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, "cannabis" does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

(b) "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the California Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code.

(c) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.

(d) "City" or "City of Nevada City" means the City of Nevada City, a California general law City.

(e) "Cultivation" means any activity, whether occurring indoors or outdoors, involving the propagation, planting, growing, harvesting, drying, curing, grading, and/or trimming of cannabis plants or any part thereof for any purpose, including medical marijuana.

(f) "Cultivation site" means a facility where medical cannabis is cultivated, propagated, planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.

(g) "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined to be authorized by the State of California, or any of its departments or divisions, to anyone for any purpose. "Delivery" also includes the use by a dispensary of any technology platform owned, controlled, and/or licensed by the dispensary, or independently licensed by the State of California under the MCRSA (as the same may be amended from time-to-time), that enables anyone to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(h) "Dispensary" means a medical cannabis business facility where cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment (whether fixed or mobile) that delivers, pursuant to express authorization, medical cannabis and medical cannabis products as part of a retail sale.

(i) "Dispensing" means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

(j) "Distribution" means the procurement, sale, and transport of medical cannabis or medical cannabis products between entities licensed pursuant to the MCRSA and any subsequent State of California legislation regarding the same.

(k) "Distributor" means a person engaged in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a license manufacturer, for sale to a licensed dispensary.

(l) "Dried flower" means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(m) "Edible cannabis product" means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible medical cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

(n) "Live plants" means living medical cannabis flowers and plants, including seeds, sprouts, immature plants (including unrooted clones), and vegetative stage plants.

(o) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as defined in this section, or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container.

(p) "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate or manufactured product intended for internal consumption or topical application.

(q) "Manufacturing site" means a location that produces, prepares, propagates, or compounds medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(r) "Marijuana" means "cannabis," as that term is defined in this Chapter.

(s) "Medical cannabis", "medical marijuana," "medical cannabis product" or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code (as the same may be amended from time-to-time). For purposes of this Chapter, "medical cannabis" does not include industrial hemp as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

(t) "Medical cannabis activity" includes cultivation, manufacture, processing, laboratory testing, transporting, delivery, distribution, or sale of medical cannabis or a medical cannabis product, within the meaning of California Business and Professions Code 19300 et seq.

(u) "Medical cannabis business" means any business or operation which engages in medical cannabis activity.

(v) "Medical cannabis business permit" means a regulatory permit issued by the City of Nevada City pursuant to this Chapter to a medical cannabis business, and is required before any medical cannabis activity may be conducted in the City. The initial permit and annual renewal of a medical cannabis business permit is made expressly contingent upon the business' ongoing compliance with all of the requirements of this Chapter and any regulations adopted by the City governing the medical cannabis activity at issue.

(w) "Patient" or "qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as it may be amended, and which means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall also refer to qualified patients who have obtained an identification card from the State Department of Health Services, as that term is defined by California Health and Safety Code Section 11362.7 et seq.

(x) "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(y) "Person with an identification card" shall have the meaning given that term by California Health and Safety Code Section 11362.7.

(z) "State License" means a permit or license issued by the State of California, or one of its departments or divisions, under MCRSA to engage in medical cannabis activity.

(aa) "Topical cannabis" means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the California Health and Safety Code.

(bb) "Testing laboratory" means a facility, entity, or site that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.

(2) Registered with the State Department of Public Health.

(cc) "Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting medical cannabis activity authorized by the MCRSA.

(dd) "Transporter" means a person authorized to transport medical cannabis or medical cannabis products in amounts authorized by the State of California, or by one of its departments or divisions under the MCRSA.

9.22.030. Medical Cannabis Business Permit Required for Owner/Operator; Requirements for Medical Cannabis Business Employees.

A. Medical Cannabis Business Permit Required to Engage in Medical Cannabis Business.

(1) No person may engage in any medical cannabis business or in any medical cannabis activity within the City of Nevada City including cultivation, manufacture, processing, laboratory testing, transporting, dispensing, distribution, or sale of medical cannabis or a medical cannabis product unless the person (1) has a valid medical cannabis business permit from the City of Nevada City and (2) is currently in compliance with all applicable state and local laws and regulations pertaining to the medical cannabis business and the medical cannabis business activities, including the duty to obtain any required state licenses.

(2) Until Health & Safety Code Section 11362.775, subdivision (a), is repealed, the City intends that persons eligible to operate collectives or cooperatives under that subdivision shall be eligible to apply for a City permit to conduct medical cannabis activities, but only to the degree those activities are authorized under state law for collectives and cooperatives. When the Health & Safety Code Section 11362.775, subdivision (a), is repealed, or as soon as collectives and cooperatives are no longer permitted under state law, any City permit holder operating as a collective or cooperative who has not already obtained a state license for the medical cannabis business activities they are engaged in shall automatically forfeit his or her City medical cannabis business permit. At that point they shall no longer be authorized to engage in any medical cannabis activities in the City until they obtain both a City issued medical cannabis business permit and a state license for that medical cannabis activity.

B. Medical Cannabis Dispensary Employee Qualifications and Training; Employer Obligations to Monitor Employee Compliance.

(1) The owner or operator of a medical cannabis business shall ensure that all employees comply with all the requirements of this Chapter 9.22.

(2) Medical cannabis business owners or operators shall ensure that employees are educated as to all the requirements of this Chapter 9.22 and applicable state law requirements for medical cannabis businesses and that they adhere to all applicable requirements.

(3) Failure of the owner or operator to take reasonable steps to comply with these requirements shall be grounds for permit revocation.

9.22.040. MEDICAL CANNABIS BUSINESSES

A. MEDICAL CANNABIS DISPENSARIES

1. Initial Maximum Amount of Medical Cannabis Dispensary Permits. Upon the effective date of this provision, the City Council may issue a maximum of up to one (1) medical cannabis business permit to a qualified medical cannabis dispensary at any one given time. The permit shall be issued in accordance with the application and permit approval process contained in this Chapter 9.22 and resolutions adopted pursuant to this Chapter. The medical cannabis dispensary must obtain a medical cannabis business permit from the City before commencing operations, must be in compliance with all applicable state and federal laws pertaining to its operation, including obtaining all necessary licenses from the state, and shall comply with all applicable operational and zoning requirements set forth in the Nevada City Municipal Code. Nothing in this Chapter creates a mandate that the City Council must issue one or more medical cannabis business permit to a medical cannabis dispensary if the City Council determines that there are no qualified applicants, the proposed locations for medical cannabis businesses are incompatible with neighboring land uses, or if the City Council determines that the issuance of a medical cannabis dispensary would have a negative effect on the health, safety, or welfare of the citizens or businesses of Nevada City, or for any other reason allowed by law.

2. City Council Review and Increased Maximum Number of Medical Cannabis Dispensaries to be Issued.

Twelve (12) months after the first medical cannabis business permit for a dispensary is issued, the City Manager shall deliver a report to the City Council during a regular meeting which examines the positive and negative impacts that the medical cannabis dispensary has had on the community during the preceding twelve (12) months. The report shall include, among other things, an analysis of how the medical cannabis dispensary has complied with state and local regulations, any positive or negative community and law enforcement impacts, and any revenue generated. If after hearing the report the City Council makes a determination that there are no significant consequences of allowing these medical marijuana businesses to operate in the City, the City Council at its sole discretion may vote to expand the number of authorized medical cannabis dispensary permits to be issued up to a maximum of three (3). If the City Council takes no action, or finds that the impacts are unacceptable, then the maximum number and type of medical cannabis dispensaries authorized shall continue to be limited to one (1) as provided is subdivision (a) above.

B. ALL OTHER MEDICAL CANNABIS BUSINESSES

Until further action by the City Council to amend this chapter has been taken, medical cannabis businesses other than medical cannabis dispensaries are not permitted to operate within the City.

C. NON-MEDICAL CANNABIS BUSINESSES

Non-medical or personal cannabis businesses including cultivation, manufacturing, distribution, dispensing, testing laboratories, and transporting businesses are not permitted within the City, unless otherwise permitted by state law.

9.22.050. Application for Medical Cannabis Business Permit: Renewal Applications; and Effect of Revocation or Suspension of State License.

A. Initial Application Procedure.

(1) The City Council shall adopt by resolution the procedures which will govern the application process, and the manner in which the decision will ultimately be made regarding the issuance of any medical cannabis business permit(s). The resolution shall authorize the City Manager or his or her designee to prepare the necessary forms, adopt any necessary rules, regulations and processes, solicit applications, conduct initial evaluations of the applicants, and to ultimately provide a final recommendation to the City Council of the top three (3) applicants for consideration.

(2) At the time of filing, each applicant shall pay an application fee established by resolution of the City Council, to cover all costs incurred by the City in the application process.

(3) After the initial review the City Manager or his designee will make a recommendation to the City Council, and the City Council shall make a final determination in accordance with the selection procedure set forth in the Resolution adopted by the City Council.

(4) THE CITY'S RESERVATION OF RIGHTS:

The City reserves the right to reject any or all applications. The City may also modify, postpone, or cancel any request for applications, or the entire program under this Chapter, at any time without liability, obligation, or commitment to any party, firm, or organization. Persons submitting applications assume the risk that all or any part of the program, or any particular category of permit potentially authorized under this Chapter, may be cancelled at any time prior to permit issuance. The City further reserves the right to request and obtain additional information from any candidate submitting an application. In addition to any other justification provided a failure to comply with other requirements in this Chapter, an application RISKS BEING REJECTED for any of the following reasons:

(1) Proposal received after designated time and date.

(2) Proposal not containing the required elements, exhibits, nor organized in the required format.

(3) Proposal considered not fully responsive to this request for permit application.

(4) Proposal contains excess or extraneous material not called for in the request for permit application.

B. Expiration of Medical Cannabis Business Permits. A medical cannabis business permit issued pursuant to this Chapter shall expire twelve (12) months after the date of its issuance. Medical cannabis business permits may be renewed as provided in subsection D below.

C. Revocation of Permits. Medical cannabis business permits may be revoked for any violation of any law and/or any rule, regulation and/or standard adopted pursuant to this Chapter 9.22.

D. Renewal Applications.

(1) An application for renewal of a medical cannabis business permit shall be filed at least sixty (60) calendar days prior to the expiration date of the current permit.

(2) The renewal application shall contain all the information required for new applications.

(3) The applicant shall pay a fee in an amount to be set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this Chapter.

(4) An application for renewal of a medical cannabis business permit shall be rejected if any of the following exists:

(a) The application is filed less than sixty (60) days before its expiration.

(b) The medical cannabis business permit is suspended or revoked at the time of the application.

(c) The medical cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application.

(d) The medical cannabis business has failed to conform to the requirements of this Chapter, or of any regulations adopted pursuant to this Chapter.

(e) The permittee fails or is unable to renew its State of California license.

(f) If the City or state has determined, based on substantial evidence, that the permittee or applicant is in violation of the requirements of this Chapter, of the City's Municipal Code, or of the state rules and regulations, and the City or state has determined that the violation is grounds for termination or revocation of the medical cannabis business permit.

(5) The City Manager or his designee is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the City Manager or his designee is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the City Manager or his designee shall be handled pursuant to Section 9.22.060 entitled "Appeals."

(6) If a renewal application is rejected, a person may file a new application pursuant to this Chapter no sooner than one (1) year from the date of the rejection.

E. Effect of state license suspension, revocation, or termination.

Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a medical cannabis business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the State license. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a medical cannabis business, such revocation or termination shall also revoke or terminate the ability of a medical cannabis business to operate within the City of Nevada City.

9.22.060. Appeals.

A. Appeals from Decisions of the City Manager or his Designee under this Chapter. Unless specifically provided elsewhere to the contrary, whenever an appeal is provided for in this Chapter from a decision of the City Manager or his or her designee, the appeal shall be conducted as prescribed in this Section.

B. Written request for Appeal.

(1) Within ten (10) calendar days after the date of a decision of the City Manager or his designee(s) to revoke, suspend or deny a permit, or to add conditions to a permit, an aggrieved party may appeal such action by filing a written appeal with the City Clerk setting forth the reasons why the decision was not proper.

(2) At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the City Council from time to time.

C. Appeal Hearing.

(1) Upon receipt of the written appeal, the City Clerk shall set the matter for a hearing before the City Council. The City Council shall hear the matter de novo, and shall conduct the hearing pursuant to the procedures set forth by the City.

(2) The appeal shall be held within a reasonable time after the filing the appeal, but in no event later than ninety (90) days from the date of such filing. The City shall notify the appellant of the time and location at least ten (10) days prior to the date of the hearing.

(3) At the hearing the appellant may present any information they deem relevant to the decision appealed. The formal rules of evidence and procedure applicable in a court of law shall not apply to the hearing.

(4) At the conclusion of the hearing the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be final.

9.22.070. Permittee Selection Process.

A. Selection and Review of Finalists.

(1) The City Council shall adopt by resolution a procedure by which the top three applicants applying for a medical cannabis business permit (in each permitted category of business, i.e., dispensary, cultivator, etc.) will be presented to the City Council for a final determination at a public hearing.

(2) The top three finalists shall be invited to attend the City Council meeting, where they will be expected to make a public presentation introducing their team and providing an overview of their proposal. In order to provide adequate time, presentations may be divided over more than one meeting over multiple days as determined to be necessary.

(3) At least ten (10) days prior to the hearing, notice of the hearing shall be sent to all property owners located within three hundred (300) feet of the proposed business locations of each of the finalists to be considered by the City Council.

(4) The City Council shall rank the final three candidates and shall select one or more candidates to be issued a medical cannabis permit. The City Council's decision as to the selection of the candidate(s) to receive the permit(s) shall be final.

(5) Official issuance of a medical cannabis business permit, however, is conditioned upon the prevailing candidate(s) obtaining all required land use approvals. Following the Council's selection, the prevailing candidate(s) shall apply to the City's planning department to obtain any required land use approvals or entitlements for the permittee's location, if any. Land use approvals shall include compliance with all applicable provisions of the California Environmental Quality Act (CEQA). The City Manager shall formally issue a medical cannabis business permit once the City Manager and Chief of Police have both affirmed that all of the required land use approvals have been obtained.

If the selected permittee(s) is/are unable to fulfill all the requirements of obtaining the medical cannabis business permit(s), the City Council, in its sole discretion, may award the permit to the next highest ranked finalist, or may begin the application process again to allow for selection of a new set of finalists.

(6) Issuance of a medical cannabis business permit does not create a land use entitlement. A medical cannabis business permit shall only be for a term of twelve (12) months, and shall expire at the end of the twelve (12) month period unless it is renewed as provided herein. Furthermore, no permittee may begin operations, notwithstanding the issuance of a permit, unless all of the state and local laws and regulations, including but not limited to the requirements of this Chapter and of the permit, have been complied with.

(7) Notwithstanding anything in this Chapter to the contrary, the City Council reserves the right to reject any or all applications if it determines it would be in the best interest of the City, taking into account any health, safety and welfare impacts on the community. Applicants shall have no right to a medical cannabis business permit until a permit is actually issued, and then only for the duration of the permit's term. Each applicant assumes the risk that, at any time prior to the issuance of a permit, the City Council may terminate or delay the program created under this Chapter.

(8) If an application is denied, a new application may not be filed for one (1) year from the date of the denial.

(9) A person or entity granted a medical cannabis business permit shall be required to pay the permit fee established by resolution of the City Council, to cover the costs of administering the medical cannabis business permit program created in this Chapter.

B. Prohibition on Transfer of Medical Cannabis Business Permits.

1. No person may transfer ownership or control of a medical cannabis business or transfer any medical cannabis business permit issued under this Chapter. Medical cannabis business permits are not a property right, and permittees have no economic interest in any permit issued to them. Permittees have no right to sell or transfer a medical cannabis business permit to another party, or to have the City Council consider whether they should authorize the transfer of a medical cannabis business permit to another party. Any attempt to transfer ownership of a medical cannabis business or of a medical cannabis business permit shall render the medical cannabis business permit void.

2. Any attempt to transfer a medical cannabis business permit or a medical cannabis business shall result in the medical cannabis business permit being declared immediately revoked and/or it is void and no longer of any effect.

3. In any situation where a permit has been lost as a result of an attempted transfer of the medical cannabis business permit or of the medical cannabis business, or as a result of the abandonment or revocation of the permit, any new permit shall be issued using the standard process for the issuance of permits in the first instance. No preference shall be given to any person proposed as new owner or assignee by the former permit holder. In such case, prior to accepting any new applications, the City shall post the availability of the medical cannabis business permit at issue on the City's website. The City Manager or his/her designee may take other actions to help ensure the broadest pool of applicants for the new permit.

9.22.080. Requirements Before Permittee May Commence Operations.

A. City Business License. Prior to commencing operations, a medical cannabis business shall obtain a City of Nevada City business license.

B. Building Permits and Inspection. Prior to commencing operations, a medical cannabis business shall be subject to a mandatory building inspection, and must obtain all required permits and approvals which would otherwise be required for any business of the same size and intensity operating in that zone. This includes but is not limited to obtaining any required building permit(s), fire department approvals, Health Department approvals and other zoning and land use permit(s) and approvals.

C. Certification from Planning Director. Prior to commencing operations, a medical cannabis business must obtain a certification from the Planning Director certifying that the business is located on a site that meets all of the requirements of the City's Zoning and Municipal Code, including Chapter 17.142 (Medical Cannabis Uses and Activities).

D. Right to Occupy and to Use Property. As a condition precedent to the City's issuance of a medical cannabis business permit pursuant to this Chapter, any person intending to open and to operate a medical cannabis business shall provide sufficient evidence of the legal right to occupy and to use the proposed location. In the event the proposed location will be leased from another person, the applicant shall be required to provide a signed and notarized statement from the owner of the property, acknowledging that the property owner has read this Chapter and consents to the operation of the medical cannabis business on the owner's property.

E. Limitations on City's Liability. To the fullest extent permitted by law, the City of Nevada City shall not assume any liability whatsoever with respect to having issued a medical cannabis business permit pursuant to this Chapter or otherwise approving the operation of any medical cannabis business. As a condition to the approval of any medical cannabis business permit, the applicant shall be required to meet all of the following conditions before they can receive the medical cannabis business permit:

(1) They must execute an agreement, in a form approved by the city attorney, agreeing to indemnify, defend (at applicant's sole cost and expense), and hold the City of Nevada City, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance of the medical cannabis business permit, the City's decision to approve the operation of the medical cannabis business or activity, to process used by the City in making its decision, or the alleged violation of any federal, state or local laws by the medical cannabis business or any of its officers, employees or agents.

(2) Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by the city attorney.

(3) Reimburse the City of Nevada City for all costs and expenses, including but not limited to attorney fees and costs and court costs, which the City of Nevada City may be required to pay as a result of any legal challenge related to the City's approval of the applicant's medical cannabis business permit, or related to the City's approval of a medical cannabis activity. The City of Nevada City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

9.22.090. Operating Requirements for Medical Cannabis Businesses.

A. Compliance with Laws.

It is the responsibility of the owners and operators of the medical cannabis business to ensure that it is, at all times, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder. Nothing in this Chapter shall be construed as authorizing any actions which violate state law or local law with respect to the operation of a medical cannabis business. It shall be the responsibility of the owners and the operators of the medical cannabis business to ensure that the medical cannabis business is, at all times, operating in a manner compliant with all applicable state and local laws, the 2008 Attorney General Guidelines, any subsequently enacted state law or regulatory, licensing, or certification requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of the medical cannabis business permit. Nothing in this Chapter shall be construed as authorizing any actions which violate state law with regard to the operation of a medical cannabis business.

B. Fees, Charges and Taxes.

(1) No person may commence or continue any medical cannabis activity in the City, without timely paying in full all fees, charges, and any applicable taxes required for the operation of a medical cannabis business. Fees and charges associated with the operation of a medical cannabis activity shall be established by resolution of the City Council which may be amended from time to time.

(2) A medical cannabis dispensary authorized to operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under federal, state and local law. Medical cannabis dispensaries shall cooperate with City with respect to any reasonable request to audit the medical cannabis dispensary's books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.

C. Operating Requirements for All Medical Cannabis Businesses.

Hours of Operation. Medical cannabis dispensaries may be open for access to the public only between the hours of 8:00 A.M. and 8:00 P.M. Monday through Sunday.

Other medical cannabis businesses may operate only during the hours specified in the business's medical cannabis business permit.

D. Restriction on Consumption. Cannabis shall not be consumed on the premises of any medical cannabis business.

E. No outdoor storage of cannabis or cannabis products is permitted at any time.

F. Reporting and Tracking of Product and of Gross Sales. Each medical cannabis business shall have in place a point-of-sale tracking system to track and report on all aspects of the medical cannabis business including, but not limited to, such matters as cannabis tracking, inventory data, and gross sales (by weight and by sale). The medical cannabis business shall ensure that such information is compatible with the City's record-keeping systems. The system must have the capability to produce historical transactional data for review by the City Manager or his/her designee.

G. All cannabis and cannabis products sold, distributed or manufactured shall be cultivated, manufactured, and transported by licensed facilities that maintain operations in full conformance with the State and local regulations.

H. Emergency Contact. Each medical cannabis business shall provide the City Manager or his/her designee(s) with the name, telephone number (mobile preferred, if available) of an owner and or manager to whom emergency notice can be provided at any hour of the day.

I. Signage and Notices.

(1) In addition to the requirements otherwise set forth in this section, business identification signage for a medical cannabis business shall conform to the requirements of the Nevada City Municipal Code, including, but not limited to, seeking the issuance of a City sign permit.

(2) No signs placed on the premises of a medical cannabis business shall obstruct any entrance or exit to the building or any window.

(3) Each entrance to a medical cannabis dispensary shall be visibly posted with a clear and legible notice indicating that smoking, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the medical cannabis dispensary is prohibited.

J. Minors.

(1) Persons under the age of eighteen (18) years shall not be allowed on the premises of a medical cannabis business unless the person is a qualified patient and is accompanied by their own parent, guardian, or primary caregiver. Persons under the age of eighteen (18) years of age shall not be allowed to serve as a driver for a mobile delivery service. It shall be unlawful and a violation of this Chapter for any person to employ any person at a medical cannabis business who is not at least twenty-one (21) years of age.

(2) The entrance to the medical cannabis business shall be clearly and legibly posted with a notice that no person under the age of eighteen (18) years of age is permitted to enter upon the premises of the medical cannabis business unless the person is a qualified patient and is accompanied by their own parent, guardian, or primary caregiver.

K. Odor Control. Odor control devices and techniques shall be incorporated in all medical cannabis dispensaries to ensure that odors from cannabis are not detectable off-site. Medical cannabis dispensaries shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the medical cannabis dispensary that is distinctive to its operation is not detected outside of the facility, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the medical cannabis dispensary. As such, a medical marijuana dispensary must install and maintain the following equipment, or any other equipment which the City Manager or his/her designee(s) determine is a more effective method or technology:

(1) an exhaust air filtration system with odor control that prevents internal odors from being emitted externally. The dispensary applicant shall provide a statement from the exhaust air filtration manufacturer that the system has been designed to achieve the above standard based on the specific building size and layout;

(2) An air system that creates negative air pressure between the medical cannabis dispensary's interior and exterior, so that the odors generated inside the medical cannabis dispensary are not detectable on the outside of the medical cannabis dispensary. The dispensary applicant shall provide a statement from the air system manufacturer that the system has been designed to achieve the above standard based on the specific building size and layout

L. Display of Permit and City Business License. The original copy of the medical cannabis business permit issued by the City pursuant to this Chapter and the City issued business license shall be posted inside the medical cannabis dispensary in a location readily-visible to the public.

M. Background Check. Pursuant to California Penal Code sections 11105(b)(11) and 13300(b)(11), which authorizes city authorities to access state and local summary criminal history information for employment, licensing, or certification purposes, and authorizes access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation, every person listed as an

owner, manager, or supervisor of the medical cannabis dispensary must submit fingerprints and other information deemed necessary by the City Manager or his/her designee(s) for a background check by the Nevada City Police Department. Pursuant to California Penal Code sections 11105(b)(11) and 13300(b)(11), which requires that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record, no person shall be issued a permit to operate a medical cannabis dispensary unless they have first cleared the background check, as determined by the Chief of Police, as required by this section. A fee for the cost of the background investigation, which shall be the actual cost to the City of Nevada City to conduct the background investigation as it deems necessary and appropriate, shall be paid at the time the application for a medical cannabis business permit is submitted. The applicant(s) shall provide an initial deposit in an amount the City Manager or his/her designee(s) estimates will cover the cost of the background investigation, which shall be used and drawn upon as a retainer to cover the actual costs of such investigation. If this amount is not sufficient, the applicant shall provide additional amounts that are necessary and if the applicant is unable to provide the additional amounts necessary to complete the investigation, the investigation shall cease and shall not continue until such additional amounts are paid. Upon completion of the investigation or in the event the applicant withdraws their application, any fees paid for this process will be deemed non-refundable.

The City shall not disseminate background check results information to any private party.

When reviewing background check results, the Chief of Police shall verify that applicants have not been convicted of any crimes listed in Business and Professions Code section 19323. Applicants found to have committed any crimes listed in Business and Professions Code Section 19323 shall fail the background, and shall be ineligible for a City medical cannabis business permit.

N. Loitering. The owner and/or operator of a medical cannabis business shall prohibit loitering by persons outside the facility both on the premises and within fifty (50) feet of the premises of the business.

O. Permits and other Approvals. Prior to the establishment of any medical cannabis dispensary or the operation of any such business, the person intending to establish a medical cannabis dispensary must first obtain all applicable planning, zoning, building, and other applicable permits from the relevant governmental agency which may be applicable to the zoning district in which such medical cannabis dispensary intends to establish and to operate.

9.22.100 Additional Operating Requirements for Medical Cannabis Dispensaries.

A. Records and Recordkeeping.

(1) Each owner and operator of a medical cannabis dispensary shall maintain accurate books and records, detailing all of the revenues and expenses of the dispensary, and all of its assets and liabilities. On no less than an annual basis (at or before the time of the renewal of a medical cannabis business permit issued pursuant to this Chapter), or at any time upon reasonable request of the City, each medical cannabis dispensary shall file a sworn statement detailing the number of sales by the medical cannabis dispensary during the previous twelve-month period (or shorter period based upon the timing of the request), provided on a per-month basis. The statement shall also include gross sales for each month, and all applicable taxes paid or due to be paid.

(2) Each owner and operator of a medical cannabis dispensary shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in the medical cannabis dispensary, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the medical cannabis dispensary. The register required by this paragraph shall be provided to the City Manager or his/her designee(s) upon a reasonable request.

(3) Each medical cannabis dispensary shall maintain a record of all persons, patients, collectives and primary caregivers served by the medical cannabis dispensary, for a period of no less than four (4) years.

(4) Medical cannabis dispensaries shall maintain records of their inventory acquired, including the name and address of each supplier, the date of acquisition and the quantity acquired from each supplier, and the location of the cultivation of the supplier, and shall maintain a copy of the supplier's state license to cultivate (if required).

(5) Subject to any restrictions under state or federal law, each medical cannabis dispensary shall allow City of Nevada City officials to have access to the dispensary's books, records, accounts, together with any other data or documents relevant to its permitted medical cannabis activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than twenty-four (24) hours after receipt of the City's request, unless otherwise stipulated by the City.

B. Security Measures.

(1) A permitted medical cannabis dispensary shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing medical cannabis or medical cannabis products, and to deter and prevent the theft of medical cannabis or medical cannabis products at the medical cannabis dispensary. Except as may otherwise be determined by the City Manager or his/her designee(s), these security measures shall include, but shall not be limited to, all of the following:

(a) Preventing individuals from remaining on the premises of the medical cannabis dispensary if they are not engaging in an activity directly related to the permitted operations of the medical cannabis dispensary.

(b) Establishing limited access areas accessible only to authorized medical cannabis dispensary personnel.

(c) All medical cannabis and medical cannabis products shall be stored in a secured and locked room, safe, or vault. All medical cannabis and medical cannabis products, shall be kept in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes or for immediate sale at a dispensary.

(d) Installing 24-hour security surveillance cameras of at least HD-quality to monitor all entrances and exits to and from the premises, all interior spaces within the medical cannabis dispensary which are open and accessible to the public, and all interior spaces where cannabis, cash or currency, is being stored for any period of time on a regular basis. The medical cannabis dispensary shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the City Manager or his/her designee(s), and the City's Police Department, and that it is compatible with the City's software and hardware. In addition, remote and real-time, live access to the video footage from the cameras shall be provided to the City Manager or his/her designee(s) and to the City's police department. Video recordings shall be maintained for a minimum of forty-five (45) days, and shall be made available to the City Manager or his designee upon request.

(e) Sensors shall be installed to detect entry and exit from all secure areas.

(f) Panic buttons shall be installed in all medical cannabis dispensaries.

(g) Having a professionally installed, maintained, and monitored alarm system.

(h) Any bars installed on the windows or the doors of the medical cannabis dispensary shall be installed only on the interior of the building.

(i) Security personnel must be licensed by the State of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the City Manager or his/her designee(s), with such approval not to be unreasonably withheld.

(j) Each medical cannabis dispensary shall have the capability to remain secure and operational during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.

(k) Entrances into the dispensary shall be locked at all times with entry strictly controlled. A "buzz-in" electronic/mechanical entry system shall be utilized to limit access to and entry to the dispensary, to separate it from the reception/lobby area. Qualified patients must show either their physician's recommendation for medical cannabis with a government-issued photo identification or their state issued identification card and a government-issued photo identification in order to gain access into the dispensary. Primary caregivers must show: (a) a government-issued photo identification; (b) a copy of a physician's recommendation for the qualified patients for whom they are purchasing cannabis and/or cannabis products at the dispensary; and (c) written permission from the qualified patient, or his or her authorized representative or parent or guardian if the patient is a minor child, authorizing the primary caregiver to purchase cannabis on behalf of the qualified patient.

(l) Uniformed licensed security personnel shall be employed to monitor site activity, control loitering and site access, and to serve as a visual deterrent to unlawful activities.

(2) A medical cannabis dispensary shall identify a designated security representative/liaison to the City of Nevada City, who shall be reasonably available to meet with the City Nevada City or his/her designee regarding any security related measures or and operational issues.

(3) As part of the application and permitting process a medical cannabis dispensary shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all cannabis, cannabis products, and any currency.

(4) The medical cannabis dispensary shall cooperate with the City whenever the City Manager or his designee makes a request, upon reasonable notice to the medical cannabis dispensary, to inspect or audit the effectiveness of any security plan or of any other requirement of this Chapter.

(5) A medical cannabis dispensary shall notify the City Manager or his/her designee(s) within twenty-four (24) hours after discovering any of the following:

(a) Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the City Manager or his/her designee.

(b) Diversion, theft, loss, or any criminal activity involving the medical cannabis dispensary or any agent or employee of the medical cannabis dispensary.

(c) The loss or unauthorized alteration of records related to cannabis, registering qualifying patients, primary caregivers, or employees or agents of the medical cannabis dispensary.

(d) Any other breach of security.

C. Restriction on Alcohol Sales.

No person shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on or about the premises of the medical cannabis dispensary.

D. If a medical cannabis dispensary permittee is operating as a collective or cooperative under Health and Safety Code Section 11362.775, subdivision (a), members of the applicant authorized to possess cannabis shall sign an agreement with the medical cannabis dispensary which states that members shall not distribute cannabis or cannabis products to non-members or in violation of the "Memorandum for all United States Attorneys," issued by the United States Department of Justice, from James M. Cole, Deputy Attorney General and any other applicable state and federal laws, regulations, or guidelines.

E. If the medical cannabis dispensary permittee is operating as a collective or cooperative under Health and Safety Code Section 11362.775, subdivision (a), the medical cannabis dispensary shall terminate the membership of any member violating any of the provisions of this Chapter.

F. Owners and Operators are required to verify the age and the necessary documentation of each customer to ensure the customer is not under the age of eighteen (18) years, and to verify that the potential customer has a valid doctor's recommendation.

G. There shall not be a physician located in or on the grounds of any medical cannabis dispensary at any time for the purpose of evaluating patients for the issuance of a medical cannabis prescription or card.

H. Prior to dispensing cannabis or cannabis products to any person, the medical cannabis dispensary shall obtain verification from the recommending physician that the person requesting cannabis or cannabis products is a qualified patient or primary caregiver.

I. Dispensaries may have on-site, in the retail sales area of the dispensary, only that quantity of cannabis and cannabis products reasonably anticipated to meet the daily demand readily available for sale. Dispensaries may also sell non-cannabis products, such as cannabis and health related educational books and publications, apparel, and the like. However, sales of non-cannabis products shall constitute no more than fifteen percent (15%) of the floor area and not to exceed three hundred (300) feet.

J. All restroom facilities shall remain locked and under the control of management.

K. All cannabis and products containing cannabis shall be dispensed in child-proof packaging and shall remain in such packaging until off the premises, unless otherwise provided by state law.

9.22.110. Reserved.

9.22.120. Reserved.

9.22.130. Delivery by Medical Cannabis Dispensary Permitted.

Legally permitted medical cannabis dispensaries are authorized to make deliveries within the City and within any jurisdiction that permits deliveries, subject to following requirements:

(A) The owner, operator, and delivery personnel shall comply with all applicable state law requirements;

(B) The delivery personnel must be an employee of the medical cannabis dispensary;

(C) Before dispensing any products to persons requesting delivery, the delivery personnel must verify that the requestor is an authorized customer (either a qualified patient or a primary caregiver) by inspecting the documents required by subdivision 9.22.100 (B)(1)(k).

9.22.140 Application of Chapter; Other Legal Duties.

A. Promulgation of Regulations and Standards.

(1) In addition to any regulations adopted by the City Council, the City Manager or his/her designee is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of medical cannabis business permits, the ongoing operation of a medical cannabis business and the City's oversight, or concerning any other subject determined to be necessary to carry out the purposes of this Chapter.

(2) Regulations shall be published on the City's website.

(3) Regulations promulgated by the City Manager shall become effective upon date of publication. A medical cannabis business shall be required to comply with all state and local laws and regulations, including but not limited to any rules, regulations or standards adopted by the City Manager or his designee.

B. Community Relations Requirements for Medical Cannabis Dispensaries.

(1) Each medical cannabis dispensary shall provide the name, telephone number, and email address of a community relations contact to whom notice of problems associated with the medical cannabis dispensary can be provided. Each medical cannabis dispensary shall also provide the above information to all businesses and residences located within one hundred (100) feet of the medical cannabis dispensary property and shall provide opportunity for those businesses and residents within one hundred (100) feet to visit and to tour the medical cannabis dispensary at least once on a mutually convenient date and time. Any additional request shall be at the sole discretion of the dispensary operator.

(2) During the first year of operation pursuant to this Chapter, the owner, manager, and community relations representative from the medical cannabis dispensary holding a permit issued pursuant to this Chapter shall attend a quarterly meeting with the City Manager or his/her designee(s) to discuss costs, benefits, and other community issues arising as a result of implementation of this Chapter. After the first year of operation, the owner, manager, and community relations representative from the medical cannabis dispensary shall meet with the City Manager or his/her

designee(s) when and as requested by the City Manager or his/her designee(s).

(3) The medical cannabis dispensary to which a permit is issued pursuant to this Chapter shall develop and make available to youth organizations and educational institutions a public education plan that outlines the risks of youth abuse of cannabis, and that identifies resources available to youth related to drugs and drug addiction.

C. Fees Deemed Debt to City of Nevada City.

The amount of any fee, cost or charge imposed pursuant to this Chapter shall be deemed a debt to the City of Nevada City that is recoverable via an authorized administrative process as set forth in the Municipal Code, or in any court of competent jurisdiction.

D. Permit Holder Responsible for Violations.

The person or members of a business entity to whom a permit is issued pursuant to this Chapter shall be responsible for all violations of the laws of the State of California or of the regulations and/or the ordinances of the City of Nevada City, whether committed by the permittee or any employee or agent of the permittee, which violations occur in or about the premises of the medical cannabis business whether or not said violations occur within the permit holder's presence.

E. Inspection and Enforcement.

(1) The City Manager or his/her designee(s) are charged with enforcing the provisions of the Nevada City Municipal Code, or any provision thereof, may enter the location of a medical cannabis business at any time during the hours of operation without notice, and inspect the location of any medical cannabis business as well as any recordings and records required to be maintained pursuant to this Chapter or under applicable provisions of State law.

(2) It is unlawful for any person having responsibility over the operation of a medical cannabis business, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a medical cannabis business under this Chapter or under state or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by a medical cannabis business under this Chapter or under state or local law.

(3) The City Manager or his/her designee(s) charged with enforcing the provisions of this Chapter may enter the location of a medical cannabis business at any time during the hours of operation and without notice to

obtain samples of the cannabis to test for public safety purposes. Any samples obtained by the City of Nevada City shall be logged, recorded, and maintained in accordance with Nevada City Police Department standards for evidence.

F. Concurrent Regulation with State. It is the stated intent of this Chapter to regulate medical cannabis activity in the City of Nevada City concurrently with the state of California.

9.22.150. Violations and Enforcement.

A. Violations declared a public nuisance.

Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance.

B. Each violation a separate offense.

Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Nevada City Municipal Code. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, any permit issued pursuant to this Chapter being deemed null and void, disgorgement and payment to the City of any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The City of Nevada City may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the medical cannabis business or persons related to, or associated with, the medical cannabis activity. Additionally, when there is determined to be an imminent threat to public health, safety or welfare, the City Manager, his/her designee, or the Chief of Police, may take immediate action to temporarily suspend a medical cannabis business permit issued by the City, pending a hearing before the City Council.

C. Remedies cumulative and not exclusive.

The remedies provided herein are not to be construed as exclusive remedies. The City is authorized to pursue any proceedings or remedies provided by law.

SECTION 2. Chapter 17.142 (Medical Cannabis Businesses and Activity) of Title 17 of the Nevada City Municipal Code is enacted as follows:

Chapter 17.142 MEDICAL CANNABIS BUSINESSES AND ACTIVITY

17.142.010. Purpose. The purpose of this part is to further fulfill the purposes and intents set forth in Chapter 9.22 of the Nevada City Municipal Code. No person shall operate a medical cannabis business without first obtaining a City medical cannabis business permit

and complying with all the requirements of Chapter 9.22 of the Nevada City Municipal Code and complying with all applicable state law requirements including obtaining a license or permit required by the state to operate a medical cannabis business.

17.142.020. Definitions. Unless otherwise provided herein, the terms used in this part shall have the meanings ascribed to them in Chapter 9.22 of the Nevada City Municipal Code.

17.142.030. Location of Medical Cannabis Dispensaries.

Medical cannabis dispensaries shall be permitted only as follows:

(a) In the following zoning designations: General Business (GB) excluding those properties designated with an Historic District (HD) overlay, Local Business (LB), and Light Industrial (LI) Zones.

(b) No closer than six hundred (600) feet from any portion of any parcel in the City limits containing any of the following:

(1) A school, including pre-school, transitional kindergarten, and K-12 that is in existence at the time the initial medical cannabis dispensary permit is issued; or

(2) A public park that is managed by the City of Nevada City that is in existence at the time the initial medical cannabis dispensary permit is issued[A1].

17.142.040. **RESERVED.**

17.142.050. Distances measured; Applicable properties.

The distance between parcels shall be the horizontal distance measured in a straight line from any property line of the sensitive use to the closest property line of the lot on which the medical cannabis business is to be located, without regard to any intervening structures.

17.142.060. Certification from Planning Director. Prior to commencing operations, a medical cannabis business must obtain a certification from the Planning Director certifying that the business is located on a site that meets all of the requirements of this Title.

SECTION 3. Chapter 17.36 of the of the Nevada City Municipal Code entitled "Local Business Zone" is hereby amended to include medical cannabis dispensaries as a permitted use, subject to the requirements of Chapter 17.142:

17.36.020 - Principal permitted uses.

A. All residential uses as permitted in R1 and R2 zones;

B. Any local retail business or service establishment, such as a grocery, fruit or vegetable store, drug store, barber and beauty shops, florists, laundromats, clothes cleaning and laundry pickup station, variety store, hardware store, or any combination thereof in one unit, antique shops, banks, gift shops, bicycle shops, dance and music studios, and similar uses, as determined by the commission, supplying commodities or performing services for the residents and visitors to the neighborhood;

C. Principal permitted uses as allowed in the OP zone;

D. Restaurants, except drive-in restaurants;

E. Electrical and plumbing supply stores;

F. Printing, publishing, letter shops and stationery stores;

G. Mixed residential uses at a maximum density of 4 (four) units per acre may be included within any building devoted to a nonresidential use or uses permitted in the LB zone, provided that irrespective of lot size, a minimum of one residential unit is permitted.

H. Art galleries.

I. Medical Cannabis Dispensaries pursuant to the provisions outlined in Chapter 17.142.

SECTION 4. Chapter 17.40 of the of the Nevada City Municipal Code entitled "General Business Zone" is hereby amended to include medical cannabis dispensaries as a permitted use, subject to the requirements of Chapter 17.142.

17.40.020 - Principal permitted uses.

In the GB zone, the following uses are permitted:

A. All residential uses as permitted in the R1 and R2 zones and principal permitted uses of the OP zone;

B. Offices on the second floor and above, stores and shops supplying commodities or performing services, such as department stores, specialty shops, bakeries, and including regional shopping centers or major elements of such centers;

C. Restaurants except drive-in, cocktail lounges, theaters and similar enterprises provided that such uses are conducted within a completely enclosed building;

D. Hotels and motels;

E. Mixed residential uses at a maximum density of 4 (four) units per acre may be included within any building devoted to a nonresidential use or uses permitted in the GB zone, provided that irrespective of lot size, a minimum of one residential unit is permitted.

F. Any other similar business or service enterprise, except offices on the ground floor, consistent with the purpose of this chapter and which will not impair the present or potential use of adjacent properties shall be deemed a permitted use under this section upon an adopted motion of the planning commission. Such business or service establishments will be characterized by the following for ground level use:

1. Nature of business depends upon walk-in traffic, and
2. Nature of business provides sales tax revenue to the city of Nevada City, and
3. Business provides products to a broad spectrum of the general public, and
4. The proposal will not weaken the concentration and continuity of retail facilities at ground level, and will not break up an important shopping frontage, and
5. If a manufacturing, assembly, fabricating or handcrafting process is involved, then the major retail outlet for such products will be on the premises where such processes are performed;

G. Restrictions on ground level uses:

1. No new or expanded office of any type may be located on the ground level of any building, unless the approving authority grants a conditional use permit and finds the use complies with Section 17.40.040(J). The cost of a conditional use permit for a ground level office shall be one hundred dollars ($100.00).

H. Medical Cannabis Dispensaries pursuant to the provisions outlined in Chapter 17.142, not including those properties designated with an Historic District (HD) overlay.

SECTION 5. Chapter 17.48 of the Nevada City Municipal Code entitled "Light Industrial Zone," is hereby amended to include medical cannabis dispensaries as a permitted use, subject to the requirements of Chapter 17.142:

Chapter 17.48 LIGHT INDUSTRIAL ZONE

17.48.020. Principal Permitted Uses.

In the LI zone, the following uses are permitted:

A. Automobile and truck service stations and terminals;

B. Business services, including advertising, credit, bookkeeping, employment and similar agencies, business and management consultants, stenographic, duplicating, blueprinting, photocopying and messenger services;

C. Building materials sales yards;

D. Light construction and special trade contractors, offices and shops, ornamental iron works, and sheet metal shops;

E. Offices, administrative and executive;

F. Refrigerators, furnaces and water heaters, repairs and servicing;

G. Electrical transmission and/or substations;

H. Warehousing, except mini-storage, including storage of furniture and household goods, but excluding feed and grain when handled in bulk;

I. Public utility service yard or garage;

J. Light manufacturing uses and all uses allowed in the EC zone;

K. Artists' studios, craft workshops, and cabinet shops.

L. Emergency shelters.

M. Medical Cannabis Dispensaries pursuant to the provisions outlined in Chapter 17.142.

SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

SECTION 7. Effective Date. This ordinance shall be in full force and effect commencing thirty (30) days after its final adoption and a summary hereof shall be published once within fifteen (15) days in The Union, a newspaper of general circulation printed and published in the County of Nevada and circulated in the City of Nevada City and hereby designated for that purpose by the City Council.

This Ordinance was introduced and read by title only on the 12th day of April, 2017 and was passed and adopted on this 12th day of April, 2017 at the regular meeting of the City Council of the City of Nevada City by the following vote:

AYES: PHELPS, STRAWSER, MOBERG, PARKER
NOES: NONE
ABSENT: SENUM
ABSTAIN: NONE

Evans Phelps

Evans Phelps, Mayor

ATTEST:

Niel Locke

Niel Locke, City Clerk

ORDINANCE NO. 2017-07

AN ORDINANCE OF THE CITY OF NEVADA CITY AMENDING SECTION 9.16.010 OF CHAPTER 9.16 ALCOHOLIC BEVERAGES OF THE NEVADA CITY MUNICIPAL CODE REGULATING CONSUMPTION

WHEREAS, section 9.16.010 currently provides that it is unlawful for any person to drink, consume, transport, carry or possess alcoholic beverages in public areas of the historical district of Nevada City, subject to suspension by the city council for "city-sponsored events"; and,

WHEREAS, it is desirable to also allow the city to suspend the prohibition for certain Nevada City Chamber of Commerce events where vendors sell drinks for fund raising so long as no breakable containers are used:

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

SECTION I:

Section 9.16.010 of Chapter 9.16 Deemed unlawful is amended to read as follows:

> **Section 9.16.010 Deemed unlawful.**
> It is unlawful for any person to drink, consume, transport, carry or possess any alcoholic beverage, except in the original package and the seal unbroken, on the public streets, parks, sidewalks and public parking lots in the historical district of Nevada City (as defined in the zoning ordinance), except the council of the city of Nevada City may by resolution suspend the provisions of this section for city-sponsored events or for approved Nevada City Chamber of Commerce sponsored events to facilitate fund raising. Only alcohol purchased from a licensed participating vender of the chamber-sponsored event is covered by this exception and containers must be in compliance with chapter 9.20 of this Title.

SECTION II:

STATUTORY CONSTRUCTION & SEVERABILITY: It is the intent of the City Council of the City of Nevada City to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or

circumstance. The City Council of the City of Nevada City hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION III:

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 the regularly scheduled meeting of the Nevada City City Council held on the 10th day of May, 2017 by the following vote:

AYES: **PHELPS, STRAWSER, MOBERG, SENUM, PARKER**

NOES: **NONE**

ABSTAIN: **NONE**

ABSENT: **NONE**

Evans Phelps

Evans Phelps, Mayor

ATTEST: Niel Locke

Niel Locke, City Clerk

ORDINANCE NO. 2017-08

AN ORDINANCE OF THE CITY OF NEVADA CITY ADDING CHAPTER 8.34 TO THE NEVADA CITY MUNICIPAL CODE BANNING FIREWORKS

WHEREAS, California Health and Safety Code §§12500 *et seq.* provide for regulation of the manufacture, classification and, in part, sales of safe and sane fireworks by the California State Fire Marshal and §12541.1 allows local jurisdictions to prohibit or otherwise regulate sale based upon local conditions; and,

WHEREAS, City of Nevada City is surrounded by forest and brush-covered lands that the California Department of Forestry and Fire Protection has designated to be in a Very High Fire Hazard Severity Zone so that fireworks present a significant fire hazard to the environment and the safety of its citizens; and

WHEREAS, nearby jurisdictions, including Nevada County and the cities of Grass Valley and Truckee, have already banned fireworks:

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 8.34 Fireworks Ban** which is to read as follows:

Section 8.34.010 Purpose and findings.

The City has determined that fireworks present a significant hazard to the environment and safety of its citizens and has determined that it is in the City's best interest to prohibit the sale, use, and discharge of fireworks, including "safe and sane fireworks". The purpose of this chapter is to establish a prohibition on the sale, use, and discharge of fireworks in Nevada City.

Section 8.34.020 Definitions.

As used herein, the words and phrases "fireworks" and "safe and sane fireworks" shall have the meanings ascribed to them in Sections 12500 *et seq.* of the California Health and Safety Code.

Section 8.34.030 Prohibitions.

The sale, use, and discharge of fireworks, including, but not limited to, safe and sane fireworks, is prohibited within the City of Nevada City. It shall be unlawful for any person to sell, offer for sale, purchase, discharge or otherwise use fireworks within the City except as provided in this chapter.

Section 8.34.040 Exceptions.

A. Nothing in this Chapter shall be construed as prohibiting the sale, use, or discharge of any of the following; torpedoes, flares, or fuses by railroad or other transportation or law enforcement agencies for signal purposes of illumination; blank cartridges for ceremonial purposes, athletic, or sports events or military ceremonies or demonstrations; fireworks by permittees having a permit as hereinafter provided; agricultural and wildlife fireworks as defined in California Health and Safety Code section 12503; or to those subjects identified in subsections (a) through (d) of California Health and Safety Code section 12540.

B. Public displays of fireworks may be conducted by permit granted pursuant to Title 19 of the California Code of Regulations.

Section 8.34.050 Violation – Penalty

Any person violating the provisions of this chapter shall be guilty of an infraction, and upon conviction thereof shall be punishable by a maximum penalty established by state law, with the current penalty being a fine not exceeding one hundred dollars ($100.00) for the first conviction, a fine not exceeding two hundred dollars ($200.00) for a second conviction within one (1) year, and a fine not exceeding five hundred dollars ($500.00) for each additional conviction within one (1) year. The Nevada city Police Department, Grass Valley Police Department and the Nevada County Sheriff's Office are authorized to issue citations for violation of this chapter.

SECTION II:

STATUTORY CONSTRUCTION & SEVERABILITY: It is the intent of the City Council of the City of Nevada City to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Nevada City hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION III:

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 regular meeting of the City Council of the City of Nevada City on the 24th day of May, 2017 by the following vote:

AYES: **PHELPS, MOBERG, SENUM, PARKER**

NOES: **NONE**

ABSTAIN: **NONE**

ABSENT: **STRAWSER**

Evans Phelps

Evans Phelps, Mayor

ATTEST: Niel Locke

Niel Locke, City Clerk

ORDINANCE 2017-09

AN ORDINANCE OF THE CITY OF NEVADA CITY REZONING A 2-ACRE PORTION OF PROPERTY OWNED BY NEVADA CITY TECH CENTER, LLC (APN: 05-190-53) LOCATED AT 500 PROVIDENCE MINE ROAD FROM R3 TO R3-PD

THE CITY OF NEVADA CITY DOES ORDAIN AS FOLLOWS:

SECTION ONE:

WHEREAS, The subject real property located at 500 Providence Mine Road, a 2-acre portion of APN 05-190-53 is hereby rezoned from R3, (High-Density, Multiple Family Residential) to R3-PD (adding the Planned Development Combining District) as shown on Exhibit "A" attached hereto

WHEREAS, in adding this zoning designation, the City Council finds that the "PD" overlay zone is consistent with the following criteria outlined in Nevada City Municipal Code Section 17.68.240:

That the project provides high overall performance standards of open space (including preservation of existing trees and vegetation, and the addition of landscaping), in such a harmonious, integrated project of sufficient unity and harmony with the historic character of the city to justify exception to the normal regulations of this title

SECTION TWO:

This Ordinance shall become effective 30 days after its final adoption and a copy of this Ordinance shall be published in The Union, a newspaper of general circulation, within fifteen days of the date of its passage.

PASSED AND ADOPTED at a regularly scheduled meeting of the City Council of Nevada City held on the 10th day of May, 2017, by the following vote:

AYES: PHELPS, STRAWSER, MOBERG, SENUM, PARKER

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

Evans Phelps

Evans Phelps, Mayor

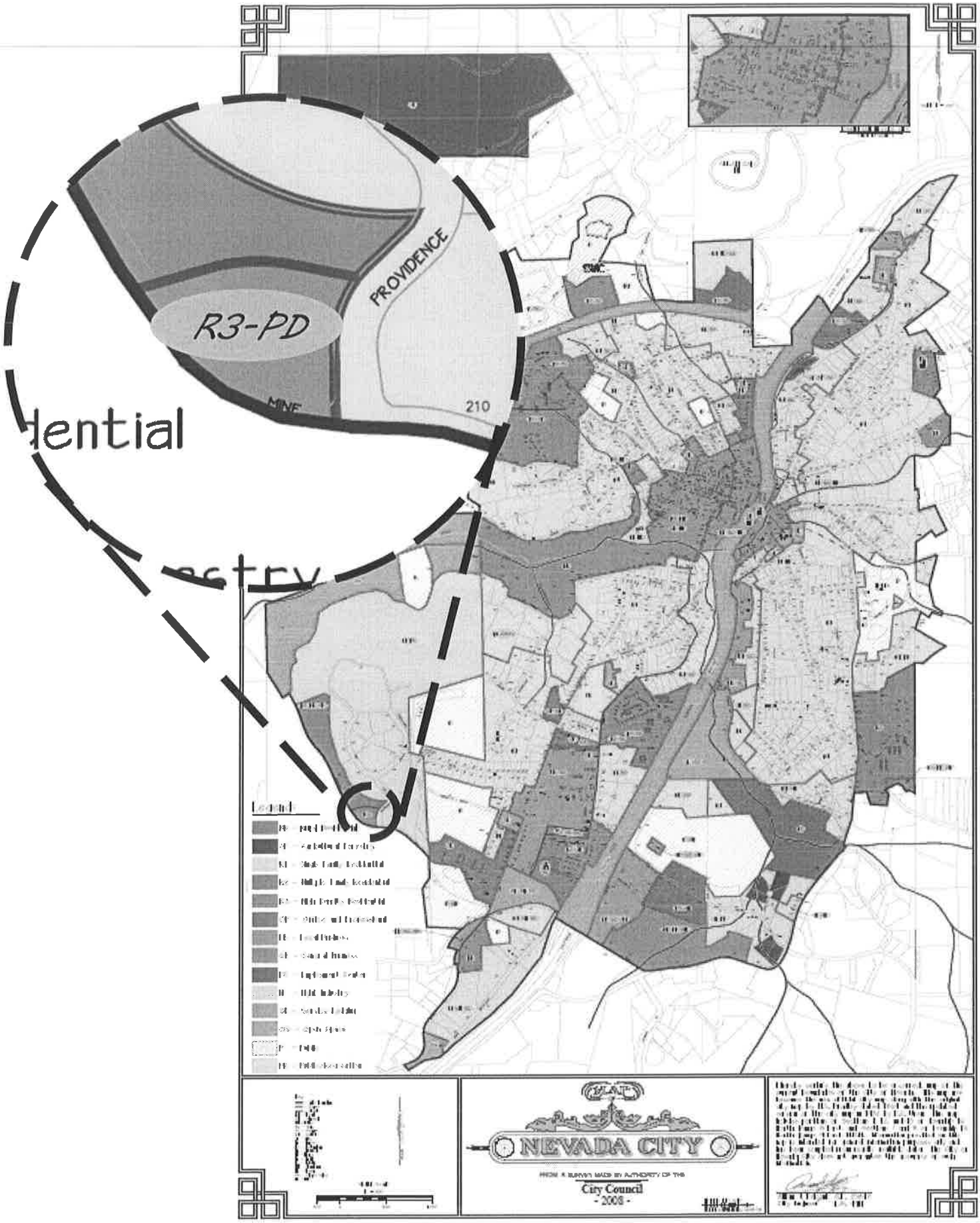
ATTEST:

Niel Locke

Niel Locke, City Clerk

Exhibit A: Ordinance 2017-09 : Rezone R3 to R3-PD (the Grove)

- ZONING -



ORDINANCE NO. 2017-10

AN ORDINANCE AMENDING CHAPTER 9.22 OF TITLE 9 OF THE NEVADA CITY MUNICIPAL CODE ENTITLED "MEDICAL CANNABIS DISPENSARIES AND OTHER CANNABIS BUSINESSES AND ACTIVITY" TO ALLOW FOR THE ESTABLISHMENT, PERMITTING, AND REGULATION OF MEDICAL CANNABIS CULTIVATION, MANUFACTURING, DISTRIBUTING, TRANSPORTING, AND TESTING LABORATORY BUSINESSES WITHIN THE CITY; AMENDING CHAPTER 17.142 ENTITLED "MEDICAL CANNABIS USES AND ACTIVITY"; AND AMENDING CHAPTER 17.48 ENTITLED "LIGHT INDUSTRIAL ZONE" TO ALLOW FOR THE SAME

WHEREAS, on April 12, 2017, the City Council of the City of Nevada City adopted Ordinance No. 2017-06 which amended Chapter 9.22 of the Nevada City Municipal Code to allow for the establishment, permitting, and regulation of medical cannabis dispensaries within the City of Nevada City; and

WHEREAS, the recitals from Ordinance No. 2017-06 declaring the City's authority and purpose for allowing medical cannabis businesses to be established within the City are hereby adopted and incorporated herein by this reference; and

WHEREAS, the City Council desires to further amend Chapter 9.22 to allow for the establishment, permitting, and regulation of other medical cannabis businesses within the City including medical cannabis cultivation, manufacturing, distribution, transporting, and testing laboratories; and

WHEREAS, medical cannabis related businesses will be subject to the zoning and land use regulations of the zoning district in which such business establish and operate, as set forth in Chapter 17 of the Nevada City Municipal Code (the Nevada City Zoning Code), and as otherwise established by the City; and

WHEREAS, the City Council finds that the activities permitted under this ordinance are consistent with and implement the goals and policies of the Nevada City General Plan; and

WHEREAS, the City Council finds that the adoption of this ordinance is not a "project" under California Environmental Quality Act (CEQA), because the ordinance will allow for the establishment of medical cannabis businesses to operate in a similar manner as traditional pharmacies which will not cause a direct physical change in the environment nor a reasonably foreseeable indirect physical change in the environment (Public Resources Code section 21065) (See *Union of Medical Marijuana Patients Inc. v. City of San Diego (California Coastal Commission) (2016) 2016 Cal.App. LEXIS 864.*)

WHEREAS, the City Council finds that even if the ordinance if found to be a Project Under CEQA, the adoption of this ordinance is exempt from environmental review under pursuant to the following sections of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3:

A. The ordinance is exempt under Section 15061(b) (3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The ordinance permits medical cannabis businesses including indoor cultivation, manufacturing, distribution, testing facilities, and transporter businesses to operate within the City which will have similar impacts to similar businesses that deal in non-cannabis products that are already authorized within the City. Furthermore, the ordinance contains requirements that prevent any potential impacts on the environment that may be unique to businesses involving medical cannabis. For example, the ordinance establishes prohibitions on nuisance odors, glare, excess energy usage, and establishes safety protections to prevent crime or deterioration of the business area into blight. Further, there is no possibility that this ordinance would create cumulative impacts that are significant because this ordinance only allows for medical cannabis businesses in limited zones within the City, does not authorize construction or other related activities or any other activities that are not already permitted, except that the ordinance allows the same activities but with a different material (medical cannabis) that is being sold for medical use; there are no other significant impacts that could occur as a result of this ordinance, and there are no unusual circumstances that would cause any such significant impacts;

B. The ordinance is also exempt under Section 15183 (projects consistent with a community plan, general plan, or zoning) since the type of business permitted by the ordinance is consistent with those contemplated by general plan and zoning, such as traditional manufacturing businesses, distribution warehouses, and chemical testing facilities;

C. The ordinance is also exempt under CEQA Guidelines Section 15301 (existing facilities) since the permitted medical cannabis businesses under the ordinance may locate in existing facilities, and any additions to structures would be expected to be also exempt under 15301; and

D. The ordinance is exempt under Section 15303 (new construction or conversion of small structures). A medical cannabis business will be established in an urban area, and given the build out of the existing city, and sufficient existing leasable property, the amount of construction that would occur is minimal to non-existent, and any such construction would be less than the thresholds established in Section 15303.

NOW THEREFORE, The City Council of the City of Nevada City does ordain as follows:

SECTION 1. Chapter 9.22 of the Nevada City Municipal Code entitled "Medial Cannabis Dispensaries and other Cannabis Businesses and Activity" shall be amended as follows:

A. Subdivision (B) of Section 9.22.040. MEDICAL CANNABIS BUSINESSES shall be amended to read as follows:

"B. ALL OTHER MEDICAL CANNABIS BUSINESSES

The Planning Commission may issue permits to other qualified medical cannabis business owners or operators to operate medical cannabis cultivation, manufacturing, distribution, transporting, or testing laboratory businesses within the City of Nevada City through the application and permit approval process contained in this Chapter 9.22 and resolutions adopted pursuant to this Chapter. All medical cannabis businesses must obtain a medical cannabis business permit from the City before commencing operations, must be in compliance with all applicable state and federal laws pertaining to its operation, including obtaining all necessary licenses from the state, and shall comply with all applicable operational and zoning requirements set forth in the Nevada City Municipal Code. Nothing in this Chapter creates a mandate that the Planning Commission or the City Council must issue one or more medical cannabis business permit to a medical cannabis cultivator, manufacturer, distributor, transporter, or testing laboratory if the Planning Commission or the City Council determines that there are no qualified applicants, the proposed locations for medical cannabis businesses are incompatible with neighboring land uses, or if the Planning Commission or the City Council determines that the issuance of a medical cannabis business permit would have a negative effect on the health, safety, or welfare of the citizens or businesses of Nevada City, or for any other reason allowed by law."

B. Section 9.22.060 entitled "Appeals" shall be amended to read as follows:

"A. Appeals from Decisions of the City Manager or his Designee or the Planning Commission under this Chapter. Unless specifically provided elsewhere to the contrary, whenever an appeal is provided for in this Chapter from a decision of the City Manager or his or her designee, or a decision of the Planning Commission the appeal shall be conducted as prescribed in this Section.

B. Written request for Appeal.

(1) Within ten (10) calendar days after the date of a decision of the City Manager or his designee(s) to revoke, suspend or deny a permit, or to add conditions to a permit, or within ten (10) calendar days after the Planning Commission has approved or denied an application for a medical cannabis

business permit, an aggrieved party may appeal such action by filing a written appeal with the City Clerk setting forth the reasons why the decision was not proper.

(2) At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the City Council from time to time.

C. Appeal Hearing.

(1) Upon receipt of the written appeal, the City Clerk shall set the matter for a hearing before the City Council. The City Council shall hear the matter de novo, and shall conduct the hearing pursuant to the procedures set forth by the City.

(2) The appeal shall be held within a reasonable time after the filing the appeal, but in no event later than ninety (90) days from the date of such filing. The City shall notify the appellant of the time and location at least ten (10) days prior to the date of the hearing.

(3) At the hearing the appellant may present any information they deem relevant to the decision appealed. The formal rules of evidence and procedure applicable in a court of law shall not apply to the hearing.

(4) At the conclusion of the hearing the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be final."

C. Subdivision A. of Section 9.22.070 entitled "Permittee Selection Process" shall be amended to read as follows:

"9.22.070. Permittee Selection Process.

A. Selection and Review of Finalists.

(1) The City Council shall adopt by resolution a procedure by which the top three applicants applying for a medical cannabis business permit in the dispensary category will be presented to the City Council for a final determination at a public meeting, and the applicants for other medical cannabis business categories will be presented to the Planning Commission for a final determination at a public meeting.

(2) The top three finalists in the medical cannabis dispensary category shall be invited to attend the City Council meeting, where they will be expected to make a public presentation introducing their team and providing an overview of their proposal. In order to provide adequate time, presentations may be divided over more than one meeting over multiple days as

determined to be necessary. The applicants in the other categories of medical cannabis businesses shall be invited to attend a Planning Commission meeting, where they will be expected to make a public presentation introducing their team and providing an overview of their proposal. In order to provide adequate time, presentations may be divided over more than one meeting over multiple days as determined to be necessary.

(3) At least ten (10) days prior to the hearing, notice of the hearing shall be sent to all property owners located within three hundred (300) feet of the proposed business locations of each of the finalists to be considered by the City Council or the Planning Commission.

(4) The City Council shall rank the final three candidates and shall select one or more candidates to be issued a medical cannabis permit for a medical cannabis dispensary as permitted by this Chapter 9.22. The City Council's decision as to the selection of the candidate(s) to receive a medical cannabis dispensary permit shall be final. Decisions of the Planning Commission to issue or deny medical cannabis permits in the other business categories may be appealed to the City Council according to the procedure set forth in Section 9.22.060.

(5) Official issuance of a medical cannabis business permit, however, is conditioned upon the prevailing candidate(s) obtaining all required land use approvals. Following the Council or Planning Commission's selection, the prevailing candidate(s) shall apply to the City's planning department to obtain any required land use approvals or entitlements for the permittee's location, if any. Land use approvals shall include compliance with all applicable provisions of the California Environmental Quality Act (CEQA). The City Manager shall formally issue a medical cannabis business permit once the City Manager and Chief of Police have both affirmed that all of the required land use approvals have been obtained.

If the selected permittee(s) is/are unable to fulfill all the requirements of obtaining the medical cannabis business permit(s), the City Council or the Planning Commission, in its sole discretion, may award the permit to the next highest ranked applicants, or may begin the application process again to allow for selection of a new set of applicants.

(6) Issuance of a medical cannabis business permit does not create a land use entitlement. A medical cannabis business permit shall only be for a term of twelve (12) months, and shall expire at the end of the twelve (12) month period unless it is renewed as provided herein. Furthermore, no permittee may begin operations, notwithstanding the issuance of a permit, unless all of the state and local laws and regulations, including but not limited to the requirements of this Chapter and of the permit, have been complied with.

(7) Notwithstanding anything in this Chapter to the contrary, the City Council and the Planning Commission reserves the right to reject any or all applications if it determines it would be in the best interest of the City, taking into account any health, safety and welfare impacts on the community. Applicants shall have no right to a medical cannabis business permit until a permit is actually issued, and then only for the duration of the permit's term. Each applicant assumes the risk that, at any time prior to the issuance of a permit, the City Council may terminate or delay the program created under this Chapter.

(8) If an application is denied, a new application may not be filed for one (1) year from the date of the denial.

(9) A person or entity granted a medical cannabis business permit shall be required to pay the permit fee established by resolution of the City Council, to cover the costs of administering the medical cannabis business permit program created in this Chapter."

D. Subdivision Q shall be added to Section 9.22.090 to read as follows:

"C. All medical cannabis business permittees other than medical cannabis dispensary businesses must comply with the following security requirements:

(1) A medical cannabis business permittee shall comply with the security plan that is approved by the City Manager, which plan may include building specifications, lighting, alarms, and state-licensed security personnel.

(2) Each security plan approved by the City Manager must include the following:

a. Security surveillance cameras. Security surveillance cameras and a video recording system must be installed to monitor all doors into the buildings on the business site, the parking lot, loading areas, and all exterior sides of the property adjacent to the public rights of way. The cameras and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present on the business site. The recording system must be capable of exporting the recorded video in standard MPEG formats to another common medium, such as a DVD or USB drive.

b. Security video recording and retention. Video from the security surveillance cameras must be recording at all times (24 hours a day, seven days a week) and the recording shall be maintained for at least 30 days. The video recordings shall be made available to the city upon request.

c. Alarm system. Professionally and centrally-monitored fire, robbery, and burglar alarm systems must be installed and maintained in good working condition. The alarm system must include a private security company that is required to respond to every alarm.

(3) A medical cannabis business permittee shall report to the City Police Department all criminal activity occurring on the cannabis business site."

E. Section 9.22.110 shall be added to read as follows:

"**9.22.110. Additional Requirements for Cultivation Facilities.**

A. Outdoor Cultivation Prohibited. The cultivation of all cannabis must occur indoors. All outdoor cultivation is prohibited.

B. In no case shall cannabis plants be visible from a public or private road, sidewalk, park or any common public viewing area.

C. If the medical cannabis business permitted by the City as a cultivator is operating as a collective or cooperative under Health and Safety Code Section 11362.775, subdivision (a), the medical marijuana business shall not allow more medical cannabis plants or plants per member of a medical marijuana business than the amounts permitted pursuant to State law, to be cultivated at the medical marijuana business premises.

D. Cannabis cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters.

E. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage or inadvertent damage from pests, rodents or other wildlife.

F. The cultivation of cannabis shall at all times be operated in such a way as to ensure the health, safety, and welfare of the public, the employees working at the medical marijuana business, visitors to the area, neighboring properties, and the end users of the cannabis being cultivated, to protect the environment from harm to streams, fish, and wildlife; to ensure the security of the cannabis being cultivated; and to safeguard against the diversion of cannabis.

G. All applicants for a cannabis cultivation permit shall submit the following in addition to the information generally otherwise required for a medical cannabis business:

(1) A cultivation and operations plan that meets or exceeds minimum legal standards for water usage, conservation and use; drainage, runoff, and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides, and other regulated products to be used on the parcel, and a description of the cultivation activities (indoor, mixed-light) and schedule of activities during each month of growing and harvesting, or explanation of growth cycles and anticipated harvesting schedules for all-season harvesting (indoor, mixed-light).

(2) A description of a legal water source, irrigation plan, and projected water use.

(3) Identification of the source of electrical power and plan for compliance with applicable Building Codes and related codes.

(4) Plan for addressing odor and other public nuisances which may derive from the cultivation site."

F. Section 9.22.120 shall be added to read as follows:

"**9.22.120 Additional Requirements for Medical Cannabis Manufacturing Businesses**.

A. Cannabis Manufacturing: Edibles and Other Cannabis Products; Sale or Distribution of Edible and Other Cannabis Products. The manufacturing of food or other products infused with or which otherwise contain cannabis may be manufactured within the appropriate manufacturing zoning districts Section 17.142 of the Nevada City Municipal Code, subject to the regulations set forth in this Chapter, and subject to whatever additional regulations may be promulgated hereunder by an ordinance or resolution of the City Council.

B. Packaging and Labeling.

(1) Before a medical cannabis manufacturer delivers any edible cannabis or edible cannabis product to a dispensary, the same shall be labeled and placed in tamper-evident packaging which at least meets the requirements of California Business and Professions Code section 19347, as the same may be amended from time-to-time or superseded or replaced by subsequent State legislation or by any department or division of the State of California.

(2) All items to be sold or distributed shall be individually wrapped at the original point of preparation by the business permitted as a medical cannabis manufacturer.

(3) Labeling must include a warning if nuts or other known allergens are used, and must include the total weight (in ounces or grams) of cannabis in the package.

(4) A warning that the item is a medication and not a food must be clearly legible on the front of the package.

(5) The package must have a label warning that the product is to be kept away from children.

(6) The label must also state that the product contains cannabis and must specify the date of manufacture.

(7) Any edible cannabis product that is made to resemble a typical food product must be in a properly labeled opaque (non-see-through) package before it leaves the medical marijuana manufacturing business.

(8) Deliveries must be in a properly labeled opaque package when delivered.

(9) The City Council may impose additional packaging and labeling requirements on cannabis or cannabis products by resolution, as permitted by law."

SECTION 2. Chapter 17.142 (Medical Cannabis Businesses and Activity) of Title 17 of the Nevada City Municipal Code is amended to add Section 17.142.040 to read as follows:

"17.142.040. Location of Medical Cannabis Business- Other than Dispensaries.

Medical cannabis businesses, other than dispensaries, including medical cannabis cultivation, manufacturing, distribution, transporting, and testing laboratory businesses shall be permitted in the Light Industrial (LI) zones only.

Medical cannabis cultivation businesses may not be located within six hundred (600) feet of a school that is in existence at the time the initial medical cannabis cultivation permit is issued as required by California Health and Safety Code Section 11362.768."

SECTION 3. Chapter 17.48 of the Nevada City Municipal Code entitled "Light Industrial Zone," is hereby amended to include medical cannabis cultivation businesses, medical cannabis manufacturing businesses, medical cannabis distribution businesses, medical

cannabis transporting businesses, and medical cannabis testing laboratory businesses as permitted uses, subject to the requirements of Chapter 17.142:

Chapter 17.48 LIGHT INDUSTRIAL ZONE

17.48.020. Principal Permitted Uses.

In the LI zone, the following uses are permitted:

A. Automobile and truck service stations and terminals;

B. Business services, including advertising, credit, bookkeeping, employment and similar agencies, business and management consultants, stenographic, duplicating, blueprinting, photocopying and messenger services;

C. Building materials sales yards;

D. Light construction and special trade contractors, offices and shops, ornamental iron works, and sheet metal shops;

E. Offices, administrative and executive;

F. Refrigerators, furnaces and water heaters, repairs and servicing;

G. Electrical transmission and/or substations;

H. Warehousing, except mini-storage, including storage of furniture and household goods, but excluding feed and grain when handled in bulk;

I. Public utility service yard or garage;

J. Light manufacturing uses and all uses allowed in the EC zone;

K. Artists' studios, craft workshops, and cabinet shops.

L. Emergency shelters.

M. Medical Cannabis Dispensaries pursuant to the provisions outlined in Chapter 17.142.

N. Medical Cannabis Cultivation businesses pursuant to the provisions outlined in Chapter 17.142.

O. Medical cannabis manufacturing businesses pursuant to the provisions outlined in Chapter 17.142.

P. Medical cannabis distribution businesses pursuant to the provisions outlined in Chapter 17.142.

Q. Medical cannabis transporting businesses pursuant to the provisions outlined in Chapter 17.142.

R. Medical cannabis testing laboratory businesses pursuant to the provisions outlined in Chapter 17.142.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

SECTION 5. Effective Date. This ordinance shall be in full force and effect commencing thirty (30) days after its final adoption and a summary hereof shall be published once within fifteen (15) days in The Union, a newspaper of general circulation printed and published in the County of Nevada and circulated in the City of Nevada City and hereby designated for that purpose by the City Council.

This Ordinance was introduced and read by title only on the 14th day of June, 2017 and was passed and adopted on this 28th day of June, 2017 by the following vote:

AYES: **PHELPS, STRAWSER, MOBERG, PARKER**

NOES: **NONE**

ABSENT: **SENUM**

ABSTAIN: **NONE**

Evans Phelps

Evans Phelps, Mayor

ATTEST:

Niel Locke

Niel Locke, City Clerk

ORDINANCE 2017-11

AN ORDINANCE APPROVING THE ANNEXATION OF 54.32 ACRES WITHIN THE UNINCORPORATED AREA OF NEVADA COUNTY LOCATED NORTHWEST OF THE NEVADA CITY LIMITS

The City Council of the City of Nevada City does hereby ordain as follows:

SECTION I:

Upon certification of the annexation by the Nevada County Local Agency Formation Commission, the official City Map of Nevada City shall be amended to reflect the annexation of the following properties and including approximately 17.5 acres of existing, right-of-way area within the unincorporated area of Nevada County to the City limits of Nevada City and more particularly described as shown on the attached Exhibit A:

- **Sugarloaf Property:** 10730 Coyote Road (APN 36-020-26), approximately 30.59-acres;
- **Nevada County Consolidated Fire District (NCCFD):** 640 Coyote Road (05-310-11 & 05-310-08), 5 acres
- **Four Residential "Clean-up" Parcels:**
  - **542 Coyote Road** (APNs 05-330-06 & 05-330-10). 0.27 acres
  - **544 Coyote Road** (APN 05-330-07), 0.58
  - **14849 Old Washington Road** (APN 36-040-04), 0.32 acres

SECTION II:

Attached hereto as Exhibit B is a document entitled "Properties Proposed for Prezoning, Sugarloaf Annexation to the City of Nevada City", which is made a part hereof by reference. This exhibit lists each parcel to be annexed to the City of Nevada City and sets forth the prezoning. The City Council hereby approves the prezoning for each parcel as set forth in Exhibit B. The prezoning shall not become effective unless and until the annexation of the property which is subject to the prezone is certified by the Nevada County Local Agency Formation Commission.

SECTION III:

In approving this prezoning, the City Council finds as follows:

1. The prezoning is consistent with the goals, objectives and policies of the Nevada City General Plan.

2. The proposed prezoning will not adversely affect the public health, safety and welfare or result in an illogical land use.

3. The Planning Commission conducted a duly noticed public hearing and, after review of all verbal and written testimony, recommended to the City Council the approval of the prezoning.

4. That the proposed project could not have a significant effect on the environment, and that any anticipated effects of future ministerial projects would be mitigated by existing City development standards, which would govern such projects.

5. That any anticipated effects of future discretionary projects would be mitigated as necessary by future environmental documents prepared to analyze such a proposal along with existing City development standards, which would govern such projects.

6. City staff shall attach the AN Annexation classification to all parcels annexed in order to facilitate administrative processing pursuant to the zoning ordinance.

SECTION IV:

This ordinance shall take effect thirty (30) days from the date of its adoption and a copy of this ordinance shall be posted in at least three (3) public places in the City of Nevada City within fifteen (15) days after its passage.

PASSED AND ADOPTED at a regular scheduled meeting of the City Council held on the 12th day of July, 2017 by the following vote:

AYES: **STRAWSER, MOBERG, SENUM, PARKER**

NOES: **NONE**

ABSENT: **PHELPS**

ABSTAIN: **NONE**

Evans Phelps

Evans Phelps, Mayor

ATTEST:

Niel Locke

Niel Locke, City Clerk

Properties Proposed for Prezoning, Sugarloaf Annexation to the City of Nevada City

Annexation #55

List of Properties :

Sugarloaf Property: APN 36-020-26

Nevada County Consolidated Fire District (NCCFD):

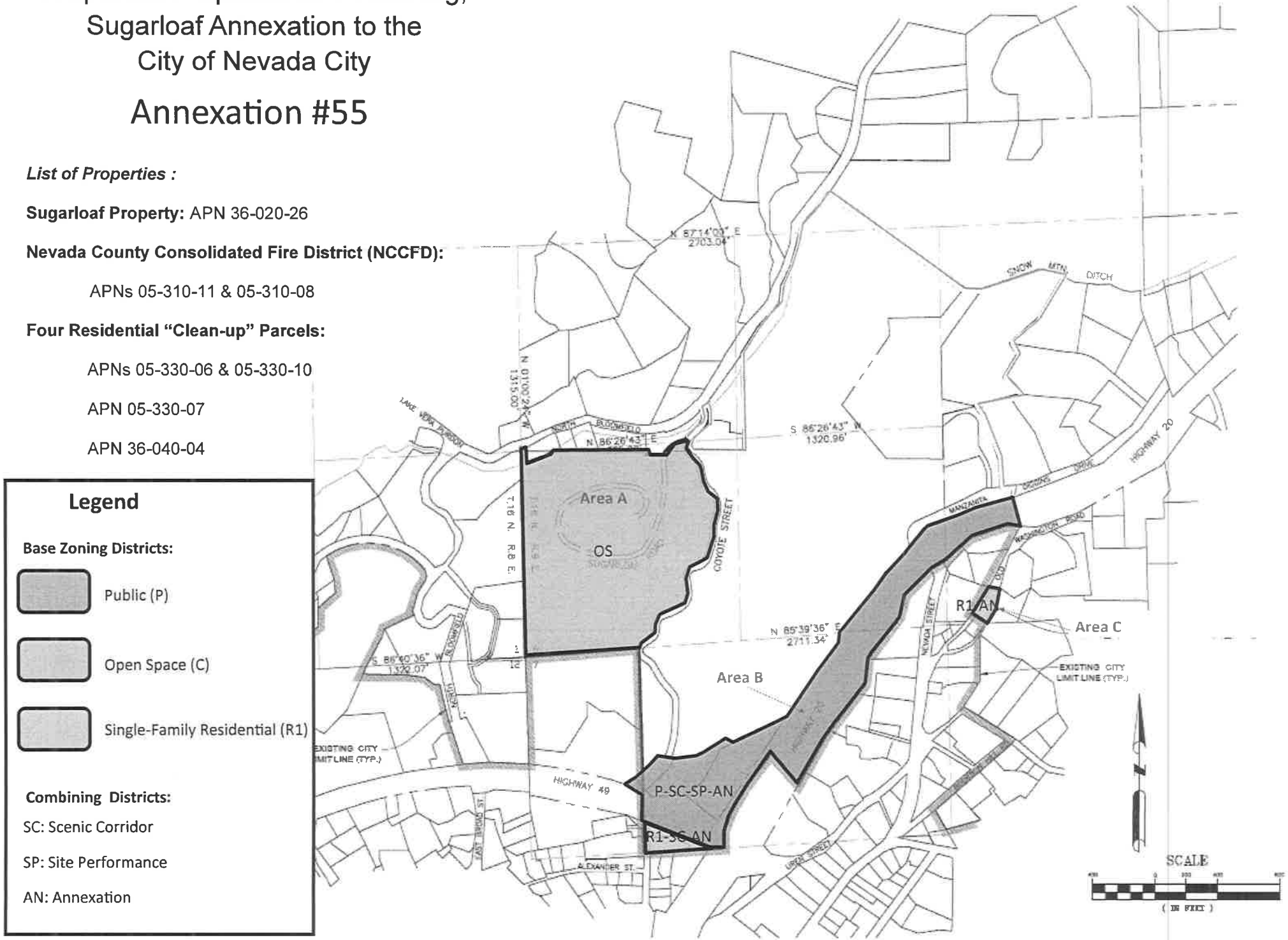
APNs 05-310-11 & 05-310-08

Four Residential "Clean-up" Parcels:

APNs 05-330-06 & 05-330-10

APN 05-330-07

APN 36-040-04



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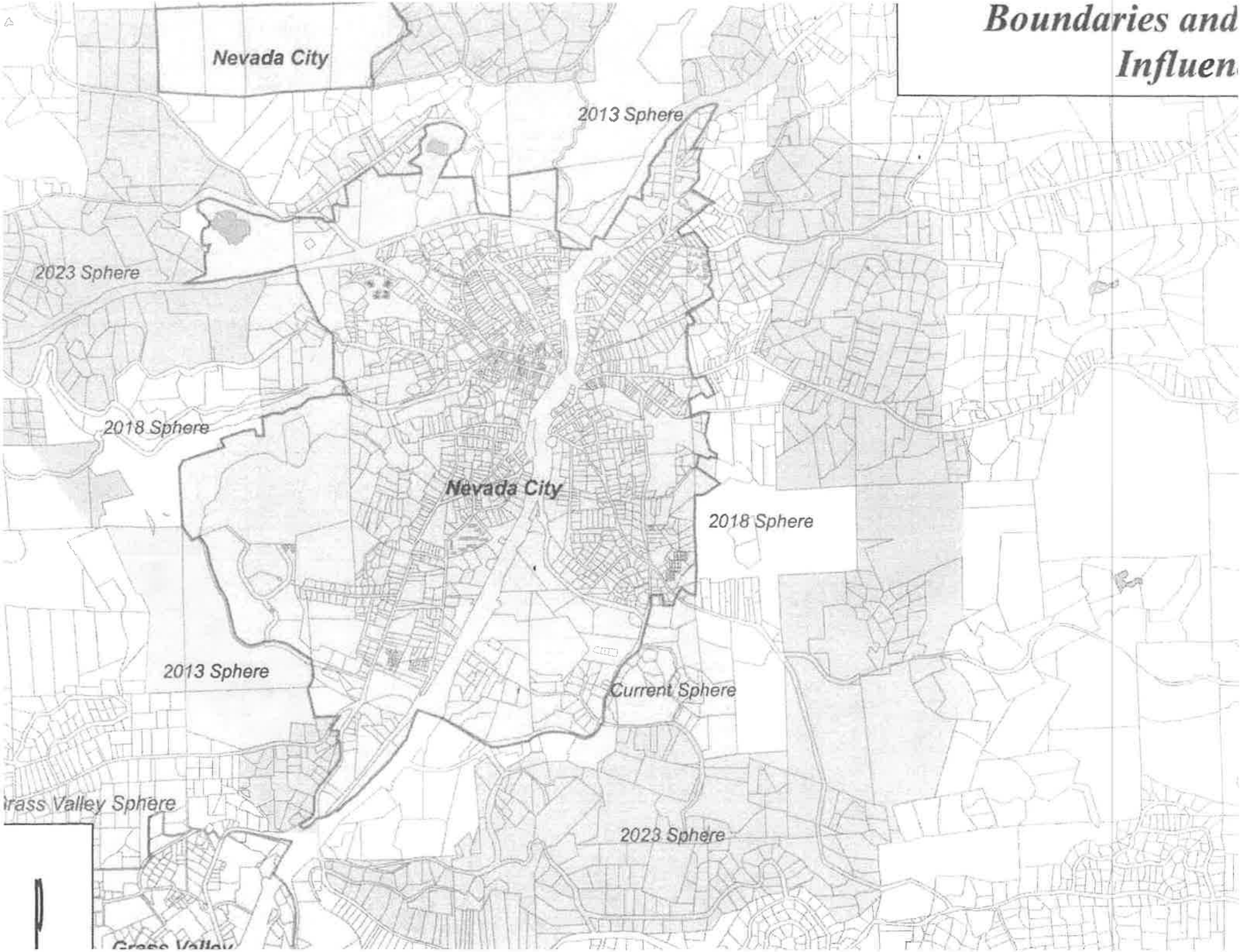


Nevada City General Plan and Zoning Descriptions

General Plan Designation Descriptions:

The above City General Plan Designations are defined as follows in the Land Use Section of the General Plan:

- Open Space Perserve (OS): Land of high scenic, recreational, and/or resource value in an essentially unimproved state.

- Single-Family Residential (SF): Historic or other sensitive single-family neighborhoods inappropriate for increased densities.

Zoning District Descriptions:

The Zoning Ordinance (Title 17 of the Municipal Code) establishes the purpose of each of the above zoning designations as follows:

- OS Open Space Zone: The purpose of the OS zoning district is to provide for and encourage the creation and permanent maintenance of open space, both natural and landscaped, for the purposes of maintaining and enhancing aesthetics, recreational opportunities, resource management, public health and safety, and mitigation of development. This zoning district is consistent with all General Plan designations.

- R1 Single-Family Residential Zone: The purpose of the R1 zone is to stabilize and protect the residential characteristics of district and to promote and encourage a suitable environment for family. The R1 zone is intended to be used only for single-family homes and service appurtenant thereto. This zoning district is consistent with the single-family and mixed residential General Plan designations.

- P Public Zone: The purpose of the P zoning district is to provide zoning for areas occupied by federal, state, county and city government uses, along with recreation areas and parks, cemeteries. This district is also intended to accommodate quasi-public and public utility uses, along with uses incidental to public services. This zoning district is consistent with all General Plan land use designations.

Combining Districts: The purpose of the combining district regulations is to provide additional development standards for selected special cases, as defined in each of the combining district regulations. The combining district designation is combined with the base zoning district to achieve the desired level of development standards and land use application processing. It is intended that more than one combining district may be attached to the base zoning district. As an example, OP-HD-SC, would indicate the base zoning district of Office and Professional, with the Historical District and Scenic Corridor Combining District regulations.

- SC Scenic Corridor Combining District: The SC scenic corridor combining district classification is intended to be applied to land areas which are adjacent to roads and highways which are indicated on the General Plan with the symbol for scenic corridors, and as may be designated by the city council from time to time. These roadways are generally entryways to Nevada City which were recognized in the General Plan as being particularly important to protect the existing essential character of Nevada City, namely that of a small, compact historical town surrounded by green, wooded hills, by hiding development from view from the highways and preserving the existing tree cover to the greatest extent possible, and assuring visually pleasing corridors through design control.

- SP Site Performance Combining District: The SP Site Performance Combining District, when attached to the base zoning district, is intended to provide for a greater level of mitigation of land use impacts than is otherwise possible under the broad development standards of the base zone. This combining district is also intended to allow for conditional approval of rezonings and prezonings.

- AN Annexation Combining District: The AN Annexation combining district is intended to be attached to the base zoning districts of parcels annexed after April 24, 1985. The district is administrative in nature and the city staff is authorized to attach the combining district to any such annexed lands. The purpose of the combining district is to identify lands which are affected by ordinances requiring payment of development fees or other mitigation measures, so that such fees or conditions may be required at the time of site plan, conditional use permit, or land division approval. Such fees shall be payable prior to the issuance of a building permit or prior to the recording of the final or parcel map, whichever occurs first

ORDINANCE 2017-XX

AN ORDINANCE APPROVING THE PREZONING OF 54.32 ACRES WITHIN THE UNINCORPORATED AREA OF NEVADA COUNTY LOCATED NORTHWEST OF THE NEVADA CITY LIMITS

The City Council of the City of Nevada City does hereby ordain as follows:

SECTION I:

Upon certification of the annexation by the Nevada County Local Agency Formation Commission, the official City Map of Nevada City shall be amended to reflect the annexation of the following properties and including approximately 17.5 acres of existing, right-of-way area within the unincorporated area of Nevada County to the City limits of Nevada City and more particularly described as shown on the attached Exhibit A:

- **Sugarloaf Property:** 10730 Coyote Road (APN 36-020-26), approximately 30.59-acres;
- **Nevada County Consolidated Fire District (NCCFD):** 640 Coyote Road (05-310-11 & 05-310-08), 5 acres
- **Four Residential "Clean-up" Parcels:**
  - **542 Coyote Road** (APNs 05-330-06 & 05-330-10). 0.27 acres
  - **544 Coyote Road** (APN 05-330-07), 0.58
  - **14849 Old Washington Road** (APN 36-040-04), 0.32 acres

SECTION II:

Attached hereto as Exhibit B is a document entitled "Properties Proposed for Prezoning, Sugarloaf Annexation to the City of Nevada City", which is made a part hereof by reference. This exhibit lists each parcel to be annexed to the City of Nevada City and sets forth the prezoning. The City Council hereby approves the prezoning for each parcel as set forth in Exhibit B. The prezoning shall not become effective unless and until the annexation of the property which is subject to the prezone is certified by the Nevada County Local Agency Formation Commission.

SECTION III:

In approving this prezoning, the City Council finds as follows:

1. The prezoning is consistent with the goals, objectives and policies of the Nevada City General Plan.

2. The proposed prezoning will not adversely affect the public health, safety and welfare or result in an illogical land use.

3. The Planning Commission conducted a duly noticed public hearing and, after review of all verbal and written testimony, recommended to the City Council the approval of the prezoning.

4. That the proposed project could not have a significant effect on the environment, and that any anticipated effects of future ministerial projects would be mitigated by existing City development standards, which would govern such projects.

5. That any anticipated effects of future discretionary projects would be mitigated as necessary by future environmental documents prepared to analyze such a proposal along with existing City development standards, which would govern such projects.

6. City staff shall attach the AN Annexation classification to all parcels annexed in order to facilitate administrative processing pursuant to the zoning ordinance.

SECTION IV:

This ordinance shall take effect thirty (30) days from the date of its adoption and a copy of this ordinance shall be posted in at least three (3) public places in the City of Nevada City within fifteen (15) days after its passage.

PASSED AND ADOPTED at a regular scheduled meeting of the City Council in the City of Nevada City on _____, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
, Mayor

ATTEST:

_____
Niel Locke, City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION

ANNEXATION NO. 55

The land described herein is situated in the State of California, County of Nevada, and is described as follows:

AREA A

A Portion of Sections 6, Township 16 North, Range 9 East, Mount Diablo Meridian, and being more particularly described as follows:

Beginning at the southwesterly corner of Section 6, said point also being on the existing city limit boundary of the City of Nevada City, thence leaving said city limit boundary and following along the west line of Section 6 N01°00'24"W 1314.99' to the northwest corner of the southwest quarter of Section 6; thence continuing along the west line of Section 6, N01°00'24"W 11.79' to the southerly right of way of North Bloomfield Road; thence leaving said west line of Section 6 and continuing along the southerly right of way of North Bloomfield Road with a curve turning to the left with an arc length of 32.52', with a radius of 220.00', through a delta angle of 08°28'11"; thence leaving the southerly right of way of North Bloomfield Road S01°00'24"E a distance of 88.20'; thence N68°59'21"E a distance of 184.03'; thence N89°59'58"E a distance of 598.06'; thence S00°00'00"E a distance of 40.00'; thence N90°00'00" E a distance of 173.71' to the westerly right of way of Sugarloaf Road; thence along said right of way of Sugarloaf Road N00°00'00"W a distance of 40.00'; thence with a curve turning to the right with an arc length of 72.87', with a radius of 110.00', through a delta angle of 37°57'27"; thence N40°30'00"E a distance of 74.98'; thence N49°10'00"E a distance of 37.87'; thence N61°50'00"E a distance of 77.82'; thence S87°50'00"E a distance of 10.68' to the westerly right of way of Coyote Street, thence S60°11'13"E a distance of 20.00' to the centerline of Coyote Street; thence continuing along the centerline of Coyote Street the following twenty five consecutive courses:

1. thence with a curve turning to the right with an arc length of 33.00', with a radius of 110.00', through a delta angle of 17°11'13";
2. thence S47°00'00"W a distance of 94.18';
3. thence with a curve turning to the left with an arc length of 112.01', with a radius of 70.00', through a delta angle of 91°41'00";
4. thence S 44°41'00" E a distance of 57.32';
5. thence with a curve turning to the right with an arc length of 55.79', with a radius of 100.00', through a delta angle of 31°58'00";
6. thence S 12°43'00" E a distance of 83.40';
7. thence with a curve turning to the left with an arc length of 57.16', with a radius of 100.00', through a delta angle of 32°45'00";
8. thence S45°28'00"E a distance of 31.75';

9. thence with a curve turning to the right with an arc length of 151.74', with a radius of 140.00', through a delta angle of 62°06'00";
10. thence S16°38'00"W a distance of 62.66';
11. thence with a curve turning to the left with an arc length of 36.41', with a radius of 100.00', through a delta angle of 20°51'44";
12. thence with a curve turning to the right with an arc length of 112.38', with a radius of 300.00', through a delta angle of 21°27'44";
13. thence S17°14'00"W a distance of 71.48';
14. thence with a curve turning to the right with an arc length of 99.83', with a radius of 100.00', through a delta angle of 57°12'00";
15. thence S74°26'00"W a distance of 25.18';
16. thence with a curve turning to the left with an arc length of 85.28', with a radius of 60.00', through a delta angle of 81°26'00";
17. thence S07°00'00"E a distance of 89.09';
18. thence with a curve turning to the right with an arc length of 100.18', with a radius of 100.00', through a delta angle of 57°23'58";
19. thence with a curve turning to the right with an arc length of 103.85', with a radius of 300.00', through a delta angle of 19°50'02";
20. thence S70°14'00"W a distance of 42.72';
21. thence with a curve turning to the left with an arc length of 66.15', with a radius of 60.00', through a delta angle of 63°10'00";
22. thence S07°04'00"W a distance of 54.13';
23. thence with a curve turning to the right with an arc length of 50.75', with a radius of 60.00', through a delta angle of 48°28'00";
24. thence S 55°32'00" W a distance of 74.22';
25. thence with a curve turning to the left with an arc length of 27.50', with a radius of 45.00', through a delta angle of 35°01'12" to a point on the south line of Section 6;

thence leaving said centerline of Coyote Street and continuing along the south line of Section 6 N 85°39'36" E a distance of 6.63' to the city limit boundary; thence continuing along the south line of Section 6 and continuing along said city limit boundary N85°39'36"E a distance of 728.03' to the point of beginning,

Containing 32.09 acres more or less.

AREA B

Portions of Sections 6 and 7, Township 16 North, Range 9 East, Mount Diablo Meridian, and being more particularly described as follows:

Beginning at a point on the existing city limit boundary of the City of Nevada City, said point also being the west right of way line for Coyote Street, said point also being on the south line of the north half of the northwest quarter of Section 7, thence continuing along said city limit boundary S 01°29'56" E a distance of 519.46'; thence N49°08'16"E a distance of 110.83'; thence with a curve turning to the left with an arc length of 25.90', with a radius of 40.00', through a delta angle of 37°05'56"; thence S77°57'56"E a distance of 100.00'; thence N79°13'14"E a distance of 193.50'; thence N57°03'06"E a distance of 174.90'; thence S61°26'54"E a distance of 55.42'; thence N63°45'07"E a distance of 382.37' to the west right of way of Highway 20; thence following along the west right of way of Highway 20 the following eight consecutive courses:

1. N 35°04'38" E a distance of 575.97';
2. thence N 10°22'29" E a distance of 64.42' to the south line of Section 6;
3. thence N38°17'14"E a distance of 502.38';
4. thence N40°49'51"E a distance of 213.40' to the south right of way of Manzanita Diggins Drive;
5. thence following along the south right of way of Manzanita Diggins Drive N 40°49'51" E a distance of 166.50';
6. thence N68°53'30"E a distance of 267.87';
7. thence with a curve turning to the right with an arc length of 188.05', with a radius of 1780.00', through a delta angle of 06°03'11";
8. thence N74°56'41"E a distance of 127.19';

thence leaving said west right of way of Highway 20 and said south right of way of Manzanita Diggins Drive S15°03'19"E a distance of 186.63' to the east right of way of Highway 20 and the existing city limit boundary; thence following along the east right of way of Highway 20 and the city limit boundary the following ten consecutive courses:

1. N86°34'57"W a distance of 89.70';
2. thence S71°15'42"W a distance of 244.38';
3. thence S47°21'02"W a distance of 233.04';
4. thence S61°31'32"W a distance of 93.34';
5. thence S44°50'10"W a distance of 231.60';

6. thence S15°18'55"W a distance of 150.67';
7. thence S36°56'21"W a distance of 331.37';
8. thence S07°23'48"W a distance of 169.78';
9. thence S37°14'59"W a distance of 416.91';
10. thence S29°35'56"W a distance of 351.24';

thence following along the city limit boundary N41°00'00"W a distance of 265.24'; thence S37°36'00"W a distance of 264.17'; thence S30°09'00"W a distance of 188.74'; thence S21°30'00"W a distance of 141.18'; thence S01°00'00"E a distance of 101.73' to the south line of the north half of the northwest quarter of Section 7; thence following along the south line of the north half of the northwest quarter of Section 7 and following along the city limit boundary S86°37'30"W a distance of 508.21' to the point of beginning,

Containing 21.75 acres more or less.

AREA C

Portion of the southeast quarter of Section 6, Township 16 North, Range 9 East, Mount Diablo Meridian, and being more particularly described as follows:

Beginning at a point on the southerly line of said Section 6; thence along the existing city limit boundary of the City of Nevada City N 59°37'39" W 113.95' to a point on the northerly right of way of Old Washington Road; thence along said right of way and continuing along said city limit boundary N 32°32'21" E 203.41'; thence leaving said right of way and existing city limit boundary S 72°47'39" E 70.86'; thence S 14°42'21" W 131.80'; thence S 29°20'21" W 92.52' to the point of beginning.

Containing 0.48 acres more or less.

The above described areas being further delineated on that certain Annexation #55 Map, , as filed in Book _____ of Surveys, at Page _____, Nevada County Records.

Properties Proposed for Prezoning, Sugarloaf Annexation to the City of Nevada City

Annexation #55

List of Properties :

Sugarloaf Property: APN 36-020-26

Nevada County Consolidated Fire District (NCCFD):

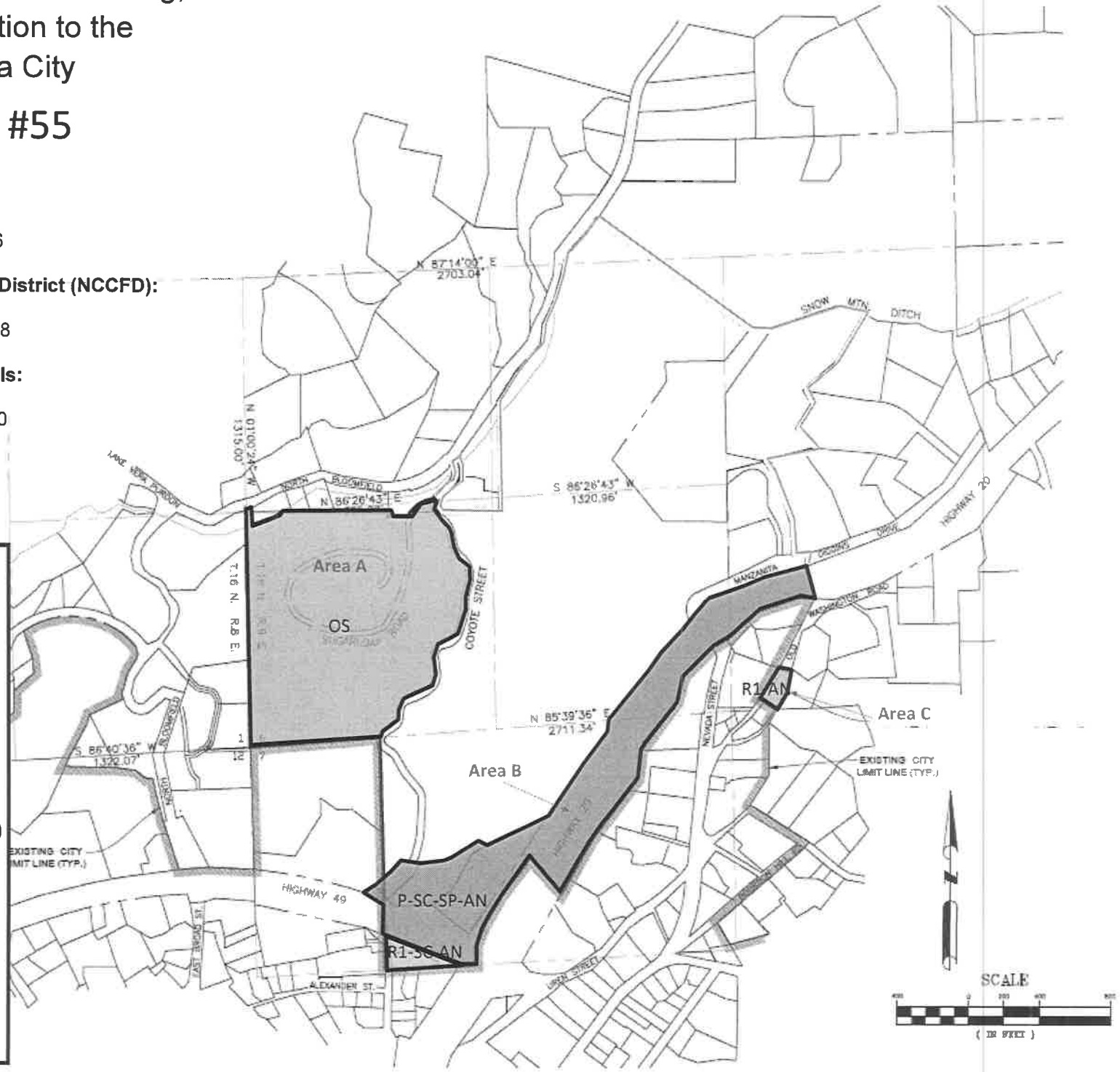
APNs 05-310-11 & 05-310-08

Four Residential "Clean-up" Parcels:

APNs 05-330-06 & 05-330-10

APN 05-330-07

APN 36-040-04



Legend

Base Zoning Districts:

- Public (P)
- Open Space (C)
- Single-Family Residential (R1)

Combining Districts:

SC: Scenic Corridor

SP: Site Performance

AN: Annexation

NEVADA CITY – PLAN FOR SERVICES

ANNEXATION #55, 54.32 ACRES (SUGARLOAF ANNEXATION)

1. **An enumeration and description of the services to be extended to the affected territory.**

   The City does not need to extend any services at this time because properties are either already appropriately served in terms of wastewater, water, and emergency services or are vacant and not in need of services at this time. However, the City in participation with NID for water is prepared to extend services upon subsequent development.

2. **The level and range of those services.**

   As needed, the services would be extended to the area at the same level and range as provided throughout the City.

3. **An indication of when those services can feasibly be extended to the affected territory.**

   Several of the subject properties are already developed, and currently receive City sewer service. The landowners who have the two developed parcels not currently connected to City sewer service will be able to apply for sewer service from the City. Landowners who have vacant territory proposed to be annexed, will be allowed to apply for sewer service as needed with development proposals. Other municipal services (including fire, police, and recreation) will be provided at the same level as the City provides throughout its jurisdiction.

4. **An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.**

   It is not anticipated that service of the subject territory will require the City to add personnel or equipment. However, it should be noted that the City's Measure "S" special tax will be available for road maintenance needs.

5. **Information with respect to how each of those services will be financed.**

   The cost of providing sewer and water services will be offset by connection fees, water, and sewer rates paid by the property owners of the subject territory. Additionally, the City levies the following special taxes on its properties: a 3/8 cent tax for fire service, a $12/SFD, and a $24/SFD.

MEMORANDUM

TO: Forty-Niner Fire District
P. O. Box 354
Nevada City, CA 95959

FROM: Nevada County Zoning Administrator

SUBJECT: Conditional Use Permit Approval - U00-008; EIS00-012
AP#: 05-310-03, -04, & -05

DATE OF APPROVAL: June 21, 2000

DATE OF MEMO: June 21, 2000

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration

You are hereby notified that the Nevada County Zoning Administrator, at a regular meeting held on June 21, 2000, after public hearing, did duly consider your application filed on April 4, 2000, for a Conditional Use Permit proposing to construct an 8,700+ sq. ft. fire station, in two phases. Phase I to include grading, retaining walls, utility installation, and parking lot surfacing, and Phase II for construction. A legal description of the property is on file in the Planning Department, 950 Maidu Avenue, Nevada City, California.

After said hearing, and upon the evidence thereat submitted, the Nevada County Zoning Administrator does hereby notify you that your application for use permit is granted, subject to the following mitigation measures and conditions:

1. ***Land Use***: To offset potentially adverse impacts associated with construction of a swale crossing to sites not reviewed with this project, the following mitigation measure shall be required:

   A. A Note shall be included on the site shall be included on the site plan submitted for the building permit, and on the final improvement/grading plans, stating that:

   "Disturbance on the east side of the drainage swale shall be limited to fuel maintenance, driveway construction from the swale crossing to the eastern property line, and use of the existing trail. No grading, no removal of heritage trees and no storage shall be allowed on the east side of the swale until environmental review is conducted for those sites."

2. ***Housing:*** No significant impacts to housing availability are anticipated with this project.
3. ***Geologic Processes***: Because no significant geologic issues have been identified, and because grading will require compliance with the County Grading Ordinance, no significant geologic impacts are anticipated.
4. ***Water Resources/Flooding:*** To offset the potentially adverse impacts associated with the proposed project, the following mitigation measures shall be required:

   A. Existing drainage patterns and flows within the State right-of-way (ROW) and drainage facilities must be maintained or improved to meet all State standards prior to discharge into the ROW. Runoff may require treatment consistent with State Regional Water Quality Control Board standards (RWQCB). Prior to the issuance of any permits for this project the developer shall provide verification from CalTrans that discharge from the project will not result in an increase of net peak runoff into the State ROW, and verification that all RWQCB water quality standards have been satisfied for runoff entering the State ROW. If special discharge limitations are imposed upon the project developer by the RWQCB, these limitations shall be adhered to, and specified in the Grading Permit. The RWWQCB may

NEVADA COUNTY
CALIFORNIA

INITIAL STUDY
(County Staff Use Only)

Date of Initial Study Preparation: May 19, 2000

Prepared By: Stephanie Wagner, Planner III

File No: U00-008 & EIS00-012 **Assessors Parcel No**: 05-310-03, 04, & 05

Property Owner: Forty-Niner Fire Protection District, P.O. Box 354, Nevada City CA 95959
Telephone: (530) 265-4431 FAX: (530) 265-8103

Agent: Dan Kopp, Fire Chief, same address and phone as above

Zoning: R1 **General Plan:** Urban Single Family

Project Location: 10135 Coyote Street, at it's intersection with State Highway 49, Nevada City

PROJECT DESCRIPTION: Conditional Use Permit Application proposing to construct an 8,700+ square foot fire station, in two phases, with Phase I to include grading and utility installation, and Phase II for construction.

The following land use approvals are needed for this project:

A. Conditional use Permit

Other Permits or Approvals Which May Be Necessary:

Based on initial comments received, the following permits may be required from the designated agencies:

1. Encroachment Permit from the California Dept. of Transportation, or from the County Department of Transportation
2. Streambed Alteration Agreement from the California Dept. of Fish & Game

INITIAL STUDY *AND* CHECKLIST

(To be completed by Lead Agency)

INTRODUCTION

This checklist is to be completed for all projects which are not exempt from environmental review under the California Environmental Quality Act (CEQA). The information, analysis and conclusions contained in the checklist are the basis for deciding whether an Environmental Impact Report (EIR) or Negative Declaration (ND) is to be prepared. Additionally, the checklist shall be used to focus an EIR on the effects determined to be potentially significant.

The following abbreviations indicate the potential level of impact:

Known Poten. Sig.: Known significant environmental impacts.

Unknown Poten. Sig.: Unknown, potentially significant impacts which need further review to determine significance level.

Poten. Sig. and Mitig.: Potentially significant impacts which can be mitigated to less than significant levels.

Not Sig.: Impacts which are not considered significant or no impact.

Project Environmental Setting: At an elevation of 2,600 feet, the project site is 1.82 acres located adjacent to the City of Nevada City, and the intersection of State Highway 49 and State Highway 20. Topography slopes moderately from north to south and east, with slopes increasing as the site drops to a seasonal drainage that parallels the most easterly property line. A building pad from a previously existing house, and rough driveways occur in the area proposed for development. Vegetation is described as a moderately sparse Ponderosa pine forest with a scrub riparian environment along the drainage swale.

Relationship to Other Projects: This project is not related to any other projects in the vicinity; however, the adjacent 3.12 acre parcel to the east is also owned by this project applicant.

SUMMARY OF PROPOSED MITIGATION MEASURES

1. ***Land Use***: To offset potentially adverse impacts associated with construction of a swale crossing to sites not reviewed with this project, the following mitigation measure shall be required:

   A. A Note shall be included on the site plan submitted for the building permit, and on the final improvement/grading plans, stating that:

   "Disturbance on the east side of the drainage swale shall be limited to fuel maintenance and use of the existing trail. No grading, no removal of heritage trees and no storage shall be allowed on the east side of the swale until environmental review is conducted for those sites."

3. ***Housing:*** No significant impacts to housing availability are anticipated with this project.
4. ***Geologic Processes***: Because no significant geologic issues have been identified, and because grading will require compliance with the County Grading Ordinance, no significant geologic impacts are anticipated.
4. ***Water Resources/Flooding:*** To offset the potentially adverse impacts associated with the proposed project, the following mitigation measures shall be required:

   A. Existing drainage patterns and flows within the State right-of-way (ROW) and drainage facilities must be maintained or improved to meet all State standards prior to discharge into the ROW. Runoff may require treatment consistent with State Regional Water Quality Control Board standards (RWQCB). Prior to the issuance of any permits for this project the developer shall provide verification from CalTrans that discharge from the project will not result in an increase of net peak runoff into the State ROW, and verification that all RWQCB water quality standards have been satisfied for runoff entering the State ROW. If special discharge limitations are imposed upon the project developer by the RWQCB, these limitations shall be adhered to, and specified in the Grading Permit. The RWQCB may also require the developer to obtain Water Quality Certification and to incorporate Best Management Practices for control of erosion and sedimentation into construction activities.

5. ***Air Quality***: To offset the potentially adverse impacts associated with grading, vegetation clearance, and construction, the following mitigation measures shall be required:

   A. Open burning of site-cleared vegetation is conditionally prohibited. Cleared vegetation should be treated by legal means other than open burning, such as chipping, shredding or grinding. Open burning will be permitted only upon Northern Sierra Air Quality Management District (NSAQMD) acceptance of documentation showing alternatives are unobtainable or economically unfeasible. Prior to approval of grading or improvement plans, an approval letter from the NSAQMD shall be obtained, indicating the approved method of cleared vegetation disposal. Such methods shall be noted on the grading/improvement plans. At no time shall open burning of materials generated by this project occur at another site unless approved in advance by the NSAQMD.

   B. Fugitive dust emissions resulting from site clearing and construction shall be minimized at all times, utilizing control measures including dust palliatives, regularly applied water, graveled or paved haul roads, etc. Control measures shall be noted on improvement and/or grading plans.

6. ***Transportation/Circulation***: To offset the potentially adverse impacts associated with off-site traffic impacts, the following mitigation measure shall be required:

A. A Traffic Impact Mitigation Fee, in accordance with the latest adopted Traffic Impact Mitigation Program, will be levied at the time of building permit application for this project. The fee will be collected to mitigate the cumulative traffic impacts of this development upon the major Nevada County Road System and will be based on the latest fee schedule adopted by the Nevada County Board of Supervisors.

7. ***Biological Resources:*** To offset the potentially adverse impacts associated with grading, road construction, vegetation clearance and building construction on plant and wildlife, the following mitigation measures shall be required:

A. Prior to beginning any work activity within the drainage channel, the developer shall notify the State Department of Fish and Game (DFG) of the proposed work to determine if a Streambed Alteration Agreement is required. Verification that the DFG has been notified shall be provided to the Planning Department prior to issuance of any grading or construction permits.

B. The developer's Final Landscape Plan shall include a Stream Restoration Plan that will restore the native habitat within the adjacent riparian corridor of the drainage swale (including stream banks). Restoration shall include removal of non-native scotch broom and blackberry plants, and the planting of native, water tolerant species. The Restoration Plan shall be prepared by a landscape architect or a plant ecologist, who shall verify completion of the restoration prior to building occupancy. A revised, final project site plan shall be submitted with all construction plans, designating a "non-disturbance" area for the restoration area. Construction of the access road to the adjacent parcel and the culvert as shown on the preliminary grading plan/site plan are allowed within the non-disturbance area.

C. The landmark oak tree identified in the Biological Inventory and shown on the approved site plan, and the area within the dripline protection zone of that oak oaks, shall be delineated on the final site plan as a Non-Disturbance Area, noting that:

"The Non-Disturbance Area shall be maintained by the property owner so as not to reduce the size of the tree canopy and to preserve the natural biological habitat. There shall be no construction, grading, disturbance, uses that would cause excessive compaction, irrigation, or change in natural runoff within the designated Non-Disturbance Area. Exceptions may be allowed, subject to approval by the Planning Director prior to any site disturbance, if a certified professional arborist, a licensed landscape architect, or a professional forester identifies one of the following:

- disturbance necessary for maintaining adequate fire protection;
- disturbance necessary to maintain the health of the biological community;
- removal of dead or dying trees, or if determined to be a public safety hazard.

D. Grading plans shall clearly show that site grading will divert runoff away from the 52" oak.

E. The landmark oak and its Non-Disturbance Area shall be protected during all construction activity. Prior to any site disturbance, a minimum four-foot (4') tall, brightly colored synthetic fence shall be installed at the outermost edge of the Dripline Protection Zone of the landmark oak. The fencing must be adequate to prevent its inadvertent relocation. Fencing detail shall be shown on the grading and/or improvement plans. Fencing must be installed in accordance with the approved fencing detail prior to the commencement of any grading operations. The developer shall contact the Planning Department for an inspection of the fencing prior to initiation of grading activities. The fence must remain in place throughout the entire construction and shall not be removed until written authorization is received from the Planning Department.

8. ***Energy:*** No significant energy impacts will occur.
9. ***Health Hazards/Risk of Upset:*** No significant impacts to health are anticipated because no potentially hazardous past uses have been identified on this site and no such uses are proposed by this project.
10. ***Noise:*** Noise generated by this project will be limited to temporary noise associated with construction. No significant noise impacts are anticipated.
11. ***Public Services:*** No significant impact to public services, including fire and road services, has been identified with this project.
12. ***Utilities & Services Systems*:** No impacts to any service or utility systems are anticipated
13. ***Visual:*** To offset the potential visual impacts associated with this development adjacent to a scenic highway, the following mitigation measures are required:

A. Landscaping in the southwesterly corner of the site, between Highway 49 and the lower parking lot, shall consist of native conifers as shown on the Preliminary Landscaping Plan. Consistent with the District's plan to establish fire-wise landscaping, cedars shall not be used in this area.

B. All outdoor light fixtures shall be designed to preclude offsite spill and to prevent the light source or lens from being visible from adjacent properties and roadways. Parking lot pole lights shall be limited to a 15' height and shall be placed in landscaped areas. No fixtures shall be a high pressure sodium unless required by the State Architect or State Fire Marshals office for emergency lighting.

C. Signage shall be limited to one monument sign, one wall sign at the building entrance, and directional signs. Materials and colors of the wall sign shall be compatible with those used on the building. The monument sign shall be designed as shown on the preliminary plans, with colors to be compatible with the building. Signage shall not be internally illuminated. If lighting is proposed for the monument sign it shall be top mounted A final sign plan shall be provided to the Planning Department prior to building permit issuance, depicting sign dimensions, colors, materials, letter style, and locations.

D. To ensure visual compatibility with the rural character of the neighborhood, and to prevent an institutional appearance, any fencing shall be of an open wire.

E. All mechanical equipment, air conditioning units, or heating units shall be screened from public view with materials and colors that are compatible with the building's exterior architectural elements. Gutters, screens, vents or flashing shall be painted to prevent glare and to blend with the roof or wall colors.

F. Any solid waste receptacles or outside storage shall be placed within a screened enclosure, constructed of colors and materials compatible with the building color and design.

14. ***Cultural Resources***: To offset the potential adverse impacts associated with site disturbance and this project, the following mitigation measure is required:

A. The following requirement shall be incorporated into grading and construction plans:

"If any subsurface cultural resources are encountered or suspected, work shall be halted immediately and the County Planning Department contacted. A professional archaeologist shall be consulted to access any discoveries and develop appropriate management recommendations for archaeological resource treatment. If bones are encountered and appear to be human, California Law requires that the Nevada County Coroner and the Native American Heritage Commission be contacted and, if Native American resources are involved, Native American Organizations and individuals recognized by the County shall be notified and consulted about any plans for treatment."

15. ***Recreation***: No impacts to recreation services have been identified as a result of this project and no mitigation's are recommended.

Mitigation Monitoring Program:

MEASURE	*MONITORING AUTHORITY*	*WHEN IMPLEMENTED*
1A	Planning Department	Prior to building or grading permit issuance
4A	Planning Department; CalTrans; RWQCB	Prior to building or grading permit issuance
5A&B	Planning Department; NSAQMD	Prior to building or grading permit issuance
6A	Department of Transportation	Prior to building permit issuance
7A-E	Planning Department	Prior to building or grading permit issuance
13A-F	Planning Department	Prior to building permit issuance
14A	Planning Department	Issuance of a grading or building permit

1. LAND USE

Environmental Setting: This project site is an undeveloped 1.82 acres that has been previously used for residential activity, logging and grading. Adjacent to two state highways, it is located adjacent to the city limits of Nevada City. The Nevada City General Plan map designates the site as Single Family Residential and designates adjacent properties as Employment Center (the U.S. Forest Service Headquarters), Planned Development (undeveloped), and Single Family Residential (across highway 49 and within Nevada City). County zoning of the site is R1, Single Family Residential, and the General Plan designation is Urban Single Family. Nevada County zoning regulations allow fire stations in all zoning districts and the General Plan encourages the updating of facilities that serve the public. The site is not located in an MRZ-2 (Important Mineralized) area.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App. A)	Agency Input (App. B)
a. Structures and/or land-use incompatible with existing land-use?				✓		1
b. The induction of growth or concentration of population?				✓		1
c. The extension of sewer trunk lines or access roads with capacity to serve new development beyond this proposed project? *(pot. significant threshold)*				✓		14
d. The loss of open space?				✓		1
e. Establishment of a use which would diminish or impair long term productivity of the environment?				✓		1
f. A substantial alteration of the present or planned land use of an area?				✓		1
g. Creation of an inconsistency or conflict between existing zoning, plans or other applicable land use controls?				✓		1 + 14
h. Conflict with general plan designation or zoning?				✓		1
i. Conflict with applicable environmental plans or policies adopted by agencies with jurisdiction over the project?			✓			1
j. Affects on agricultural resources or operations, to soils or farmlands, or from incompatible land uses?				✓		1
k. Disrupting or dividing the physical arrangement of an established community, including a low-income or minority community?				✓		1

Impact Discussion: This project proposes the relocation of an existing fire station that is located approximately ¼ mile east of this site, at the intersection of State Highway 49 and North Bloomfield Road. This project is consistent with both the zoning and the General Plan designation for the site, and with R1 district site development standards. County General Plan Policy requires coordination between the County and incorporated cities for development within the City's Sphere of Influence. The City has reviewed this project and does not require annexation for this project to proceed. The City advises that this site will be annexed within the next year. Because this project is consistent with both City and County zoning regulations and with General Plan policies, no conflicts with land use policies are anticipated. The Preliminary Improvement Plans for the project provide for construction of a swale crossing, to an area that is not shown as part of the project and for which no detail is provided. This crossing will also allow access to a separate 3+ acre parcel that is owned by this applicant. To ensure that premature disturbance will not occur in areas that have not been adequately reviewed for environmental resources or visual impacts, and for which this project proposes to construct access, a restriction is needed.

Mitigation & Residual Impact: To offset potentially adverse impacts associated with construction of a swale crossing to sites not reviewed with this project, the following mitigation measure shall be required:

A. The following Note shall be included on the site plan submitted for the building permit, and on the final improvement/grading plans:

"Disturbance on the east side of the drainage swale shall be limited to fuel maintenance and use of the existing trail. No grading, no removal of heritage trees and no storage shall be allowed on the east side of the swale until environmental review is conducted for those sites."

Mitigation Monitoring:

MEASURES	*MONITORING AUTHORITY*	*WHEN IMPLEMENTED*
1A	Planning Department	Prior to building or grading permit issuance

2. HOUSING

Environmental Setting: Existing R1 zoning would allow for one dwelling unit per parcel. This project will provide sleeping quarters for 24-hour staffing but that use is not considered to be housing.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. Loss of existing affordable dwellings through demolition, conversion, or removal?				✓		1
b. Displacement of a large number of current residents? *(pot. significant threshold)*				✓		1
c. An effect on existing housing or create an additional demand for additional housing?				✓		1
d. Altering the location, distribution, density, or growth rate of the population of an area?				✓		1
e. The inducement of substantial growth in the area either directly or indirectly?				✓		1

Impact Discussion: While this project will result in the loss of one dwelling unit, that loss is not significant. No mitigation measures are recommended.

3. GEOLOGIC PROCESSES

Environmental Setting: Topography on the subject site is moderate with slopes increasing northerly from State Highway 49 and near the seasonal drainage. Outside of the drainage swale, no slopes of 30% or more occur. There are no visible signs of erosion at the site, no earthquake faults are mapped in the vicinity and General Plan maps do not reflect any record of landslide activity nor erosion hazard. Soil type is mapped as Placer Diggings, generally identified as areas of past hydraulic mining. A Geotechnical Report prepared for this project revealed no potentially expansive soils nor any ground water.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. Unstable earth conditions or changes to geologic substructure?				✓	K	
b. Exposure to or production of unstable earth conditions such as landslides, earthquakes, liquefaction, soil creep, mudslides, ground failure (including expansive, compressible, collapsible soils), or similar hazards?				✓	E+U	
c. Disruptions, displacements, compaction or overcovering of the soil by cuts, fills, or extensive grading?				✓		
d. Changes in topography or ground relief features?				✓		
e. The destruction, covering or modification of any unique geologic, paleontologic, or physical features?				✓	T&U	
f. Any increase in wind or water erosion of soils, on or off the site?				✓		
g. Changes in siltation, deposition or erosion which may modify the channel of a river, or stream, or the bed any bay, inlet or lake?				✓		
h. Excessive grading on slopes over 30 %?				✓		
i. Vibrations, from short-term construction or long-term operation, which may affect adjoining areas?				✓		
j. Exposure of persons to potential impacts involving volcanic hazard, erosion, change in topography, unstable soil conditions from excavations, grading or fill, or other unique geologic or physical features?				✓		

Impact Discussion: To support the building and parking pads for this project, the cut and fill of approximately 3,000 cubic yards of soil is required. No import of soils will be needed nor will any materials be exported offsite. The proposed building has been designed to conform as much as possible with the natural terrain of the land to minimize disturbance. A six foot high retaining wall will separate a lower parking area and the engine bays from the upper, public parking lot and office. Two four foot high retaining walls will support the parking areas located in the lower portions of the site. Minor grading within the drainage swale is proposed to construct a swale crossing (see Water Resources below). No significant impacts are identified in the project's Geotechnical Report. The Preliminary Improvement Plans prepared for this project provide for both temporary and permanent erosion control measures. Because site work will require compliance with the County Grading Ordinance, no mitigation measures are recommended.

4. WATER RESOURCES/FLOODING

Environmental Setting: The subject site is located within the Deer Creek Drainage Basin. No perennial water bodies occur on the site. A seasonal drainage traverses the eastern portion of the site, and while not mapped on the USGS Topographic Maps, appears to carry substantial amounts of water through its well defined channel. The Biological Inventory prepared for this project identified a narrow band of riparian/wetland vegetation (less than .10 of an acre) within the banks of the swale.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. Changes in currents, or the course or direction of water movement?				✓	I	
b. Changes in percolation rates, drainage patterns or the rate and amount of surface water runoff?			✓			
c. Change in the amount of surface water in any water body?			✓			9
d. Substantial increase in storm water runoff?			✓			9
e. Aggravation of an identified drainage problem or creation of a new one?				✓		9
f. Discharge into surface waters, or alteration of surface water quality, including but not limited to temperature, dissolved oxygen, turbidity, or thermal water pollution (i.e. eutrophication)?				✓		
g. Alterations to the course of flow of flood waters, or need for private or public flood control projects?				✓	M	
h. Exposure of people or property to water related hazards such as flooding, placement of a project in a 100 year floodplain, or accelerated runoff?				✓	M	
i. Alteration of the direction or rate of flow of groundwaters?				✓		

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
j. A change in the quantity of groundwaters, either through direct additions or withdrawals?				✓		
k. Substantial interference with or loss of ground water recharge capability?				✓		
l. Overdraft or overcommitment of any groundwater basin? Or, a substantial increase in the existing overdraft or overcommitment of any groundwater basin? *(pot. significant threshold)*				✓		
m. The use of substantial quantities of water?				✓		
n. A substantial reduction in aquifer recharge? *(pot. significant threshold)*				✓		
o. Substantial water quality degradation?				✓		
p. A substantial reduction in the amount of water otherwise available for public water supplies?				✓		
q. Significant changes in temperature, flow or chemical content of surface thermal springs?				✓		

Impact Discussion: This project will result in the surfacing of approximately 31,393 square feet, or 72% of the site. General Plan policy allows for a maximum 60% impervious surfacing of projects that are conditional uses. Project plans provide for construction of a 14' wide driveway to cross the drainage swale, requiring installation of a 42" diameter culvert and construction of a concrete headwall over a 60' long section of the drainage swale. This crossing will require the regrading of approximately 15 lineal feet of the drainage channel, possibly triggering the need for a Stream Bed Alteration Permit from the State Department of Fish and Game.

Stormwater runoff from the surfaced area will be directed from the westerly portion of the site (front parking area and building) to a rock lined ditch, and into an existing drainage ditch along Highway 49; and from the rear parking lot, through an overside drain, and a rock flow dissipater, into the seasonal drainage swale, at the south end of the culvert. The existing drainage channel empties into to a culvert within the State ROW that directs runoff form the north side of the highway to the south side of the highway.

Mitigation & Residual Impact: To offset the potentially adverse impacts associated with the proposed project, the following mitigation measures shall be required:

A. Existing drainage patterns and flows within the State right-of-way (ROW) and drainage facilities must be maintained or improved to meet all State standards prior to discharge into the ROW. Runoff may require treatment consistent with State Regional Water Quality Control Board standards (RWQCB). Prior to the issuance of any permits for this project, the developer shall provide verification from CalTrans that discharge from the project will not result in an increase of net peak runoff into the State ROW, and verification that all RWQCB water quality standards have been satisfied for runoff entering the State ROW. If special discharge limitations are imposed upon the project developer by the RWQCB, those limitations shall be adhered to, and specified in the Grading Permit plans. The RWQCB may also require the developer to obtain Water Quality Certification and to incorporate Best Management Practices for control of erosion and sedimentation into construction activities.

Mitigation Monitoring:

MEASURE	*MONITORING AUTHORITY*	*WHEN IMPLEMENTED*
4A	Depts. of Transportation, Building & Planning	Prior to issuance of a grading or building permit

5. AIR QUALITY

Environmental Setting: The overall air quality in Nevada County is good but two known air quality problems exist, the Ozone and Suspended Particulate Matter (PM-10). Nevada County is considered to be "non-attainment" for both pollutants. Both problems can be generated by automobile emissions.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. Substantial air emissions or deterioration of ambient air quality?				✓	Q	
b. A violation of any air quality standard or contribute to an existing or projected air quality violation?				✓		
c. Exposure of sensitive receptors to pollutants?				✓		
d. The creation of objectionable smoke, ash or odors?			✓			
e. Dust generation?			✓			
f. Exceeding any potentially significant thresholds adopted in County Plans and Goals? *(Poten. sig. threshold)*				✓		
g. The alteration of air movement, moisture, temperature, or any change in climate, either locally or regionally?				✓		

Impact Discussion: No significant increase in traffic-related automobile emissions will occur because this project is a relocation of an existing use which is located in close proximity to the project site. Dust may be generated during site grading and brush clearing may result in open burning.

Mitigation & Residual Impact: To offset the potentially adverse impacts associated with grading and vegetation clearance, the following mitigation measures shall be required:

A. Open burning of site-cleared vegetation is conditionally prohibited. Cleared vegetation should be treated by legal means other than open burning, such as chipping, shredding or grinding. Open burning will be permitted only upon Northern Sierra Air Quality Management District (NSAQMD) acceptance of documentation showing alternatives are unobtainable or economically unfeasible. Prior to approval of grading or improvement plans, an approval letter from the NSAQMD shall be obtained, indicating the approved method of cleared vegetation disposal. Such methods shall be noted on the grading/improvement plans. At no time shall open burning of materials generated by this project occur at another site unless approved in advance by the NSAQMD.

B. Fugitive dust emissions resulting from site clearing and construction shall be minimized at all times, utilizing control measures including dust palliatives, regularly applied water, graveled or paved haul roads, etc. Control measures shall be noted on improvement and/or grading plans.

Mitigation Monitoring:

MEASURE	*MONITORING AUTHORITY*	*WHEN IMPLEMENTED*
5A	Planning Dept.	Prior to issuance of a Grading or Building permit

6. TRANSPORTATION/CIRCULATION:

Environmental Setting: This project is located at the northeast corner of State Route 49 and Coyote Street, with access proposed from the Coyote Street frontage. Coyote Street is county maintained but the right of way (ROW) along this parcel's frontage is within the SR 49 ROW to the northwest corner of the site. Coyote Street is a minor collector road that connects North Bloomfield Road and State Highway 49. The State ROW containing Coyote Street along this frontage is 100 feet wide.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. Generation of additional vehicular movement in relation to existing traffic load and capacity of the street system? Substantial capacity impacts is defined as exceeding the designated level of service for the local roadway network. Substantial change relative to existing traffic load is defined as resulting in increasing the existing traffic levels for the local roadway network by more than 25%?			✓			2+9
b. A need for private or public road maintenance, or need for new roads?				✓		2
c. Effects on existing parking facilities, or demand for new parking?				✓		
d. Hazards to safety from design features, e.g., sharp curves or dangerous intersections, or incompatible uses, e.g. farm equipment?				✓		9
e. A substantial impact upon existing transit systems or alteration of present patterns of circulation or movement of people and/or goods?				✓		9
f. An alteration to waterborne, rail or air traffic?				✓		
g. An increase in traffic hazards to motor vehicles, bicyclists or pedestrians, including short-term construction and long-term operational?				✓		
h. Inadequate:						
Sight distance?				✓		
Ingress/egress?				✓		
General road capacity?				✓		
Emergency access (4290 Standard)?				✓		
i. Hazards or barriers for pedestrians or bicyclists?				✓		

j. Conflicts with adopted policies supporting alternative transportation, e.g. bus turnouts, bicycle racks?	____	____	____	✓	____	____

Impact Discussion: This project will replace an existing station that is located approximately ¼ mile west of the new site. No improvement needs for Coyote Street have been identified. The payment of impact fees to offset the impacts generated by this project will be levied at building permit stage and are established by County Resolution. CalTrans advises that the project will not generate significant traffic impacts but anticipates that future improvements may be necessary to align the north and south Coyote Street/SR49 intersections. The property owner is advised that any such road work may impact improvements established by this project. Driveway encroachments on to Coyote Street will require permits from CalTrans and will be addressed in project conditions of approval.

Mitigation & Residual Impacts: To offset the potentially adverse impacts associated with transportation/circulation increases, the following mitigation measure shall be required:

A. A Traffic Impact Mitigation Fee, in accordance with the latest adopted Traffic Impact Mitigation Program, will be levied at the time of building permit application for this project. The fee will be collected to mitigate the cumulative traffic impacts of this development upon the major Nevada County Road System and will be based on the latest fee schedule adopted by the Nevada County Board of Supervisors.

Mitigation Monitoring:

MEASURE	*MONITORING AUTHORITY*	*WHEN IMPLEMENTED*
6A	Dept. of Transportation	Prior to issuance of a building permit

7. BIOLOGICAL RESOURCES

Environmental setting: This site is located within the Transition Life Zone, supporting Ponderosa Pine forest and Riparian Scrub environments. Understory plantings are minimal due to heavy pine needle matting and recent disturbance. Ponderosa Pine, Incense Cedar, Black Oak and Manzanita are the dominant plant species. The site is mapped as a Resident Deer Herd area and is not shown to be within a critical range or migratory corridor.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. A loss or disturbance to a unique, rare or threatened, or endangered species of plant or animal, or habitat of species within the community? *(pot. significant threshold)*				✓	S	
b. A reduction in the numbers or restrictions in the range of any unique, rare or endangered, or threatened species of plants or animals? *(pot. sig. threshold)*				✓	S	
c. A reduction in the extent, diversity, or quality of native vegetation, including brush removal for fire prevention and flood control improvements?			✓		S	
d. A reduction in the numbers, a restriction in the range, or an impact to the critical habitat of any unique, rare, threatened or endangered species of animals or plants? *(pot sig. threshold)*				✓	S	
e. A reduction in the diversity or numbers of animals on-site, including mammals, birds, reptiles, amphibians, fish or invertebrates?				✓	S	
f A substantially diminished habitat or a deterioration of existing fish, wildlife or plant habitat, for foraging, breeding, roosting, nesting, etc.?			✓		S	
g. The introduction of a barrier to movement of any resident or migratory fish or wildlife species? *(pot. sig. threshold)*				✓	S	
h. Introduction of any factors (light, fencing, noise, human presence and/or domestic animals) which could hinder the normal activities of wildlife?				✓	S	
i. The introduction of a new species of plant, wildlife or fish into an area, or, a barrier to the migration and movement of animals?				✓		
j. The reduction in acreage of any agricultural crop?				✓		

Impact Discussion: The Biological Inventory prepared for this project did not identify any Rare, Threatened or Endangered Species on site. The site is within range of several species of concern, however, the Inventory concludes that there is no suitable habitat for any such species on the site. One 52" black oak occurs on the site approximately 40' from the proposed structure. The site is also defined by the Inventory as an area of "High Urbanization" which likely accounts for the lack of critical deer resources on the site. Narrow, well-defined patches of riparian/wetland vegetation were found on the banks of the seasonal drainage, extending only a few feet from the drainage bank; however, soil types are not defined as hydric. Construction of the swale crossing will result in the removal of habitat on both sides of the swale.

Mitigation & Residual Impacts: To offset the potentially adverse impacts associated with grading, road construction, vegetation clearance and building construction on plant and wildlife, the following mitigation measures shall be required:

A. Prior to beginning any work activity within the drainage channel, the developer shall notify the State Department of Fish and Game (DFG) of the proposed work to determine if a Streambed Alteration Agreement is required. Verification that the DFG has been notified shall be provided to the Planning Department prior to issuance of any grading or construction permits.

B. The developer's Final Landscape Plan shall include a Stream Restoration Plan that will restore the native habitat within the adjacent riparian corridor of the drainage swale (including stream banks). Restoration shall include removal of non-native scotch broom and blackberry plants, and the planting of native, water tolerant species. The Restoration Plan shall be prepared by a landscape architect or a plant ecologist, who shall verify completion of the restoration prior to building occupancy. A revised, final project site plan shall be submitted with all construction plans, designating a "non-disturbance" area for the restoration area. Construction of the access road to the adjacent parcel and the culvert as shown on the preliminary grading plan/site plan are allowed within the non-disturbance area.

C. The 52" landmark oak tree identified in the Biological Inventory and shown on the project site plan, and the area within the dripline protection zone of that oak, shall be delineated on the final site plan as a Non-Disturbance Area, noting that:

   "The Non-Disturbance Area shall be maintained by the property owner so as not to reduce the size of the tree canopy and to preserve the natural biological habitat. There shall be no construction, grading, disturbance, uses that would cause excessive compaction, irrigation, or change in natural runoff within the designated Non-Disturbance Area. Exceptions may be allowed, subject to approval by the Planning Director prior to any site disturbance, if a certified professional arborist, a licensed landscape architect, or a professional forester identifies one of the following:

   - disturbance necessary for maintaining adequate fire protection;
   - disturbance necessary to maintain the health of the biological community;
   - removal of dead or dying trees, or if determined to be a "public safety hazard".

D. Grading plans shall clearly show that site grading will divert runoff away from the 52" oak.

E. The landmark oak and its Non-Disturbance Area shall be protected during all construction activity. Prior to any site disturbance, a minimum four-foot (4') tall, brightly colored synthetic fence shall be installed at the outermost edge of the Dripline Protection Zone of the landmark oak. The fencing must be adequate to prevent its inadvertent relocation. Fencing detail shall be shown on the grading and/or improvement plans. Fencing must be installed in accordance with the approved fencing detail prior to the commencement of any grading operations. The developer shall contact the Planning Department for an inspection of the fencing prior to initiation of grading activities. The fence must remain in place throughout the entire construction and shall not be removed until written authorization is received from the Planning Department.

Mitigation Monitoring:

MEASURE	*MONITORING AUTHORITY*	*WHEN IMPLEMENTED*
7A-E	Planning Department	Prior to issuance of a Grading Permit

8. ENERGY

Environmental Setting: Energy uses in the project will include electrical service and natural gas.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. A substantial increase in demand, especially during peak periods, upon existing sources of energy?	____	____	____	✓	____	____
b. A requirement for the development of new sources of energy or expansion of existing facilities?	____	____	____	✓	____	____
c. The use of fuel or energy in a wasteful or inefficient manner? *(pot. significant threshold)*	____	____	____	✓	____	____
d. The necessity to extend power lines requiring new easements?	____	____	____	✓	____	____
e. A conflict with an adopted energy conservation plan?	____	____	____	✓	____	____

Impact discussion: The project site will retain a number of trees and the developers landscaping plans incorporates additional trees on the south and west property boundaries, providing shade during summer months. This project will not result in any significant demands on energy resources and no mitigation measures are recommended.

9. HEALTH HAZARDS/RISK OF UPSET

Environmental Setting: Public land uses are subject to compliance with County standards for the storage of certain quantities of potentially hazardous materials that may be stored on site. The applicant advises that no such materials will be stored on site.

a. In the known history of this property, have there been any past uses, storage, or discharge of hazardous materials? (Examples include, but are not limited to, fuel or oil stored in underground tanks, pesticides, solvents, or other chemicals.) Yes _____ Maybe _____ No ✓

b. Will the proposed project involve the use, production or disposal of materials which pose a hazard to people or animal, or plant populations in the area effected? Yes _____ Maybe _____ No ✓

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. Creation of any health hazard or potential health hazard?				✓		3
b. Exposure of people to potential health hazards?				✓		
c. A risk of an explosion or the release of hazardous substances (including, but not limited to oil, gas, biocides, , chemicals or radiation) in the event of an accident or upset conditions?				✓		
d. Possible interference with an emergency response plan or an emergency evacuation plan? *(pot. significant threshold)*				✓		

Impact Discussion: No potentially hazardous past uses have been identified on this site and no proposed uses will pose a significant risk. No mitigation measures are recommended.

10. NOISE

Environmental Setting: The Nevada County General Plan establishes maximum allowable noise levels for sensitive land uses, excluding temporary noise that occurs during construction. Adjacent to State Highway 49, with a high ambient noise level, no sensitive land uses are located within the project vicinity.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig. (App A)	Data Source (App B)	Agency Input
a. Long-term exposure of people to noise levels exceeding County thresholds? *(pot. significant threshold)*				✓	Q	1
b. Short-term exposure of people to noise levels exceeding County thresholds?				✓		
c. A project-generated substantial increase in the ambient noise levels for adjoining areas, either day or night?				✓		

Impact Discussion: Short term noise from this site will occur during construction, however, no significant short or long term noise will be generated by this project and no mitigation measures are recommended.

11. PUBLIC SERVICES:

Environmental Setting: The following public services are provided to this site:
Fire: The Forty Niner Fire Protection District provides fire and rescue services to this portion of the County. The California Dept. of Forestry and Fire Protection provides wildland fire services.
Police: Law enforcement services are provided by the Nevada County Sheriff.
Other: Solid waste generated either during the site development or after occupancy, are disposed of at the McCourtney Road transfer station. The City of Nevada City will provide sewer and water service. No other public services will be effected by this project. Road maintenance is discussed in Section 6 of this document.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. **FIRE PROTECTION**						
1) An increased fire hazard in areas with flammable brush, grass or trees?				✓		10
2) A substantial increase in expenditures for fire protection?				✓		
3) Exposure of people to hazardous wastes/materials? *(pot. significant threshold)*				✓		
b. **POLICE PROTECTION** A substantial increase in expenditures for police protection?				✓		

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
c. **SCHOOLS**						
1) A substantial increase in the number of school children in the attendance area?				✓		
2) Aggravation of an existing facilities overcrowding?				✓		
3) A negative impact on student access routes to or from school property during normal working hours?				✓		
d. **OTHER**						
An effect upon or a need for any other new or altered public facilities, utility or government services?				✓		

Impact Discussion: No potential impacts to any public service providers have been identified with this project. No mitigation measures are recommended.

12. UTILITIES & SERVICE SYSTEMS

Environmental Setting: This site is located within the Sphere of Influence of Nevada City, which already provides water service to the site and has approved connection to the City sewer system prior to annexation.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
A need for new systems or supplies, or substantial alterations to:						
a. Power or natural gas?				✓		14
b. Local or required water distribution facilities?				✓		14
c. Communication systems?				✓		
d. Local or regional water supplies?				✓		14
e. Storm water drainage?				✓		
f. Sewer or septic systems?				✓		14
g. Solid Waste disposal?				✓		

Impact Discussion: No significant impacts to any service systems will occur as a result of this project and no mitigations are recommended.

13. VISUAL

Environmental Setting: This area just north of Nevada City is undeveloped and retains a rural, forested character. On the north side of Highway 49, development is limited to a U.S. Forest Service Headquarters. Land use on the south side of Highway 49 is dense residential development, within the city limits of Nevada City. State Highway 49 is defined as a scenic highway by the County General Plan and is listed as Eligible for State Scenic Highway Master Plan designation.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. Demonstrable, negative, aesthetic effects on scenic vistas or views open to the public?				✓	Q	14
b. The creation of an aesthetically offensive site open to public view? *(pot. significant threshold)*				✓		
c. A change to the visual character of the area?			✓			
d. Glare or night lighting which may affect adjoining areas?			✓			
e. A visually incompatible structure within a designated historic district? *(pot. significant threshold)*				✓		

Impact Discussion: This proposed development will be visible from the Highway 49 corridor and from Coyote Street within the City limits. Existing native trees between the roadways and the project are sparse. The applicant's preliminary landscaping plan reflects the planting of additional deciduous shade trees and native conifers. Building design proposes a 70' wide by 156' long, single-story, split-level structure with a maximum 33' height. Building elevations provide for a varied pitch, multi-roofed structure in earth tone colors (beige siding, green roof) and a composition shingle roof. The structure is placed on the site with the shorter, gable-end facing the highway and the longer building front facing Coyote Street.

Mitigation & Residual Impact: To offset the potential visual impacts associated with this development adjacent to a scenic highway, the following mitigation measures are required:

A. Landscaping in the southwesterly corner of the site, between Highway 49 and the lower parking lot, shall consist of native conifers as shown on the Preliminary Landscaping Plan. Consistent with the District's plan to establish fire-wise landscaping, cedars shall not be used in this area.

B. All outdoor light fixtures shall be designed to preclude offsite spill and to prevent the light source or lens from being visible from adjacent properties and roadways. Parking lot pole lights shall be limited to a 15' height and shall be placed in landscaped areas. No fixtures shall be a high pressure sodium unless required by the State Architect or State Fire Marshals office for emergency lighting.

C. Signage shall be limited to one monument sign, one wall sign at the building entrance, and directional signs. Materials and colors of the wall sign shall be compatible with those used on the building. The monument sign shall be designed as shown on the preliminary plans, with colors to be compatible with the building. Signage shall not be internally illuminated. If lighting is proposed for the monument sign, it shall be top mounted. A final sign plan shall be provided to the Planning Department prior to building permit issuance, depicting sign dimensions, colors, materials, letter style, and locations.

D. To ensure visual compatibility with the rural character of the neighborhood, and to prevent an institutional appearance, any fencing shall be of an open wire.

E. All mechanical equipment, air conditioning units, or heating units shall be screened from public view, with materials and colors that are compatible with the building's exterior architectural elements. Gutters, screens, vents or flashing shall be painted to prevent glare and to blend with the roof or wall colors.

F. Any solid waste receptacles or outside storage shall be placed within a screened enclosure, constructed of colors and materials compatible with the building color and design.

Mitigation Monitoring:

MEASURES	*MONITORING AUTHORITY*	*WHEN IMPLEMENTED*
13A-F	Planning Department	Prior to issuance of a grading or building permit

14. CULTURAL RESOURCES

Environmental Setting: There are numerous recorded archaeological sites in the Nevada City area, both historic and prehistoric. The North Central Information Center found no record that the subject site had been previously surveyed but identified historic sites within ¼ mile of the project area.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. The disruption, alteration, destruction, or adverse effect on a recorded pre-historic or historic archaeological site (note site number below)? *(pot. significant threshold)*				✓	T	
b. The distribution or removal of human remains? *(pot. sig. threshold)*				✓		
c. Increased potential for trespassing, vandalizing, or sabotaging of archaeological resources?				✓		
d. Ground disturbances in an area with potential cultural resource sensitivity based on the location of known historic or prehistoric sites?				✓		
e. The potential to cause a physical change which would affect unique ethic cultural values?				✓		
f. Restricting existing religious or sacred uses within the potential impact area?				✓		
g. Adverse physical or aesthetic effects to a prehistoric or historic building, structure, or object?				✓		

Impact Discussion: The site-specific inventory conducted on the site did not reveal the presence of prehistoric use or occupation. The lack of evidence is attributed to previous logging, mining and residential activity in the project area. A limited number of early 1900's artifacts were observed and recorded, but not determined to be of significance. While no impacts to cultural resources are likely to occur, there is always a possibility of uncovering unanticipated subsurface features or artifacts, and if such resources are encountered or suspected, work must be halted immediately and a professional archaeologist consulted.

Mitigation and Residual Impact: To offset the potentially adverse impacts associated with grading and construction for the proposed project, the following mitigation measure shall be required:

A. The following requirement shall be incorporated into grading and construction plans:

"If any subsurface cultural resources are encountered or suspected, work shall be halted immediately and the County Planning Department contacted. A professional archaeologist shall be consulted to access any discoveries and develop appropriate management recommendations for archaeological resource treatment. If bones are encountered and appear to be human, California Law requires that the Nevada County Coroner and the Native American Heritage Commission be contacted and, if Native American resources are involved, Native American Organizations and individuals recognized by the County shall be notified and consulted about any plans for treatment."

Mitigation Monitoring Program

MEASURE	*MONITORING AUTHORITY*	*WHEN IMPLEMENTED*
14A	Planning Department	Prior to issuance of a grading or building permit

15. RECREATION

Environmental Setting: The project is not located within an organized Recreation District and has no recreational easements of record. It is located in the Nevada City Benefit Zone for the purpose of recreation development fees, however Recreation fees are not applicable to non-residential development.

Will the proposal result in:	Known Poten. Sig.	Unknown Poten. Sig.	Poten. Sig. & Mitig.	Not Sig.	Data Source (App A)	Agency Input (App B)
a. An increased demand for neighborhood or regional parks or other recreational facilities?				✓		1
b. An affect on existing recreational facilities?				✓		1
c. A conflict with established recreation uses of the area, including biking, equestrian and/or hiking trails?				✓		1

Impact Discussion: No impacts to recreation services have been identified as a result of this project and no mitigations are recommended.

XVI. MANDATORY FINDINGS OF SIGNIFICANT ENVIRONMENTAL EFFECT

	Yes	Maybe	No	Data Source (App. A)	Agency Input (App. B)
a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of major periods of California's history or prehistory?			✓		
b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?			✓		
c. Does the project have environmental effects which are individually limited but cumulatively considerable (cumulatively considerable means that the incremental effects of the project are considered when viewed in connection with the effects of past, current, and probable future projects)?			✓		
d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			✓		
Alternatives to the Proposed Action: Does the project require the discussion and evaluation of a range of reasonable alternatives which could feasibly attain the basic objectives of the project?			✓		

RECOMMENDATION OF THE PROJECT PLANNER:

On the basis of this initial evaluation:

_____ I find the proposed project will NOT have a significant adverse environmental effect, and a NEGATIVE DECLARATION is recommended.

__✓__ I find that although the proposed project could have a significant adverse environmental effect, there would not be a significant effect in this case if mitigation measures described herein are included in the project. A MITIGATED NEGATIVE DECLARATION is recommended.

_____ I find that the proposed project MAY have a significant adverse environmental effect, and an ENVIRONMENTAL IMPACT REPORT should be prepared.

_____	May 19, 2000
Stephanie Wagner, Planner III	Date

APPENDIX "A"
ENVIRONMENTAL REVIEW DATA SOURCES

A. State Division of Mines and Geology, *Mineral Classification Map*, 1990
B. State Department of Fish and Game, *Migratory Deer Ranges*, 1988
C. State Department of Fish and Game, *Natural Diversity Data Base Maps*, as updated
D. State Department of Forestry and Fire Protection, *Fire Hazard Severity Zone Maps*, 1990
E. State Division of Mines and Geology, *Geologic Map of the Chico Quadrangle, Calif. 1992*
F. State Division of Mines and Geology, *Fault Map of California, 1990.*
G. State Dept. of Conservation, *Important Farmland Map*, as updated
H. State Dept. of Forestry & Fire Protection, *Nevada County Hardwood Rangelands,* 1993
I. U.S.G.S, *7.5 Quadrangle Topographic Maps*, as updated (Nevada City quad)
J. U.S. Fish and Wildlife Service, *National Wetlands Inventory*, 12/95
K. U. S. Soil Conservation Service, *Soil Survey of Nevada County*, 1975 (#12)
L. U.S. Geological Service, *Nevada County Landslide Activity Map*, 1970, as found in the Draft Nevada County General Plan, Master Environmental Inventory, December 1991, Figure 8-3
M. Federal Emergency Management Agency, *Flood Insurance Rate Maps*, 1987
N. Wilson, Norman, *Avalanche Hazard Study - Nevada County*, 1982
O. County of Nevada, *Draft Nevada County General Plan Noise Contour Maps,* 1993
P. County of Nevada, *High Traffic Accident Locations Map,* 1991, as found in the Draft Nevada County General Plan, Master Environmental Inventory, 1991, Figure 9-4
Q. *Draft Nevada County General Plan, Master Environmental Inventory*, December 1991
R. All Final Environmental Impact Reports, certified by the County of Nevada
S. Biological Inventory prepared by Marcus Bole & Associates, dated March 28, 2000
T. Archaeological Inventory Survey prepared by Jensen & Associates, dated March 22, 2000
U. Preliminary Geotechnical Report prepared by Vector Engineering, dated November, 1999.

APPENDIX "B"
AGENCY INPUT LIST

1. Planning Department
2. Department of Transportation
3. Environmental Health Department
4. Building Inspection Department
5. Department of Sanitation
6. S.T.A.R.
7. Resource Conservation District
8. Northern Sierra Air Quality Management District
9. CalTrans
10. California Department of Forestry
12. California Department of Fish & Game
13. Central Valley Regional Water Quality Control Board
14. City of Nevada City
15. U.S. Army Corps of Engineers

CEQA APPENDIX G
SIGNIFICANT EFFECTS

A project will normally have a significant effect on the environment if it will:

(a) Conflict with adopted environmental plans and goals of the community where it is located;
(b) Have a substantial, demonstrable negative aesthetic effect;
(c) Substantially affect a rare or endangered species of animal or plant or the habitat of the species;
(d) Interfere substantially with the movement of any resident or migratory fish or wildlife species;
(e) Breach published national, state, or local standards relating to solid waste or litter control;
(f) Substantially degrade water quality;
(g) Contaminate a public water supply;
(h) Substantially degrade or deplete ground water resources;
(i) Interfere substantially with ground water recharge;
(j) Disrupt or adversely affect a prehistoric or historic archaeological site or a property of historic or cultural significance to a community or ethic or social group; or a paleontological site except as a part of a scientific study;
(k) Induce substantial growth or concentration of population;
(l) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system;
(m) Displace a large number of people;
(n) Encourage activities which result in the use of large amounts of fuel, water, or energy;
(o) use fuel, water, or energy in a wasteful manner;
(p) Increase substantially the ambient noise levels for adjoining areas;
(q) Cause substantial flooding, erosion or siltation;
(r) Expose people or structures to major geologic hazards;
(s) Extend a sewer trunk line with capacity to serve new development;
(t) Substantially diminish habitat for fish, wildlife or plants;
(u) Disrupt or divide the physical arrangement of an established community;
(v) Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the area affected;
(w) Conflict with established recreational, educational, religious or scientific uses of the area;
(x) Violate any ambient air quality standard, contribute substantially to an existing or projected air quality violation, or expose sensitive receptors to substantial pollutant concentrations;
(y) Convert prime agricultural land to non-agricultural use or impair the agricultural productivity of prime agricultural land;
(z) Interfere with emergency response plans or emergency evacuation plans.
(aa) Expose people or structures to major geologic hazards.
(bb) Convert prime agricultural land to non-agricultural use or impair the agricultural productivity of prime agricultural land.
(cc) Breach published national, state, or local standards relating to solid waste or litter control.
(dd) Contaminate a public water supply.
(ee) Substantially degrade or deplete ground water resources.
(ff) Use.... water.... in a wasteful manner
(gg) Cause substantial flooding, erosion or siltation.
(hh) Conflict with established....educational, religious, or scientific uses of the area.

also require the developer to obtain Water Quality Certification and to incorporate Best Management Practices for control of erosion and sedimentation into construction activities.

5. ***Air Quality***: To offset the potentially adverse impacts associated with grading, vegetation clearance, and construction, the following mitigation measures shall be required:

   A. Open burning of site-cleared vegetation is conditionally prohibited. Cleared vegetation should be treated by legal means other than open burning, such as chipping, shredding or grinding. Open burning will be permitted only upon Northern Sierra Air Quality Management District (NSAQMD) acceptance of documentation showing alternatives are unobtainable or economically unfeasible. Prior to approval of grading or improvement plans, an approval letter from the NSAQMD shall be obtained, indicating the approved method of cleared vegetation disposal. Such methods shall be noted on the grading/improvement plans. At no time shall open burning of materials generated by this project occur at another site unless approved in advance by the NSAQMD.

   B. Fugitive dust emissions resulting from site clearing and construction shall be minimized at all times, utilizing control measures including dust palliatives, regularly applied water, graveled or paved haul roads, etc. Control measures shall be noted on grading plans.

6. ***Transportation/Circulation***: To offset the potentially adverse impacts associated with off-site traffic impacts, the following mitigation measure shall be required:

   A. A Traffic Impact Mitigation Fee, in accordance with the latest adopted Traffic Impact Mitigation Program, will be levied at the time of building permit application for this project. The fee will be collected to mitigate the cumulative traffic impacts of this development upon the major Nevada County Road System and will be based on the latest fee schedule adopted by the Nevada County Board of Supervisors.

7. ***Biological Resources:*** To offset the potentially adverse impacts associated with grading, road construction, vegetation clearance and building construction on plant and wildlife, the following mitigation measures shall be required:

   A. Prior to beginning any work activity within the drainage channel, the developer shall notify the State Department of Fish and Game (DFG) of the proposed work to determine if a Streambed Alteration Agreement is required. Verification that the DFG has been notified shall be provided to the Planning Department prior to issuance of any grading or construction permits.

   B. The developer's Final Landscape Plan shall include a Stream Restoration Plan that will restore the native habitat within the adjacent riparian corridor of the drainage swale (including stream banks). Restoration shall include removal of non-native scotch broom and blackberry plants, and the planting of native, water tolerant species. The Restoration Plan shall be prepared by a landscape architect or a plant ecologist, who shall verify completion of the restoration prior to building occupancy. A revised, final project site plan shall be submitted with all construction plans, designating a "non-disturbance" area for the restoration area. Construction of the access road to the adjacent parcel and the culvert as shown on the preliminary grading plan/site plan are allowed within the non-disturbance area.

   C. The landmark oak tree identified in the Biological Inventory and shown on the approved site plan, and the area within the dripline protection zone of that oak oaks, shall be delineated on the final site plan as a Non-Disturbance Area, noting that:

"The Non-Disturbance Area shall be maintained by the property owner so as not to reduce the size of the tree canopy and to preserve the natural biological habitat. There shall be no construction, grading, disturbance, uses that would cause excessive compaction, irrigation, or change in natural runoff within the designated Non-Disturbance Area. Exceptions may be allowed, subject to approval by the Planning Director prior to any site disturbance, if a certified professional arborist, a licensed landscape architect, or a professional forester identifies one of the following":

- disturbance necessary for maintaining adequate fire protection;
- disturbance necessary to maintain the health of the biological community;
- removal of dead or dying trees, or if determined to be a public safety hazard.

D. Grading plans shall clearly show that site grading will divert runoff away from the 52" oak.

E. The Landmark oak and its Non-Disturbance Area shall be protected during all construction activity. Prior to any site disturbance, a minimum four-foot (4') tall, brightly colored synthetic fence shall be installed at the outermost edge of the Dripline Protection Zone of the landmark oak. The fencing must be adequat4e to prevent its inadvertent relocation. Fencing detail shall be shown on the grading and/or improvement plans. Fencing must be installed in accordance with the approved fencing detail prior to the commencement of any grading operations. The developer shall contact the Planning Department for an inspection of the fencing prior to initiation of grading activities . The fence must remain in place throughout the entire construction and shall not be removed until written authorization is received from the Planning Department.

8. ***Energy:*** No significant energy impacts will occur.
9. ***Health Hazards/Risk of Upset:*** No potentially hazardous uses have been identified, nor are proposed, on this site. No significant impacts to health are anticipated .
10. ***Noise:*** Noise generated by this project will be limited to temporary noise associated with construction. No significant noise impacts are anticipated.
11. ***Public Services:*** No significant impact to public services, including fire and road services, has been identified with this project.
12. ***Utilities & Services Systems:*** No impacts to any service or utility systems are anticipated
13. ***Visual:*** To offset the potential visual impacts associated with this development adjacent to a scenic highway, the following mitigation measures are required:

A. Landscaping in the southwesterly corner of the site, between Highway 49 and the lower parking lot, shall consist of native conifers as shown on the Preliminary Landscaping Plan. Consistent with the District's plan to establish fire-wise landscaping, cedars shall not be used in this area.

B. All outdoor light fixtures shall be shielded and directed downward to prevent glare and designed to preclude offsite spill and visibility of the light source or lens from adjacent properties and roadways. Parking lot pole lights shall be limited to a 15' height and shall be placed in landscaped areas. No fixtures shall be a high pressure sodium unless required by the State Architect or State Fire Marshals office for emergency lighting. Lighting needed after normal business hours shall be either motion-sensitive, or, be turned on only during meetings, special events, and emergency periods.

C. Signage shall be limited to one monument sign, one wall sign at the building entrance, and directional signs. Materials and colors of the wall sign shall be compatible with those used on the building. The monument sign shall be designed as shown on the preliminary plans, with colors to be compatible with the building. Signage shall not be internally illuminated. If lighting is proposed for the monument sign it shall be top mounted A final sign plan shall be

provided to the Planning Department prior to building permit issuance, depicting sign dimensions, colors, materials, letter style, and locations.

D. To ensure visual compatibility with the rural character of the neighborhood, and to prevent an institutional appearance, any fencing shall be of an open wire.

E. All mechanical equipment, air conditioning units, or heating units shall be screened from public view with materials and colors that are compatible with the building's exterior architectural elements. Gutters, screens, vents or flashing shall be painted to prevent glare and to blend with the roof or wall colors.

F. Any solid waste receptacles or outside storage shall be placed within a screened enclosure, constructed of colors and materials compatible with the building color and design.

14. ***Cultural Resources***: To offset the potential adverse impacts associated with site disturbance and this project, the following mitigation measure is required:

A. The following requirement shall be incorporated into grading and construction plans:

"If any subsurface cultural resources are encountered or suspected, work shall be halted immediately and the County Planning Department contacted. A professional archaeologist shall be consulted to access any discoveries and develop appropriate management recommendations for archaeological resource treatment. If bones are encountered and appear to be human, California Law requires that the Nevada County Coroner and the Native American Heritage Commission be contacted and, if Native American resources are involved, Native American Organizations and individuals recognized by the County shall be notified and consulted about any plans for treatment."

15. ***Recreation***: No impacts to recreation services have been identified as a result of this project and no mitigation's are recommended.

Mitigation Monitoring Program:

MEASURE	MONITORING AUTHORITY	WHEN IMPLEMENTED
1A	Planning Department	Prior to building or grading permit issuance
4A	Planning Dept; CalTrans; RWQCB	Prior to building or grading permit issuance
5A&B	Planning Department; NSAQMD	Prior to building or grading permit issuance
6A	Department of Transportation	Prior to building permit issuance
7A-E	Planning Department	Prior to building or grading permit issuance
13A-F	Planning Department	Prior to building permit issuance
14A	Planning Department	Prior to grading or building permit issuance

A. PLANNING DEPARTMENT:

1. This use permit is valid for occupancy of the approved structure as a fire station only. Any change in use or occupancy shall require review by the Nevada County Planning Department to determine consistency with this approved permit. Any intensification of use shall require additional environmental review.

2. All trees shown for retention shall be incorporated into the grading and landscape plans, including methods to be employed for tree retention and preservation.

3. The Voluntary Merger must be recorded prior to grading or building permit issuance.

4. Prior to building or grading permit issuance, provide to the Planning Department a revised site plan consistent with the Improvement Plans, and showing all Non-Disturbance areas, to the Planning Dept.

5. Prior to any occupancy, all parking areas shall be constructed in accordance with the approved site plan and with the design standards of Article 28 of County zoning regulations, including stall size, striping, wheelchair accessibility standards, slope, drainage, backout area and driveway/aisle widths.

6. Final building plans shall depict the architectural features reflected on the submitted building elevations and shall clearly show:

   a. Exterior building materials, heights and trim treatments.

   b. That no mechanical equipment will be placed on the rooftop.

   c. All colors proposed must be indicated on either building plans or on a separate set of elevations provided to the Planning Department. Colors are limited to muted earth tone browns, grays, or greens. Trim accents in complementary colors may be used sparingly.

7. The final Landscape Plan shall be prepared by a licensed landscape architect or contractor. A copy of the Final Plan shall be provided to the City of Nevada City for comment to the County Planning Department. Pursuant to Section L-II 28.7 of the Land Use Code, that plan shall include the following:

   a. Landscaping shall be provided in the areas delineated on the applicant's preliminary plan and as required by mitigation measures attached to this permit. Planting areas shall be separated from roadways by a stationary curb.

   b. Plant materials shall be consistent with Sec. L-II 28.7 of County Zoning Ordinance (the Landscape Ordinance), including the size and number of plants and shall include a mix of evergreens and deciduous as well as native plants. Shrubs and trees must be evenly dispersed throughout the parking areas.

   c. Groundcover plantings and mulch shall be utilized between plants. Gravel may not be used as groundcover in landscaped areas.

   d. A water-efficient Irrigation Plan that includes Notes detailing compliance with the Water Conservation standards of Section L-II 28.7.B., including the use of soil amendments and the grouping of plants per their hydrozones.

e. A note that "All plantings and irrigation shall be maintained by the property owner and in any case where a required planting has not survived, the property owner shall be responsible for replacement with equal or better plant materials."

8. Prior to final occupancy, the landscape architect/contractor shall verify that all planting has been completed in compliance with the approved Landscape Plan.

9. Signage for this site shall be designed consistent with the size and locational standards in Article 26 of the Zoning Ordinance.

10. Noise levels generated by any non-emergency service use of this site shall not exceed the standards allowed by the Noise Chapter of the General Plan.

11. For the purpose of this permit, landscaping, but not irrigation, may be postponed for a maximum of one year, pursuant to Sec. L-II 3.34 of the Land Use Code (posting of a bond in the amount of plant materials, labor plus a 25% administrative fee).

12. Prior to occupancy, the applicant shall contact the Planning Department for a field inspection to verify all Conditions of Approval and ordinance requirements have been satisfied. Fees for such inspection shall be applicable on the project building permit.

B. DEPARTMENT OF TRANSPORTATION & SANITATION:

Prior to issuance of a Certificate of Occupancy for the project:

1. An Encroachment Permit, issued by the entity with jurisdiction, will be required prior to any work within the existing right-of-way. Work shall be completed with the terms of the permit.

2. Post an advisory sign directing visitors to access public parking by way of the second driveway.

C. ENVIRONMENTAL HEALTH DEPARTMENT:

1. The storage and use of hazardous materials and hazardous waste is prohibited with the exceptions of small quantities of materials normally found in a residential setting.

2. Prior to final occupancy, the applicant shall provide the Environmental Health Department with "Proof of Service" or a "Will Serve" letter from the appropriate public agency(ies) for public water supply and sewer service.

3. Prior to final occupancy, the applicant shall provide solid waste and recycling receptacles and an appropriate enclosure area.

D. FIRE PROTECTION DISTRICT:

1. This proposed fire station building is a Group B Occupancy. Emergency water flow requirements for this project is 1,500 gallons per minute for two hours duration. A new fire hydrant shall be installed for this project, with the exact location to be determined by the CDF/Nevada County Fire Protection Planner and the Forty-Niner Fire Protection District. Because this hydrant may not provide full fire flow, the following same practical effect measures shall be incorporated into the final building and/or landscape plans:

   a. Fire-resistant exterior siding shall be used.
   b. Roofing shall be a Class A fire resistant roof.
   c. A 2-hour area separation wall is required on the interior of the fire station, constructed between the garage apparatus room and the living / office areas.

d. Parking lot landscaping shall be of fire resistant ornamental varieties.

2. The hydrant or fire valve to access this water storage system shall be located a minimum 18 inches above grade, 8 feet from any flammable vegetation, and no closer than 50 feet to any building.

3. Minimum roadway or driveway widths shall be increased by an additional six feet in areas adjacent to, and 25 feet in any direction of, any fire flow facility.

4. The building shall have a fully supervised automatic engineered fire sprinkler system installed with appropriate monitoring , alarming, and a PIV (Post Indicating Valve) placed in an area accessible to fire apparatus., specific location to be determined by the CDF/Nevada County Fire Protection Planner and the Forty-Niner Fire Protection District. Freeze protection is to be incorporated into the design of all components. An FDC (Fire Department Connection) is to be located on the outside of the building.

5. Panic hardware and exit signs for all egress paths and emergency lighting are to be installed and tested prior to final inspection.

6. Plans for the hydrant system, sprinkler system, and alarm system shall be submitted to and approved by the CDF/Nevada County Fire Protection Planner and the Forty-Niner Fire Protection District prior to construction of the system(s).

7. An occupant load sign shall be posted.

8. A minimum of three fire extinguishers with a 2A10BC rating shall be provided and travel distance shall not exceed 75 feet.

9. Extinguishers shall be serviced annually and shall have a current service tag attached.

10. Prior to any occupancy, vegetation clearance around structures shall meet the minimum requirements of Public Resources Code Section 4291. Structures shall maintain a fire break by removing and clearing away all brush, flammable vegetation or combustible growth up to 100 feet from structures. This clearing does not apply to individual isolated trees, ornamental shrubbery or similar plants which are used for ground cover unless such vegetation forms a means of rapidly transmitting fire from ground vegetation to canopy trees.

11. Provide a 30 foot fuel modification zone around the entire perimeter of the project at the time of development. This will require the removal and clearing away all brush, flammable vegetation or combustible growth or vegetation that forms a means of rapidly transmitting fire from ground vegetation to canopy trees.

12. Prior to final occupancy, all flammable vegetation and fuels caused by site development shall be legally disposed or removed.

E. NEVADA IRRIGATION DISTRICT

1. Prior to occupancy, the applicant shall establish water service to the site by either 1) obtaining authorization from the Nevada Irrigation District for a transfer of service area to the City of Nevada City, or 2) by providing District service to the site per District policies and regulations.

Construction pursuant to this permit approval must be completed and the use commenced thereon within three (3) years from the effective date of the approval of the permit, which would be **July 3, 2003**, unless an extension of time for reasonable cause is requested prior to the expiration date, and granted by the Zoning Administrator pursuant to Article 32 of the Nevada County Land Use and

Development Code. If no extension is granted, the permit shall become null and void, as to the portion of the approved use not completed.

Pursuant to the requirements of the Land Use and Development Code, you are hereby notified that this permit is not valid until the expiration of ten (10) days from the date of the Planning Commission action ***July 3, 2000.*** If the granting of the permit is appealed or submitted to the Board of Supervisors for final action, the effective date is stayed until final action by said Board. Any appeal must be submitted on the proper form which is available from the Clerk to the Board of Supervisors, Eric Rood Administrative Center, Nevada City, California 95959 (Deadline for appeal: July 3, 2000, at 5:00 p.m.).

You are advised not to commence any work on this permit until the ten-day period expires and to check with the Planning Department to determine if any appeal has been submitted.

Pursuant to Section 21089 of the California Public Resource Code and Section 711.4 et. seq. of the California Fish & Game Code, a fee in the amount of $1,250.00 must be paid as a condition of filing the Notice of Determination for this project. This fee must be submitted to the Planning Department within 10 days of the permit approval with the check made payable to the County Clerk, County of Nevada. Without payment of this fee, the 30-day Statute of Limitations on court challenges to this project's approved environmental document will remain open, which could affect the permit validity. This fee is required to be collected on behalf of the State Department of Fish & Game, and is not for County purposes.

NEVADA COUNTY ZONING ADMINISTRATOR
MARK TOMICH

By_____
Vicky Wilbourn
Clerk to the Zoning Administrator

MT:vw

cc: Building Department
Rod McConnell,Department of Transportation/Sanitation
Kurtis Zumwalt, Environmental Health Department
Nevada Irrigation District
City of Nevada City
Duane Davidson, Project Manager

ORDINANCE NO.2017-12

AN ORDINANCE AMENDING SECTION 17.12.175 OF TITLE 17 OF THE NEVADA CITY MUNICIPAL CODE ENTITLED "HOMELESS HOUSING FACILITIES" TO CORRECT THE CITY'S DEFINITIONS FOR "EMERGENCY SHELTER," "TRANSITIONAL HOUSING," AND "SUPPORTIVE HOUSING" AND ENSURE THEIR CONSISTENCY WITH STATE LAW; AMENDING CHAPTER 17.48 ENTITLED "LIGHT INDUSTRIAL ZONE" TO REFERENCE EMERGENCY SHELTER OPERATIONAL MANAGEMENT STANDARDS; AND TO ADD CHAPTER 17.130 ENTITLED "OPERATIONAL MANAGEMENT STANDARDS" TO ESTABLISH A CHAPTER FOR OBJECTIVE MANAGEMENT STANDARDS FOR SPECIFIC MINISTERIAL USES INCLUDING EMERGENCY SHELTER USES

WHEREAS, pursuant to the authority granted the City by Article XI, Sections 5 and 7 of the California Constitution, the City has the power to make and enforce within its limits all ordinances and regulations in respect to municipal affairs not in conflict with general laws; and

WHEREAS, comprehensive zoning regulations and regulations upon the use of land and property lie within the City's police powers; and

WHEREAS, on September 9, 2009, The City Council adopted Ordinance 2009-06, updating Title 17 Zoning Code to reflect policies outlined in the 2015-2019 Housing Element including; and

WHEREAS, the City Council finds that the activities permitted under this ordinance are consistent with and implement the goals and policies of the Nevada City General Plan; and

WHEREAS, the City Council finds that the adoption of this ordinance is not a "project" under California Environmental Quality Act (CEQA), because the ordinance will allow for the establishment of reasonable regulations of Homeless Housing Facilities which will not cause a direct physical change in the environment nor a reasonably foreseeable indirect physical change in the environment (Public Resources Code section 21065)

WHEREAS, the City Council finds that even if the ordinance if found to be a Project Under CEQA, the adoption of this ordinance is exempt from environmental review under pursuant to the following sections of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3:

A. The ordinance is exempt under Section 15061(b) (3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The ordinance corrects definitions of "Emergency Shelter", "Transitional Housing," and "Supportive Housing" to be consistent with State law and provides objective management standards for the operation of Emergency Shelters as allowed by State law.

NOW THEREFORE, The City Council of the City of Nevada City does ordain as follows:

SECTION 1.Chapter 17.12 of the Nevada City Municipal Code entitled "Definitions," under Subsection 12.12.175 entitled "Homeless Housing Facilities" is hereby amended with the following language:

17.12.175 - HOMLESS HOUSING FACILITIES

"Emergency Shelters" (from Health and Safety Code Section 50801(e): temporary lodging for homeless persons with minimal supportive services that may be limited to occupancy of six months or less.

"Transitional Housing" (from Health and Safety Code Section 50675.2)(h): Any dwelling unit or a Group Living Accommodation configured as a rental housing development, but operated under program requirements that call for the termination of assistance and recirculation of the assisted units to another eligible program recipient at some predetermined future point in time.

"Supportive Housing" (Health and Safety Code 50675.14(b): Any dwelling unit or a Group Living Accommodation, that is occupied by the target population as defined in Section 50675.14(b) of the CA Health and Safety Code with no limit on length of stay, that is linked to on- or off-site services that assist the supportive housing residents in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

"Group Living Accommodation": A building, group of buildings or portion of a building designed for or accommodating residential use by persons not living together as a Family.

SECTION 2. Chapter 17.48 to the Nevada City Municipal Code entitled "Light Industrial Zone," is hereby amended to provide reference to applicable emergency shelter operational management standards under requirements of Chapter 17.130:

Chapter 17.48 LIGHT INDUSTRIAL ZONE

17.48.020. Principal Permitted Uses.

In the LI zone, the following uses are permitted:

A. Automobile and truck service stations and terminals;

B. Business services, including advertising, credit, bookkeeping, employment and similar agencies, business and management consultants, stenographic, duplicating, blueprinting, photocopying and messenger services;

C. Building materials sales yards;

D. Light construction and special trade contractors, offices and shops, ornamental iron works, and sheet metal shops;

E. Offices, administrative and executive;

F. Refrigerators, furnaces and water heaters, repairs and servicing;

G. Electrical transmission and/or substations;

H. Warehousing, except mini-storage, including storage of furniture and household goods, but excluding feed and grain when handled in bulk;

I. Public utility service yard or garage;

J. Light manufacturing uses and all uses allowed in the EC zone;

K. Artists' studios, craft workshops, and cabinet shops.

L. Emergency shelters pursuant to the operational management standards outlined in Chapter 17.130

M. Medical Cannabis Dispensaries pursuant to the provisions outlined in Chapter 17.142.

N. Medical Cannabis Cultivation businesses pursuant to the provisions outlined in Chapter 17.142.

O. Medical cannabis manufacturing businesses pursuant to the provisions outlined in Chapter 17.142.

P. Medical cannabis distribution businesses pursuant to the provisions outlined in Chapter 17.142.

Q. Medical cannabis transporting businesses pursuant to the provisions outlined in Chapter 17.142.

R. Medical cannabis testing laboratory businesses pursuant to the provisions outlined in Chapter 17.142.

SECTION 3. Adding Chapter 17.130 to the Nevada City Municipal Code entitled "Operational Management Standards," is hereby amended to include objective management standards as may be necessary to apply to ministerial permitted uses.

Chapter 17.130 – Operational Management Standards

Sections:

17.130.010 - Purpose.

The purpose of this chapter is to establish standards to ensure that the development of specific ministerial uses do not adversely impact adjacent parcels or the surrounding neighborhood and

that they are developed in a manner which protects the health, safety, and general welfare of the nearby residents and businesses. A use permit is required to establish a shelter that does not meet all requirements of this Chapter.

17.130.020 – Emergency Shelters located in the Light Industrial (LI) Zone

A. When abutting a residentially-zoned property, the following standards shall apply:

   1. The minimum building setbacks from transitional use lot lines (where residential and nonresidential lots meet) shall be either twenty-five feet or one foot for each foot of nonresidential building height, whichever is greater.

   2. A fence meeting the design standards of the planning commission may be required to be erected.

   3. Off-street parking shall be designed to avoid being immediately adjacent to residentially zoned property, if possible

B. The maximum number of beds shall be two beds per 150 square feet of living space.

C. Emergency shelters shall provide:

   1. Sleeping facilities

   2. An area for onsite client intake at a minimum size of 120 square feet or 10 square feet per bed, whichever is larger.

   3. Secure personal storage.

   4. Showers and restroom facilities.

   5. Interior and/or exterior common space for clients to congregate at a ratio of not less than 15 square feet per client, with a minimum overall area of 120 square feet.

D. Optional facility services may include:

   1. Central cooking and dining room(s) subject to compliance with Nevada County Environmental Health Department

   2. Recreation Room

   3. Counseling Center

   4. Laundry equipment for clients.

5. Child care facilities

6. Other support services intended to benefit homeless clients

E. Adequate exterior lighting shall be provided for security purposes. The lighting shall be stationary, shielded and downcast, and directed away from adjacent properties and public rights-of-way.

F. On-site management shall be provided at all times the facility is in operation and at least one hour prior to and after facility operation hours.

G. The shelter operator shall be a non-profit, public or quasi-public entity or have a contract with a public or quasi-public entity for operation of the shelter.

H. The maximum length of stay at the facility shall not exceed 180 days per client in a 365 day period.

I. Shelters shall establish and maintain set hours for client intake/discharge. Hours must be prominently posted on site.

J. Facility improvements shall comply with the most recently adopted California Building Code in terms of providing adequate toilet and shower facilities.

K. Bike rack parking shall be provided onsite

L. Off-street parking shall be provided at a ratio of one space per 1,000 square feet of gross floor area, or one space for each employee on the largest shift plus one space for each agency vehicle plus three visitor spaces, whichever is greater;

M. Prior to use as an Emergency Shelter, the shelter operator shall submit a Shelter Safety and Management Plan. The Plan shall be available to the public upon request and shall address:

1. Client congregation outside of the shelter facility in order to prevent queuing within the public right-of-way.

2. Eligibility criteria, enforcement rules, and procedures for disruptive clients.

3. Number and responsibilities of on-site support staff, training standards, other management procedures, and a primary and secondary contact person.

4. Bed bug prevention.

5. Refuse collection.

6. Security procedures.

7. Separation of sleeping areas and restrooms by gender and for families.

8. Food Service procedures (Preparation / Distribution / Clean-up)

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

SECTION 5. Effective Date. This ordinance shall be in full force and effect commencing thirty (30) days after its final adoption and a summary hereof shall be published once within fifteen (15) days in the Union, a newspaper of general circulation printed and published in the County of Nevada and circulated in the City of Nevada City and hereby designated for that purpose by the City Council.

This Ordinance was introduced and read by title only on the 15th day of November, 2017 and

PASSED AND ADOPTED at a regular scheduled meeting of the City Council held on the 13th day of December, 2017, by the following vote:

AYES: **STRAWSER, PARKER, MOBERG, SENUM, PHELPS**

NOES: **NONE**

ABSTAIN: **NONE**

ABSENT: **NONE**

Duane Strawser, Mayor

ATTEST:

Niel Locke, City Clerk