



CITY OF BUELLTON

CITY COUNCIL AGENDA

**Regular Meeting of October 22, 2015 at 6:00 p.m.
City Council Chambers, 140 West Highway 246
Buellton, California**

Materials related to an item on this agenda, as well as materials submitted to the City Council after distribution of the agenda packet, are available for public inspection in the Office of the City Clerk, located at 107 West Highway 246, during normal business hours.

CALL TO ORDER

Mayor Holly Sierra

PLEDGE OF ALLEGIANCE

ROLL CALL

Council Members Dan Baumann, John Connolly, Leo Elovitz, Vice Mayor Ed Andrisek, and Mayor Holly Sierra

REORDERING OF AGENDA

PUBLIC COMMENTS

Speaker Slip to be completed and turned in to the City Clerk prior to commencement of meeting. Any person may address the Council on any subject pertaining to City business, including all items on the agenda not listed as a Public Hearing, including the Consent Agenda and Closed Session. Limited to three (3) minutes per speaker. By law, no action may be taken at this meeting on matters raised during Public Comments not included on this agenda.

CONSENT CALENDAR

(ACTION)

The following items are considered routine and non-controversial and are scheduled for consideration as a group. Any Council Member, the City Attorney, or the City Manager may request that an item be withdrawn from the Consent Agenda to allow for full discussion. Members of the Public may speak on Consent Agenda items during the Public Comment period.

- 1. Minutes of October 8, 2015 Regular City Council Meeting**
- 2. List of Claims to be Approved and Ratified for Payment to Date for Fiscal Year 2015-16**
- 3. Revenue and Expenditure Reports through September 30, 2015**
❖ (Staff Contact: Finance Director Carolyn Galloway-Cooper)
- 4. Financial Report for First Quarter Ending September 30, 2015**
❖ (Staff Contact: Finance Director Carolyn Galloway-Cooper)

5. **Acceptance and Filing of Stormwater Management Program Annual Report**
❖ *(Staff Contact: Public Works Director Rose Hess)*
6. **Filing of an Amended 2015-16 Claim with the Santa Barbara County Association of Governments (SBCAG) for State Transit Assistance (STA) Fund 2014-15 Apportionments**
❖ *(Staff Contact: Finance Director Carolyn Galloway-Cooper)*
7. **City Manager Approval of Amplified Music at Events on Private Property**
❖ *(Staff Contact: City Manager Marc Bierdzinski)*

PRESENTATIONS

8. **Proclamation Honoring Friends of the Library Week**

PUBLIC HEARINGS

(POSSIBLE ACTION)

9. **Ordinance No. 15-02 – “An Ordinance of the City Council of the City of Buellton, California, Revising Title 19 (Zoning) of the Buellton Municipal Code (15-ZOA-01) by Adding Regulations Regarding a Definition of a Fast Food Restaurant and Locational Restrictions for Fast Food Restaurants” (Introduction and First Reading – Continued from September 10, 2015)**
❖ *(Staff Contact: City Manager Marc Bierdzinski)*

COUNCIL MEMBER COMMENTS

COUNCIL ITEMS

WRITTEN COMMUNICATIONS

Written communications are included in the agenda packets. Any Council Member, the City Manager or City Attorney may request that a written communication be read into the record.

COMMITTEE REPORTS

This Agenda listing is the opportunity for Council Members to give verbal Committee Reports on any meetings recently held for which the Council Members are the City representatives thereto.

BUSINESS ITEMS

(POSSIBLE ACTION)

10. **Highway 246 Sidewalk Project - Consideration of Approval of Caltrans Cooperative Agreement**
❖ *(Staff Contact: Public Works Director Rose Hess)*
11. **Approval of Internet Services to Support Live Video Streaming of Council Meetings**
❖ *(Staff Contact: Public Works Director Rose Hess)*
12. **Medical Marijuana Update and Discussion**
❖ *(Staff Contact: City Attorney Steve McEwen)*

- 13. Resolution No. 15-28 – “A Resolution of the City Council of the City of Buellton, California, Approving the Quitclaim of Certain Portions of Excess Street Right-of-Way Easement West of Industrial Way and Located on the Properties of Assessor’s Parcel Numbers (APN) 099-820-011 and 099-820-012 and Accepting the New Street Right-of-Way Easement Located on the Properties of APN 099-820-011 and 099-820-012”**

❖ *(Staff Contact: Public Works Director Rose Hess)*

CITY MANAGER’S REPORT

CLOSED SESSION ITEMS

(POSSIBLE ACTION)

- 14. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Government Code Section 54956.9(a))
City of Buellton, et al. v. Michael Cohen, as Director, etc.; California Court of Appeal Case No. C076121**

ADJOURNMENT

The next meeting of the City Council will be held on Thursday, November 12, 2015 at 6:00 p.m.

CITY OF BUELLTON

CITY COUNCIL MEETING MINUTES
Regular Meeting of October 8, 2015
City Council Chambers, 140 West Highway 246
Buellton, California

CALL TO ORDER

Mayor Holly Sierra called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Council Members Dan Baumann, John Connolly Leo Elovitz, Vice Mayor Ed Andrisek, and Mayor Holly Sierra

Staff: City Manager Marc Bierdzinski, City Attorney Steve McEwen, Finance Director Carolyn Galloway-Cooper, Station Commander Lt. Shawn O'Grady, Public Works Director Rose Hess, and City Clerk Linda Reid

REORDERING OF AGENDA

None

PUBLIC COMMENTS

Spencer Murray, Buellton, discussed his Eagle Scout project installing a retaining wall for the Recreation Center garden.

Barbara Knecht, Recreation Center Coordinator provided the City with a travel commission check from the Nova Scotia trip in the amount of \$4,175.

Kyle Abello, Recreation Coordinator discussed the Summer Recreation Program and displayed graphs showing the number of participants, revenue received, and types of activities provided.

Kathy Vreeland, Executive Director of the Buellton Chamber of Commerce and Visitors Bureau and announced several upcoming events. She also read a letter into the record regarding the Avenue of Flags Specific Plan.

Darin Biamonte, Buellton, said the new drought resistant landscaping at City Hall looks fantastic and he recognized the hard work of the California Conservation Corps. Mr. Biamonte also thanked staff for their efforts in rectifying the traffic light timing issues on Highway 246. Mr. Biamonte said that PAWS Park is running smoothly and commented that the surface is almost weed and foxtail free.

Judith Dale, Buellton, thanked the City for supporting the Library and thanked staff for the carpeting and the new check-out desk.

CONSENT CALENDAR

- 1. Minutes of September 24, 2015 Regular City Council Meeting**
- 2. List of Claims to be Approved and Ratified for Payment to Date for Fiscal Year 2015-16**

MOTION:

Motion by Council Member Baumann, seconded by Council Member Elovitz, approving Consent Calendar Items 1 and 2 as listed.

VOTE:

Motion passed by a roll call vote of 4-0-1.

Council Member Baumann – Yes

Council Member Connolly – Yes

Council Member Elovitz – Yes

Vice Mayor Andrisek – Abstain

Mayor Sierra – Yes

PRESENTATIONS

None

PUBLIC HEARINGS

None

COUNCIL MEMBER COMMENTS/ITEMS

Vice Mayor Andrisek announced that he and Mayor Sierra and City Manager Bierdzinski attended the League of California Cities (LOCC) Annual Conference in San Jose and that the conference provided worthwhile information

Council Member Elovitz asked for the status regarding the traffic signal timing on Highway 246 and McMurray Road. Public Works Director Hess provided an update regarding the traffic lights.

Council Member Elovitz requested the status of video streaming Council meetings. City Manager Bierdzinski stated that we need a direct internet line into the Council Chambers and that this item will be brought back for discussion at the next Council meeting.

Vice Mayor Andrisek mentioned legislation to replace redevelopment funding for projects.

Mayor Sierra questioned the accounts payable process for paying invoices prior to receiving council approval. Finance Director Galloway-Cooper stated this is a timing issue for staff to be able to pay the invoices prior to the claims being approved.

WRITTEN COMMUNICATIONS

None

COMMITTEE REPORTS

Vice Mayor Andrisek announced that he attended the California Joint Powers Insurance Authority's (CJPIA) annual conference in San Francisco and said it provided great information.

BUSINESS ITEMS

3. Consideration of Appointment to the Planning Commission

RECOMMENDATION:

That the City Council make an appointment to the Planning Commission with the term of office expiring December 2016.

STAFF REPORT:

City Manager Marc Bierdzinski presented the staff report.

DOCUMENTS:

Staff Report with attachments as listed in the staff report.

SPEAKERS/DISCUSSION:

Patty Hammel and Dan Heedy spoke about the reasons why they would like to serve on the Planning Commission. Darin Biamonte withdrew his application prior to the meeting.

The City Council discussed the fact that Dan Heedy has prior Planning Commission experience that would be very beneficial to the Commission.

MOTION:

Motion by Council Member Vice Mayor Andrisek, seconded by Council Member Elovitz appointing Dan Heedy to the Planning Commission with term of office expiring December 2016.

VOTE:

Motion passed by a roll call vote of 5-0.
Council Member Baumann – Yes
Council Member Connolly – Yes
Council Member Elovitz – Yes
Vice Mayor Andrisek – Yes
Mayor Sierra – Yes

- 4. **Resolution No. 15-25 – “A Resolution of the City Council of the City of Buellton, California, Supporting the Redesignation of the Santa Barbara Regional Recycling Market Development Zone as a Recycling Market Redevelopment Zone Due to an Increase in Boundaries”**

RECOMMENDATION:

That the City Council approve Resolution No. 15-25.

STAFF REPORT:

Public Works Director Rose Hess presented the staff report.

DOCUMENTS:

Staff Report with attachments as listed in the staff report.

MOTION:

Motion by Council Member Connolly, seconded by Vice Mayor Andrisek, approving Resolution No. 15-25 – “A Resolution of the City Council of the City of Buellton, California, Supporting the Redesignation of the Santa Barbara Regional Recycling Market Development Zone as a Recycling Market Redevelopment Zone Due to an Increase in Boundaries”

VOTE:

Motion passed by a roll call vote of 5-0.
Council Member Baumann – Yes
Council Member Connolly – Yes
Council Member Elovitz – Yes
Vice Mayor Andrisek – Yes
Mayor Sierra – Yes

- 5. **Discussion Regarding the City’s Vehicle Use Policy**

RECOMMENDATION:

Staff recommends that the current policy remain in place regarding the use of City vehicles.

STAFF REPORT:

City Manager Marc Bierdzinski presented the staff report.

SPEAKERS/DISCUSSION:

The City Council discussed the following issues:

- Use of vehicles by Public Works field staff and using vehicles during emergency situations
- Review of IRS log books on a quarterly basis
- Animals in City vehicles
- Gas and maintenance costs associated with City vehicle use
- Only allowing the on-call Public Works employee to take a vehicle home
- Not compromising the safety of the community by changing the vehicle policy
- Public perception of how vehicles are being used

Judith Dale, Buellton, asked that staff identify where Public Works field staff live so that all areas of the City have emergency coverage.

DIRECTION:

The City Council agreed by consensus to allow management to continue to use City vehicles according to existing authorization. It was further agreed that only on-call Public Works field staff have permission to take vehicles home, no animals are allowed in City vehicles and directed staff to bring back a formal written policy regarding City vehicles and associated costs.

CITY MANAGER'S REPORT

City Manager Bierdzinski provided an informational report to the City Council.

- 6. Closed Session - California Government Code Section 54957 regarding:
PUBLIC EMPLOYEE PERFORMANCE EVALUATION (SIX MONTH REVIEW)**
Title: City Manager

The City Council met in closed session to discuss the City Manager's performance evaluation. No reportable action was taken.

ADJOURNMENT

Mayor Sierra adjourned the regular meeting at 8:50 p.m. The next regular meeting of the City Council will be held on Thursday, October 22, 2015 at 6:00 p.m.

Holly Sierra
Mayor

ATTEST:

Linda Reid
City Clerk

BACK-UP/SUPPORT DATA IS AVAILABLE FOR COUNCIL REVIEW IN CITY HALL

The following is a list of claims to be ratified and approved for payment by the City Council at the **October 22, 2015** Council Meeting.

Listed below is a brief summary of the attached claims:

EXHIBIT A *	A/P Packet 00021	\$	457,589.77 (5 pages)
	Total Packets:	\$	<u>457,789.77</u>

EXHIBIT B		\$	<u>11,687.52</u>
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Special Payroll	9/30/2015	\$	4,717.09
Staff Payroll	9/30/2015	\$	39,038.00
	Total Payroll:		<u>43,755.09</u>

TOTAL AMOUNT OF CLAIMS:		\$	<u><u>513,232.38</u></u>
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* The A/P Packets list checks issued on the check run of 10/8/2015. Packets include detailed information for each check written, summary by fund, summary by account and grand totals.

Payments via Electronic Fund Transfer (EFT):

Bank Fees	9/30/15	117.20
ETS (Credit Card Set-Up - new)	10/20/15	38.10
Bank Fees	10/5/15	20.00
DCP - AUL	10/7/15	9,085.14
Payroll Taxes - Staff	10/7/15	2,427.08
Total		\$ 11,687.52



Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
Fund: 001 - General Fund					
WEX BANK	#42467829	09/30/2015	9/15 - Fuel Charges	001-511-61280	303.54
WEX BANK	#42467829	09/30/2015	9/15 - Fuel Charges	001-558-61280	520.25
SANTA MARIA TIMES dba	#65344	09/28/2015	9/17 - Public hearing- planni	001-565-60520	158.82
KOSMONT & ASSOCIATES, IN	0002	09/14/2015	8/1-8/31 - Econ. Dev. Service	001-565-60800	2,488.44
READY REFRESH BY NESTLE	0510029022365	09/28/2015	8/27-9/26 - CH drinking wate	001-558-60800	19.41
READY REFRESH BY NESTLE	0510029022381	09/28/2015	8/27-9/26 - Lib./CC drinking	001-558-60800	30.01
READY REFRESH BY NESTLE	0510029154614	09/28/2015	8/27-9/26 - Planning drinkin	001-558-60800	6.53
RAVATT, ALBRECHT & ASSOC	0815-533	09/21/2015	Thru 8/31 - Ave. of Flags SP	001-565-60800	750.00
JOHN F. RICKENBACH	104	10/02/2015	5/30/15 - 9/30/15 - Live Oak	001-22416	2,415.00
JOHN F. RICKENBACH	120	10/02/2015	9/1-10/2 - Ave. of Flags SP	001-565-60800	2,700.00
SPRINT SPECTRUM, L.P. dba	131378819-094	09/29/2015	8/26-9/25 - Abello cell phon	001-511-61290	34.94
D.L. ELECTRIC, INC.	15-646	09/18/2015	9/15 - repair lighting - sherrif	001-558-60250	216.00
SB CO SHERIFF'S DEPARTME	16-059	09/21/2015	10/15-16 Contract Services	001-501-60800	141,252.00
SILVIO L. MOTTA	1983	09/09/2015	8/15 - Stremaing Video Onlin	001-401-60210	6,798.35
METRO VENTURES LTD	2015-1005-buel	10/05/2015	9/15 - Professional Services	001-565-60800	3,760.00
US BANK EQUIPMENT FINAN	288397151	09/26/2015	9/20-10/20 - New Planning c	001-565-60310	482.46
MARBORG INDUSTRIES	3586809	09/16/2015	9/8 - RR deliv. - Rec.	001-511-60250	145.00
MARBORG INDUSTRIES	3589138	09/20/2015	9/8-9/16 - Roll Off & recycle	001-558-61127	519.36
ACCOUNTEMPS	43928554	09/15/2015	Thru 9/11 - M. Atterbery	001-420-60800	694.80
ACCOUNTEMPS	43928555	09/15/2015	Thru 9/11 - S. Zamora	001-420-60800	1,028.48
ACCOUNTEMPS	43981258	09/22/2015	Trhu 9/18 - S. Zamora	001-420-60800	1,285.60
ACCOUNTEMPS	44005525	09/24/2015	Thru 9/18 - M. Atterbery	001-420-60800	1,121.81
DEMCO, INC.	5689732	09/16/2015	9/15 - Furniture/Installation	001-558-73500	14,642.20
MNS ENGINEERS, INC.	60014	09/29/2015	8/1-8/29 - #90017 Neighbor	001-22416	250.00
G E CAPITAL	63470521	09/20/2015	11/1-11/30 - Rec. Ctr. Copier	001-511-67140	150.12
COASTAL COPY, LP	63512254	09/27/2015	2015 - CH copier Property Ta	001-410-60310	66.39
G E CAPITAL	63516019	09/27/2015	2015 - Rec. Ctr. copier Prope	001-511-67140	52.97
HENRY L. HUDSON dba	65571	09/24/2015	9/15 - Banners - Ave. of Flag	001-565-60900	356.94
MNS ENGINEERS, INC.	66002	09/29/2015	8/1-8/31 - City Eng/Public W	001-557-60800	3,995.00
MNS ENGINEERS, INC.	66004	09/29/2015	8/1-8/31 - City/Traffic Studie	001-558-60800	3,420.00
MNS ENGINEERS, INC.	66005	09/29/2015	8/1-8/31 - City Storm Wtr M	001-551-60800	15,320.00
MNS ENGINEERS, INC.	66007	09/29/2015	8/1-8/31 - City/Misc Plannin	001-565-60830	2,615.00
MNS ENGINEERS, INC.	66008	09/29/2015	8/1-8/31 - Small Permits	001-557-67265	1,125.00
MNS ENGINEERS, INC.	66010	09/29/2015	8/1-8/31 - #90010 Crossroad	001-22416	15,320.00
MNS ENGINEERS, INC.	66012	09/29/2015	8/1-8/31 - #90013 2nd St Ch	001-22416	4,810.00
MNS ENGINEERS, INC.	66015	09/29/2015	8/1-8/31 - #90019 Hampton	001-22416	1,435.00
MNS ENGINEERS, INC.	66016	09/29/2015	8/1-8/31 - #90025 Ind Way R	001-22416	800.00
MNS ENGINEERS, INC.	66018	09/29/2015	8/1-8/31 - #90021 Village To	001-22416	19,443.75
MNS ENGINEERS, INC.	66020	09/29/2015	8/1-8/31 - #90024 Tilton Eng	001-22416	1,460.00
MNS ENGINEERS, INC.	66022	09/29/2015	8/1-8/31 #90025 Poor Dev-D	001-22416	767.50
STAPLES CONTRACT & COM	7001968113	09/16/2015	9/16 - supplies #7001968113	001-558-61130	57.13
STAPLES CONTRACT & COM	7001968116	09/18/2015	9/16 - supplies #7001968116	001-420-61130	53.99
STAPLES CONTRACT & COM	7001968120	09/16/2015	9/16 - supplies #7001968120	001-410-61130	54.57
STAPLES CONTRACT & COM	7001976159	09/22/2015	9/22 - supplies #7001976159	001-511-61130	11.26
STAPLES CONTRACT & COM	7001978317	09/23/2015	9/23- Supplies #7001978317	001-410-61130	104.61
STAPLES CONTRACT & COM	7001978317	09/23/2015	9/23- Supplies #7001978317	001-511-61130	37.79
ESRI	93033653	09/22/2015	12/15-12/16 - Annual Maint.	001-565-60210	1,388.00
MILLER'S HARDWOOD CARP	984	09/30/2015	9/30 - repair of carpet & des	001-558-60250	457.38
BURKE, WILLIAMS & SORENS	Inv.#193027 & #193029	09/30/2015	9/15 - Retainer	001-404-60840	8,646.30
BARBARA KNECHT	INV0000391	09/24/2015	9/24 - Zone supplies refund	001-511-67140	18.53
BURKE, WILLIAMS & SORENS	INV0000404	09/29/2015	9/15 - Live Oaks Proj. #9001	001-22416	666.00
BURKE, WILLIAMS & SORENS	INV0000405	09/29/2015	9/15 - Buellton Apartments	001-22416	179.90
BURKE, WILLIAMS & SORENS	INV0000406	09/29/2015	9/15 - Eminent Domain	001-404-60840	154.20

Expense Approval Register

Packet: APPKT00021 - 10/8/15 - payables

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
BURKE, WILLIAMS & SORENS	INV0000407	09/29/2015	9/15 - Dept. of Finance Laws	001-404-60840	51.40
BURKE, WILLIAMS & SORENS	INV0000409	09/29/2015	9/15 - Kukendall Project #90	001-22416	745.30
MARC P. BIERDZINSKI	INV0000410	10/05/2015	9/30-10/2 - League of CA Citi	001-402-60710	258.75
SB CO CLERK/RECORDER/AS	INV0000413	10/05/2015	10/15 - Renewal of Notary B	001-565-60650	37.00
SB CO CLERK/RECORDER/AS	INV0000414	10/05/2015	10/15 - Recording of Notary	001-565-60650	15.00
MUNICIPAL CODE CORPORA	INV0000417	10/05/2015	10/15 - 10/15 - Municipal Co	001-403-60012	75.60
ECHO COMMUNICATIONS	INV0000422	10/01/2015	10/1 - Msg. svc. & 9/23 - me	001-558-60800	28.73
COMCAST CABLE	INV0000423	09/20/2015	9/25-10/24 - Phone/Int. Rec.	001-511-61290	168.69
CITY OF BUELLTON	INV0000433	09/25/2015	8/25-9/25 - Irrig. Oak Valley	001-552-61211	1,346.41
THE GAS COMPANY	INV0000447	09/28/2015	8/27-9/28 - Lib./CC gas charg	001-510-61230	17.29
THE GAS COMPANY	INV0000449	09/22/2015	9/8-9/28 - CH gas charges	001-510-61230	17.63
LEE CENTRAL COAST NEWSP	INV0000451	09/27/2015	8/31-9/27 - Rec. Ctr. ads	001-511-60510	340.34
VERIZON CALIFORNIA	INV0000474	09/19/2015	8/31-9/19 - Summary Billing	001-410-67705	336.35
VERIZON CALIFORNIA	INV0000474	09/19/2015	8/31-9/19 - Summary Billing	001-565-67705	427.67
TODD PIPE & SUPPLY	INV0000493	09/30/2015	9/1-9/28 - Misc Maint/Repai	001-552-60256	67.60
TODD PIPE & SUPPLY	INV0000493	09/30/2015	9/1-9/28 - Misc Maint/Repai	001-552-60258	331.82
TODD PIPE & SUPPLY	INV0000493	09/30/2015	9/1-9/28 - Misc Maint/Repai	001-552-61125	24.27
TODD PIPE & SUPPLY	INV0000493	09/30/2015	9/1-9/28 - Misc Maint/Repai	001-552-61140	24.53
TODD PIPE & SUPPLY	INV0000493	09/30/2015	9/1-9/28 - Misc Maint/Repai	001-558-60250	135.69
TODD PIPE & SUPPLY	INV0000493	09/30/2015	9/1-9/28 - Misc Maint/Repai	001-558-60270	47.72
FARM SUPPLY COMPANY	INV0000495	09/30/2015	9/15 - Misc Supplies	001-552-61125	165.22
FARM SUPPLY COMPANY	INV0000495	09/30/2015	9/15 - Misc Supplies	001-558-60131	151.09
FARM SUPPLY COMPANY	INV0000495	09/30/2015	9/15 - Misc Supplies	001-558-61140	22.65
ALBERTSONS, LLC.	INV0000497	09/24/2015	9/8-9/24 - Misc Maint Items	001-410-60900	154.81
ALBERTSONS, LLC.	INV0000497	09/24/2015	9/8-9/24 - Misc Maint Items	001-511-67140	20.77
CVS PHARMACY	INV0000498	09/28/2015	9/15 - Misc Maint Items	001-410-60900	33.46
CVS PHARMACY	INV0000498	09/28/2015	9/15 - Misc Maint Items	001-552-61140	21.11
CAL-COAST IRRIGATION, INC.	INV0000500	10/01/2015	9/15 Misc Maint/Repair Item	001-558-60250	8.67
SANTA YNEZ VALLEY HARDW	INV0000501	09/30/2015	9/15 - Misc Maint/Repair lte	001-552-60258	55.03
SANTA YNEZ VALLEY HARDW	INV0000501	09/30/2015	9/15 - Misc Maint/Repair lte	001-552-61140	43.11
SANTA YNEZ VALLEY HARDW	INV0000501	09/30/2015	9/15 - Misc Maint/Repair lte	001-558-61140	57.50
SANTA YNEZ VALLEY NEWS	INV0000502	09/15/2015	11/15-11/15 - CH subscriptio	001-410-60650	21.00
COC/BBA/VISITORS INFORM	INV0000505	10/05/2015	8/15 - Transient Occupancy	001-410-67790	43,263.34
VISITSYV	INV0000506	10/05/2015	Aug. 2015 - SYVTBID fees coll	001-22160	32,151.35
CaIPERS LONG-TERM CARE P	INV0000339	09/30/2015	Long Term Care	001-22166	84.25
				Fund 001 - General Fund Total:	345,341.48

Fund: 005 - Sewer Fund

WEX BANK	#42467829	09/30/2015	9/15 - Fuel Charges	005-701-61280	520.25
READY REFRESH BY NESTLE	0510029022365	09/28/2015	8/27-9/26 - CH drinking wate	005-701-60800	19.41
STEVE'S WHEEL & TIRE	1-55687	09/30/2015	9/28 - Flat tire repair- Joe M.	005-701-60270	22.16
PRAXAIR DISTRIBUTION, INC.	53755452	09/20/2015	9/20 - Acetylene & Tanks	005-701-61111	141.93
AUTOSYS, INC.	824	09/29/2015	9/3 - 9/11 - SCADA/WWTP	005-701-60800	971.25
POSTMASTER	INV0000421	09/30/2015	10/15 - postage for water/se	005-701-61131	292.50
ECHO COMMUNICATIONS	INV0000422	10/01/2015	10/1 - Msg. svc. & 9/23 - me	005-701-60800	28.74
VERIZON CALIFORNIA	INV0000474	09/19/2015	8/31-9/19 - Summary Billing	005-701-67705	603.51
TODD PIPE & SUPPLY	INV0000493	09/30/2015	9/1-9/28 - Misc Maint/Repai	005-701-60250	36.68
TODD PIPE & SUPPLY	INV0000493	09/30/2015	9/1-9/28 - Misc Maint/Repai	005-701-61140	10.06
ALBERTSONS, LLC.	INV0000497	09/24/2015	9/8-9/24 - Misc Maint Items	005-701-61111	27.04
CAL-COAST IRRIGATION, INC.	INV0000500	10/01/2015	9/15 Misc Maint/Repair Item	005-701-60250	6.24
CAL-COAST IRRIGATION, INC.	INV0000500	10/01/2015	9/15 Misc Maint/Repair Item	005-701-61127	47.76
SANTA YNEZ VALLEY HARDW	INV0000501	09/30/2015	9/15 - Misc Maint/Repair lte	005-701-60270	19.42
SANTA YNEZ VALLEY HARDW	INV0000501	09/30/2015	9/15 - Misc Maint/Repair lte	005-701-61127	25.35
SANTA YNEZ VALLEY HARDW	INV0000501	09/30/2015	9/15 - Misc Maint/Repair lte	005-701-61140	39.92
				Fund 005 - Sewer Fund Total:	2,812.22

Fund: 020 - Water Fund

WEX BANK	#42467829	09/30/2015	9/15 - Fuel Charges	020-601-61280	520.25
READY REFRESH BY NESTLE	0510029022365	09/28/2015	8/27-9/26 - CH drinking wate	020-601-60800	19.41
CALIF. RURAL WATER ASSOC	11620	09/28/2015	9/28 - Nov. 5 class for Joe M.	020-601-60710	250.00
STEPHEN L. HARPER dba	351678	10/08/2015	9/4 - Backflow rep./rebuilt	020-601-60800	410.00
FISHER PUMP & WELL SERVI	4092	09/24/2015	9/18 & 9/19 - Inj. Pump @ M	020-601-60250	334.00

Expense Approval Register

Packet: APPKT00021 - 10/8/15 - payables

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
MNS ENGINEERS, INC.	66006	09/29/2015	8/1-8/31 - City/Update Wate	020-601-60830	120.00
MNS ENGINEERS, INC.	66013	09/29/2015	8/1-8/31 - Water Model	020-601-60830	7,852.50
MNS ENGINEERS, INC.	66017	09/29/2015	8/1-8/31 - Backflow Preventi	020-601-60830	16,852.50
JCI JONES CHEMICALS, INC.	667545	09/11/2015	9/11-Chlorine/Sulfur dioxide	020-601-61111	4,312.37
JCI JONES CHEMICALS, INC.	667841	09/16/2015	9/16 - Cylinder return - credi	020-601-61111	-1,050.00
AMERICAN WATER WORKS A	7001070424	08/31/2015	12/1/15-11/30/16 - Member	020-601-60650	413.00
AUTOSYS, INC.	824	09/29/2015	9/3 - 9/11 - SCADA/WWTP	020-601-60800	971.25
POSTMASTER	INV0000421	09/30/2015	10/15 - postage for water/se	020-601-61131	292.50
ECHO COMMUNICATIONS	INV0000422	10/01/2015	10/1 - Msg. svc. & 9/23 - me	020-601-60800	28.73
VERIZON CALIFORNIA	INV0000474	09/19/2015	8/31-9/19 - Summary Billing	020-601-67705	504.50
TODD PIPE & SUPPLY	INV0000493	09/30/2015	9/1-9/28 - Misc Maint/Repai	020-601-60250	18.80
TODD PIPE & SUPPLY	INV0000493	09/30/2015	9/1-9/28 - Misc Maint/Repai	020-601-61140	64.90
FARM SUPPLY COMPANY	INV0000495	09/30/2015	9/15 - Misc Supplies	020-601-61127	67.55
CAL-COAST IRRIGATION, INC.	INV0000500	10/01/2015	9/15 Misc Maint/Repair Item	020-601-61127	21.45
SANTA YNEZ VALLEY HARDW	INV0000501	09/30/2015	9/15 - Misc Maint/Repair lte	020-601-60250	19.38
SANTA YNEZ VALLEY HARDW	INV0000501	09/30/2015	9/15 - Misc Maint/Repair lte	020-601-61140	20.48
Fund 020 - Water Fund Total:					32,043.57
Fund: 027 - Local Transportation Fund					
CITY OF LOMPOC	92609	09/15/2015	10/15 - Transit services	027-559-67115	1,666.66
Fund 027 - Local Transportation Fund Total:					1,666.66
Fund: 029 - Transportation Planning					
MNS ENGINEERS, INC.	66003	09/29/2015	8/1-8/31 - City/Transportati	029-557-60800	4,095.00
Fund 029 - Transportation Planning Total:					4,095.00
Fund: 092 - Capital Improvement Proj Fund					
TYLER TECHNOLOGIES, INC.	025-134355	09/09/2015	Aug./Sept. - Go Live - M. Zar	092-203-74100	5,354.02
TYLER TECHNOLOGIES, INC.	025-135319	09/16/2015	9/15 - Fin., A/P, Gen. Ledger	092-203-74100	10,000.00
TYLER TECHNOLOGIES, INC.	025-135320	09/16/2015	9/7 & 9/10 - Fin. Mgmt. - M.	092-203-74100	1,524.12
GLR CONSTRUCTION, INC.	529	09/16/2015	9/30 - Reimb. for stg. contain	092-602-74100	385.20
MNS ENGINEERS, INC.	66009	09/29/2015	8/1-8/31 - Park & Ride Expan	092-308-74100	480.00
MNS ENGINEERS, INC.	66011	09/29/2015	8/1-8/31 - Reservoir 1&2 Ro	092-602-74100	7,125.00
MNS ENGINEERS, INC.	66019	09/29/2015	8/1-8/31 - 2014/15 Road Ma	092-310-74100	28,565.00
MNS ENGINEERS, INC.	66021	09/29/2015	8/1-8/31 - Backwash Reclam	092-603-74100	13,362.50
MNS ENGINEERS, INC.	66023	09/29/2015	8/1-8/31 - Hwy 246 Pedestri	092-311-74100	400.00
MNS ENGINEERS, INC.	66024	09/29/2015	8/1-8/31 - Recycled Water P	092-611-74100	4,435.00
Fund 092 - Capital Improvement Proj Fund Total:					71,630.84
Grand Total:					457,589.77

Report Summary

Fund Summary

Fund	Expense Amount
001 - General Fund	345,341.48
005 - Sewer Fund	2,812.22
020 - Water Fund	32,043.57
027 - Local Transportation Fund	1,666.66
029 - Transportation Planning	4,095.00
092 - Capital Improvement Proj Fund	71,630.84
Grand Total:	457,589.77

Account Summary

Account Number	Account Name	Expense Amount
001-22160	SYVTBID Payable	32,151.35
001-22166	Long-Term Care Deducti	84.25
001-22416	Developer Deposit	48,292.45
001-401-60210	Computer Maintenance	6,798.35
001-402-60710	Travel & Training	258.75
001-403-60012	Code Updates	75.60
001-404-60840	Contract Services-Legal	8,851.90
001-410-60310	Equipment Rental	66.39
001-410-60650	Membership & Publicati	21.00
001-410-60900	Miscellaneous	188.27
001-410-61130	Office Supplies	159.18
001-410-67705	Telephone	336.35
001-410-67790	Visitors Bureau	43,263.34
001-420-60800	Contract Services	4,130.69
001-420-61130	Office Supplies	53.99
001-501-60800	Contract Services	141,252.00
001-510-61230	Utilities - Gas	34.92
001-511-60250	Maintenance/Repair	145.00
001-511-60510	Advertising	340.34
001-511-61130	Office Supplies	49.05
001-511-61280	Fuel-Vehicles	303.54
001-511-61290	Telephone/Internet	203.63
001-511-67140	Buellton Recreation Pro	242.39
001-551-60800	Contract Services	15,320.00
001-552-60256	Maintenance/Repair-Oa	67.60
001-552-60258	Maintenance/Repair-Riv	386.85
001-552-61125	Small Equipment	189.49
001-552-61140	Operational Supplies	88.75
001-552-61211	Utilities - Water	1,346.41
001-557-60800	Contract Services	3,995.00
001-557-67265	Development Permit Pro	1,125.00
001-558-60131	Laundry / Uniforms	151.09
001-558-60250	Maintenance / Repair	817.74
001-558-60270	Maintenance - Vehicles	47.72
001-558-60800	Contract Services	3,504.68
001-558-61127	Tools	519.36
001-558-61130	Office Supplies	57.13
001-558-61140	Operational Supplies	80.15
001-558-61280	Fuel - Vehicles	520.25
001-558-73500	Equipment	14,642.20
001-565-60210	Computer Maintenance	1,388.00
001-565-60310	Equipment Rental	482.46
001-565-60520	Advertising - Legal	158.82
001-565-60650	Membership & Publicati	52.00
001-565-60800	Contract Services	9,698.44
001-565-60830	Contract Services-Engine	2,615.00
001-565-60900	Miscellaneous	356.94

Account Summary

Account Number	Account Name	Expense Amount
001-565-67705	Telephone	427.67
005-701-60250	Maintenance / Repair	42.92
005-701-60270	Maintenance - Vehicles	41.58
005-701-60800	Contract Services	1,019.40
005-701-61111	Chemicals / Analysis	168.97
005-701-61127	Tools	73.11
005-701-61131	Postage	292.50
005-701-61140	Operational Supplies	49.98
005-701-61280	Fuel - Vehicles	520.25
005-701-67705	Telephone	603.51
020-601-60250	Maintenance / Repair	372.18
020-601-60650	Membership & Publicati	413.00
020-601-60710	Travel & Training	250.00
020-601-60800	Contract Services	1,429.39
020-601-60830	Contract Services-Engine	24,825.00
020-601-61111	Chemicals / Analysis	3,262.37
020-601-61127	Tools	89.00
020-601-61131	Postage	292.50
020-601-61140	Operational Supplies	85.38
020-601-61280	Fuel - Vehicles	520.25
020-601-67705	Telephone	504.50
027-559-67115	Breeze Extension Pilot	1,666.66
029-557-60800	Contract Services	4,095.00
092-203-74100	Improvements	16,878.14
092-308-74100	Improvements	480.00
092-310-74100	Improvements	28,565.00
092-311-74100	Improvements	400.00
092-602-74100	Improvements	7,510.20
092-603-74100	Improvements	13,362.50
092-611-74100	Recycled Water Progra	4,435.00
	Grand Total:	457,589.77

Project Account Summary

Project Account Key	Expense Amount
None	457,589.77
Grand Total:	457,589.77

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 3

To: The Honorable Mayor and City Council

From: Carolyn Galloway-Cooper, Finance Director

Meeting Date: October 22, 2015

Subject: Revenue and Expenditure Reports through September 30, 2015

BACKGROUND

The attached reports compare month-to-month data covering the period July1, 2015 through September 30, 2015. The reports are prepared monthly and submitted to Council on the second meeting of each month. Monthly reports are posted to the City's website. Upon monthly review, adjustments may be necessary and staff will update on the website.

FISCAL IMPACT

The Revenue and Expenditure reports provide the community with an understanding of the financial activity of the City's funds on a monthly basis.

RECOMMENDATION

That the City Council receives and files these report for information purposes.

ATTACHMENT

Attachment 1 - Revenue and Expenditure Reports through September 30, 2015

2015

25%

2016

Account Number	Description	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	FY: 2015-16
001-301-4001-000	Property Tax - Secured													-
001-302-4002-000	Property Tax - Unsecured													-
001-309-4007-000	Homeowners Exemptions													-
001-310-4101-000	Franchise Fees	5,668	11,322											16,990
001-311-4102-000	Sales Tax	149,216												149,216
001-311-4115-000	Sales Tax Compensation													-
001-312-4103-000	Transient Occupancy Tax (TOT)	234,804	207,697											442,501
001-320-5801-000	Buellton Recreation Program	29,010	9,321	10,945										49,276
001-320-5801-001	Recreation Program (50/50)													-
001-320-5802-000	Buellton Rec Pgm Trips	3,550	924	6,057										10,531
001-321-4106-000	Property Transfer Tax		3,020	358										3,378
001-322-4107-000	Motor Vehicle in Lieu Tax													-
001-322-4116-000	MV License Fee													-
001-325-5814-000	Park Reservation Fees	640	480	180										1,300
001-331-4203-000	Miscellaneous Permits													-
001-333-4506-000	CA Indian Gaming Grant													-
001-333-4508-000	COPS Grant													-
001-340-4401-000	Criminal Fines and Penalties	262	114											376
001-342-4402-000	Fines and Fees	2,655												2,655
001-345-4904-000	Interest	501												501
001-346-4905-000	Rent	5,739	5,739	5,944										17,422
001-347-4801-000	Law Enforcement Cost Recovery													-
001-348-4403-000	Event Applic Fee/Temp Use													-
001-357-4802-000	Zoning Clearance	270	45	45										360
001-357-4803-000	Document Sales													-
001-357-4806-000	Time Extension Fees													-
001-357-4801-110	Crossroads at the Village													-
001-357-4808-000	Code Enforcement Fines													-
001-376-4908-000	CA Prop 1B Revenue													-
001-378-4205-000	Small Permits	1,000	1,385	2,405										4,790
001-390-4917-000	Miscellaneous	211	1,070	1,053										2,334
001-390-4918-000	Cost Reimbursement			-										-
001-390-4924-000	Mandated Cost			12,697										12,697
001-395-4931-000	Transfer In - Successor Agency													-
001-398-4923-000	Surplus Property Sales													-
TOTAL REVENUE (ACTUAL THROUGH SEPTEMBER):		433,526	241,117	39,684	-	-	-	-	-	-	-	-	-	714,327

Percentage Received:	11%
Original Budget	6,665,000
Amendments:	-
Budget:	6,665,000

City of Buellton
 General Fund Monthly Expenditures (Unaudited)
 FY: 2015-16

cgc: 10 12 15

25%

2015

2016

Department No.	Description	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	FY: 2014-15
001-401	City Council	8,776	8,774	14,908										32,458
001-402	City Manager	17,198	16,886	17,315										51,399
001-403	City Clerk	7,722	8,994	7,457										24,173
001-404	City Attorney	-	24,169	8,851										33,020
001-410	Non-Departmental	139,297	91,717	4,813										235,827
001-420	Finance	16,852	30,261	22,396										69,509
001-501	Police and Fire	147,061	142,593	143,835										433,489
001-510	Library	315	499	508										1,322
001-511	Recreation	55,369	51,406	35,484										142,259
001-550	Street Lights	4,492	4,514	4,603										13,609
001-551	Storm Water	463	-	15,415										15,878
001-552	Public Works - Parks	14,513	18,291	8,930										41,734
001-556	Public Works - Landscape	3,476	4,452	850										8,778
001-557	Public Works - Engineering	5,000	-	5,120										10,120
001-558	Public Works - General	32,130	45,302	62,894										140,326
001-565	Planning/Community Dev	28,897	26,505	22,144										77,546
	Transfer to CIP fund 92 (updated in June)													-
	TOTAL EXPENDITURES (ACTUAL THROUGH SEPTEMBER):	481,561	474,363	375,523	-	-	-	-	-	-	-	-	-	1,331,447

Percentage spent:	20%
Budget	6,653,082
Amendments	-
Amended Budget	<u>6,653,082</u>

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 4

To: The Honorable Mayor and City Council

From: Carolyn Galloway-Cooper, Finance Director

Meeting Date: October 22, 2015

Subject: Financial Report for First Quarter Ending September 30, 2015

BACKGROUND

Four times each year, City staff completes a comprehensive analysis of City finances, including projected fund balances, revenues to date, departmental budgets, expenditures, encumbrances and potential budget adjustments. This financial report summarizes the First Quarter of the 2015-16 Fiscal Year's financial analysis for the General Fund and Enterprise Funds.

The attached report provides an overview of the current economic outlook on the Local, State and National levels; General Fund revenues, expenditures, projected fund balances; and activity in the two Enterprise Funds. Though this information is not audited and does not contain all the usual periodic adjustments, accruals or disclosures, the information does provide a picture of the City's activity and developing financial trends.

FISCAL IMPACT

The Interim financial statement provides the community with an understanding of the financial activity of the City's primary funds.

RECOMMENDATION

That the City Council receives, reviews, and files this First Quarter Financial Report.

ATTACHMENT

Attachment 1: Quarterly Financial Report for the period ending September 30, 2015

CITY OF BUELLTON



QUARTERLY FINANCIAL REPORT

First Quarter Ending September 30, 2015

October 22, 2015

Overview

The purpose of this financial report is to provide financial information for the City of Buellton. This report covers the first quarter of fiscal year 2015-16 or the period July 1, 2015 through September 30, 2015. The report will be presented quarterly and concentrates on the General Fund and Enterprise Funds. The quarterly financial report presents the City's financial position, considers economic factors and highlights trends based on the City's budget versus what actually occurred during the period. A discussion of other economic factors provides a means of comparing the local economy against larger economic events that may affect the City of Buellton. This quarterly financial report is a valuable tool to the Council, staff and general public.

US Economy

Personal income increased .3 percent and disposable personal income increased .4 percent compared to the previous quarter. Wages and salaries increased \$35.6 billion in August compared to \$43.8 billion in July, according to the Bureau of Economic Analysis. Some economists think the U.S economy is on a self-sustaining growth path that should allow the Federal Reserve to start raising interest rates in the latter half of 2015. The Unemployment rate is down from last quarter at 5.1 percent. The number of unemployed persons changed little (7.9 million). Among the major worker groups, the unemployment rates for adult men (4.7 percent), adult women (4.6 percent), teenagers (16.3 percent). The civilian labor force participation rate declined to 62.4 percent in September; the rate had been 62.6 percent for the prior three months.

State Economy

In September, the Department of Finance and the Board of Equalization estimated Sales Tax Compensation Fund amounts to be paid from the Educational Revenue Augmentation Fund and provided this estimate to the County Auditor-Controller. The amounts include, (1) Fiscal Year 2014-15 Triple Flip True Up and, (2) Advance amount for the Second Quarter of 2015. The total triple flip reimbursement in 2015-16 will equal 3 quarters of takeaway activity and was part of the 2015-16 budget estimates provided by HdL. Sales Tax estimates budgeted in 2015-16 included the estimated annual Triple Flip amounts along with anticipated sales tax revenue. The amount budgeted for sales tax is an accurate estimate in light of the State's actions.

City of Buellton

The City's General fund ended the first quarter of the 2015-16 fiscal year with over \$12 Million in fund balance. Minimal change from the prior quarter was experienced. Over half of that amount is restricted until a legal decision is rendered concerning the City's current lawsuit against the State of California. Approximately \$3 Million in cash reserves is available to the City. The General Fund finished the quarter below budgeted revenues at 11 percent but will meet target by year-end. Expenditures are below budget at 20 percent. The City's Enterprise funds ended the first quarter with positive fund balances in both Water and Sewer Funds. Details are provided in a later discussion.

GENERAL FUND

General Fund Balance

The chart below shows that with 25% of the year complete revenues are below projections at 11% while expenditures are below expected at 20% of appropriations. “Revenue versus budget” gaps are explained in the next paragraph.

General Fund - Fund Balance	Budget	Actual	Percent
Balance, at Start of Year	\$ 12,810,992	\$ 12,810,992	
Revenues *	6,665,000	714,327	11%
Expenditures *	6,653,082	1,331,447	20%
Balance, at End of Year	<u>\$ 12,822,910</u>	<u>\$ 12,193,872</u>	
* Includes Transfers			

The chart below provides summary comparison information on revenues and expenditures for the first quarter ending September 30, 2015 versus the first quarter ending September 30, 2014. Total revenues are higher in the prior year. The major cause of this variance is delayed receipts in the current year for Property tax, Sales tax, Transient Occupancy Tax and Franchise Fees. Revenue flows are expected to be on target with budget as the fiscal year elapses. Expenditures are lower compared to the prior year first quarter of 2015-16. This was due to capital outlay for fleet vehicle replacement purchases in the first quarter of the prior year. Current actual expenditures are below budget at 20 percent of appropriations. Capital projects in progress include Fundware software replacement, Storm Drain Cleaning/Retrofit, Facilities Maintenance, Riverview Park Improvements, Village Park Improvements, Road Maintenance and Industrial Way Streetlights.

General Fund	2015-16	2014-15	Over (Under)
Revenues:			
Taxes	612,085	987,852	(375,767)
Fees and Permits	5,150	5,756	(606)
Fines and Penalties	3,031	6,120	(3,089)
Charges For Current Services	59,807	58,140	1,667
Other Revenues	34,254	44,337	(10,083)
Total Revenues	<u>714,327</u>	<u>1,102,205</u>	<u>(387,878)</u>
Expenditures:			
General Government	1,331,447	1,390,260	(58,813)
Capital	-	77,425	(77,425)
Total Expenditures	<u>1,331,447</u>	<u>1,467,685</u>	<u>(136,238)</u>

Top Five Revenues

Top Five Revenues	Budget	YTD Actual	Percent
Sales Tax	2,050,000	149,216	7%
TOT	1,600,000	442,501	28%
Property Tax	1,188,000	3,378	0%
MVLF	363,000	-	0%
Franchise Fees	210,000	16,990	8%
Other Revenues	759,441	102,242	13%
Total Revenues	6,170,441	714,327	12%

Sales Tax

The City received 7 percent of the total Sales Tax revenue as of September 30, 2015 (one month). Payments are recorded when received and applied to the corresponding months of sales, usually two months prior to receipt. Sales Tax payments fluctuate each month and are expected to be on target with budget for the 2015-16 fiscal year. Sales tax is the top revenue source in the General Fund. The City has experienced strong revenue reports from local sales tax and increasing trends are expected. The State’s reimbursement for the “Triple-Flip” wind down process will be completed in the latter half of 2015-16. Triple flip is ending and according to law, the full 1 percent rate will then return on January 1, 2016 and the 0.25 percent state Fiscal Recovery Fund rate ends.

Transient Occupancy Tax (TOT)

This revenue source is a major component of the City’s General Fund revenue. The City expects TOT revenue streams to meet budgeted levels with total receipts at 28 percent at the end of the first quarter. TOT receipts have been received through August. Payments for the reporting period are due on the 20th of the following month, which causes revenue streams to lag one month.

Property Tax

The City’s property tax revenues are received later in the fiscal year at intervals set by the Santa Barbara County Auditor-Controller. Property tax is expected to be on target with budget.

Motor Vehicle License Fees

Payments for 2015-16 are expected to be on course with budget. Payments from the State of California are received intermittently throughout the fiscal year.

Franchise Fees

The majority of the City’s Franchise Fees are collected from MarBorg Industries, the City’s solid waste service provider. Other franchise fees are received from various utilities. This revenue source is on target with budget with timing delays in the first quarter.

Expenditures

The chart below summarizes operating costs by department and shows that one budget unit is over budget. Overall the General fund is within budget at the end of the first quarter.

Department Expenditures	Budget	YTD Actual	% Expended
City Council	142,622	32,458	23%
City Manager	213,832	51,399	24%
City Clerk	111,385	24,173	22%
City Attorney	150,000	33,020	22%
Non-Departmental	1,365,676	235,827	17%
Finance	312,580	69,509	22%
Police and Fire	1,977,896	433,489	22%
Library	99,741	1,322	1%
Recreation	474,058	142,259	30%
Street Lights	55,000	13,609	25%
Storm Water	184,600	15,878	9%
Public Works - Parks	320,800	41,734	13%
Public Works - Landscape	100,500	8,778	9%
Public Works - Engineering	110,000	10,120	9%
Public Works - General	584,205	140,326	24%
Planning (Comm Dev)	450,187	77,546	17%
Transfer to CIP Fund 92	-	-	
Total All Departments	6,653,082	1,331,447	20%

As of September 30, 2015 or 25 percent of the year expended, the General Fund budget ended at 20 percent spent. Actual General Fund expenditures were approximately \$1.3 Million. Although Recreation ended the quarter at 5 percent over budget, the General Fund absorbed the overage with numerous departments falling within appropriations and ending the quarter under-budget. The Recreation Department experienced an increase in operating activities during the quarter. Offsetting this seasonal trend, an increase in recreation program revenue was noted for the same period. CIP expenditures will be discussed later in the fiscal year. Because of the positive condition of the other General Fund budget units, there are no budget amendments required this quarter for the General Fund.

Major Expenditure Variances

Expenditures By Type	Budget	YTD Actual	% Expended
Staffing	1,633,560	327,117	20%
Contract Services	3,075,737	537,531	17%
Telecomm and Utilities	263,092	38,050	14%
Supplies and Materials	254,050	46,582	18%
Other Operating Costs	1,377,893	381,878	28%
Minor Capital	48,750	288	1%
Total by Type	6,653,082	1,331,447	20%

The chart above shows General Fund operating expenditures by Expenditure Type. With 25 percent of the year expended as of the first quarter of fiscal year 2015-16, all budget categories are within budget with the exception of “Other Operating Costs”. This category includes expenditures for community organization support which is paid at the beginning of each fiscal year. The total grants approved amounted to \$78,900 and included payments to SYV Senior Citizens’ Foundation, People Helping People, Foodbank of Santa Barbara County, SYV Fruit and Vegetable Rescue and the Aquatics Foundation. The overall General Fund operating expenditures are within budget.

ENTERPRISE FUNDS

The Statement of Revenues and Expenses for the first quarter of Fiscal Year 2015-16 are shown below.

Revenues and Expenses

Enterprise Funds	Water	Wastewater
Revenues		
Charges for Service	397,398	186,755
Interest Income		
Other Revenues*	85,210	19,542
Total Revenues	482,608	206,297
Expenses		
Operating	227,220	151,619
Transfers Out/CIP	102,152	
State Water		-
Total Expenses	329,372	151,619
Profit (Loss)	153,236	54,678

*Connection Fees

Water Fund

Operating revenues have exceeded operating expenditures by over \$250,000 in the first quarter of Fiscal Year 2015-16 (excludes Capital Improvement Projects). The Water fund utilizes reserves to fund Capital Improvement projects (CIPs) which amount to about \$100,000 expended as of September 30, 2015. The total CIP budget for fiscal year 2015-16 includes Reservoirs 1 & 2 Improvements, Water Treatment Plant Facilities Improvements and Water Treatment Plant Backwash Reclamation Improvement Project, Water Meter Improvements, Recycled Water Concept (costs shared jointly with Wastewater) and Fundware Financial and Utility Billing Replacement Project. The Water Fund will split the cost of the Fundware Software Replacement Project equally between Water, Wastewater and General Fund (1/3 each). Budgeted appropriations for CIPs amount to approximately \$1.1 Million. A water rate study is planned to provide direction regarding the need for future rate increases. The Water Fund ended the first quarter with approximately \$2.1 Million in reserves.

Wastewater Fund

Operating revenues exceeded operating expenditures by about \$55,000 in the first quarter of Fiscal Year 2015-16 (excludes Capital Improvement Projects). The Sewer fund utilizes reserves to fund Capital Improvement projects (CIPs) which amount to zero expended as of September 30, 2015. The total CIP budget for fiscal year 2015-16 includes Wastewater Treatment Plant Facilities Improvements, Sewer Collection System Clean (CCTV), Recycled Water Concept (costs shared jointly with Water) and Fundware Financial and Utility Billing Software Replacement. The Wastewater Fund will split the cost of the Fundware Software Replacement Project equally between Water, Wastewater and General Fund (1/3 each). Total budgeted appropriations for CIPs amount to about \$280,000. A sewer rate study is planned to provide direction regarding the need for future rate increases. The Sewer Fund ended the first quarter with slightly over \$1.4 Million in reserves.

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 5

To: The Honorable Mayor and City Council

From: Rose Hess, Public Works Director

Meeting Date: October 22, 2015

Subject: Acceptance and Filing of Stormwater Management Program Annual Report

BACKGROUND

As part of the City's Stormwater Management Program and required by the Regional Water Quality Control Board (RWQCB), the City completes Annual Reports to demonstrate activities throughout the year that achieves permit compliance. During this second permit year, the Annual Report consists of on-line reporting for compliance.

Attachment 1 is a copy of the on-line forms submitted and subsequently approved and accepted by the RWQCB.

There were no violations or substantial issues noted. The City continues to partner with other local agencies to make a concerted effort towards the overall water quality goals for our region.

A copy of the Annual Report is provided on the City's webpage.

FISCAL IMPACT

Acceptance and filing of the Annual Report will have no fiscal impact on the City.

RECOMMENDATION

Staff recommends that Council accept and file the Annual Report.

ATTACHMENT

Attachment 1 - 2014-2015 SWMP Annual Report

2014-2015

Phase II Small MS4 Annual - Report

REPORTING PERIOD:07/01/2014 - 06/30/2015

WDID No: 3 42M2000150

Permittee Information

City of Buellton

Marc Bierdzinski

marcb@cityofbuellton.com

PO Box 1819

Buellton CA 93427

Phase II Small MS4 Annual - Report - 2014-2015
Questions & Answers

Q No.	Text	DropDown Answer	CheckBoxAnswer	DescriptiveAnswer	Date Answer	Number Answer
	GENERAL					
1	Per Section E.1., did you continue to implement your previously approved storm water management plan? If 'No', please provide a brief explanation in the comments section. (Years 1 - 5) (Please note: This question is for renewal permittees only. If you are a new permittee, please select 'NA')	Yes				
2	If you relied on another entity (co-permittee or SIE) to implement one or more of the permit requirements did the co-permittee or SIE meet the permit requirements that were implemented on your behalf? (Years 1 - 5) If 'Yes', please attach a copy of the agreement that you may have with the other entity. If 'No', please provide a brief explanation.	Yes				
	PROGRAM MANAGEMENT					

3	Reviewed and/or revised any relevant ordinances or other regulatory mechanisms, or adopted any new ordinances or regulatory mechanisms to obtain adequate legal authority as specified by Section E.6.a.(ii)(a-j)? (pgs. 20-22, Year 2) If 'No', please provide a brief explanation in the comments section.	No		<p>No. The City of Buellton did not revise Buellton's Municipal Code Title 1 General Provisions Chapter 1.28 (Code of Violations, Penalties and Enforcement) and Chapter 1.20 (Administrative Citations), or Title 15 Stormwater (also known as Ordinance 13-05 Stormwater Quality Management and Discharge Control) or any relevant ordinances or adopt any new ordinances or regulatory mechanisms to obtain adequate legal authority as specified by Section E.6.a.(ii)(a-j). Buellton's Municipal Code Title 1 General Provisions Chapter 1.28 (Code of Violations, Penalties and Enforcement) and Chapter 1.20 (Administrative Citations) provide administrative and legal procedures to mandate compliance with Ordinance No. 13-05 Buellton Municipal Code Chapter 15 Stormwater Quality and Management and Discharge Control.</p> <p>No. The City of Solvang did not revise Solvang's Municipal Code Title 1 Administration, Chapter 3 (General Penalty), Chapter 6 (Appeal Procedures), Title 6 Police Regulations, Chapter 5 (Administrative Remedies Process) or Title 14 Stormwater Management (also known as the Stormwater Management Ordinance) or any relevant ordinances or adopt any new ordinances or regulatory mechanisms to obtain adequate legal authority as specified by Section E.6.a.(ii)(a-j). Solvang's Municipal Code Title 1 Administration, Chapter 3 (General Penalty), Chapter 6 (Appeal Procedures), and Title 6 Police Regulations, Chapter 5 (Administrative Remedies Process) provides administrative and legal procedures to mandate compliance with Solvang Municipal Code Title 14 Stormwater Management.</p>		
4	Certified legal authority, as specified by section E.6.b.? (page 22, Year 2) If 'Yes', attach required statement signed by an authorized signatory certifying adequate legal authority to comply with all Order requirements. (E.6.b.(ii)(a-e), page 22). (Year 2) If "No", please provide a brief explanation.	Yes				
5	Developed and began implementation of Enforcement Response Plan as specified by Section E.6.c.(ii)(a-f)? (pgs. 22-24, Year 3) If 'No', please provide a brief explanation.	N/A				
EDUCATION AND OUTREACH						
6	Selected one or more of the Public Education and Outreach options? (E.7.a, page 25.) (Year 1) If yes, which option was selected to comply with section E.7.? Provide answer in comments section. (Year 1) For countywide/regional collaborative option selection, upload required attachment: agreement confirming collaboration with other MS4s. (Year 1)	N/A				

7	Developed and began implementation of storm water public education and outreach program as specified by section E.7.a.(ii)(a - m)? (pgs. 25-27, Year 2); OR Continued implementation of storm water public education and outreach program as specified by section E.7.a.(ii)(a - m)? (pgs. 25-27, Year 3-5) If 'No', please provide a brief explanation.	Yes				
8	Developed and began implementation of a public education strategy that established education tasks based on water quality problems, target audiences and anticipated task effectiveness? (E.7.a.(ii)a, page26) (Year 2); OR Continued implementation of a public education strategy that established education tasks based on water quality problems, target audiences and anticipated task effectiveness? (Years 3-5) If 'No', please provide a brief explanation.	Yes				
9	Developed and implemented a training program for all staff who, as part of their normal job responsibilities, may be notified of, come into contact with, or otherwise observe an illicit discharge or illegal connection to the storm drain system, as specified by section E.7.b.1.(ii)(a-g), page 27) (Year 3) If 'NA', please provide a brief explanation.	N/A				
10	Provided construction outreach and education training for staff implementing construction site storm water runoff control program, as specified by section E.7.b.2.a(ii)(a-c), page 28 (Year 2) If 'NA', please provide a brief explanation.	Yes				
11	Developed and distributed educational materials to construction site operators, as specified by section E.7.b.2(b)(ii)(a-d), pgs. 28 - 29) (Year 3) If 'NA', please provide a brief explanation.	N/A				
12	Updated existing storm water website, as necessary, to include information on appropriate selection, installation, implementation and maintenance of BMPs? (E.7.b.2.(b)(ii)(d), page 29) (Year 3) If 'No', please provide a brief explanation.	N/A				
13	Trained employees on how to incorporate pollution prevention/good housekeeping techniques into Permittee operations, as specified by section E.7.b.3.(ii)(a-d), pages 29-30 (Years 2-5) If 'NA', please provide a brief explanation.		Yes			
	PUBLIC INVOLVEMENT AND PARTICIPATION PROGRAM					
14	Involved the public in the development and implementation of activities related to the program, as specified by section E.8.(ii)(a-e)? (Years 2-5) If 'No', please provide a brief explanation.	Yes				
	ILLCIT DISCHARGE DETECTION AND ELIMINATION					

15	Created and/or maintained outfall map? (E.9.a., page 31) (Years 2-5) If 'No', please provide a brief explanation.	Yes				
16	Included in the outfall map, location of all outfalls that are operated by the Permittee within the urbanized area, drainage areas, and land use(s) contributing to those outfalls that are operated by the Permittee, and that discharge within the Permittee's jurisdiction to a receiving water? (E.9.a(ii)(a), page 31) (Year 2) If 'No', please provide a brief explanation.	Yes				
17	Included in the outfall map, the location (and name, where known to the Permittee) of all water bodies receiving direct discharges from those outfall pipes? (E.9.a(ii)(b), page 31) (Year 2) If 'No', please provide a brief explanation.	Yes				
18	Included in the outfall map, priority areas, as specified in E.9.a.(ii)(c)(1-8), pages 31 -32. (Year 2) If 'No', please provide a brief explanation.	Yes				
19	Included in the outfall map, field sampling stations? (E.9.a(ii)(d), page 32) (Year 2) If 'No', please provide a brief explanation.	Yes				
20	Included in the outfall map, the permit boundary? (E.9.a(ii)(e), page 32) (Year 2) If 'No', please provide a brief explanation.	Yes				
21	Maintained inventory of all industrial/commercial facilities/sources within the Permittee's jurisdiction (regardless of ownership) that could discharge storm water pollutants to the MS4? (E.9.b., page 32) (Year 2) If 'No', please provide a brief explanation.	Yes				
22	Included in the inventory, the facility name, address, nature of business/activity, physical location of storm drain receiving discharge, name of receiving water and if the facility/source is tributary to a Clean Water Act Section 303(d) listed water body segment or water body segment subject to a TMDL? (E.9.b(ii)(a), page 32) (Year 2) If 'No', please provide a brief explanation.	Yes				
23	Included in the inventory: vehicle salvage yards, metal and other recycled materials collection facilities, waste transfer facilities, vehicle mechanical repair, maintenance or cleaning; building trade central facilities or yards; corporation yards; landscape nurseries and greenhouses; building material retailers and storage; plastic manufacturers; other facilities designated by the Permittee or Regional Water Board to have reasonable potential to contribute to pollution of storm water runoff? (E.9.b(ii)(b), page 33) (Year 2) If 'No', please provide a brief explanation.	Yes				

24	Determined if facilities that are required to be covered under the Statewide Industrial General Permit (IGP) have done so and notified Regional Water Board of any non-filers? (E.9.b(ii)(c), page 33) (Year 2) Attached copies of the notification of non-filers to the Regional Water Board (E.9.b(ii)(c)page 33) (Year 2) If 'No', please provide a brief explanation.	No		No. Both the City of Buellton and Solvang created an Illicit Discharge Source/Facility Inventory based on the types of industrial and commercial facilities/sources specified in E.9.b as well as the types of facilities covered list within the new NPDES General Permit for Stormwater Discharges Associated with Industrial Activities Order NPDES No. CAS00001 Appendix A. E.9 did not requiring documentation of SIC Codes, the City did not have the resources to determine the SIC Codes of each facility listed within the inventory. The City did conduct a search within the Storm Water Multiple Application and Report Tracking System (SMARTS) Database for facilities with active coverage under the Statewide Industrial General Permit through submission of a Notice of Intent (NOI). In consultation with the Central Coast Regional Water Quality Control Staff, it was deemed acceptable and in compliance with E.9.b(ii)(c) to provide the Inventory with the NOI status that indicate which facilities may require further review to determine if they meet the requirements for filing under the new Statewide Industrial General Permit. The City inventories were submitted electronically to the Central Coast Regional Water Quality Control Board Staff on June 30, 2015.		
25	Updated the inventory annually? (E.9.b(ii)(d), page 33) (Years 2-5) If 'No', please provide a brief explanation.	Yes				
26	Developed and implemented procedures to proactively identify illicit discharges originating from priority areas identified in Section E.9.a.(ii)(c), at least once over the length of the permit term. OR, established a self-certification program where Permittees require reports from authorized parties demonstrating the prevention and elimination of illicit discharges at their facilities in priority areas at least once over the length of the permit term? (E.9.b(ii)(e), page 33) (Year 2) OR Implemented the procedures established per E.9.b.(ii).(e).? (Years 3-5) If 'No', please provide a brief explanation.	Yes				
27	Conducted field sampling of any outfalls that were flowing or ponding when it had been more than 72 hours after the last rain event (i.e., were suspected of illicit discharges) during outfall inventory mapping (under section E.9.a., page 31)? (E.9.c., page 34) (Year 2) If 'No', please provide a brief explanation.	No		No. The City of Solvang did not have any outfalls flowing or ponding more than 72 hours after a rain event, and therefore, the City did not conduct any field sampling. Yes. The City of Buellton conducted field sampling of River View Park West (Outfall ID 1A) and East (Outfall ID 2A) Outfall Structures that had ponded more than 72 hours after a rain event.		

28	Conducted monitoring for the parameters listed in Table 1 (page 34), or for parameters selected by Permittee based on local knowledge of pollutants of concern in priority areas? (E.9.c(ii)(a), page 34) (Years 2-5) If tailored parameter action levels, attach justification and modifications to parameters If 'No', please provide a brief explanation.	No		<p>No. The City of Solvang did not have any outfalls flowing or ponding more than 72 hours after a rain event, and therefore, the City did not conduct any field sampling.</p> <p>Yes. The City of Buellton conducted field sampling of River View Park West (Outfall ID 1A) and East (Outfall ID 2A) Outfall Structures that had ponded more than 72 hours after a rain event and conducted monitoring for parameters listed within Table 1 (page 34) with the exception of fluoride. The City of Buellton does not fluoridate their tap water but adds chlorine to disinfect their tap water. The City of Buellton substituted total chlorine (field test) as an alternative indicator parameter than fluoride to help identify tap or irrigation water from natural water sources.</p>		
29	Verified that indicator parameter action levels in Table 2 (page 35), or tailored parameter action levels were not exceeded? (E.9.c(ii)(b), page 35) (Years 2-5) If tailored parameter action levels, attach justification and modifications to parameter action levels. If 'No', please provide a brief explanation.	No		<p>No. The City of Solvang did not have any outfalls flowing or ponding more than 72 hours after a rain event, and therefore, the City did not conduct any field sampling.</p> <p>Yes. The City of Buellton verified if indicator parameter action levels within Table 2 or tailored parameter action levels were exceeded. The City also consulted with the Central Coast Regional Water Quality Control Board Staff regarding Sample Results/Action Levels for the following indicator parameters: Outfall ID 1A - Specific Conductivity 2450 umhom/cm and Total Chlorine 0.1 mg/L; Outfall ID 2A - Total Chlorine 0.1 mg/L.</p>		
30	Conducted follow-up investigations per Section E.9.d. if the action level concentrations were exceeded? (E.9.c(ii)(c), page 35) (Years 2-5) If 'No', please provide a brief explanation.	No		<p>No. The City of Solvang did not have any outfalls flowing or ponding more than 72 hours after a rain event, and therefore, the City did not conduct any field sampling; and therefore did not conduct any monitoring or follow-up investigations.</p> <p>No. Based on discussion with the Central Coast Regional Water Quality Control Board, City of Buellton did not conduct any additional follow-up investigations. The local geology can contribute to the exceedances of specific conductivity and are most likely background levels. The total residual chlorine is lower than domestic water source and would be investigated if over 1 ppm.</p>		
31	Developed written procedures for conducting investigations into the source of all suspected illicit discharges? (E.9.d.ii(a-e), page 36) (Year 2) If 'No', please provide a brief explanation.	Yes				
32	Investigated within 24 hours, non-storm water discharges suspected of being sanitary sewage and/or significantly contaminated? (E.9.d.ii)(a), page 36) (Years 2-5) If 'No', please provide a brief explanation.	Yes				

33	Prioritized investigations of suspected sanitary sewage and/or significantly contaminated discharges over investigations of non-storm water discharges suspected of being cooling water, wash water, or natural flows? (E.9.d.(ii)(b), page 36) (Years 2-5) If 'No', please provide a brief explanation.	Yes				
34	Reported immediately the occurrence of any flows believed to be an immediate threat to human health or the environment to local Health Department? (E.9.d.(ii)(c), page 36? (Years 2-5) If 'No', please provide a brief explanation.	Yes				
35	Determined and documented through investigations the source of all non-storm water discharges? (E.9.d.(ii)(d), page 36) (Years 2-5) If 'No', please provide a brief explanation.	Yes				
36	Implemented corrective actions to eliminate illicit discharges as specified in section E.9.d.(ii)(e), page 36. (Years 2-5) If 'No', please provide a brief explanation.	Yes				
37	Developed and began implementing a spill response plan? (E.9.e., page 36) (Year 1); OR Continued to implement a spill response plan (Years 2 -5) If 'No', please provide a brief explanation.	Yes				
	CONSTRUCTION SITE STORM WATER RUNOFF CONTROL PROGRAM					
38	Developed an enforceable construction site storm water runoff control ordinance for all projects that disturb less than one acre of soil? (E.10., page 37) (Year 2) If 'No', please provide a brief explanation.	Yes				
39	Created, maintained, and continuously updated an inventory of all projects subject to local construction site storm water runoff control ordinance according to the minimum requirements listed in section E.10.a(ii)(a-h) ? (E.10.a., page 37) (Years 1-5) If 'No', please provide a brief explanation.	Yes				
40	Developed procedures that include the minimum requirements listed in section E.10.b(ii)(a-e) to review and approve construction plan documents? (i.e., erosion and sediment control plans). (E.10.b., page 38) (Year 1) If 'No', please provide a brief explanation.	Yes				
41	Used legal authority to implement procedures for inspecting public and private construction projects and conducted enforcement as necessary? (E.10.c, page 39). (Years 2-5) If 'No', please provide a brief explanation.	Yes				
42	Conducted inspections, at a minimum, at priority construction sites prior to land disturbance, during active construction and following active construction? (E.10.c.(ii), page 39) (Years 2-5) If 'No', please provide a brief explanation.	Yes				

43	Included in inspection, an assessment of compliance with the Permittee's construction site storm water control ordinance and other applicable ordinances? (E.10.c.(ii), page 39) (Years 2-5) If 'No', please provide a brief explanation.	Yes				
44	Active site inspections included inspections of BMP maintenance, BMP effectiveness and verification of no pollutant of concern discharge? (E.10.c.(ii), page 39) (Years 2-5) If 'No', please provide a brief explanation.	Yes				
45	Based inspection prioritization criteria on project threat to water quality (includes soil erosion potential, site slope, project size and type, sensitivity of receiving water bodies, proximity to receiving water bodies, non-storm water discharges, projects more than one acre that are not subject to the CGP and past record of non-compliance)? (E.10.c.(ii), page 39) (Years 2-5) If 'No', please provide a brief explanation.	Yes				
	POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR PERMITTEE OPERATIONS PROGRAM					
46	Developed and maintained an inventory of Permittee-owned or operated facilities within your jurisdiction that are a threat to water quality, as specified in E.11.a(ii), page 40. (Years 2-5) If 'No', please provide a brief explanation.	Yes				
47	Developed and submitted a map that identifies the location of inventoried Permittee-owned/operated facilities, storm drainage system corresponding to the each of the facilities and the receiving water, facility name and management including contact information? (E.11.b., page 41) (Year 2) If 'No', please provide a brief explanation.	Yes				
48	Developed and implemented SWPPPs for hotspots as specified in section E.11.d.(ii)(a-c), page 42-43)? (Year 4) If 'No', please provide a brief explanation.	N/A				
49	Conducted quarterly visual inspection of hotspots and hotspot discharge locations? (E.11.e.(ii)(a and c), page 43) (Year 5) If 'No', please provide a brief explanation.	N/A				
50	Conducted annual comprehensive hotspot inspection? (E.11.e(ii)(b), page 43) (Year 5) If 'No', please provide a brief explanation.	N/A				
51	Inspected each inventoried facility that is not a hotspot once during permit term? (E.11.e(ii)(d), page 44) (Year 5) If 'No', please provide a brief explanation.	N/A				

52	Implemented procedures to assess and prioritize maintenance of storm drain system infrastructure and assigned a high priority to each catch basin meeting any of the criteria listed in section E.11.f(ii)(1-5), page 44? (Year 2) If 'No', please provide a brief explanation.	No		<p>No. The City of Buellton has developed a draft Storm Drain System Assessment, Prioritization, Maintenance Standard Operation Procedure that is in process of being finalized and implemented through a Request For Proposal. When assessing catch basins and drop inlets to assign a priority level (high, medium or low) the City determined that each City owned and operated catch basin and drop inlet would be assigned a high priority level. The City has also updated the Storm Drain System Inventory that includes public and private structures and verified GPS coordinates for each structure.</p> <p>No. The City of Solvang is the process of developing and implementing a Storm Drain System Assessment, Prioritization, Maintenance Standard Operation Procedure but this effort is not yet completed. Therefore, for this year, the City assigned an initial high priority level for all City owned and operated catch basin and drop inlets, and inspected and cleaned all City owned and operated catch basin and drop inlets. Next year with completion of the Storm Drain System Assessment, Prioritization, Maintenance Standard Operation Procedure, all City owned and operated catch basins and drop inlets will be assigned a priority level (high, medium or low). The City has also updated the Storm Drain System Inventory that includes public structures and verified GPS coordinates for each structure.</p>		
53	Began maintenance of storm drain systems according to the procedures and priorities developed according to section E.11.g.(ii)(a-e), page 45? (Year 3) If 'No', please provide a brief explanation.	N/A				
54	Developed and implemented a strategy to inspect storm drain systems, based on the priorities assigned in section E.11.f.(ii), page 44. (E.11.g.(ii)(a), page 45). (Year 3) If 'No', please provide a brief explanation.	N/A				
55	Developed and implemented a schedule to clean high priority catch basins and other systems? (E.11.g.(ii)(b), page 45) (Year 3) If 'No', please provide a brief explanation.	N/A				
56	Ensured that each catch basin in high foot traffic areas includes a legible storm water awareness message? (E.11.g.(ii)(c), page 45) (Year 3) If 'No', please provide a brief explanation.	N/A				
57	Reviewed and maintained high priority facilities and removed trash and debris from high priority areas prior to the rainy season? (E.11.g.(ii)(d), page 45). (Year 3) If 'No', please provide a brief explanation.	N/A				

58	Developed and maintained a procedure to dewater and dispose of materials extracted from catch basins that ensures that water removed during the catch basin cleaning process and waste material will not reenter the MS4? (E.11.g.(ii)(e), page 45). (Year 3) If 'No', please provide a brief explanation.	N/A				
59	Developed program to assess O&M activities for potential to discharge pollutants and inspected all O&M BMPs quarterly as specified in section E.11.h.(ii)(a-d), page 45-46? (Year 3) If 'No', please provide a brief explanation.	N/A				
60	Developed and implemented a program that includes activities listed in section E.11.h.ii(a)(1-8), page 46, to assess O & M activities and subsequently developed applicable BMPs? (E.11.h(ii)(a), page 46) (Year 3) If 'No', please provide a brief explanation.	N/A				
61	Identified all materials that could be discharged from each of these O&M activities, and which materials contain pollutants? (E.11.h(ii)(b), page 46) (Year 3) If 'No', please provide a brief explanation.	N/A				
62	Developed and identified a set of BMPs that, when applied during Permittee O&M activities, will reduce pollutants in storm water and non-storm water discharges? (E.11.h(ii)(c), page 46) (Year 3) If 'No', please provide a brief explanation.	N/A				
63	Evaluated all BMPs implemented during O&M activities quarterly? (E.11.h(ii)(d), page 46) (Year 3) If 'No', please provide a brief explanation.	N/A				
64	Developed and implemented a process for incorporating water quality and habitat enhancement into new and rehabilitated flood management projects? (E.11.i, page 46-47) (Year 3) If 'No', please provide a brief explanation.	N/A				
65	Implemented a landscape design and maintenance program to reduce the amount of water, pesticides, herbicides and fertilizers used by Permittee? (E.11.j., page 47) (Years 2-5) If 'No', please provide a brief explanation.	Yes				
66	Evaluated pesticides, herbicides and fertilizers used and application activities performed and identified pollution prevention and source control opportunities? (E.11.j(ii)(a), page 47) (Year 2) If 'No', please provide a brief explanation.	Yes				
67	Implemented practices that reduced the discharge of pesticides, herbicides and fertilizers as specified in section E.11.j(ii)(b)(1-4), page 47-48)? (Years 2-5) If 'No', please provide a brief explanation.	Yes				

68	Implemented educational activities for municipal applicators and distributors? (E.11.j(ii)(b)(1), page 47) (Years 2-5) If 'No', please provide a brief explanation.	Yes				
69	Implemented landscape management measures that rely on non-chemical solutions, including the measures specified in section E.11.j.(ii)(b)(2)(a-i), page 47? (Years 2-5) If 'No', please provide a brief explanation.	Yes				
70	Collected and properly disposed of unused pesticides, herbicides and fertilizers? (E.11.j(ii)(b)(3), page 48)(Years 2-5) If 'No', please provide a brief explanation.	Yes				
71	Minimized irrigation runoff by using an evapotranspiration-based irrigation schedule and rain sensors? (E.11.j(ii)(b)(4), page 48), (Years 2-5) If 'No', please provide a brief explanation.	Yes				
72	Recorded the types and amounts of pesticides, herbicides and fertilizers used in the permit area? (E.11.j(ii)(c), page 48) (Years 2-5) If 'No', please provide a brief explanation.	Yes				
POST CONSTRUCTION STORMWATER MANAGEMENT PROGRAM						
73	Regulated development to comply with sections E.12.b. through E.12.l of permit? (E.12.a., page 48) (Years 2-5) If 'No', please provide a brief explanation.	NA		N/A. These requirements are superseded by the Central Coast adopted Post-Construction Requirements (PCRs). The Cities shall comply with the adopted and approved Stormwater Management Requirements for Development Projects in the Central Coast Region dated July 12, 2013.		
74	Required implementation of site design measures for all projects that create and/or replace 2,500- 5,000 square feet of impervious surface (including single family homes, that are not part of a larger plan of development)? (E.12.b., page 48-49) (Years 2-5) If 'No', please provide a brief explanation.	NA		N/A. these requirements are superseded by the Central Coast adopted Post-Construction Requirements (PCRs). The Cities shall comply with the adopted and approved Stormwater Management Requirements for Development Projects in the Central Coast Region dated July 12, 2013.		
75	Implemented standards, including measures for site design, source control, runoff reduction, storm water treatment and baseline hydromodification management, on projects that create and/or replace more than 5,000 square feet of impervious surface (Regulated Projects)? (E.12.c., pages 49 -51) (Years 2-5) If 'No', please provide a brief explanation.	No		N/A. These requirements are superseded by the Central Coast adopted Post-Construction Requirements (PCRs). The Cities shall comply with the adopted and approved Stormwater Management Requirements for Development Projects in the Central Coast Region dated July 12, 2013.		
76	Required Regulated Projects to implement source control measures? (E.12.d., page 51-52) (Years 2-5) If 'No', please provide a brief explanation.	NA		N/A. These requirements are superseded by the Central Coast adopted Post-Construction Requirements (PCRs). The Cities shall comply with the adopted and approved Stormwater Management Requirements for Development Projects in the Central Coast Region dated July 12, 2013.		

77	Required Regulated Projects to implement LID standards designed to reduce runoff, treat storm water, and provide baseline hydromodification management to the extent feasible, to meet the Numeric Sizing Criteria for Storm Water Retention and Treatment under section E.12.e(ii)c., page 53. (E.12.e., page 52-56)? (Years 2-5) If 'No', please provide a brief explanation.	NA		N/A. These requirements are superseded by the Central Coast adopted Post-Construction Requirements (PCRs). The Cities shall comply with the adopted and approved Stormwater Management Requirements for Development Projects in the Central Coast Region dated July 12, 2013.		
78	Developed and implemented hydromodification management procedures for Regulated Projects that created and/or replaced one acre or more of impervious surface as specified by section E.12.f? (pgs. 56 - 57, Year 3) If 'No', please provide a brief explanation.	N/A				
79	Developed and/or modified enforceable mechanisms to implement E.12.b and E.12.f. (E.12.g., page 58) (Year 3) If 'No', please provide a brief explanation.	N/A				
80	Implemented an O&M verification program for storm water treatment and baseline hydromodification structural controls measures on all Regulated Projects, as specified by section E.12.h.(ii)(a-e), page 58-60? (Years 2-5) If 'No', please provide a brief explanation.	NA		N/A. These requirements are superseded by the Central Coast adopted Post-Construction Requirements (PCRs). The Cities shall comply with the adopted and approved Stormwater Management Requirements for Development Projects in the Central Coast Region dated July 12, 2013.		
81	Inventoried and assessed the maintenance condition of structural post-construction BMPs within your jurisdiction? (E.12.i., page 60) (Year 3) If 'No', please provide a brief explanation.	N/A				
82	Developed and maintained a plan to inventory, map and determine the relative maintenance condition of structural post-construction BMPs as specified by section E.12.i(ii)(a-d), page 60-61? (Year 3) If 'No', please provide a brief explanation.	N/A				
83	Conducted an analysis of the landscape code to correct gaps and impediments impacting effective implementation of post-construction standards? (E.12.j(ii)(a), page 61) (Year 1) If 'No', please provide a brief explanation.	N/A				
84	Completed any changes to the landscape code to effectively administer post-construction requirements? (E.12.j(ii)(b), page 61) (Years 2-5) If 'No', please provide a brief explanation.	No		No. The City of Buellton and the City of Solvang did not find any impediments with administering the post construction requirements during the Municipal Landscape Gap Analysis but the Cities are considering future opportunities to improve that were identified during the analysis and/or adopt a new ordinance to align with the Department of Water Resource's Model Water Efficient Landscape Ordinance (MWELO).		
85	Implemented post-construction storm water management requirements based on a watershed-process approach as specified by section E.12.k, page 62? (Years 1 - 5)	NA		N/A. These requirements are superseded by the Central Coast adopted Post-Construction Requirements (PCRs). The Cities shall comply with the adopted and approved Post-Construction Stormwater Management Requirements for Development Projects (including Watershed Protection) in the Central Coast Region dated July 12, 2013		

86	Proposed alternative post-construction requirements that achieved multiple-benefits as specified by section E.12.I., page 62? (Years 1 - 5)	No		No. Neither the City of Buellton or the City of Solvang submitted a proposal to the Regional Water Board or the Executive Officer to obtain approval for alternative post-construction measures for multiple-benefit projects.		
	WATER QUALITY MONITORING					
87	Indicate which water quality monitoring approach applies to your jurisdiction. Check all that apply.		303(d) Monitoring			
88	If you selected TMDL Monitoring or 303(d) Monitoring, did you consult with your Regional Water Board within Year 1 of the permit to determine monitoring study design and implementation schedule? (Year 1) If 'No', please provide a brief explanation.	N/A				
89	Indicate if you are or will be conducting water quality monitoring individually or as part of a regional program. (Years 1 and 2) If regional program, list the name of the program in the text box below. If a Permittee has a population less than 50,000 AND is not required to conduct ASBS, TMDL or 303(d) Monitoring (Sections E.13.(a)-(c)), then enter N/A		Regional Program	Regional Program. Both the City of Buellton and the City of Solvang are participating in the Santa Barbara County Public Works Department's regional water quality monitoring program. The draft "Urban Storm Water Monitoring Plan 2015-2018 For the NPDES Phase II Small MS4 General Permit Sections E.13.c 303(d) Monitoring and E.14.a Program Effectiveness Assessment and Improvement Plan" (previously titled Receiving Water Monitoring Plan FY 2015-2018) was submitted to the Central Coast RWQCB on December 29, 2014 and is pending approval.		
90	Provide a status update regarding the development (including consultation with Regional Boards, if applicable), submittal and/or approval of the monitoring study design and implementation schedule. (Year 1)					
91	Upload the Monitoring Study Design and any available results for the monitoring option that applies to your jurisdiction. (Year 2)					
92	Provide a summary of the implementation of the water quality monitoring program and related results. (Year 3 - 5) Upload the Monitoring Study Results.					
	PROGRAM EFFECTIVENESS ASSESSMENT					
93	Developed and implemented a Program Effectiveness Assessment and Improvement Plan (PEAIP) that includes the minimum requirements listed in section E.14.a(ii)(a-f), page 70-72)? (Year 2) If 'No', please provide a brief explanation. If 'Yes', upload required PEAIP as attachment.	Yes				
94	Provide a description of implementation of the Program Effectiveness and Implementation Plan, a summary of data obtained through effectiveness assessment measures and the short and long-term progress of the storm water program and an analysis of the data as described on page 72 of the permit. Upload as an attachment. (Years 3 - 5)					

95	Identified and summarized BMP and/or program modification identified in priority program areas that will be made in next permit term? (E.14.b.(ii)(a-d), page 72-73) (Year 5) If 'No', please provide a brief explanation. If 'yes', upload required PEAIP as attachment.	N/A				
	TOTAL MAXIMUM DAILY LOADS COMPLIANCE REQUIREMENTS					
96	Attached TMDL implementation status report that includes the information listed in section E.15.d(i-iv), page 74 of permit? (Years 1-5) If 'No', please provide a brief explanation.	NA		N/A. Although the Santa Ynez River is a 303(d) impaired water body, it was not identified within "Phase II Permit Traditional Small MS4 Attachment G-Region Specific Requirements" that outlines Regional Water Board Approved TMDL's.		
	ADDITIONAL INFORMATION					
97	Optional: If you have any additional information, reports or attachments that you would like to provide to describe your storm water program please use the text box and/or the upload attachment button below. (Years 1 - 5)					

Phase II Small MS4 Annual - Report - 2014-2015
ATTACHMENTS

Attachment Title	Description	Date Uploaded	Attachment Type	Attachment Hash	Doc Part No/Total Parts
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2014-2015

Phase II Small MS4 Annual - Report

REPORTING PERIOD:07/01/2014 - 06/30/2015

WDID No: 3 42M2000150

Permittee Information

City of Buellton

Marc Bierdzinski

marcb@cityofbuellton.com

PO Box 1819

Buellton CA 93427

Phase II Small MS4 Annual - Report - 2014-2015
Questions & Answers

Q No.	Text	DropDown Answer	CheckBoxAnswer	DescriptiveAnswer	Date Answer	Number Answer
1	Did the Permittee upload the Central Coast Post-Construction Stormwater Requirements annual reporting form and all other documents required in the form? Access form here. If the form does not open, right click on the hyperlink and chose the option, 'Save Target As'. To get full utilization of the form, the form must be viewed and completed using Adobe software. Adobe Reader can be downloaded for free.	Yes				

Phase II Small MS4 Annual - Report - 2014-2015
ATTACHMENTS

Attachment Title	Description	Date Uploaded	Attachment Type	Attachment Hash	Doc Part No/Total Parts
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CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 6

To: The Honorable Mayor and City Council

From: Carolyn Galloway-Cooper, Finance Director

Meeting Date: October 22, 2015

Subject: Filing of an Amended 2015-16 Claim with the Santa Barbara County Association of Governments (SBCAG) for State Transit Assistance (STA) Fund 2014-15 Apportionments

BACKGROUND

Attached is the staff report from SBCAG recommending local agencies amend their 2015-16 claim forms in order to claim 2014-15 STA apportionments. STA funds may be used by local agencies for public transit and transportation planning purposes with priority given to public transit. The amended 2015-16 claim is attached.

FISCAL IMPACT

The amount apportioned to the City of Buellton is \$24,879 for fiscal year 2014-15.

RECOMMENDATION

The City Council authorizes the amended 2015-16 claim to be filed with SBCAG for the purpose of claiming fiscal year 2014-15 STA funding.

ATTACHMENT

Attachment 1 – Staff report from SBCAG showing STA apportionment and 2015-16 amended claim



» 260 North San Antonio Road, Suite B » Santa Barbara, CA » 93110
» Phone: 805/961-8900 » Fax: 805/961-8901 » www.sbcag.org

TTAC STAFF REPORT

SUBJECT: FY 2014-15 STA Apportionments / FY 15-16 TDA Claim Amendments

MEETING DATE: October 8, 2015

AGENDA ITEM: 4

STAFF CONTACT: Bobbi Didier

RECOMMENDATION:

Receive FY 2014-15 State Transit Assistance (STA) Fund Apportionments to be claimed in Fiscal Year 2015-16 by amending FY15-16 TDA Claims.

DISCUSSION:

Effective FY 2011-12 STA funding provided by the state based became on actual revenues received from the sales tax on diesel fuel versus being based on the state budget. Payments are therefore received quarterly in Oct/Nov, Jan/Feb, Apr/May and July/Aug as funds are received. Under this new funding scenario, SBCAG does not know how much STA funding will be available until all four quarters of tax revenue are received.

In April 2012 SBCAG presented this dilemma to TTAC which voted to approve that the apportionment and allocation process be delayed until after all funds are received, in essence one year in arrears. There was unanimous agreement that this would create more stability for STA and minimize the administrative burden of the claims process for transit operators and SBCAG. Following is this approved process:

- State Controller provides an estimate of STA sales tax revenue to SBCAG for next fiscal year (Jan/Feb)
- State Controller collects taxes and appropriates quarterly based on actual sales tax revenue on diesel fuel.
- SBCAG apportions funds to local claimants after all four quarters are received (Sept/Oct) thereby apportioning funds one year in arrears.
- Local claimants submit STA claims by revising current year Transportation Development Act claims (Sept/Oct)
- SBCAG allocates funds to local claimants (Oct/Nov)
- Reimbursement requests submitted to SBCAG for payment

Attached for TTAC review are the State Transit Assistance (STA) apportionments for FY 2014-15. The total amount estimated to be available for FY 2014-15 including a carryover balance of STA interest earnings of \$51,699 and is \$2,981,373: \$2,208,151 in PUC Section 99313 funds and \$773,222 in PUC Section 99314 funds. Section 99313 funds are apportioned to the four transit service areas in Santa Barbara County based on population and Section 99314 funds are apportioned directly to transit operators based on fare revenues. STA funds may be used by local agencies for public transit and transportation planning purposes with priority given to public transit. Transit operators can use STA monies for transit operations, transit capital and planning purposes.

Local agencies are required to amend their 2015-16 TDA claim forms if they choose to claim FY 14-15 STA funds. Claimants are asked to work cooperatively when developing their individual claims so that the total claims filed from each apportionment area do not exceed the apportionment reported for that area. To assist you in the preparation of your claims SBCAG has provided an STA Claim Manual.

Documentation when Submitting Claim

When submitting an STA fund claim, the claimant must submit the following to SBCAG:

- Revised Document A (Current fiscal year TDA Claim Form)
- New Document B ,Resolution, only required if LTF amendments are not authorized in original LTF resolution
- Revised Document D, Parts A and B (Capital and operating budgets for the coming fiscal year for each project)
- New Document I (Only applies to STA Claim)
- STA Checklist

As a reminder, when submitting an STA claim for operating expenses please provide validation of meeting the requirements as detailed in the STA claim manual- pages 6 and 7. Because funds are allocated a year in arrears, claims for operating expenses should be submitted against the funding year, not the claim year.

For your reference the link to the STA Manual and aforementioned required STA Claim Forms is: Please note; the STA Forms are included under the heading TDA Claim Forms.

<http://www.sbcag.org/documents.html>

Claims for STA funds are due to SBCAG no later than Oct 23, 2015. Contact: Bobbi Didier

APPORTIONMENT OF STA FUNDS (FY 2014-15)

Amended Claim FY 2015-16

PUC SECTION 99313 (Population Based Apportionments)				
Apportionment Area	Eligible Claimants	Population	% of Total Population	FY 2014-15 Apportionments
South Coast	Easy Lift			\$52,789
	SBMTD			\$1,002,986
	Santa Barbara	91,088		
	Carpinteria	13,547		
	Goleta	30,765		
	County	73,848		
	<i>Subtotal</i>	209,248	47.81266%	\$1,055,775
Santa Maria Valley	SMOOTH			\$36,368
	Santa Maria	102,087		\$656,443
	Guadalupe	7,205		\$34,535
	County	34,864		
	<i>Subtotal</i>	144,156	32.93908%	\$727,346
Lompoc Valley	Lompoc	43,479		\$299,906
	County	15,961		
	<i>Subtotal</i>	59,440	13.58176%	\$299,906
Santa Ynez & Cuyama Valleys	Buellton	4,931		\$24,879
	Solvang	5,489		\$93,963
	County:			\$6,282
	S.Y.Valley Uninc.	13,134		
	Cuyama Valley	1,245		
	<i>Subtotal</i>	24,799	5.66650%	\$125,124
Total to Claimants		437,643	100.0000%	\$2,208,151

PUC SECTION 99314 (Revenue Based Apportionments)	
Claimant	FY 2014-15 Apportionments
County	\$6,435
Guadalupe	\$5,275
Lompoc	\$70,128
Santa Maria	\$51,235
Solvang	\$5,687
SBMTD	\$634,462
Total	\$773,222

Population figures from DOF (Jan 2014)
 Funds are from FY 14-15 but received fully in FY 15-16

TRANSPORTATION DEVELOPMENT ACT CLAIM FORM
(All claimants must complete this document)

Line

1 Project Year (FY) 2015-16
 2 Claimant City of Buellton
 3 Address P.O. Box 1819, Buellton
 4 Contact Person Marc Bierdzinski Title City Manager
 5 Telephone Number 805-686-7429

6 The above named claimant hereby applies for allocations of Transportation Development Act funds for FY 2015-16 for the purposes and in the amount(s) specified below:

	Purpose	Apportionment	Claimed
	Local Transportation Fund		
7	Regional Transportation Planning (PUC 99262 & 99402)	\$ 5,703.00	\$ 5,703.00
	<i>less amount released to SBCAG</i>	<i>minus</i>	\$ 5,703.00
8	Pedestrian & Bikeway Facilities (PUC 99234)	\$ 3,879.00	\$ 3,879.00
9	Articles 4 & 8:	\$ 184,391.00	
	<i>less amounts released to:</i>		
10	<u>City of Solvang</u>	<i>minus</i>	\$ 184,391.00
11		<i>minus</i>	
12		<i>minus</i>	
	<i>plus amounts released from:</i>		
13	<u>2014-15 Year-End Balance Apportionments</u>	<i>plus</i>	\$ 1,291.00
14		<i>plus</i>	
15		<i>plus</i>	
16	Article 4 Transit (PUC 99260)		\$ -
17	Article 4.5 Community Transit (PUC 99275)		\$ -
18	Article 8a Streets & Roads (PUC 99400a)		\$ 1,291.00
19	Article 8c Transit Contracts (PUC 99400c)		
20	TOTAL LTF	\$ 193,973.00	\$ 5,170.00
21	Amount to be held in reserve (CCR 6648)		
	<i>By Claimant</i> <u> </u> <i>By SBCAG</i> <u> </u>		
	State Transit Assistance		
22	Transportation Planning		\$ 24,879.00
23	Mass Transportation		
24	TOTAL STA		\$ 24,879.00

DOCUMENT A (Continued)

25 TOTAL TRANSPORTATION DEVELOPMENT ACT CLAIM

\$ 30,049.00

(add lines 20 and 24)

Claimant acknowledges that payment by the County Auditor of an allocation made by the Association of Governments is subject to such monies being on hand and available for distribution and to the provision that such moneys be used only in accordance with the terms of the allocation instruction issued by the Association of Governments

26 By: _____

27 Title: City Manager

28 Date: 10/23/2015

I hereby attest to the reasonableness and accuracy of the financial statements included in Documents C, D, F, and G. (Sec. 6632)

29 Signed: _____
Chief Financial Officer

30 Name: Carolyn Galloway-Cooper

31 Title: Finance Director

Reference: CCR Section 6630

DOCUMENT D, PART A (Instructions on pages 4-7 and 4-8)

PROPOSED OPERATING BUDGET
(All transit claimants must complete this document)

<u>Line</u>	<u>Prior Year (FY)</u>	<u>Project Year (FY)</u>
1 Budget Year		2015-16
2 Total Eligible Operating Cost		
3 Estimated Fares		
4 Operating Deficit (subtract Line 3 from Line 2)	\$ -	\$ -

Other Operating Revenues

5 Property Taxes		
6 Local Transportation Fund		\$ 3,879.00
7 LTF Balance from Prior Year		\$ 1,291.00
8 State Transit Assistance Fund		\$ 24,879.00
9 Federal Operating Assistance		
10a Measure D/A - Local		
10b Measure D/A - Regional		
11 Other (specify):		
12 Other (specify):		
13 Other (specify):		
14 Net Surplus/(Deficit) (add Lines 5-13 to Line 4)	\$ -	\$ 30,049.00

Footnotes

Reference: CCR Section 6632

DOCUMENT D, PART B (Instructions on pages 4-7 and 4-8)

PROPOSED CAPITAL BUDGET
(All transit claimants must complete this document)

<u>Line</u>	<u>Prior Year (FY)</u>	<u>Project Year (FY)</u>
15 Budget Year	0	2015-16
<u>Capital Expenditures</u> (Itemize by Project)		
16		
17		
18		
19		
20		
21		
22		
23		
24 Total Capital Expenditures (Add Lines 16-23)	\$ -	\$ -
<u>Capital Revenues</u>		
25 Property Taxes		
26 Local Transportation Fund (LTF)		
27 LTF Reserve Account		
28 LTF Balance from Prior Year		
29 State Transit Assistance Fund (STAF)		
30 STAF Balance from Prior Year		
31 Federal Capital Assistance		
32 Other (specify):		
33 Other (specify):		
34 Other (specify):		
35 Other (specify):		
36 Total Capital Revenues (add Lines 25-35)	\$ -	\$ -
37 Net Surplus/(Deficit) (subtract Line 36 from Line 24)	\$ -	\$ -

DOCUMENT I

STATE TRANSIT ASSISTANCE ALLOCATION AREAS

Select the claim category or categories by checking appropriate box and indicating the amount of STA funding

6730 - Claims of Operators
SBMTD, SMAT, COLT, SYVT, Guadalupe Flyer

Claims may be filed for allocations from the State Transit Assistance fund by an operator for the following purposes.

	Claimed
<input type="checkbox"/> 6730 (a) The operating cost of the operator's public transportation system.	\$ -
<input type="checkbox"/> 6730 (b) The capital requirements of the operator's public transportation system.	\$ -
<input type="checkbox"/> 6730 (b) Subsidy of passenger rail services, either by bulk purchases of passenger tickets or by direct payments to a railroad corporation, pursuant to Public Utilities Code sections 99260.2(b) and 99260.5, or for rail passenger service operation and capital improvement expenditures pursuant to Public Utilities Code section 99260.6 and construction and maintenance of intermodal transportation facilities pursuant to Public Utilities Code section 99234.9.	\$ -
<input type="checkbox"/> 6730 (d) Community transit service purposes pursuant to Public Utilities Code section 99275.	\$ -

6731 - Claims of Cities, Counties or Transit Districts
City of Buellton, City of Guadalupe, City of Lompoc, City of Santa Maria, City of Solvang, County of Santa Barbara and Santa Barbara Metropolitan Transit District

Claims may be filed for allocations from the State Transit Assistance fund by a city or county, or transit district for the following purposes, if it is eligible for allocations from the local transportation fund for such purposes:

	Claimed
<input type="checkbox"/> 6731(a) Payments for passenger rail service operations and capital improvements pursuant to Public Utilities Code section 99400(b) and construction and maintenance of intermodal transportation facilities pursuant to Public Utilities Code section 99234.9.	\$ -
<input checked="" type="checkbox"/> 6731(b) Payment to an entity under contract with the city, county or transit district, for transportation services or payment for the claimant's related administrative and planning cost, pursuant to Public Utilities Code sections 99400(c) and 99400(d).	\$ 24,879.00

6731 - Claims of Cities, Counties or Transit Districts [CONTINUED]

City of Buellton, City of Guadalupe, City of Lompoc, City of Santa Maria, City of Solvang, County of Santa Barbara and Santa Barbara Metropolitan Transit District

Claimed

<input type="checkbox"/> 6731(c) To provide or contract for transportation services to elderly and handicapped persons, if the city, county, or transit district is a member of a joint powers entity operating a public transportation system, pursuant to Public Utilities Code section 99260.7	\$ -
<input type="checkbox"/> 6731(d) Community transit service purposes pursuant to Public Utilities Code section 99275.	\$ -
<input type="checkbox"/> 6731(e) Transportation services provided by cities or counties with populations of less than 5,000 pursuant to Public Utilities Code section 99405(d).	\$ -

6731.1 Claims of Consolidated Transportation Service Agencies

Easy Lift and SMOOTH

<input type="checkbox"/> Claims may be filed for allocations from the state transit assistance fund by consolidated transportation service agencies for purposes specified in Public Utilities Code section 99275.	\$ -
--	------

Total Amount Claimed \$ 24,879.00

REFERENCED PUBLIC UTILITIES CODE SECTIONS

99234.9 Rail Passenger Service Projects

Any county, city, county transportation commission, or operator may file claims with the transportation-planning agency for rail passenger service operation expenditures and capital improvement expenditures, including construction and maintenance of intermodal transportation facilities. These funds may be used as the entity's required contribution toward the cost of providing these services or capital improvements.

99260.2 Claims for Peak-Hour Service; Rail Ticket Purchases

99260.2 (b) Claims may be filed with the transportation-planning agency by a transit district to make bulk purchases of passenger tickets for passenger rail services, if it is authorized to make such purchases by its enabling legislation.

99260.5 Claims for Railroad Corporation

99260.5(a) Claims may also be filed with the transportation planning agency by a city and county or a transit district under this article for payments to be made to a railroad corporation subject to the jurisdiction of the Public Utilities Commission and engaged in the transportation of persons, as defined in Section 208, for operating losses incurred in such transportation of persons between points within the city and county or the district, as the case may be, and for that portion of the operating losses incurred in such transportation of persons in the city and county or the district, as the case may be, whose origin or destination, or both, are outside the city and county or district.

99260.5(b) A city and county or a transit district receiving funds under a claim filed pursuant to subdivision (a) shall use those funds for the purposes specified in that subdivision.

99260.6 Claims for Rail Passenger Service

Public agencies authorized to file claims pursuant to Section 99234.9 may file claims under this article.

99260.7 Claims for Separate Service to Elderly and Disabled Persons by Joint Powers Agency Members

In order to provide, or to contract to provide, transportation services using vehicles for the exclusive use of elderly or disabled persons, a city or a county, which is contributing funds it is eligible to receive under this article to a joint powers agency of which it is a member to operate a public transportation system, may also file a claim under this article and may also file a claim for funds made available pursuant to Section 99313.

~~99275 - Community Transit Services Definition~~

99275 (a) Claims may be filed with the transportation planning agency by claimants for community transit services, including such services for those, such as the disabled, who cannot use conventional transit services.

99275 (b) For purposes of this article, "community transit services" means transportation services which link intra-community origins and destinations.

99313 - State Transit Assistance; Population Formula Allocations

From the funds made available pursuant to subdivision (c) of Section 99312, an amount shall be allocated by the Controller to each transportation planning agency and county transportation commission, and the San Diego Metropolitan Transit Development Board, based on the ratio of the population of the area under its jurisdiction to the total population of the state.

99400 - Article 8

Claims may be filed under this article with the transportation-planning agency by counties and cities for the following purposes and by transit districts for the purposes specified in subdivisions

99400 (b) Passenger rail service operations and capital improvements.

99400 (c) Payment to any entity which is under contract with a county, city, or transit district for public transportation or for transportation services for any group, as determined by the transportation planning agency, requiring special transportation assistance. If the county, city, or transit district is being served by an operator, the contract entered into by the county, city, or transit district shall specify the level of service to be provided, the operating plan to implement that service, and how that service is to be coordinated with the public transportation service provided by the operator. Prior to approving any claim filed under this section, the transportation planning agency, or the county transportation commission in a county with such a commission, shall make a finding that the transportation services contracted for under subdivision (c) are responding to a transportation need not otherwise being met within the community or jurisdiction of the claimant and that, where appropriate, the services are coordinated with the existing transportation service.

99400 (d) Payments to counties, cities, and transit districts for their administrative and planning cost with respect to transportation services under subdivision (c).

99405 50-Percent Allocation Limitation

99405 (d) The 50-percent limitation shall not apply to funds allocated under this article to a city or county with a population of less than 5,000, and, notwithstanding Section 99400, the city or county may claim funds under this article for transportation services, including associated capital, planning, and administrative costs, without contracting with another entity.

Required STA Forms Checklist

See eligibility requirements on page 6 of the STA Manual.

REQUIRED FORMS CHECKLIST	
CLAIMANT:	City of Buellton
Document Name ⁽¹⁾	
Revised Document A:	Claim Form
New Document B: Resolution (Only if amendments not included in original LTF Claim)	
Revised Document D: Fiscal Reporting	
<u>Part A</u>	Proposed Operating Budget
<u>Part B</u>	Proposed Capital Budget
New Document I : STA Claim Category(ies)	

<i>I hereby certify that I have completed all forms necessary to comply with the requirements of the Transportation Development Act.</i>	
Signature:	Submitted by:
	Name: Marc Bierdzinski
	Title: City Manager
	E-mail: marcb@citybuellton.com
Date: 10/23/2015	Phone: 805-686-7429

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 7

To: The Honorable Mayor and City Council

From: Marc Bierdzinski, City Manager

Meeting Date: October 22, 2015

Subject: City Manager Approval of Amplified Music at Events on Private Property

BACKGROUND

Temporary Use Permits (TUP) for functions on private property are typically processed by City staff in accordance with Municipal Code Section 19.06.240. However, events with amplified music on private property have been brought to the City Council for approval due to complaints regarding noise. Staff has developed the following conditions that have been included with all TUPs with amplified music:

- An on-site sound engineer to monitor and enforce decibel level restrictions
- An on-site monitor with cell phone access for the duration of the event
- Neighborhood outreach efforts
- The City’s Code Enforcement Officer will spot check noise levels during the event
- Amplified music will cease at a specific time

Since the above conditions have been in place, events with amplified music on private property have complied with noise level restrictions and monitoring with minimal or no complaints. The City Council has requested that events on private property with amplified music that have followed our noise conditions be allowed to be approved by the City Manager in the future.

Staff would recommend that the City Council provide this direction with the following parameters:

- New events with amplified music that have never been reviewed by staff or the City Council shall require initial approval by the City Council with notification to the neighbors
- An event with amplified music that has occurred at least one time on the same private property and has met all conditions of the Temporary Use Permit, including sound levels at the property line, may be approved by the City Manager

- All standard conditions for Temporary Use Permits are included as part of the application

This direction does not apply to events with music on City owned property, such as the Vintner's Festival and Brewfest. These events have a separate process that must be followed and are not under the TUP process.

RECOMMENDATION

That the City Council authorize the City Manager to approve Temporary Use Permits with amplified music for events on private property under the following conditions:

- An event with amplified music has occurred at least one time on the same private property and has met all conditions of the Temporary Use Permit, including sound levels at the property line
- All standard conditions for Temporary Use Permits are included as part of the application



City of Buellton



PROCLAMATION RECOGNIZING FRIENDS OF THE LIBRARY WEEK

WHEREAS, the important work of the Friends of the Buellton Library highlights that libraries are the cornerstone of our communities, providing opportunities for all residents to engage in the joy of life-long learning; and

WHEREAS, Friends of the Buellton Library understands the critical importance of well-funded libraries; they advocate on behalf of libraries to obtain the resources needed to provide a wide variety of library services to all ages, including access to print and electronic materials, and children's programming; and

WHEREAS, the gift of time and commitment by Friends of the Buellton Library sets an example for all in how volunteerism leads to positive civic engagement and the betterment of our communities; and

WHEREAS, the proclaiming of Friends of the Library Week will provide a positive example and influence to encourage community members to join local Friends of Libraries groups and will demonstrate appreciation and gratitude to these groups and all they do to make our libraries and communities better.

NOW, THEREFORE, I, Holly Sierra, Mayor of the City of Buellton, on behalf of the Buellton City Council, hereby proclaim October 18-25, 2015, Friends of the Library Week in the City of Buellton and we celebrated it in conjunction with National Friends of the Libraries Week.

APPROVED AND PRESENTED this 22nd day of October 2015.



Mayor

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 9

To: The Honorable Mayor and City Council

From: Planning Commission
By: Marc Bierdzinski, City Manager

Meeting Date: October 22, 2015

Subject: Ordinance No. 15-02 – “An Ordinance of the City Council of the City of Buellton, California, Revising Title 19 (Zoning) of the Buellton Municipal Code (15-ZOA-01) by Adding Regulations Regarding a Definition of a Fast Food Restaurant and Locational Restrictions for Fast Food Restaurants” (Introduction and First Reading – Continued from September 10, 2015)

BACKGROUND

The City Council directed staff and the Planning Commission to develop zoning restrictions for fast food restaurants in order to avoid and/or ameliorate certain negative impacts on community aesthetics and public health resulting from an over-abundance of such establishments. The Planning Commission reviewed this item at two public meetings and ultimately agreed on a definition and locational restrictions for fast food restaurants. On August 6, 2015, the Planning Commission voted 4-0 vote to adopt Resolution No. 15-10 (Attachment 1), which recommended that the City Council adopt the proposed Zoning amendments. The following was the Planning Commission’s proposed definition:

Fast food restaurant definition. A fast food restaurant is any establishment which dispenses food for consumption on or off the premises, and which may have two or more of the following characteristics: a limited menu, items prepared in advance or prepared or heated quickly, no table orders, and food served in disposable wrapping, containers, or bags.

Attachment 2 lists a variety of fast food restaurant definitions from other cities that the Planning Commission considered in its deliberations.

On September 10, 2015, the City Council requested that staff investigate and provide additional wording for the fast food restaurant definition. Staff, in turn, requested that City Council members provide the City Manager directly with any language that they wished to be considered at the next public meeting on this issue. Based on the September 10th City

Council discussion, staff's additional research, and the input received by the City Manager from three Council Members, staff proposes the following definition:

Fast food restaurants are establishments that have all of the following characteristics: a menu consisting of items prepared in advance or prepared or heated quickly, no table orders, food served in disposable wrapping or containers, and a drive-through lane. Food service establishments that meet this definition within hospitality or entertainment businesses, including hotels, movie theaters, and bowling alleys, are not subject to this ordinance.

Any determination under, or interpretation of, this proposed zoning provision would be subject to the existing appeal procedures set forth in Municipal Code section 19.10.130, which governs the appeals of decisions by the planning director, zoning administrator, and Planning Commission. There is no need, therefore, for any additional provisions establishing Planning Commission review of proposed fast food restaurants.

Therefore, staff recommends revising the wording of sub-section C from:

C. Planning Commission determination. If the planning director or his or her designee determines that a restaurant or proposed restaurant located outside of the boundary described in subsection A is a fast food restaurant and is therefore prohibited, the operator of such restaurant may request the Planning Commission make an interpretation of whether the restaurant falls within the definition set forth in subsection B.

to:

C. Any determination or decision under, or interpretation of, this Section is subject to the appeal provisions set forth in Section 19.10.130.

The locational restriction area was developed based on the current location of fast food and other restaurants in the City, and the proximity of this area to Highway 101 and Highway 246 for ease of access. The area was delineated after several public meetings with the Planning Commission and City Council. However, the City Council may still adjust the boundary as part of their recommended action.

The adoption of this ordinance is within the City's constitutional police power authority. Article XI, section 7, of the California Constitution authorizes cities to enact and enforce regulations in order to protect the public's health, safety, and welfare. Article XI, section 7, states: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." This broad constitutional police power includes the authority to regulate land uses.

Here, the regulation of fast food restaurants is intended to protect the public's health, safety, and welfare in at least three ways. First, many counties and cities have learned that fast-food restaurants, with their standardized architecture, color schemes, décor, and signage, can

diminish a community's visual quality and distinctive character. Second, the unregulated growth of fast food restaurants in a community can hinder, if not decrease, the growth of locally-based small restaurant businesses, thus limiting the diversity of food options for members of the community. Finally, numerous studies have found a correlation between the presence of numerous fast food restaurants and obesity, type 2 diabetes, cardiovascular disease, and other negative health effects. One study regarding this effect is attached for the City Council's review (Attachment 3). The proposed ordinance, therefore, falls within the City's constitutional police power authority.

ENVIRONMENTAL REVIEW

This project is exempt from the California Environmental Quality Act 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.

FISCAL IMPACT

No fiscal impacts are anticipated as a result of the proposed Zoning Ordinance Amendment.

RECOMMENDATION

Staff recommends that the City Council consider the introduction and first reading of Ordinance No. 15-02 – “An Ordinance of the City Council of the City of Buellton, California, Revising Title 19 (Zoning) of the Buellton Municipal Code (15-ZOA-01) by Adding Regulations Regarding a Definition of a Fast Food Restaurant and Locational Restrictions for Fast Food Restaurants” by title only and waive further reading.

ATTACHMENTS

Ordinance No. 15-02
Attachment 1 – Planning Commission Resolution No. 15-10
Attachment 2 – Definitions from Other Cities
Attachment 3 – Article on Zoning for Fast Food Restaurants

ORDINANCE NO. 15-02

An Ordinance of the City Council of the City of Buellton, California, Revising Title 19 (Zoning) of the Buellton Municipal Code (15-ZOA-01) by Adding Regulations Regarding a Definition of a Fast Food Restaurant and Locational Restrictions for Fast Food Restaurants

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

SECTION 1: Pursuant to City Council direction, and with consultation and recommendation from the Planning Commission, staff has developed a definition of a fast food restaurant and developed locational restrictions for fast food restaurants.

SECTION 2: All proceedings having been duly taken as required by law, and upon review of the information provided in the staff report, consideration of the testimony given at the public hearing, as well as other pertinent information, the City Council finds the following:

- A. Record.** Prior to rendering a decision on any aspect of the proposed zoning ordinance amendments, the City Council considered the following:
1. All public testimony, both written and oral, received in conjunction with the public hearings conducted by the Planning Commission on August 6, 2015 (“Planning Commission Public Hearing”).
 2. All oral, written and visual materials presented by City staff in conjunction with the Planning Commission Public Hearing.
 3. All public testimony, both written and oral, received in conjunction with those certain public hearings conducted by the City Council on September 10, 2015, and October 22, 2015 (“City Council Public Hearings”).
 4. All oral, written and visual materials presented by City staff in conjunction with the City Council Public Hearings.
 5. The following informational documents which, by this reference, are incorporated herein.
 - a. Those certain written reports submitted to the City Council dated September 10, 2015, and October 22, 2015 (the “Staff Reports”).
 - b. The report and recommendation of the Planning Commission approved on August 6, 2015, and set forth in Resolution No. 15-10.

B. Public Review. On the basis of evidence hereinafter listed, all administrative procedures and public participation requirements prescribed in the Buellton Zoning Ordinance have been lawfully satisfied:

1. A notice was published in a legal section of a newspaper on August 27, 2015 (the “Public Notice”), a minimum of ten (10) days in advance of the City Council Public Hearing conducted on September 10, 2015.
2. The Public Notice was posted in three public locations on August 27, 2015, a minimum of 10 days in advance of the September 10, 2015, City Council Public Hearing.
3. The September 10, 2015, City Council Public hearing was left open and continued to October 22, 2015.

C. Environmental Clearance. This project is exempt from the California Environmental Quality Act 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.

D. Consistency Declarations. Based on (i) the evidence presented in the Staff Report (incorporated herein by reference), (ii) consultations with affected City Departments, and (iii) testimony and comments received in connection with the public hearing, the City Council does hereby declare as follows:

1. Zoning Ordinance Amendments.

a. Findings:

- i. The Amendment is in the interests of the general community welfare as it: (1) promotes a closer planning review of fast food restaurants that have been identified as a concern by the Buellton community and City Council; (2) preserves the community aesthetic and visual quality, which can be compromised by an over-abundance of fast food restaurants and their standardized architecture, color schemes, décor, and signage; (3) promotes a diversity of restaurant options within the community and protects locally-based restaurant business against the expansion of fast food restaurants which tend to be part of large, out-of-area corporations; and (4) protects the public health by limiting the location of fast food restaurants, which have been associated with negative health impacts.
- ii. The Amendment is consistent with the General Plan, the requirements of state planning and zoning laws, and Title 19 of the Zoning Ordinance.

- iii. The Amendment is consistent with good zoning and planning practices.

SECTION 3. Section 19.02.210 of the Buellton Municipal Code is hereby amended and Section 19.02.230 is hereby added to the Buellton Municipal Code, to be read, in words and figures, as follows (deletions in strikeout, additions in underline):

“Section 19.02.210 Commercial and industrial zone allowable land use and permit requirements

Land Use Type	CN	CR	CS	M	See Section
Restaurants, fast food	MUP	CUP	CUP		<u>19.02.230</u>

Section 19.02.230 Fast food restaurant locational restrictions

A. Locational Restrictions. Fast food restaurants, as defined in subsection B below, shall only be located in the City within the boundaries bolded in black below:



Fast food restaurants, as defined in subsection B, are prohibited outside this area.

B. Fast food restaurant definition. Fast food restaurants are establishments that have all of the following characteristics: a menu consisting of items prepared in advance or prepared or heated quickly, no table orders, food served in disposable wrapping or containers, and a drive-through lane. Food service establishments that meet this definition within hospitality or entertainment businesses, including hotels, movie theaters, and bowling alleys, are not subject to this ordinance.

C. Any determination or decision under, or interpretation of, this Section is subject to the appeal provisions set forth in Section 19.10.130.

SECTION 4: If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance irrespective of the fact that any one or more sections, subsections, subdivision, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

SECTION 5: The City Clerk: (i) shall certify as to the passage of this Ordinance and shall cause the same to be published as required by law; (ii) is hereby authorized and directed to make typographical, grammatical and similar corrections in the final text of the Ordinance so long as such corrections do not constitute substantive changes in context; and (iii) cause the Buellton Municipal Code to be reprinted by adding the language contained within Section 3 of this Ordinance.

PASSED, APPROVED, AND ADOPTED this _____ day of November 2015.

Holly Sierra
Mayor

ATTEST:

Linda Reid
City Clerk

Planning Commission Resolution No. 15-10

A Resolution of the Planning Commission of the City of Buellton, California, Recommending that the City Council Revise Title 19 (Zoning) of the Buellton Municipal Code (15-ZOA-01) By Adding Regulations Regarding a Definition of a Fast Food Restaurant and Locational Restrictions for Fast Food Restaurants, and Making Findings in Support Thereof

THE PLANNING COMMISSION OF THE CITY OF BUELLTON DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1: Pursuant to City Council direction, and with consultation with the Planning Commission, staff has developed a definition of a fast food restaurant and developed locational restrictions for fast food restaurants. Attached Exhibit A is the proposed wording of these regulations.

SECTION 2: All proceedings having been duly taken as required by law, and upon review of the information provided in the staff report, consideration of the testimony given at the public hearing, as well as other pertinent information, the Planning Commission finds the following:

- A. Record.** Prior to rendering a decision on any aspect of the proposed zoning ordinance amendments, the Planning Commission considered the following:
1. All public testimony, both written and oral, received in conjunction with that certain public hearing conducted by the Planning Commission on August 6, 2015 (“Public Hearing”).
 2. All oral, written and visual materials presented by City staff in conjunction with the Public Hearing.
 3. The following informational documents which, by this reference, are incorporated herein.
 - a. That staff report submitted by the Planning Department dated August 6, 2015 (the “Staff Report”).
- B. Public Review.** On the basis of evidence hereinafter listed, all administrative procedures and public participation requirements prescribed in the Buellton Zoning Ordinance have been lawfully satisfied:
1. A notice was published in a newspaper on July 23, 2015 (the “Public Notice”), a minimum of ten (10) days in advance of the August 6, 2015, Public Hearing.

2. The Public Notice and Agenda for the Public Hearing was posted in three conspicuous public places on July 23, 2015, a minimum of 10 days before the August 6, 2015, Public Hearing.
- C. **Environmental Clearance.** This project is exempt from the California Environmental Quality Act 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.
- D. **Consistency Declarations.** Based on (i) the evidence presented in the Staff Report (incorporated herein by reference), (ii) consultations with affected City Departments, and (iii) testimony and comments received in connection with the public hearing, the Planning Commission does hereby declare as follows:
1. **Zoning Ordinance Amendments.**
 - a. **Findings:**
 - i. The Amendment is in the interests of the general community welfare as it promotes a closer planning review of fast food restaurants that have been identified as a concern by the Buellton community and City Council.
 - ii. The Amendment is consistent with the General Plan, the requirements of state planning and zoning laws, and Title 19 of the Zoning Ordinance.
 - iii. The Amendment is consistent with good zoning and planning practices.

SECTION 3. The Planning Commission hereby recommends that the City Council adopt an ordinance to amend Title 19 of the Buellton Municipal Code in accordance with the changes noted on Exhibit A to this resolution as amended at the Planning Commission public hearing.

SECTION 4. The Planning Commission Secretary shall certify as to the adoption of this Resolution and shall cause the same to be transmitted to the City Clerk for consideration by the City Council.

PASSED, APPROVED, AND ADOPTED this 6th day of August 2015.

Lisa Figueroa, Chair

Exhibit A – Draft Ordinance Wording

ATTEST:

Clare Barcelona, Planning Commission Secretary

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) SS
CITY OF BUELLTON)

I, Clare Barcelona, Planning Commission Secretary of the City of Buellton, do hereby certify that the above and foregoing Resolution No. 15-10 was duly passed and adopted by the Planning Commission of said City at a regular meeting thereof, held on the 6th day of August 2015, by the following vote, to wit:

- AYES: (4) Commissioners Dunstan and Mercado, Vice Chair Reif and Chair Figueroa
- NOES: (0)
- ABSENT: (1) Commissioner Padilla

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of August 2015.

Clare Barcelona
Planning Commission Secretary

EXHIBIT A

Section 19.02.210 Commercial and industrial zone allowable land use and permit requirements

Land Use Type	CN	CR	CS	M	See Section
Restaurants, fast food	MUP	CUP	CUP		<u>19.02.230</u>

Section 19.02.230 Fast food restaurant locational restrictions

A. Locational Restrictions. Fast food restaurants, as defined in subsection B below, shall only be located in the following area of the City:



Fast food restaurants, as defined in subsection B, are prohibited outside this area. If necessary, an operator of a restaurant or proposed restaurant located outside this area may request the Planning Commission, pursuant to subsection C, to determine that such restaurant does not fall within the definition set forth in subsection B.

B. Fast food restaurant definition. A fast food restaurant is any establishment which dispenses food for consumption on or off the premises, and which may have two or more of the following characteristics: a limited menu, items prepared in advance or prepared or heated quickly, no table orders, and food served in disposable wrapping, containers, or bags.

C. Planning Commission determination. If the planning director or his or her designee determines that a restaurant or proposed restaurant located outside of the boundary described in subsection A is a fast food restaurant and is therefore prohibited, the operator of such restaurant may request the Planning Commission make an interpretation of whether the restaurant falls within the definition set forth in subsection B.

FAST FOOD RESTAURANT DEFINITIONS FROM OTHER CITIES

Santa Maria

Restaurant, fast-food. "Fast-food restaurant" means a place that is primarily designed and used for the sale of prepared foods to be consumed off the premises.

Cotati

Formula-Based Fast Food Restaurant. A national, regional, or local formula food service establishment that uses a Trademark, Logo, Service Mark or other mutually identifying name or symbol that is shared by 150 or more similar establishments within the United State, and which maintains a standardized array of merchandise, or standard service, décor, color scheme, business methods, architecture, layout, uniform apparel, signage or similar standardized feature; and is dedicated to food service where food is consumed on or off site and exhibits three or more of the following characteristics:

- 1. Food is pre-made and wrapped before customers place orders;*
- 2. Food is served with disposable tableware for on-site food consumption;*
- 3. Food is ordered from a wall menu at a service counter;*
- 4. Food is consumed on the premises is ordered while customers are standing;*
- 5. Payment is made by customers before food is consumed; and*
- 6. The service counter is closer to an entry/exit than is the seating/dining area.*

Seaside

Definition of "Restaurant, Fast Food"

A retail business that sells ready-to-consume food products for on or off-premise consumption and whose design or operation includes three or more of the following characteristics:

- 1. Foods are usually served in paper, plastic or disposable containers;*
- 2. Foods can be served directly to the consumer in a motor vehicle either by a carhop or by other means which eliminate the need for a customer to exit the motor vehicle;*
- 3. The consumption of food within a motor vehicle parked upon the premises or at other facilities on the premises outside the restaurant building is allowed or encouraged;*
- 4. The facilities for on-premises consumption of food are insufficient for the volume of food sold in the restaurant;*
- 5. Table service is not provided; and/or*

6. *A restaurant that has as its principal business the sale of prepared and/or ready-to-eat food or beverage for consumption on or off the premises, and that is affiliated with three or more other restaurants with a similar name, trademark, trade name, trade style or type of food service, by commonality of ownership, control or contract arrangement, or which is advertised to give the appearance of affiliation.*

Los Angeles

Fast Food Restaurant. Any establishment which dispenses food for consumption on or off the premises, and which has the following characteristics: a limited menu, items prepared in advance or prepared or heated quickly, no table orders, and food served in disposable wrapping or containers.

Solvang

Restaurant, Formula: A restaurant devoted to the preparation and offering for sale of food and beverages for consumption either on or off the premises, which is required by contractual or other arrangements to offer any of the following: standardized menus, ingredients, food preparation, decor, uniforms or similar standardized features, and where there are five (5) or more similar locations nationwide. Notwithstanding the foregoing, a full service restaurant, where there are less than twenty five (25) locations nationwide does not meet the definition of a formula restaurant and "uniforms" do not include Northern European ethnic garb.

The Latest Illustrated Book of Development Definitions (2004)

An establishment where food and/or beverages are sold in a form ready for consumption, where all or significant part of the consumption takes place outside the confines of the restaurant, and where ordering and pickup of food may take place from an automobile.

Santa Barbara

Fast Food Restaurant. Any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state for consumption either within the restaurant building or for carry-out with consumption off the premises, and whose design or principal method of operation includes foods, frozen desserts, or beverages that are usually served in edible containers or in paper, plastic, or other disposable containers.

City of Arroyo Grande

An establishment whose principal business is one that offers quick food service primarily for take-out, which is accomplished through a limited menu of items already prepared and held for service, and that is characterized by high automobile accessibility, self-service, short stays by customers and having late or long hours of operation (e.g., open six a.m. to eleven p.m. or outside of those hours).

City of Alameda

Businesses that offer quick food service which is accomplished through a limited menu of items already prepared and held for service, or prepared, fried or griddled quickly. Orders are not generally taken at the customer's table, and food is generally served in disposable wrapping or containers.

City of Glendale

An establishment which is engaged primarily in the business of preparing food and purveying it on a self-serve or semi-self-serve basis, and with more than eight (8) seats. Customer orders and/or service may be by means of a walk-up counter or window designed to accommodate automobile traffic. Consumption may be either on or off the premises.

City of Irvine

An establishment whose principal business is the sale of prepared, "take-out" or rapidly pre-prepared food served in disposable packaging directly to the customer, for consumption either within the restaurant or off the premises.

City of Pacifica

An eating establishment whose primary use is the quick selling of food in ready-to-consume individual servings. Such food is typically served over-the-counter in pre-packaged disposable containers. Fast food restaurants have more than one seat per one hundred fifty (150') square feet gross leasable floor area.

THE USE OF ZONING
TO RESTRICT
FAST FOOD OUTLETS:
A POTENTIAL STRATEGY
TO COMBAT OBESITY

October 2005

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Acknowledgments: We would like to thank the National Center for Environmental Health, Centers for Disease Control and Prevention, for providing funding to The Center for Law and the Public's Health at Johns Hopkins & Georgetown Universities for this project. We would also like to express our gratitude to the following individuals for their review of the manuscript and comments: Marice Ashe, JD, MPH, Director, Public Health Law Program, Public Health Institute; Andrew L. Dannenberg, MD, MPH, Project Officer, National Center for Environmental Health, Centers for Disease Control and Prevention; Leslie S. Linton, JD, MPH, Deputy Director, Active Living Research, San Diego State University; and Lesley A. Stone, JD, Zuckerman Fellow, Harvard University Kennedy School of Government. The contents are solely the responsibility of the authors and do not necessarily represent the official views of CDC or the views of individual reviewers.

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The Use of Zoning to Restrict Fast Food Outlets: A Potential Strategy to Combat Obesity

Ashe et al., in a September 2003 article in the *American Journal of Public Health*, discuss how local communities can use zoning laws to create a retail market that offers healthier foods.¹ In considering how zoning laws have been used to reduce the adverse health effect of alcohol, the researchers mention studies that provide substantial evidence of a positive correlation between alcohol availability and alcohol-related health problems, such as liver cirrhosis, motor vehicle crashes, and violence. They also comment that, since the mid-1980s, many California cities have passed zoning laws that reduce alcohol availability by restricting the density and location of alcohol retailers. California courts have upheld these laws. According to the researchers, these findings suggest that zoning laws have provided a useful tool for reducing alcohol-related health problems.

The Ashe et al. article also considers how the alcohol zoning model could be extended to other retailers, including “fast food” outlets.² “The prevalence of ‘fast food’

¹ Ashe M, Jernigan D, Kline R, Galaz R. Land use planning and the control of alcohol, tobacco, firearms, and fast food restaurants. *American Journal of Public Health* 2003; 93(9):1404-1408.

² In this monograph, we use the terms “fast food outlet,” “fast food establishment,” “fast food restaurant,” and “fast food business” interchangeably. In zoning codes, various terms are used to describe different food retailers, including: “formula fast food establishment,” “fast food restaurant,” “large-scale fast food establishment,” “small-scale fast food establishment,” “full-service restaurant,” “standard restaurant,” “carry out food store,” “quick service restaurant,” “drive-in restaurant,” “drive-through restaurant,” “convenience food store,” “cafeteria,” “café,” and “class I, class II and class III” (see Part II of this monograph). The same term is often defined differently in different zoning codes. What to call and how to distinguish among the various types of businesses that sell food can be difficult. Definitions must be clear in zoning laws to include only those establishments the municipality would like to regulate and exclude those it does not. See McAllister A. *Zoning for Fast-Food and Drive-In Restaurants*. Planning Advisory Service, Report No. 320. Chicago, Illinois: American Society of Planning Officials,

outlets offering menus filled with nutritionally deficient food and promoting ‘super-sized’ portions, in combination with a scarcity of healthy alternatives, is an important public health issue.”³ They suggest that communities can combat the public health threat posed by fast food by issuing zoning laws that restrict where and how fast food outlets can operate.

In this monograph, we build on Ashe et al.’s suggestions for using zoning laws to restrict the operations of fast food outlets to combat obesity. Fast food is defined generally here as inexpensive food that is prepared and served quickly, often by drive-through service, and tends to be high in fat and low in nutritional value. We recognize that diet is only half of the equation as obesity results from the consumption of too many calories and the expenditure of too few. The expenditure of calories, which is vitally important to battling obesity, is also quite amenable to influence by zoning laws. Laws that encourage exercise by creating hiking trails or bicycle paths, or by restricting automobile use or parking in certain areas, can alter the balance between the consumption and expenditure of calories, thereby altering the prevalence of obesity. Important as those laws are, they are not the focus of this monograph. Information on that topic can be found elsewhere.⁴

September 1976. When zoning laws are not drafted clearly, litigation can arise. See, e.g., *Vitolo v. Chave*, 314 N.Y.S.2d 51 (N.Y. Sup. Ct. 1970) (determining whether proposed use is “restaurant” or “drive-in restaurant”); *Board of Supervisors of Upper Merion Township v. McDonald’s Corp.*, 497 A.2d 264 (Pa. Cmmw. Ct. 1985) (discussing difference between terms “drive-in” and “drive-thru”); *Appeal of Haff*, 448 A.2d 120 (Pa. Cmmw. Ct. 1982) (determining which use definition McDonald’s restaurant falls under).

³ Ashe et al. Land use planning and the control of alcohol, tobacco, firearms, and fast food restaurants at 1407.

⁴ Trust for America’s Health. *Fast in Fact: How Obesity Policies are Failing in America*. Issue Report (2005). Available at: <http://healthyamericans.org>; Fenton M. Engineering physical activity back into Americans’ lives. *Progressive Planning* 2003;157:12-17;

This monograph accompanies our abbreviated guide, *The City Planner's Guide to the Obesity Epidemic: Zoning and Fast Food*.⁵ In that guide, we ask and attempt to answer three key questions:

- **What is the supporting scientific evidence for zoning laws that address fast food outlets?**
- **Have such zoning laws been enacted by municipalities and what are the bases of such laws?**
- **Have the courts upheld zoning laws that address fast food?**

These issues are addressed in more detail here, and we encourage planners and others to use the content of this monograph to supplement the Guide. This monograph also discusses zoning and its traditional focus on protecting the public's health. We suggest that zoning law has the potential to be an effective tool for addressing obesity as a public health problem.

The monograph is divided into three parts. In Part I, *Connecting the Dots: Obesity to Fast Food to Zoning*, we answer the first question above. Specifically, we discuss the problem of obesity in the United States, paying particular attention to the role of fast food in the obesity epidemic. Part I also explores how zoning can be an effective tool for reducing obesity and explains the legal bases of zoning fast food

Hirschhorn JS. Zoning should promote public health. *American Journal of Health Promotion*. 2004;18(3):258-260; Sallis JF, Kraft K, Linton LS. How the environment shapes physical activity: a transdisciplinary research agenda. *American Journal of Public Health* 2002;22(3):208; American Planning Association. *Planning and Designing the Physically Active Community: Resource List*. Available at: <http://www.planning.org/physicallyactive/pdf/ReferenceList.pdf>; Institute of Medicine of the National Academies. *Preventing Childhood Obesity: Health in the Balance, Executive Summary*. The National Academies Press: Washington, D.C. (2005). Available at: http://www.nap.edu/execsumm_pdf/11015.pdf.

⁵ *The City Planner's Guide to the Obesity Epidemic: Zoning and Fast Food* is available electronically at The Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities' website (<http://www.publichealthlaw.net>).

outlets. The final section of Part I briefly describes potential federal constitutional challenges to zoning laws aimed at fast food.

Part II, *Zoning Laws Regulating Fast Food Outlets*, answers the second question by providing numerous examples of existing zoning laws that regulate fast food. This section should be a useful resource for planners and others interested in specific language restricting fast food outlets.

Part III, *Case Law Supporting Zoning of Fast Food Outlets*, answers the third question by discussing selected court cases that involve zoning of fast food outlets. While we have found no examples by which municipalities have directly confronted their populations' problems with obesity through zoning legislation, zoning fast food establishments for other reasons has been tried and approved by the courts. These cases shed light on zoning's potential with respect to obesity and lead to a few practical suggestions for drafting zoning laws that address obesity.

Part I: Connecting the Dots: Obesity to Fast Food to Zoning

I. Obesity as a Current Public Health Crisis

Obesity⁶ is a significant public health problem in the United States and has been described as an epidemic. One study calculated that in 2000 at least 365,000 deaths in the United States or about 15.2 percent of the total number of deaths were attributable to poor diet and physical inactivity, second only to tobacco use (n=435,000), and the number is increasing.⁷ Using all levels of overweight (including obesity) as an estimate of poor diet and physical activity (see note 6 for definitions of weight categories), the authors found that overweight alone accounted for nearly all of the deaths (n=350,000), while nutritional deficiencies and obesity-independent effects of physical inactivity accounted for the rest (n=15,000).⁸ Another study found that compared to the normal weight category, obesity was associated with nearly 112,000 excess deaths in 2000 and overweight was not associated with any excess mortality.⁹ While there are differences in the scientific findings over the estimated number of deaths attributable to obesity and

⁶ For adults over 20 years old, *overweight* is defined as a body mass index (BMI) between 25.0 and 29.9; *obesity* as 30.0 or higher; and *extreme obesity* as 40.0 or higher. BMI is a tool used for determining weight status and measures weight adjusted for height. For determining weight status in children and teens, BMI is plotted on the 2000 Centers for Disease Control and Prevention (CDC) Growth Charts which are age and gender specific. *Overweight* is defined as at or above the 95th percentile of BMI-for-age. *At risk of overweight* is defined as at or above the 85th percentile but less than the 95th percentile of BMI-for-age. Centers for Disease Prevention and Control. *BMI - Body Mass Index: Home*. Available at: <http://www.cdc.gov/nccdphp/dnpa/bmi/index.htm>; Flegal KM, Carroll MD, Ogden CL, Johnson CL. *Prevalence and trends in obesity among US adults, 1999-2000*. *JAMA* 2002;288(14):1723-1727.

⁷ Mokdad AH, Marks JS, Stroup DF, Gerberding JL. Actual causes of death in the United States, 2000. *JAMA* 2004;291(10):1238-1245; Mokdad AH, Marks JS, Stroup DF, Gerberding JL. Correction: actual causes of death in the United States, 2000. *JAMA* 2005;293(3):293.

⁸ Mokdad et al. Correction: actual causes of death in the United States, 2000.

⁹ Flegal KM, Graubard BI, Williamson DF, Gail MH. Excess deaths associated with underweight, overweight, and obesity. *JAMA* 2005;293(15):1861-1867.

overweight, even the lowest estimates suggest that at least tens of thousands of people in the United States die from obesity each year.¹⁰ Individuals even moderately overweight are 2 times more likely to die prematurely than those of normal weight.¹¹ Life-expectancy at birth and at older ages in the United States might level off or even decline within the first half of this century because of obesity and its related complications.¹² It is estimated that about 9 million U.S. children over age 6 are overweight.¹³ For adults alone, overweight and obesity costs between \$98 billion to \$129 billion each year in national health care expenditures.¹⁴

¹⁰ See Mark DH. Deaths attributable to obesity. *JAMA* 2005;293(15):1918-1919 (commenting on differences in the two studies).

¹¹ DeMaria AN. Of fast food and franchises. *Journal of the American College of Cardiology* 2003;41(7):1227-1228.

¹² Olshansky SJ, Passaro JK, Hershow RC, Layden J, Carnes BA, Brody J, Hayflick L, Butler RN, Allison DB, Ludwig DS. A potential decline in life expectancy in the United States in the 21st Century. *New England Journal of Medicine* 2005;352:1138-1145.

¹³ Institute of Medicine of the National Academies. *Childhood Obesity in the United States: Facts and Figures*. Fact Sheet, September 2004. Available at: <http://www.iom.edu/Object.File/Master/22/606/0.pdf>. The Institute of Medicine of the National Academies Report defines "obesity" as children and youth between ages 2 and 18 with a body mass index (BMI) equal to or greater than the 95th percentile of the Centers for Disease Control and Prevention (CDC) Growth Charts. This is essentially the "overweight" category as defined by CDC as CDC does not refer to children as obese (see note 6).

¹⁴ Institute of Medicine of the National Academies. *Overview of the IOM's Childhood Obesity Prevention Study*. Fact Sheet, September 2004. Available at: <http://www.iom.edu/Object.File/Master/22/604/0.pdf>.

According to national surveys,¹⁵ the prevalence of obesity in adults, defined as a body mass index (BMI) of 30 or higher, was relatively stable from 1960 to 1980 and then increased in 1988-1994 and in 1999-2002.¹⁶ Specifically, in 1960-1962, 13.4 percent of U.S. adults aged 20-74 were obese, 14.5 percent in 1971-1974, and 15.0 percent in 1976-1980. In 1988-1994, the prevalence of obesity increased to 23.3 percent in that group.¹⁷ In 1999-2002, among adults aged 20 or older, 30.4 percent were obese and 34.7 percent were overweight; thus, recent data indicates that nearly two-thirds of U.S. adults (65.1%) are either overweight or obese. The 1999-2002 data also show that in nearly every age and racial/ethnic group (non-Hispanic white, non-Hispanic black, Mexican-American) of adults, the prevalence of overweight or obesity was greater than 50 percent. By racial/ethnic group, gender, and age, the prevalence of obesity ranged from a low of 22.9 percent of non-Hispanic white men aged 20-39 to a high of 50.6 percent of non-Hispanic black women aged 40-59. While there was no significant difference in the prevalence of obesity among men across racial/ethnic

¹⁵ The National Health and Nutrition Examination Survey (NHANES) is a series of nationally representative cross-sectional surveys conducted by the National Center for Health Statistics of the Centers for Disease Control and Prevention. The surveys began in 1960 and each provides a national estimate of the weight status of the U.S. population at the time of the survey. In 1999, NHANES became a continuous survey. Previous surveys include the National Health Examination Survey (NHES I, 1960-1962) and three NHANES surveys (NHANES I, 1971-1974; NHANES II, 1976-1980; and NHANES III, 1988-1994). The results from NHANES are considered more accurate than other surveys such as the Behavioral Risk Factor Surveillance System (BRFSS) and the Harris Poll because those surveys are based on self-reports and self-reported weight tends to be lower. By contrast, NHANES is based on measured weight and height data. Centers for Disease Control and Prevention, *NHANES homepage*. Available at: <http://www.cdc.gov/nchs/nhanes.htm>.

¹⁶ Flegal et al. Prevalence and trends in obesity among US adults, 1999-2000; Hedley AA, Ogden CL, Johnson CL, Carroll MD, Curtin LR, Flegal KM. Prevalence of overweight and obesity among US children, adolescents and adults, 1999-2002. *JAMA* 2004;291(23):2847-2850.

¹⁷ Flegal et al. Prevalence and trends in obesity among US adults, 1999-2000.

categories for all age groups, for women aged 20 or older the difference was significant. Non-Hispanic black women had the highest prevalence of obesity at 49.0 percent, followed by Mexican-American women at 38.4 percent, and non-Hispanic white women at 30.7 percent.¹⁸

The 1999-2002 data also show that among children aged 6-19, 16 percent were overweight and 15 percent were at risk for becoming overweight (see note 6 for definitions of weight categories in children). For boys aged 6-19, Mexican-American boys had a significantly higher prevalence of overweight (25.5%) than both non-Hispanic white boys (14.3%) and non-Hispanic black boys (17.9%). For girls aged 6-19, non-Hispanic white girls had a significantly lower prevalence of overweight (12.9%) than both non-Hispanic black girls (23.2%) and Mexican-American girls (18.5%).

Obesity is a risk factor for many chronic conditions such as diabetes, stroke, heart disease, high blood pressure, and certain cancers.¹⁹ Children who are obese are more likely to be obese adults and obesity in children may predispose them to adult diseases.²⁰ Over the past two decades, the public health sector has devoted increasing attention to determining the causes of obesity and has been developing strategies to prevent it. Healthy People 2010, which is a set of health objectives for the nation to achieve by year 2010, identifies overweight and obesity as one of ten Leading Health

¹⁸ Hedley et al. Prevalence of overweight and obesity among US children, adolescents and adults, 1999-2002.

¹⁹ Visscher TL, Seidell JC. The public health impact of obesity. *Annual Review of Public Health* 2001;22:355-75; Flegal et al. Prevalence and trends in obesity among US adults, 1999-2000.

²⁰ Hill JO, Trowbridge FL. Childhood obesity: future directions and research priorities. *Pediatrics* 1998;101:S570-S574; St-Onge MP, Keller KL, Heymsfield B. Changes in childhood food consumption patterns: a cause for concern in light of increasing body weights. *American Journal of Clinical Nutrition* 2003;78(6):1068-73; Institute of Medicine of the National Academies. *Childhood Obesity in the United States: Facts and Figures*.

Indicators that will be used to measure the health of the nation over the first decade of the 21st century.²¹ The 1999-2002 data indicate that we are far off from the stated goals. For example, the prevalence of obesity in adults (30.4%) is double the Healthy People 2010 objective of 15 percent; and the prevalence of overweight in children is 16 percent—more than 3 times the 5 percent stated goal. Moreover, the prevalence of adults at a healthy weight is only 33 percent—about half of the Healthy People 2010 objective of 60 percent.²²

II. Why Zoning Fast Food Outlets Can Help Address Obesity

A. Food Retail Market and Diet

Obesity is believed to have many causes, including polygenic, metabolic, psychosocial, and environmental ones. For example, certain genes may make an individual more susceptible to obesity by affecting energy intake and requirements, energy utilization, taste preferences, and metabolism.²³ Most experts agree, though, that biology cannot explain the rapid weight gain in the past few decades. While there are insufficient data to state definitively the cause of the recent obesity epidemic, the growing consensus among experts is that environmental factors are responsible—specifically, high caloric intake and low levels of physical activity.²⁴ With respect to

²¹ Healthy People 2010. Available at: www.healthypeople.gov.

²² Healthy People 2010, *Nutrition and Overweight*. Available at: http://www.healthypeople.gov/document/HTML/Volume2/19Nutrition.htm#_Toc490383123; Hedley et al. Prevalence of overweight and obesity among US children, adolescents and adults.

²³ Poston II, WS, Foreyt JP. Obesity is an environmental issue. *Atherosclerosis* 1999;146:201-209.

²⁴ Hill JO, Wyatt HR, Reed GW, Peters JC. Obesity and the environment: where do we go from here? *Science* 2003;299:853-855; French SA, Story M, Jeffery RW. Environmental influences on eating and physical behavior. *Annual Review of Public Health* 2001;22:309-335; Poston II et al. Obesity is an environmental issue.

intake, fast food has been under increasing scrutiny for its role in the obesity epidemic. In this section, we consider some of the reasons why fast food may contribute to obesity in the United States, and we review several studies that indicate that access to fast food is positively associated with higher caloric intake, higher BMI, weight gain, and low nutrition. These and other studies suggest that zoning laws that limit individuals' access to fast food and provide access to healthy food alternatives could help reduce the prevalence of obesity in the United States.

1. *Fast Food*

The scientific literature suggests three main reasons why fast food likely contributes to obesity: large, inexpensive portion sizes; high energy density; and the frequency with which Americans, including children, consume it.²⁵

Food portion sizes have increased significantly in the United States over the past several decades. One study found that between 1977 and 1996, with the exception of pizza, food portion sizes increased for Americans aged 2 and older for all foods studied in all locations examined (eaten or prepared at home, fast food establishments, restaurants, and any other source).²⁶ Specifically, during the 19-year study period, a single serving of a soft drink increased by 6.8 ounces, Mexican dishes by 1.7 ounces, hamburgers by 1.3 ounces, salty snacks by 0.6 ounces, and french fries by 0.5 ounces. The same study found that in 1994-1998, for most of the foods studied, the largest portion sizes were found at fast food establishments and the smallest portions at other restaurants.

²⁵ See Brownell KD. Fast food and obesity in children. *Pediatrics* 2004;113(1 Pt 1):132.

²⁶ Nielsen SJ, Popkin BM. Patterns and trends in food portion sizes, 1977-1998. *JAMA* 2003;289(4):450-453.

Another study looked at ready-to-eat prepared foods (marketplace portions) and found that the portion sizes of all of the food studied, with the exception of sliced white bread, exceeded federal standards (U.S. Department of Agriculture standard serving sizes for dietary guidance and U.S. Food and Drug Administration standard servings for food labels) by a minimum factor of 2 and sometimes by as much as 8.²⁷ According to the study, hamburgers, sodas, and french fries served at fast food chains are often 2 to 5 times larger than their original portion size. Specific examples are illustrative. In 2001, McDonald's "small" french fries were the same size as the only size offered in the mid-1950s and one-third the weight of the largest size available in 2001. In 2001, "large" was equivalent in weight to 1998's "Supersize," and the 2001 "Supersize" was nearly one ounce more.²⁸ Portion size matters because studies repeatedly demonstrate that, except for young children, people tend to eat more when served more.²⁹ Food retailers also recognize that consumers like values, and offering larger portions for relatively less money has become a successful marketing strategy for fast food businesses.³⁰

Large portion size by itself is not the problem, but rather the consumption of large servings of high energy dense food (*energy density* refers to the amount of energy or calories per weight of a particular food). Foods higher in fat tend to be more energy

²⁷ Young LR, Nestle M. Expanding portion sizes in the US marketplace: implications for nutrition counseling. *Journal of the American Dietetic Association* 2003;103:231-234.

²⁸ Young LR, Nestle M. The contribution of expanding portion sizes to the US Obesity Epidemic. *American Journal of Public Health* 2002;92(2):246-249.

²⁹ Rolls BJ. The supersizing of America: portion size and the obesity epidemic. *Nutrition Today* 2003;38(20):42-53.

³⁰ Young et al. The contribution of expanding portion sizes to the US Obesity Epidemic; Nestle M, Jacobson MF. Halting the obesity epidemic: a public health policy approach. *Public Health Reports* 2000;115:12-24.

dense.³¹ Fast foods tend to be high in fat, energy dense, and low in nutrition.³² For example, the combined total of McDonald's Supersize french fries (7.1 oz with 610 kcal) and Supersize Coca-Cola (42 oz with 410 kcal) makes up about half of the daily energy requirements for large segments of the U.S. population.³³ The combination of a Big Mac (570 kcal and 32g of fat) and medium french fries (450 kcal and 22g of fat) also has about half of the daily energy requirements as well as 83 percent of recommended daily fat based on a 2000 kcal/day diet.³⁴ And Burger King's Double Whopper alone, with nearly 1,000 kcal, provides nearly half of total daily energy requirements for many Americans.³⁵ Between 1977 and 1996, soft drinks increased by 49 kcal (6.8 oz), french fries by 68 kcal (0.5 oz), and hamburgers by 97 kcal (1.3 oz).³⁶ One study found that children and adolescents aged 4-19 who ate fast food consumed on average 187 kilocalories per day more than those who did not, which could theoretically account for an additional 6 pounds of weight gain per child per year.³⁷ As only 10 extra kilocalories

³¹ Rolls BJ. The supersizing of America: portion size and the obesity epidemic. Rolls notes that large portions of low energy dense food such as fruits and vegetables should be encouraged.

³² Prentice AM, Jebb SA. Fast foods, energy density and obesity: a possible mechanistic link. *Obesity Reviews* 2003;4(4):187-194; French SA, Story M, Jeffery RW. Environmental influences on eating and physical behavior; Bowman SA, Gortmaker SL, Ebbeling CB, Pereira MA, Ludwig DS. Effects of fast-food consumption on energy intake and diet quality among children in a national household survey. *Pediatrics* 2004;113(1):112-118.

³³ Young et al. Expanding portion sizes in the US marketplace: implications for nutrition counseling.

³⁴ French et al. Environmental influences on eating and physical behavior.

³⁵ Young et al. Expanding portion sizes in the US marketplace: implications for nutrition counseling.

³⁶ Nielsen et al. Patterns and trends in food portion sizes, 1977-1998.

³⁷ Bowman et al. Effects of fast-food consumption on energy intake and diet quality among children in a National household survey.

per day of unexpended energy amounts to an extra pound of weight per year, the high fat and caloric content of many fast foods raises legitimate concerns.³⁸

Fast food consumption may also contribute to a less nutritional diet in both children and adults. In a study of U.S. children and adolescents aged 4-19, those who ate fast food compared to those who did not consumed more total energy, more total fat, more saturated fat, more total carbohydrates, more added sugars, more sugar-sweetened drinks, less fluid milk, less fiber, less fruits, and less nonstarchy vegetables.³⁹ A second study found that adolescents who frequently ate fast food consumed more total energy, a higher percent of energy from fat, more daily servings of cheeseburgers, french fries, pizza, and soft drinks, and less daily servings of fruit, vegetables, and milk.⁴⁰ A third study involving both adults and children found similar results: fast food consumers had a higher intake of energy, fat, saturated fat, sodium, and soft drinks, and a lower intake of fruits and vegetables, milk, and vitamins A and C compared to those who did not eat fast food.⁴¹ A fourth study of adults alone found that eating fast food increased the day's energy intakes, increased energy density of the overall day's diet, and decreased micronutrient density. The same study found that adults who ate fast food on one of the two survey days also consumed 206 calories more on the day they ate fast food than on the non-fast food day, and that eating fast

³⁸ Nielsen et al. Patterns and trends in food portion sizes, 1977-1998.

³⁹ Bowman et al. Effects of fast-food consumption on energy intake and diet quality among children in a National household survey.

⁴⁰ French SA, Story M, Neumark-Sztainer D, Fulkerson JA, Hannan P. Fast food restaurant use among adolescents: associations with nutrient intake, food choices and behavioral and psychosocial variables. *International Journal of Obesity* 2000;25:1823-1833.

⁴¹ Paeratakul S, Ferdinand DP, Champagne CM, Ryan DH, Bray GA. Fast-food consumption among US adults and children: dietary and nutrient intake profile. *Journal of the American Dietetic Association* 2003;103(10):1332-1338.

food was associated with failing to meet at least one of the recommendations for total fat, saturated fat, and added sugars.⁴² In a prospective study, researchers found that fast food consumption was associated with increased total energy and percentage of energy from fat, and more frequent consumption of hamburgers, french fries and soft drinks and less frequent consumption of fruit and fiber.⁴³

The third factor implicating fast food in the recent obesity epidemic is the frequency with which it is eaten. In general, more people are eating away from home. In 1977-1978, Americans (aged 2 and older) consumed about 77 percent of total kilocalories at home; by 1994-1996, the percentage had decreased to 65 percent.⁴⁴ In 1970, Americans spent 25 percent of their total food spending away from home, and by 1999 they spent nearly half (47.5%). By 2010, it is projected that the majority (53%) of the food dollar will be spent on away-from-home foods.⁴⁵ When people do eat out, many are choosing fast food restaurants. In 1953, fast food consumption comprised only 4 percent of the total away-from-home food sales compared to 34 percent in 1997.⁴⁶ Between 1977 and 1995, the percentage of meals/snacks eaten at fast food restaurants increased 200 percent compared to a 150 percent increase at other restaurants.⁴⁷ In

⁴² Bowman SA, Vinyard BT. Fast food consumption of U.S. adults: impact on energy and nutrient intakes and overweight status. *Journal of the American College of Nutrition* 2004;23(2):163-168.

⁴³ French SA, Harnack L, Jeffery RW. Fast food restaurant use among women in the Pound of Prevention study: dietary, behavioral and demographic correlates. *International Journal of Obesity* 2000;24:1353-1359.

⁴⁴ Nielsen et al. Patterns and trends in food portion sizes, 1977-1998.

⁴⁵ French et al. Fast food restaurant use among adolescents: associations with nutrient intake, food choices and behavioral and psychosocial variables.

⁴⁶ French et al. Fast food restaurant use among women in the Pound of Prevention study: dietary, behavioral and demographic correlates.

⁴⁷ French et al. Environmental influences on eating and physical behavior.

2001, about \$110 billion was spent on fast food alone in the United States.⁴⁸ The number of fast food restaurants in the United States has increased dramatically over the past few decades from 72,850 in 1972 to 180,205 in 1995⁴⁹ to over 280,000 in recent years.⁵⁰ In the late 1970s, fast food accounted for 2 percent of the total energy consumed by children; by the mid-1990s, it accounted for 10 percent or a 500 percent increase.⁵¹ The average adolescent eats at a fast food restaurant two times per week,⁵² and on a typical day, 30.3 percent of U.S. children and adolescents eat fast food.⁵³ It is not surprising that children eat so much fast food as a recent study found that fast food restaurants in Chicago are clustered within a short walking distance from schools; 3 to 4 times as many fast food restaurants were located within 1.5 kilometers of schools than would have been expected if the restaurants had been distributed throughout the city unrelated to school locations.⁵⁴ In half of Chicago's schools, students need only walk about 5 minutes to reach a fast food restaurant. Adults are big consumers of fast food as well. In a nationally representative 24-hour dietary recall survey, one in four adults (26.5%) reported eating fast food.⁵⁵ In another 24-hour dietary recall survey, 37 percent

⁴⁸ DeMaria AN. Of fast food and franchises.

⁴⁹ French et al. Environmental influences on eating and physical behavior.

⁵⁰ Austin SB, Melly SJ, Sanchez BN, Patel A, Buka S, and Gortmaker SL. Clustering of fast-food restaurants around schools: a novel application of special statistics to the study of food environments. *American Journal of Public Health* 2005;95(9):1575-1581.

⁵¹ Bowman et al. Effects of fast-food consumption on energy intake and diet quality among children in a National household survey.

⁵² French et al. Fast food restaurant use among adolescents: associations with nutrient intake, food choices and behavioral and psychosocial variables.

⁵³ Bowman et al. Effects of fast-food consumption on energy intake and diet quality among children in a National household survey.

⁵⁴ Austin et al. Clustering of fast-food restaurants around schools: a novel application of special statistics to the study of food environments.

⁵⁵ Bowman et al. Fast food consumption of U.S. adults: impact on energy and nutrient intakes and overweight status.

of the adults and 42 percent of the children reported eating fast food.⁵⁶ And in a third study of women aged 20-45, 21 percent reported eating at a fast food restaurant 3 or more times a week, 15.7 percent reported two visits per week, and 39.2 percent reported one visit per week.⁵⁷

2. Suggestive Links to Obesity

Some research suggests that fast food may be linked to obesity. For example, studies have found an association between eating fast food and increased energy intake, higher fat intake,⁵⁸ higher BMI,⁵⁹ and overweight status.⁶⁰ A 15-year prospective study in young adults found strong positive associations between fast-food consumption and weight gain and insulin resistance.⁶¹ People eating fast food more than twice a week at both baseline and follow-up gained an extra 10 pounds (4.5 kilograms) over 15

⁵⁶ Paeratakul et al. Fast-food consumption among US adults and children: dietary and nutrient intake profile.

⁵⁷ French et al. Fast food restaurant use among women in the Pound of Prevention study: dietary, behavioral and demographic correlates.

⁵⁸ Bowman et al. Fast food consumption of U.S. adults: impact on energy and nutrient intakes and overweight status; Bowman et al. Effects of fast-food consumption on energy intake and diet quality among children in a National household survey; French et al. Fast food restaurant use among women in the Pound of Prevention study: dietary, behavioral and demographic correlates; French et al. Fast food restaurant use among adolescents: associations with nutrient intake, food choices and behavioral and psychosocial variables; Jeffrey RW, French SA. Epidemic obesity in the United States: are fast foods and television viewing contributing? *American Journal of Public Health* 1998;88(2):277-280; Paeratakul et al. Fast-food consumption among US adults and children: dietary and nutrient intake profile.

⁵⁹ Bowman et al. Fast food consumption of U.S. adults: impact on energy and nutrient intakes and overweight status; French et al. Fast food restaurant use among women in the Pound of Prevention study: dietary, behavioral and demographic correlates; Jeffrey et al. Epidemic obesity in the United States: are fast foods and television viewing contributing?.

⁶⁰ Bowman et al. Fast food consumption of U.S. adults: impact on energy and nutrient intakes and overweight status.

⁶¹ Pereira MA, Kartashov AI, Ebbeling CB, Van Horn L, Slattery, ML, Jacobs Jr, DR, Ludwig DS. Fast-food habits, weight gain, and insulin resistance (the CARDIA study): 15-year prospective analysis. *Lancet* 2005;365:36-42.

years, compared to those eating fast food less than once a week. The associations, moreover, were largely independent of potentially confounding factors such as physical activity and television viewing. Another study found that predominantly black neighborhoods had 2.4 fast food restaurants per square mile compared to only 1.5 fast food restaurants in predominantly white neighborhoods.⁶² For an average-sized neighborhood shopping area, this finding meant that predominantly black neighborhoods had 6 more fast food restaurants than predominantly white neighborhoods. The authors suggest that in black and low-income neighborhoods, more convenient access to fast food combined with decreased access to healthy food may increase consumption of unhealthy foods and play a role in the obesity epidemic in these populations.⁶³

3. *Alternatives to Fast Food*

While fast food restaurants have generally been associated with poorer eating habits, supermarkets and grocery stores have been associated with healthier eating habits. A 1991 study found a positive and significant association at both the community and zip code level between the availability of healthful products (low fat and high fiber) in supermarkets and grocery stores and reported consumption of healthful products by

⁶² Block JP, Scribner RA, DeSalvo KB. Fast food, race/ethnicity, and income: a geographic analysis. *American Journal of Preventive Medicine* 2004;27(3):211-217.

⁶³ One study found no association between overweight in urban low-income preschool children and three environmental factors—the proximity of the children’s residences to fast food restaurants, the proximity to playgrounds, and the level of neighborhood crime. Burdette HL, Whitaker RC. Neighborhood playgrounds, fast food restaurants, and crime: relationships to overweight in low-income preschool children. *Preventive Medicine* 2004;38:57-63.

individuals living near the stores.⁶⁴ In general, supermarkets tend to offer healthier foods at lower prices⁶⁵ and, therefore, may help to encourage individuals to eat healthier foods.

A U.S. study found that for each additional supermarket in the census tract, black residents' consumption of fruits and vegetables increased by 32 percent. Moreover, while fast food restaurants were evenly dispersed across neighborhoods, there were 5 times as many supermarkets in census tracts where white Americans lived. In fact, only 8 percent of black Americans lived in a census tract with one or more supermarkets compared to 31 percent of white Americans.⁶⁶ Another multi-jurisdictional study found that wealthier neighborhoods had over 3 times as many supermarkets as the lowest-wealth neighborhoods, and that there were 4 times as many supermarkets in predominantly white neighborhoods than in predominantly black neighborhoods.⁶⁷ The same study found 5 supermarkets serving nearly 118,000 people in 35 predominantly black neighborhoods (ratio 1:23,582) compared to 68 supermarkets serving 259,500 people (ratio 1:3816) in predominately white neighborhoods. The additional factor that

⁶⁴ Cheadle A, Psaty BM, Curry S, Wagner E, Diehr P, Koepsell T, Kristal A. Community-level comparisons between the grocery store environment and individual dietary practices. *Preventive Medicine* 1991;20:250-261.

⁶⁵ Morland K, Wing S, Diez Roux A, Poole C. Neighborhood characteristics associated with the location of food stores and food service places. *American Journal of Preventive Medicine* 2002;22(1):23-29; Cotterill RW, Franklin AW. *The Urban Grocery Store Gap*. Food Marketing Policy Issue paper, No. 8, Food Marketing Policy Center, Department of Agricultural and Resource Economics, University of Connecticut: Storrs, Connecticut, April 1995; Weinberg Z. No place to shop: food access lacking in the inner city. *Race, Poverty & the Environment* 2000;Winter:22-24.

⁶⁶ Morland K, Wing S, Diez Roux A. The contextual effect of the local food environment on residents' diets: the atherosclerosis risk in communities study. *American Journal of Public Health* 2002;92(11):1761-1767.

⁶⁷ Morland et al. Neighborhood characteristics associated with the location of food stores and food service places.

fewer households in poor and black neighborhoods had access to private transportation led the researchers to “suggest that residents of these neighborhoods have greater difficulty obtaining healthy food” and “may be at a disadvantage when attempting to achieve a healthy diet.”⁶⁸

Access to healthier foods alone, though, will not stop the obesity epidemic in the United States because many other factors influence what people eat including taste, cost, familiarity, nutritional value, and advertising.⁶⁹ But without access to healthy foods, the choice of what to eat is limited, and the research suggests lack of access is likely a significant barrier to healthy eating in some populations.⁷⁰ The Institute of Medicine of the National Academies’ report, *Preventing Childhood Obesity: Health in the Balance*, lists as one of the immediate steps for local and state governments to “[w]ork with communities to support partnerships and networks that expand the availability of and access to healthful foods.”⁷¹ One way to expand access to healthful foods is through zoning. By limiting the prevalence of fast food outlets and encouraging the development of healthier alternatives, such as supermarkets, zoning laws could help increase

⁶⁸ Morland et al. Neighborhood characteristics associated with the location of food stores and food service places.

⁶⁹ Poston II et al. Obesity is an environmental issue; Morland et al. The contextual effect of the local food environment on residents’ diets: the atherosclerosis risk in communities study; Henderson VR, Kelly B. Food advertising in the age of obesity: content analysis of food advertising on general market and African American television. *Journal of Nutrition Education & Behavior* 2005;37(4):191-196; Trust for America’s Health. *F as in Fact: How Obesity Policies are Failing in America*.

⁷⁰ Trust for America’s Health. *F as in Fact: How Obesity Policies are Failing in America*; Morland et al. Neighborhood characteristics associated with the location of food stores and food service places; Wendy C. Perdue, Larry O. Gostin & Lesley A. Stone, National challenges in population health: public health and the built environment: historical, empirical, and theoretical foundations for an expanded role, 31 *Journal of Law, Medicine & Ethics* 557 (2003).

⁷¹ Institute of Medicine of the National Academies. *Preventing Childhood Obesity: Health in the Balance, Executive Summary*, Table ES-1 at 21.

people's access to healthy foods and, in turn, help reduce the prevalence of obesity in this nation. In the next section, we review how zoning works and describe several zoning techniques that could be used to limit fast food outlets in communities and encourage the development of healthier, alternative food retailers.

B. Zoning to Create a Healthier Food Retail Market

The positive association between fast food, unhealthy diets, and obesity suggests that by reducing access to fast food restaurants and displacing them with healthier alternatives, local governments could encourage healthier eating patterns in their communities. Zoning provides a useful tool for reducing access to fast food restaurants and for encouraging healthier alternatives.

Zoning has been defined as “action by the state, or by a city under authority of the state, to control...a) the heights to which buildings may be erected; b) the area of lots that must be left unbuilt upon; and c) the uses to which buildings and lots may be put.”⁷² Of these three purposes, use restrictions are the most relevant to creating a healthier food retailer market. By regulating how land and buildings are used, governments can influence where and how fast food restaurants can operate and can encourage the development of alternative, healthier food retailers.

Use zoning has become increasingly flexible to adapt to changing community needs and development pressures.⁷³ The earliest zoning ordinances were very simple and divided communities into just a few use zones, such as residential, commercial, and

⁷² Martha A. Lees, Preserving Property Values? Preserving Proper Homes? Preserving Privilege?: The Pre-Euclid Debate over Zoning for Exclusively Private Residential Areas, 1916-1926, 56 *University of Pittsburgh Law Review* 357, 370-371 (1994).

⁷³ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* (West Group 1998) at 103.

industrial.⁷⁴ Usually these zoning schemes were “cumulative”: that is, as zones became less restrictive, they not only permitted additional, more intensive uses, but also incorporated all the less intensive uses that were allowed in the more restrictive zones. Thus, residential development could occur in residential, commercial, or industrial zones, whereas industrial use could only occur in industrial zones. Today, many communities retain elements of cumulative zoning, but most have departed somewhat from the cumulative model. For example, most communities do not allow residential development in industrial zones, and many communities prohibit residential development in commercial zones as well.⁷⁵

One of the main difficulties with use zoning in its simplest form is its rigidity: residential communities may have a need for some commercial development, and municipalities may sometimes need to define more precisely the exact types of establishments they want or do not want in a particular location.⁷⁶ One solution has been to create a wider variety of zones. Whereas early zoning ordinances often distinguished between just three or four types of uses, modern zoning ordinances often define their zones more narrowly, distinguishing, for example, between lighter, medium, and heavy commercial uses.⁷⁷ Thus, if a community wanted to allow the development of a supermarket in a particular neighborhood but prohibit the development of a fast food restaurant, it could create a zone whose definition included supermarkets but excluded fast food restaurants. In addition to expanding the spectrum of use zones, municipalities

⁷⁴ See Patrick J. Rohan, *Zoning and Land Use Controls*, §1.03[2] (Patrick J. Rohan & Damien Kelly eds., 2004).

⁷⁵ Patrick J. Rohan, *Zoning and Land Use Controls*, §1.03[2].

⁷⁶ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 106.

⁷⁷ Patrick J. Rohan, *Zoning and Land Use Controls*, §1.03[2] at 1-36.

have adopted a number of techniques that allow them to zone with more flexibility and that could be useful in encouraging healthier food retailers and discouraging unhealthy food retailers. Like all zoning ordinances, these techniques must conform to both state and federal requirements. Below, we briefly describe the techniques that will most likely be helpful in discouraging fast food restaurants and encouraging healthier alternatives.

1. *Conditional Zoning*

Conditional zoning allows municipalities to designate permissible uses on a site-specific basis.⁷⁸ Under this approach, a municipality rezones a piece of land for more intensive use, but on the condition that only specified new uses be allowed or that certain uses (that would otherwise be allowed) be prohibited.⁷⁹ For example, a municipality could rezone a residential site to allow the development of all types of restaurants except fast food establishments or to allow only supermarkets. Conditional zoning comes in many varieties, but its basic purpose is to give municipalities greater control over how particular parcels of land are used.

Conditional zoning has gained increasing acceptance among courts over the past few decades, though it is still vulnerable to attack.⁸⁰ At first, courts struck down conditional zoning ordinances because site-specific legislation seemed antithetical to the spirit of general-use districts, which treated all parcels within a use district equally.⁸¹ Today, some courts still apply a stricter standard to site-specific zoning decisions. In

⁷⁸ See Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 106.

⁷⁹ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 107.

⁸⁰ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 196-98.

⁸¹ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 196.

some cases, courts will hold that a parcel of land that is zoned for more intensive use than the surrounding area is an illegal “spot zone,” or if the parcel is zoned to allow only less intensive uses, an illegal “reverse spot zone.”⁸² Courts may apply stricter review in such cases and require that the decision to distinguish the particular parcel from the surrounding land be consistent with a broader plan for the community.⁸³ Furthermore, some courts treat site-specific rezonings as quasi-judicial because their focus on a particular parcel of land more closely resembles a judicial decision than a legislative one.⁸⁴ If a court treats a rezoning decision as quasi-judicial, the burden is on the government to prove that the rezoning is proper.⁸⁵ Finally, if the condition appears to be part of a bargaining process, in which the government agrees to rezone a piece of property in exchange for a specific promise or performance from the developer, a court may invalidate it as illegal “contract zoning.”⁸⁶

Most courts, however, uphold conditional zoning as long as it is in the public interest.⁸⁷ Courts will generally not conclude that rezoning is illegal contract zoning unless “there is an express bilateral agreement that bargains away the municipality's

⁸² Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 192-93.

⁸³ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 193.

⁸⁴ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 190-91.

⁸⁵ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 189.

⁸⁶ Edward H. Ziegler, Jr., Arden H. Rathkopf, and Daren A. Rathkopf, *Rathkopf's The Law of Zoning and Planning*, §44:11 (4th ed. & cum. supp. 2004).

⁸⁷ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 196-197.

future use of the police power.”⁸⁸ (See Part I, Section III below for discussion of police power.) If no such agreement exists, most courts apply a “public interest test,” upholding conditional zoning as long the zoning primarily promotes the public interest, rather than individual interests.⁸⁹ Because public health is included within the public interest, any condition that promotes public health should be upheld under the public interest test.

2. *Incentive Zoning*

Incentive zoning allows municipalities to encourage the construction of certain amenities that benefit the public, while avoiding charges of contract zoning. One law review article described incentive zoning as follows: “[t]he local government presents the developer...with instructions to choose an item from column A (which the zoning code does not permit) and to give the local government in return an item from column B (which the zoning code does not require).”⁹⁰ Because the trade-offs are predetermined, no individual bargaining takes place and the government cannot be accused of contract zoning.⁹¹ Theoretically, municipalities could use incentive zoning to create a healthier food retail market by, for example, providing incentives for developers to build healthier retail food stores, such as supermarkets or health-food restaurants.

⁸⁸ Edward H. Ziegler, Jr., Arden H. Rathkopf, and Daren A. Rathkopf, *Rathkopf’s The Law of Zoning and Planning*, § 44:11.

⁸⁹ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 193, 198; see also Edward H. Ziegler, Jr., Arden H. Rathkopf, and Daren A. Rathkopf, *Rathkopf’s The Law of Zoning and Planning*, § 44:4.

⁹⁰ Roy P. Cookston & Burt Bruton. Zoning Law, 35 *University of Miami Law Review* 581, 592-593 (1981).

⁹¹ Roy P. Cookston & Burt Bruton, Zoning Law at 592.

3. Performance Zoning

Performance zoning focuses not on how the land is used but on the effects of the land use.⁹² A performance zoning ordinance sets specific standards that anyone who uses the land must meet. For example, the ordinance might prohibit land users from exceeding certain noise, vibration, or pollution levels.⁹³ Performance zoning can serve as a supplement or an alternative to use zoning; if the ordinance includes no use restrictions, then any use will be permitted as long as it does not transgress the ordinance's performance standards. By contrast, the zoning ordinance may also include use restrictions, in which case the landowner must meet both the use restrictions and the performance standards.⁹⁴

Performance zoning could be used to promote a healthier selection of food choices for consumers. Although performance zoning has primarily been used in industrial use zones, it has also been used to regulate non-industrial development and could be applied to restaurants as well. A municipality could, for example, require fast food and other restaurants to offer a minimum number of healthy alternatives on their menu. Courts review performance zones under the rational basis standard—the legislation must have a rational relationship to a legitimate governmental purpose of promoting the public health, safety, morals, or general welfare.⁹⁵ Therefore, a requirement that restaurants provide a healthy mix of foods should pass constitutional

⁹² Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 111.

⁹³ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 111.

⁹⁴ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 111.

⁹⁵ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 111.

muster because there is evidence that healthier food choices would help decrease obesity.

These are not the only innovations to traditional use zoning that allow communities more flexibility in regulating how land and buildings can be used,⁹⁶ but they are the ones most likely to be useful for communities that wish to issue zoning ordinances that restrict the operation and location of fast food establishments and encourage the development of healthier alternatives. In the next section, we consider the legal basis of such zoning ordinances.

III. Legal Basis of Zoning Fast Food Outlets

As we have seen, studies suggest that obesity rates within a community are influenced, in part, by the selection of foods that are available in that community's retail market. By restricting where and how fast food restaurants operate and encouraging the development of healthier alternatives, such as supermarkets, zoning ordinances may help reduce the prevalence of obesity. But like all laws, zoning ordinances are subject to legal challenges. In this section, we consider the legal basis for zoning laws aimed at creating a healthier food retail market and the possible legal challenges that such laws will face.

The section is divided into three parts. Part A provides an overview of the "police power," which is the basis of authority for all zoning laws, and reviews the two landmark Supreme Court opinions that establish that zoning to promote public health is a legitimate exercise of the police power. Part B expands upon this conclusion by

⁹⁶See, e.g., *Supermarket Access in Cambridge: A Report to Cambridge City Council Community Development Department, December 19, 1994*. Available at: <http://www.cambridgema.gov/~CDD/cp/zng/super/super.html>.

considering language from other zoning opinions and prominent zoning commentators that suggests that public health goals have historically provided—and perhaps still provide—not only a *legitimate* legal basis for zoning ordinances, but the *strongest* legal basis. Finally, Part C briefly describes federal constitutional challenges that zoning ordinances aimed at creating a healthier food retail market may face.

A. Public Health Zoning as a Legitimate Exercise of the Police Power

1. *Origins and Scope of the Police Power*

All zoning laws and many public health laws are exercises of the “police power.”⁹⁷ Before we review the two Supreme Court cases that established that states may use their police power to zone for the public’s health, however, it may be helpful to explain the origins and general scope of the police power and how it fits into this country’s federalist framework.

Under the police power, states have authority to regulate private individuals in the interest of the public’s health, safety, morals, and welfare.⁹⁸ The police power is not the only source of state regulatory authority. The *parens patriae* powers, for example, encompass the states’ inherent authority to care for those who cannot care for themselves.⁹⁹ States may also derive authority over certain issues from federal legislation: federal environmental statutes, for example, often grant states the authority to regulate “in lieu” of federal programs.¹⁰⁰ These other sources of authority can

⁹⁷ See Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 111 (West Group 1998); Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (University of California Press 2000) at 50-51.

⁹⁸ Lawrence O. Gostin. *Public Health Law: Power, Duty, Restraint* at 48.

⁹⁹ Lawrence O. Gostin. *Public Health Law: Power, Duty, Restraint* at 52.

¹⁰⁰ Judith V. Royster & Rory SnowArrow Fausett, Control of the Reservation Environment, 64 *Washington Law Review* 581, 613 -614 (1989).

influence zoning decisions.¹⁰¹ The police power is, however, the ultimate source of authority for all zoning laws.

The police power predates the Constitution and inheres in the states as a remnant of their sovereignty.¹⁰² Prior to the formation of the United States, the individual states or colonies were sovereigns and, as such, had inherent authority over certain matters. When the states agreed to unite under the Constitution, they gave up some of their inherent authority to the federal government. They did not, however, give up all of their sovereignty.¹⁰³ Instead, they created a federal government whose authority is limited to those powers specifically enumerated in the Constitution.¹⁰⁴ The enumerated list is quite extensive and includes some far-reaching powers, such as the power to tax and spend, and the power to regulate interstate commerce.¹⁰⁵ It does not, however, include a federal police power. In other words, the federal government cannot enact laws *solely* in the interest of the public's health, safety, morals, and general welfare. That power, like other non-enumerated powers, is reserved to the states under the Tenth Amendment of the U.S. Constitution.¹⁰⁶ Although the police power, and therefore the power to zone, ultimately resides in the states, all fifty states have delegated at least

¹⁰¹ See, e.g., *Support Ministries for Persons with AIDS, Inc. v. Village of Waterford*, New York, 799 F. Supp. 272 (N.D.N.Y. 1992) (holding that the state of New York had standing under its *parens patriae* power to challenge the Village of Waterford's denial of a zoning approval for a residence for homeless persons living with HIV/AIDS).

¹⁰² Edward H. Ziegler, Jr., Arden H. Rathkopf, and Daren A. Rathkopf. *The Law of Zoning and Planning*, § 1:2.

¹⁰³ Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* at 52.

¹⁰⁴ D. Benjamin Barros, The Police Power and the Takings Clause, 58 *University of Miami Law Review* 471, 475 (2004) ("In giving the federal government limited and enumerated powers, the Constitution left the remaining sovereign authority of the United States with the individual states.").

¹⁰⁵ U.S. Const. Art. 1, § 8.

¹⁰⁶ See U.S. Const. amend. X; see also Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* at 52; Patrick J. Rohan, *Zoning and Land Use Controls*, § 35.03[1].

some of their zoning authority to local governments (see Appendix A: State Delegation of Zoning Authority). Most zoning decisions, therefore, are made by local governments.

The Supreme Court has described the police power as “one of the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government.”¹⁰⁷ This assessment of the broad reach of the police power is at no time more apt than when states are regulating in the interest of the public’s health and safety. As one court put it:

When the city council considers some occupation or thing dangerous to the health of the community, and in the exercise of its discretion passes an ordinance to prevent such a danger, it is the policy of the law to favor such legislation. Municipalities are allowed a greater degree of liberty of legislation in this direction than in any other...The most important of the police powers is that of caring for the safety and health of the community...¹⁰⁸

Thus, state regulatory authority is arguably at its greatest when regulating to protect and promote the public’s health and safety. It is not surprising, therefore, that a state’s power to zone, which is based on the police power, is greatest when the state enacts zoning ordinances in the interest of public health and safety. This, as we shall see later, has been true historically and appears to remain true today. First, however, we consider two Supreme Court cases that together help define the reach and limits of the states’ power to zone for the public’s health.

2. *Zoning for Public Health as a Legitimate Exercise of the Police Power*

Two landmark U.S. Supreme Court cases confirm the general validity of using the police power to promote public health and to enact zoning ordinances in the interest

¹⁰⁷ *District of Columbia v. Brooke*, 214 U.S. 138, 149 (1909).

¹⁰⁸ *Cleaners Guild of Chicago v. City of Chicago*, 37 N.E.2d 857, 865 (Ill. App. Ct. 1941) (citing *Biffer v. City of Chicago*, 116 N.E. 182, 569 (Ill. 1917)).

of public health. *Jacobson v. Massachusetts*, a non-zoning case,¹⁰⁹ made clear that courts should be deferential when considering public health legislation. In that case, the Supreme Court upheld a Massachusetts law that allowed local boards of health to require individuals to be vaccinated if the boards determined vaccination was necessary “for the public health or safety.”¹¹⁰ Anyone over twenty-one who refused was subject to a five dollar fine. Jacobson refused, was charged five dollars, and appealed the case to the Supreme Court, arguing, unsuccessfully, that the law violated his due process rights because it was “unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best.”¹¹¹ In rejecting Jacobson’s challenge, the Supreme Court affirmed the broad power of states to regulate individuals in the interest of public health and articulated a deferential standard of review for public health legislation: it stated that a court can only overturn a public health statute if that statute “has no real or substantial relation to [public health], or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law.”¹¹²

Twenty years later, the Supreme Court invoked *Jacobson’s* deferential standard in the seminal zoning decision *Village of Euclid v. Ambler Realty*,¹¹³ which affirmed that comprehensive zoning laws were a permissible use of the police power and that public health was a permissible goal of zoning laws. *Euclid* involved a method of zoning now called “Euclidean” (or cumulative) zoning, in which, as described above, a municipality

¹⁰⁹ *Jacobson v. Massachusetts*, 197 U.S. 11, 12 (1905).

¹¹⁰ *Jacobson v. Massachusetts*, 197 U.S. at 12.

¹¹¹ *Jacobson v. Massachusetts*, 197 U.S. at 26.

¹¹² *Jacobson v. Massachusetts*, 197 U.S. at 31.

¹¹³ *Village of Euclid v. Ambler Realty*, 272 U.S. 365 (1926).

is divided into a number of zones, ranging from most restrictive—where only one or two uses are allowed—to least restrictive, where all uses are allowed. Ambler Realty sought to enjoin the zoning scheme, arguing that it violated the company’s constitutional right to property because the value of its land had been diminished by 75 percent¹¹⁴ in a manner that was allegedly “unreasonable and confiscatory.”¹¹⁵ In rejecting this argument, the Supreme Court cited *Jacobson* as it articulated a similarly deferential standard: “the [Village’s] reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.”¹¹⁶

Euclid conclusively established that zoning for the public health is a proper exercise of the police power. The Supreme Court did not say that public health was the only permissible purpose for zoning laws, but it relied heavily on health-related goals in upholding the zoning law. It stated that the separation of residential, commercial, and industrial areas from each other “bears a *rational relation* to the health and safety of the community,”¹¹⁷ and it favorably cited expert reports and lower-court decisions that had found that such separation could reduce a city’s risk of fires, traffic accidents, and nervous disorders.¹¹⁸

Neither *Jacobson* nor *Euclid* suggested that the government’s power to zone or enact other laws in the interest of public health was unlimited. At the end of *Jacobson*,

¹¹⁴ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 456.

¹¹⁵ *Village of Euclid v. Ambler Realty*, 272 U.S. at 384, 386.

¹¹⁶ *Village of Euclid v. Ambler Realty*, 272 U.S. at 395.

¹¹⁷ *Village of Euclid v. Ambler Realty*, 272 U.S. at 391 (emphasis supplied).

¹¹⁸ *Village of Euclid v. Ambler Realty*, 272 U.S. at 391, 394.

the Supreme Court stated that “the police power of a state, whether exercised directly by the legislature, or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression.”¹¹⁹ *Euclid* echoed this sentiment, stating that zoning ordinances may be unconstitutional as applied if they are arbitrary and unreasonable.¹²⁰

Despite these limitations, one scholar has noted that “[t]he legacy of *Jacobson* surely is its defense of social welfare philosophy and unstinting support of police power regulation.”¹²¹ As we will discuss in the next section, this legacy was upheld in many subsequent zoning decisions in which courts generally deferred to legislatures when the purpose of zoning laws was to promote the public health.

B. Public Health as the Strongest Basis for Zoning Laws

Euclid conclusively established that public health provides a *legitimate* basis for zoning, but a deeper look at the history of zoning laws and zoning law cases suggests that, as a historical matter, public health has provided the *strongest* legal basis for zoning. Here, we discuss how many early zoning laws and their predecessors were motivated by public health concerns and how this traditional use of zoning-type restrictions to promote public health appears to have made public health the primary focus of early zoning decisions.

Modern zoning laws first appeared in the United States in the early twentieth century, but their precursors date back to the colonial era. Public health was a primary

¹¹⁹ *Jacobson v. Massachusetts*, 197 U.S. at 38.

¹²⁰ *Village of Euclid v. Ambler Realty*, 272 U.S. at 395.

¹²¹ Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* at 67.

motive for many of the early regulations. Fire was a particular concern as towns developed and grew in the early United States. A 1692 Massachusetts ordinance, for example, sought to prevent fires by requiring all buildings of a certain size to be made of brick or stone and to have slate roofs.¹²² Municipalities also exercised control over where explosives could be stored in thickly settled areas.¹²³ In the nineteenth and early twentieth centuries, as cities grew even more rapidly, states and cities began to use zoning-type laws to prevent the spread of diseases as well. Cities in several states passed laws prohibiting the expansion of urban cemeteries,¹²⁴ and some imposed height controls on buildings, in part to ensure that city residents received sufficient light and air, which were considered essential to good health.¹²⁵ These precursors to modern zoning laws demonstrate that the link between public health and zoning-type restrictions is longstanding in this country.

The arrival and rapid spread of comprehensive zoning laws in the first quarter of the twentieth century was also due, in part, to public health concerns. In 1916, New York City passed the first comprehensive zoning ordinance in the United States. It divided the city into a residential district, a business district, and an industrial district and

¹²² James Metzenbaum, *The Law of Zoning*, vol. 1, 4-5 (Baker, Voorhis, & Co. Inc. 2 ed. 1958).

¹²³ Norman Williams Jr. & John M. Taylor, *American Land Planning Law: Land Use and the Police Power*, § 8.01 (Callaghan & Company 1988).

¹²⁴ *Laurel Hill Cemetery v. City and County of San Francisco*, 216 U.S. 358, 366 (1910) (citing several early cases that upheld ordinances restricting the expansion of urban cemeteries).

¹²⁵ See, e.g., *Welch v. Swasey*, 79 N.E. 745,746 (Mass. 1907) (“The erection of very high buildings in cities, especially upon narrow streets, may be carried so far as materially to exclude sunshine, light and air, and thus to affect the public health.”).

imposed upon each district a series of height, bulk, and use restrictions.¹²⁶ Public health was an important impetus for the ordinance. For example, a 1913 report that laid the foundation for the 1916 ordinance and that has been described as “mark[ing] the beginning of the zoning movement in America” was initiated by public health concerns.¹²⁷ The report recommended height, bulk, and use restrictions in order to protect public health and safety.¹²⁸ Other cities quickly followed New York’s lead, and their enthusiasm for zoning was motivated to an important extent by public health concerns.¹²⁹

A prominent early advocate of zoning suggested that zoning’s primary purpose was to protect community health.¹³⁰ In a 1924 paper entitled “Zoning and Health,” Professor George C. Whipple described zoning’s numerous potential health benefits. By ensuring that individuals received adequate light and air, zoning could improve mental

¹²⁶ Martha A. Lees, *Preserving Property Values? Preserving Proper Homes? Preserving Privilege?: The Pre-Euclid Debate over Zoning for Exclusively Private Residential Areas, 1916-1926* at 372.

¹²⁷ Seymour I. Toll, *Zoned American* (Grossman Publishers 1969) at 147.

¹²⁸ Georgette C. Poindexter, *Light, Air, or Manhattanization?: Communal Aesthetics in Zoning Central City Real Estate Development*, 78 *Boston University Law Review* 445, 460 -461 (1998) (“The Commission found that this resulted in darkened streets and buildings, and recommended that in the interest of public safety, height along with area and use should be regulated.”); see also Seymour I. Toll, *Zoned American* at 153-54 (stating that planners worried that skyscrapers raised the risk of tuberculosis by blocking light and air).

¹²⁹ Kenneth H. Young, *Anderson’s American Law of Zoning* § 7.04 (4th ed. 1996) (“The initial zoning ordinance of New York City was enacted at a time when public officials had become aware of the health hazards of congested tenement districts, and the very real threat that things were likely to get worse with increases in population, continued migration to the cities, and consequent intensive use of land. The rapid adoption of zoning during the 1920’s undoubtedly was encouraged by the belief that zoning regulations would at least minimize the health hazards of unrestricted urban growth.”).

¹³⁰ George C. Whipple, “Zoning and Health,” 6, 10, in *Zoning Pamphlets* vol. 1 (Department of Commerce 1930).

health and reduce the incidence of tuberculosis, rickets, and skin and eye problems.¹³¹ By decreasing traffic congestion, zoning could reduce the harms from pollution.¹³² And by segregating residential and industrial districts, zoning could prevent injuries caused by noise and vibration.¹³³ Towards the end of his paper, Professor Whipple emphasized that these health effects were significant at the community level, even if not at the individual level: “It is often difficult to show that zoning prevents injury to the health of certain particular individuals...The relation between zoning and health is a mass relation. It is the health of the community, the collective health of many people, that is at stake.”¹³⁴

Public health was not, however, the only issue driving zoning’s early success. A number of commentators have argued that the real impetus behind zoning was and continues to be preservation of property values.¹³⁵ Property owners were the most powerful group pushing for zoning reforms in New York City, and it may have been no more than coincidence that their goals meshed with those of public health and other land reformers.¹³⁶ In fact, many of the zoning supporters openly acknowledged that their primary concern was property value. For example, although the 1913 report’s official

¹³¹ George C. Whipple, “Zoning and Health” at 6.

¹³² George C. Whipple, “Zoning and Health.”

¹³³ George C. Whipple, “Zoning and Health.”

¹³⁴ George C. Whipple, “Zoning and Health.”

¹³⁵ Martha A. Lees, *Preserving Property Values? Preserving Proper Homes? Preserving Privilege?: The Pre-Euclid Debate over Zoning for Exclusively Private Residential Areas, 1916-1926* at 370-71; Juliana Maantay, *Zoning, Equity, and Public Health*, *American Journal of Public Health* 2000;91(7):1033-1041; Seymour I. Toll, *Zoned American* at 187.

¹³⁶ Seymour I. Toll, *Zoned American* at 148 (stating that, during zoning's rapid growth in the 1920s, it lost its early reforming tendencies and "became the desired institution of men whose principal interest was the condition of the real estate market. ").

purpose was to address public health concerns, public health took second seat to preserving property values.¹³⁷

Notwithstanding doubts about the true motivations underlying the early zoning laws and the court decisions that upheld them, it is clear that, as a legal matter, public health and safety provided the strongest basis for zoning laws. In “Zoning and Health,” Professor Whipple acknowledged that zoning could promote goals other than public health, but he cautioned that zoning laws would not be upheld unless squarely based upon the four permissible purposes of police power: protection of the public health, safety, morals, or general welfare.¹³⁸ For practical purposes, this meant that zoning laws had to be justified on public health and safety grounds since “general welfare” was considered synonymous with public health and safety, and courts appeared unwilling to rely exclusively on morals to uphold zoning measures.¹³⁹

¹³⁷ Seymour I. Toll, *Zoned American* at 165 (“Height and court restrictions should be framed with a view to securing to each district as much light, air, relief from congestion and safety from fire as is consistent with a proper regard for the most beneficial use of the land and as is practicable under existing conditions as to improvements and land values.”).

¹³⁸ George C. Whipple, “Zoning and Health” at 3 (“Zoning is advantageous to a city in many ways. It tends to stabilize real estate values, to promote orderly building, to enhance beauty, and to develop local self-consciousness and civic responsibility on the part of the people. Yet in the face of these benefits, zoning is likely to be declared unconstitutional if it cannot be justified under the police power.”)

¹³⁹ Harvard Law Review Association, *The Legitimate Objectives of Zoning*, 91 *Harvard Law Review* 1443, 1445 -1446 (1978) (“Apparently no court, for example, has ever relied on ‘morals’ to sustain a zoning measure; those that mention morals could have relied on other aims instead. Earlier in this century, the general welfare was often treated not as an independent objective but as equivalent to health and safety. At that time, zoning typically was used for more limited purposes than it is today. Height, setback, and lot size requirements were aimed at ensuring that adequate light and air would enter urban dwellings. Minimum floor space standards were designed to prevent the unhealthy overcrowding of dwellings. Uses were separated in order to alleviate noise, odors, and similar effects in residential areas, and to reduce traffic congestion and provide recreational spaces so that the safety and well-being of children would not

This assessment is borne out by early opinions for and against zoning, which focused almost exclusively on public health and safety. For example, in a decision upholding the separation of business and residential districts, the Supreme Court of Massachusetts placed particular emphasis on public health and safety:

The segregation of manufacturing, commercial and mercantile business of various kinds to particular localities, when exercised with reason, may be thought to bear a rational relation to the health and safety of the community. We do not think it can be said that circumstances do not exist in connection with the ordinary operation of such kinds of business which increase the risk of fire, and which renders life less secure to those living in homes in close proximity. Health and security from injury of children and the old and feeble and otherwise less robust portion of the public well may be thought to be promoted by requiring that dwelling houses be separated from the territory devoted to trade and industry.¹⁴⁰

Similarly, decisions invalidating zoning ordinances emphasized the absence of any relationship between the ordinance and public health:

The proper operation of a grocery store cannot possibly be injurious to the public health. One of the ordinary uses of property is for personal gain, and in the lawful use of this property the individual is protected by the Constitution. He must so use it as not to injure others. By using this property for the purpose of conducting a retail grocery store in a lawful manner he does not injure, in the legal sense, the property of his neighbor.¹⁴¹

be threatened. Thus 'health' and 'safety' construed according to their natural meanings were sufficient to sustain these measures.”).

¹⁴⁰ *In re Opinion of the Justices*, 127 N.E. 525, 531 (Mass. 1920); see also *Miller v. Board of Public Works of City of Los Angeles*, 234 P. 381, 385 (Cal. 1925) (“As the congestion of our cities increases, likewise do the problems of traffic control and police, fire, and health protection. Comprehensive and systematic zoning aids in the successful solution of these problems and obviously tends thereby to affirmatively promote the public welfare.”).

¹⁴¹ *Fitzhugh v. City of Jackson*, 97 So. 190, 193 (Miss. 1923); see also *Eubank v. City of Richmond*, 226 U.S. 137, 144 (1912) (“It is hard to understand how public comfort or convenience, much less public health, can be promoted by a line which may be so variously disposed.”).

Thus, as a historical matter, public health provided motivation and, to an even greater extent, justification for early zoning laws. This history suggests that a government's authority to zone has traditionally been greatest when it is zoning in the interest of public health.

This tradition holds true today: courts continue to be deferential in their review of zoning laws enacted to promote public health. As one commentator put it:

[I]t is no longer true that there are serious difficulties in providing fire protections for very tall buildings, nor is much emphasis now placed on the advantages (for purposes of fire fighting) of having buildings spaced farther apart. On the other hand, there are numerous instances where [zoning] controls are in fact based directly on considerations of either public safety or public health. When such a relationship clearly appears, this is of course the strongest possible basis for any land use controls.¹⁴²

C. Federal Constitutional Limitations on the Police Power

As we have seen, through the police power states have broad zoning authority, especially when zoning to protect and promote the public's health and safety. Nevertheless, zoning restrictions, by their nature, interfere with private property owners' interests and are, therefore, prime targets for legal challenges on the federal, state, and local levels. For example, a developer could argue that the planning board, in denying a conditional use permit, did not apply the zoning ordinance properly or that the zoning authority exceeded its power under state law in enacting the ordinance. With respect to federal legal challenges, this broad authority primarily is limited to the extent that a regulation violates the federal constitution or is not reasonably or rationally related to protecting the public's health, safety, morals, or welfare. Because no zoning laws have

¹⁴² Norman Williams Jr. & John M. Taylor, *American Land Planning Law: Land Use and the Police Power*, § 8.0 (Callaghan & Company 1988); see also Kenneth H. Young, *Anderson's American Law of Zoning*, § 7.08.

been enacted specifically to address the epidemic of obesity, it is impossible to state with certainty what types of federal constitutional challenges may be brought against these laws and how courts will respond to them. However, the possibility of a constitutional challenge is very real and poses a threat to these laws. Accordingly, lawmakers, when drafting zoning legislation to address obesity, need to consider the potential constitutional challenges that might be raised. Courts have considered federal constitutional challenges to zoning restrictions placed on fast food outlets enacted for purposes other than addressing obesity and to zoning restrictions placed on other types of retailers, such as firearm, alcohol, and tobacco outlets. Constitutional challenges that have been raised and mostly failed include violations to equal protection, due process, the takings clause, the commerce clause, and the First Amendment. Appendix B provides a brief description of potential constitutional challenges. While it is beyond the scope of this monograph to analyze the various court decisions on this topic, we believe that carefully drafted restrictions placed on fast food outlets, such as those identified in this monograph, would likely survive similar constitutional challenges.

Part II: Zoning Laws Regulating Fast Food Outlets

Many communities have passed zoning restrictions on fast food outlets (see note 2 on defining fast food outlets). These laws were enacted on bases other than the protection of the public's health from obesity, although some were enacted for other public health purposes. In this section, we provide a sample of the types of restrictions some communities have adopted.

I. Banning Fast Food Outlets and/or Drive-Through Service

The most obvious way to curtail the development of fast food outlets is to ban them entirely. A wholesale ban could be accomplished in various ways. For example, a specific provision in the zoning code could prohibit the development of fast food outlets anywhere in the locality. A ban could also be indirect if there is no specific provision prohibiting fast food outlets but, in an exclusive list of permitted uses in the zoning districts, fast food outlets are not listed. In a third approach, fast food outlets could be banned, but permitted with a special or conditional use permit. What approach a locality ultimately chooses depends upon many variables including what the locality hopes to accomplish, what is politically feasible, and how easy or difficult a special use permit is to obtain. Banning only drive-through service can potentially have the same effect as an outright ban because 60 percent or more of fast food business is from drive-through service, and therefore, it may be unprofitable to conduct business without it.

An example of an outright ban appears in the Zoning Bylaw of The City of Concord, Massachusetts, which is located less than 20 miles northwest of Boston, with a population of about 15,600 and total area of 25.9 square miles. Concord bans both "fast food restaurants" and "drive-in" service:

Drive-in or fast food restaurants are expressly prohibited. A drive-in or fast-food restaurant is defined as any establishment whose principal business is the sale of foods or beverages in a ready-to-consume state, for consumption within the building or off-premises, and whose principal method of operation includes: (1) sale of foods and beverages in paper, plastic or other disposable containers; or (2) service of food and beverages directly to a customer in a motor vehicle.¹⁴³

While the purpose section of the ordinance does not specifically mention fast food outlets as some zoning codes do, it does include the following objectives: “to lessen congestion in the streets” and “to preserve and enhance the development of the natural, scenic and aesthetic qualities of the community.”¹⁴⁴ These two general purposes have historically been used to justify restrictions on fast food outlets.

The City of Carlsbad, California (population over 78,000 and a total area of 40.8 square miles), located in San Diego County, bans all new drive-through restaurants in its thirty-five classes of zones. Interestingly, for other businesses, drive-through service is permitted in most zones with a conditional use permit:

Drive-thru business or drive-thru facilities to existing businesses except drive-thru restaurants which are prohibited from all zones in the city including coastal zone properties. The drive-thru restaurant prohibition applies citywide to all existing and proposed specific plans, master plans, and related amendments. Drive-thru restaurants that are either existing or have received final approvals on the effective date of the ordinance codified in this section are allowed to continue in existence subject to the terms and conditions of this code and the conditional use permit or other discretionary permit permitting them and may apply for and may be granted CUP extensions under this code.¹⁴⁵

¹⁴³ Section 4.7.1, Town of Concord Zoning Bylaw, Town of Concord, Massachusetts. Available at: <http://www.bostonrealestate.com/downloads/Concordzoning.pdf>.

¹⁴⁴ Section 1.2, Town of Concord Zoning Bylaw, Town of Concord, Massachusetts.

¹⁴⁵ Section 21.42.010(5)(N), Carlsbad Municipal Code, Title 21 Zoning, The Zoning Ordinance, Carlsbad, California (emphasis supplied). Available at: <http://municipalcodes.lexisnexis.com/codes/carlsbad/>.

“Drive-thru restaurant” is defined very simply as “a restaurant that has a drive-thru lane to serve customers in motor vehicles.”¹⁴⁶ No other restaurants are defined in the definition sections of the code.

The City of Newport, Rhode Island (population about 26,500 and total area of 11.5 square miles) has a more complicated scheme in this regard. Restaurants are divided into four groups: carry-out, drive-in, fast-food, and standard.¹⁴⁷ While standard restaurants are permitted “by right” in all five commercial districts and fast-food restaurants are permitted with a special use permit in four of the five commercial districts, both drive-in and carry-out restaurants are specifically prohibited in any district in the city.¹⁴⁸ The definition of “drive-in” is also far more detailed than the definition of “drive-thru” found in the Carlsbad ordinance:

“Drive-in restaurant” means any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state and whose design, method of operation or any portion of whose business is such that foods, frozen desserts or beverages are served directly to the customer in a motor vehicle, either by a car-hop or by other means which eliminate the need for the customer to exit the motor vehicle, or where the consumption of food, frozen desserts or beverages within a motor vehicle parked on the premises is allowed, encouraged or permitted.¹⁴⁹

¹⁴⁶ Section 21.04.109, The Zoning Ordinance, Carlsbad, California.

¹⁴⁷ Section 17.08.010, Codified Ordinances of the City of Newport, Rhode Island, Title 17 The Zoning Code, Newport Rhode Island. Available at: <http://municipalcodes.lexisnexis.com/codes/newport/>.

¹⁴⁸ Section 17.04.050(B), Codified Ordinances of the City of Newport, Rhode Island, Title 17 The Zoning Code Newport, Rhode Island (“Prohibited Uses. It is intended that any use not included in this zoning code as a permitted use is prohibited. To assist in the interpretation of such permitted uses, the following uses, the list of which is not intended to be complete, are specifically prohibited... drive-in restaurants; carry-out restaurants...”).

¹⁴⁹ Section 17.08.010, Codified Ordinances of the City of Newport, Rhode Island, Title 17 The Zoning Code, Newport, Rhode Island.

In addition, a special provision in the Newport’s zoning code addresses restaurants specifically and reiterates in one subsection that carry-out restaurants are prohibited in the city.¹⁵⁰ Another subsection in the same provision makes it incumbent upon the owners of standard and fast-food restaurants to post that “the consumption of food, frozen desserts or beverages within a motor vehicle parked upon the premises” is prohibited and requires owners to “strictly enforce” the prohibition. Thus, while fast food restaurants are permitted in Newport,¹⁵¹ customers are expressly prohibited from both buying food from their vehicle or eating it in their vehicle on the restaurant premises.

II. Banning “Formula” Restaurants

Instead of enacting an outright ban on all types of fast food restaurants, several cities ban what have become known as “formula” restaurants.¹⁵² The definition can be drafted and interpreted broadly to include a local restaurant that has only one other similar restaurant in the area or interpreted narrowly to include only large national chain restaurants. For example, in 1996, the City of Calistoga, California (population of about 5,200 and total area of 2.6 square miles), located in Napa County, banned “formula restaurants”¹⁵³ and regulated other “formula businesses” in order “to preserve the unique and historic character of Calistoga’s downtown commercial district ... which has become a cornerstone of the visitor industry which is a key component in the City’s

¹⁵⁰ Section 17.100.090(D), Codified Ordinances of the City of Newport, Rhode Island, Title 17 The Zoning Code, Newport, Rhode Island.

¹⁵¹ Section 17.100.090(B), Codified Ordinances of the City of Newport, Rhode Island, Title 17 The Zoning Code, Newport, Rhode Island.

¹⁵² For both citywide and partial bans on formula restaurants see The New Rules Project, The Hometown Advantage, *Formula Business Restrictions*. Available at: <http://www.newrules.org/retail/formula.html>.

¹⁵³ Section 17.22.020(D)(2), Calistoga Municipal Code, Title 17 Zoning, Calistoga, California. Available at: http://www.thefiengroup.com/municipal_codes.html.

economy...”¹⁵⁴ With respect to formula restaurants, in particular, the City Council found that:

formula food businesses do not reflect the unique character of the community and the desired aesthetic ambience of the commercial areas of the city in that they offer rushed, ready made meals from formula menus identical to similarly decorated units located in other communities and thus cannot contribute to the established uniqueness which the Council finds necessary to maintain a viable visitor industry.¹⁵⁵

“Formula restaurant” is defined broadly in Calistoga’s code:

“Formula restaurant” shall mean an eating establishment devoted to the preparation and offering of food and beverages for sale to the public for consumption either on or off the premises which, by contractual or other arrangement, established or recognized business practice, or membership affiliation, maintains any of the following:

- A. Business name common to a similar business located elsewhere;
- B. Standardized menus, ingredients, food preparation, uniforms, or other standardized features common to a restaurant located elsewhere;
- C. Interior decor common to a similar business located elsewhere;
- D. Architecture or exterior signs common to a similar business located elsewhere;
- E. Use of a trademark or logo common to a similar business located elsewhere (but not including logos or trademarks used by chambers of commerce, better business bureaus, or indicating a rating organization including, but not limited to, AAA, Mobil or Michelin); or
- F. A name, appearance, or food presentation format which causes it to be substantially identical to another restaurant within or outside Calistoga.¹⁵⁶

¹⁵⁴ The New Rules Project, The Hometown Advantage, *Formula Restaurant Ban-Calistoga, CA*. Available at:<http://www.newrules.org/retail/calistoga.html>.

¹⁵⁵ The New Rules Project, The Hometown Advantage, *Formula Restaurant Ban-Calistoga, CA*.

¹⁵⁶ Section 17.04.616, Calistoga Municipal Code, Title 17 Zoning, Calistoga, California.

III. Banning Fast Food in Certain Areas

A ban on fast food outlets might only affect certain areas in a locality. For example, the City of Solvang, California (population 5,332 and total area of 2.5 square miles), which is known for its Danish Northern European character, bans new or expanded formula restaurants in its Tourist Commercial District,¹⁵⁷ finding that the proliferation of formula restaurants would adversely affect its unique character:

The Village Area is unique not only because of its Danish architecture, but because of its small individualized shops and restaurants. Solvang's Village Area is recognized worldwide. It attracts hundreds of thousands of visitors each year, a large part of whom come to enjoy and experience the unique character of the Village. This unique character would be adversely affected by a proliferation of "formula restaurants" which are required by contractual or other arrangements to be virtually identical to restaurants in other communities as a result of standardized menus, ingredients, food preparation, decor, uniforms and the like. The development of such restaurants would conflict with the distinct atmosphere and unique character for which Solvang's Village is famous. Therefore, the City Council finds that in order to preserve the character of the Village, it is reasonable and necessary to adopt this ordinance which would preclude the development of new formula restaurants in the Village.¹⁵⁸

The City and County of San Francisco (population about 777,000 and total area of 231.9 square miles of which 185.2 is water) prohibits all "formula retail uses" (including fast food outlets) in its four-block Hayes-Gough Neighborhood Commercial District¹⁵⁹ and makes formula business conditional uses in some other districts¹⁶⁰ in order to, among other things, "protect its vibrant small business sector and create a

¹⁵⁷ Sections 11.-7A-2(E) & 11-12-7(E), Solvang Zoning Ordinance, Solvang, California. Available at: <http://www.sterlingcodifiers.com/CA/Solvang>.

¹⁵⁸ The New Rules Project, The Hometown Advantage, *Formula Restaurant Ban-Solvang, CA*. Available at: <http://www.newrules.org/retail/solvang.html>.

¹⁵⁹ Section 703.3(e), San Francisco Planning Code, San Francisco, California. Available at: <http://www.amlegal.com/library/ca/sanfrancisco.shtml>.

¹⁶⁰ Section 703.3(f), San Francisco Planning Code, San Francisco, California.

supportive environment for new small business innovations” and preserve “the distinctive character of certain neighborhood commercial districts.”¹⁶¹ The findings in the City’s planning code explicitly state what the unregulated growth of formula retail businesses could do:

The increase of formula retail businesses in the City's neighborhood commercial areas, if not monitored and regulated, will hamper the City's goal of a diverse retail base with distinct neighborhood retailing personalities comprised of a mix of businesses. Specifically, the unregulated and unmonitored establishment of additional formula retail uses may unduly limit or eliminate business establishment opportunities for smaller or medium-sized businesses, many of which tend to be non-traditional or unique, and unduly skew the mix of businesses towards national retailers in lieu of local or regional retailers, thereby decreasing the diversity of merchandise available to residents and visitors and the diversity of purveyors of merchandise.¹⁶²

“Formula retail use” is defined, in part, numerically:

as a type of retail sales activity or retail sales establishment which, along with eleven or more other retail establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark ...”¹⁶³

The City of Davis, California (population about 60,000 and total area of 10.5 square miles) has a somewhat complicated zoning scheme in this regard. For example, “formula fast food restaurants” or “drive-through facilities” are not permitted by right in its central commercial district¹⁶⁴ although they could be developed with a conditional use

¹⁶¹ Sections 703.3(a)(2) & (a)(8), San Francisco Planning Code, San Francisco, California.

¹⁶² Section 703.3(a)(9), San Francisco Planning Code, San Francisco, California.

¹⁶³ Section 703.3(b), San Francisco Planning Code, San Francisco, California.

¹⁶⁴ Section 40.14.030(b), Davis Municipal Code, Chapter 40 Zoning, Davis, California. Available at: <http://www.city.davis.ca.us/cmo/citycode/chapter.cfm?chapter=40>.

permit.¹⁶⁵ In its residential conversion zone, all restaurants are allowed, including formula fast food, but drive-through service is expressly not permitted even with a conditional use permit.¹⁶⁶ In the mixed use district, “restaurant” is defined exclusively for that district and “fast-food and full-service dining establishments” are listed as an example of the type of restaurant included in the definition.¹⁶⁷ Drive-through service is a conditional use.¹⁶⁸ There is also a lengthy list of regulations on drive-through facilities that apply across districts.¹⁶⁹ Interestingly, in addition to the general considerations for granting a conditional use permit, with respect to formula fast food restaurants in the central commercial district, zoning authorities may also consider the “concentration of like uses” in addition to other specified factors (“litter, odors, exterior design, signage, concentration of like uses, and the extent to which the use enhances the unique characteristics of the core area”).¹⁷⁰

Depending upon how many zones in the locality the ban affects, a more limited ban could begin to approach an outright ban throughout the entire locality. The Municipal Code of Bainbridge Island, Washington (population about 20,000 and total area of 65.5 square miles of which 57.87% is water) permits “formula take-out food restaurants” (defined as “a restaurant or establishment that (1) is contractually required to offer standardized menus, ingredients and interior or exterior design; and (2) serves

¹⁶⁵ Sections 40.14.050(g) & (h), Davis Municipal Code, Chapter 40 Zoning Davis, California.

¹⁶⁶ Sections 40.11.020(c) & 40.11.04, Davis Municipal Code, Chapter 40 Zoning Davis, California.

¹⁶⁷ Section 40.15.030(d), Davis Municipal Code, Chapter 40 Zoning Davis, California.

¹⁶⁸ Section 40.15.050(i), Davis Municipal Code, Chapter 40 Zoning Davis, California.

¹⁶⁹ Section 40.26.420, Davis Municipal Code, Chapter 40 Zoning Davis, California.

¹⁷⁰ Section 40.14.050(h), Davis Municipal Code, Chapter 40 Zoning Davis, California.

or delivers its food or beverages in disposable containers”)¹⁷¹ in only one part of one district (High School Road District I east of State Route 305).¹⁷² In addition, formula take-out restaurants must meet specific design guidelines,¹⁷³ which include the prohibition of drive-through facilities and provide specific density requirements (see section V below). The locality justified the ban as follows:

WHEREAS, as a result, the City Council of the City of Winslow, Washington, [now Bainbridge Island] now finds that formula take-out food restaurants represent a type of business that is automobile-oriented or of a particular nature that *the existence of one such restaurant in the High School Road zone is a sufficient maximum number of that use for the village character of Winslow to be preserved. That other or additional restaurants of that type in all zones should not be permitted hereafter*; that expansion in number of such establishments should be disallowed entirely in order to establish at this time, an optimal mix of pedestrian-oriented and other kinds commercial [sic] and retail establishments; that to preclude further development of such restaurants in a town of this size prevents commercial over concentration of automobile-oriented businesses and of that type of retail service establishment and will provide for smaller neighborhood-style pedestrian and other kinds of retail outlets to best serve the varied needs of Winslow residents and consumers.¹⁷⁴

IV. Regulating the Number of Fast Food Outlets: Quotas

The City of Berkeley, California (population over 100,000 and total area of 17.7 square miles of which nearly 41% is water) is located in northern California in the San Francisco Bay area. Elmwood Commercial District, located south of the University of

¹⁷¹ Section 18.06.370, Bainbridge Island Municipal Code, Title 18 Zoning, Bainbridge Island, Washington. Available at: [http://search.mrsc.org/nxt/gateway.dll/bnbgmc?f=templates&fn=bnbgpage.htm\\$vid=mun icode:BainbridgeIsland](http://search.mrsc.org/nxt/gateway.dll/bnbgmc?f=templates&fn=bnbgpage.htm$vid=mun icode:BainbridgeIsland).

¹⁷² Section 18.40.020, Bainbridge Island Municipal Code, Title 18 Zoning, Bainbridge Island, Washington.

¹⁷³ Section 18.41.050, Bainbridge Island Municipal Code, Title 18 Zoning, Bainbridge Island, Washington.

¹⁷⁴ The New Rules Project, The Hometown Advantage, *Formula Restaurant Ban-Bainbridge Island, WA* (emphasis supplied). Available at: <http://www.newrules.org/retail/bainbridge.html>.

California, Berkeley, is known for its historic mansions, shopping, restaurants, cafes, and old neighborhood atmosphere. The Elmwood Commercial District was created in 1981, among other things, to preserve the shopping area that serves the surrounding community and the character of the neighborhood.¹⁷⁵ To help accomplish these goals, the City of Berkeley has implemented a quota system in the Elmwood Commercial District which includes numerical limitations on the number of “Food Service Establishments.”¹⁷⁶ There are three types of “Food Service Establishments”: “carry out food store” (no seating on premises), “quick service restaurant,” and “full service restaurant.” What is commonly known as “fast food” would fall under the definition of “quick service restaurant.”¹⁷⁷ Elmwood is permitted three carry out food stores up to 1,000 square feet, seven quick service restaurants up to 1,000 square feet, and seven full service restaurants.¹⁷⁸

The City of Arcata, California (population over 16,600 and total area of 11.0 square miles) limits the number of formula restaurants to nine at any one time:

The number of Formula Restaurants in Arcata shall be limited to nine (9) establishments from the date of the adoption of this ordinance. A new Formula Restaurant shall only be allowed if it replaces an existing Formula Restaurant in one of the following business districts: Janes Road [1], Northtown [1], Uniontown [2], and Valley West/Giuntoli Lane [5]. The allowed number of Formula Restaurants per business district has been indicated in the brackets, and replacement Formula Restaurants are allowed within the business district boundaries as identified in Attachment 1. All other business districts, as labeled in Attachment 1, shall not allow Formula Restaurants.¹⁷⁹

¹⁷⁵ Section 23E.44.020, Berkeley Zoning Code, Berkeley, California. Available at: http://www.ci.berkeley.ca.us/bmc/Berkeley_Zoning_Code/index.html.

¹⁷⁶ Section 23E.44.030, Berkeley Zoning Code, Berkeley, California.

¹⁷⁷ Section 23F.04.010, Berkeley Zoning Code, Berkeley, California.

¹⁷⁸ Section 23E.44.040, Berkeley Zoning Code, Berkeley, California.

¹⁷⁹ The New Rules Project, The Hometown Advantage, *Formula Restaurant Ban-Arcata, CA*. Available at: <http://www.newrules.org/retail/arcata.html>.

V. Regulating Density of Fast Food Outlets

Controlling the development of fast food outlets can also be accomplished by limiting the number of such outlets per unit space or through spacing requirements. The Westwood Village area of Los Angeles provides an example of this approach.

Westwood Village surrounds the University of California at Los Angeles (UCLA) and has a wide variety of retail shops, boutiques, and restaurants. “Fast food establishments” are permitted:

provided the total number of fast food establishments along any public street does not exceed one for every 400 feet of lot frontage along that street, except that on Broxton Avenue one fast food establishment shall be permitted for every 200 feet of lot frontage. Fast food establishments need not be spaced at said intervals, provided that the total number along any public street does not exceed the above ratios.¹⁸⁰

In addition to these density requirements, the Westwood Village Specific Plan also provides a chart listing exactly how many fast food establishments (and other restaurants and uses) are allowed on each street. For example, as of December 2002, Broxton Avenue was permitted up to nine such establishments and already had seven.¹⁸¹ The purposes listed behind the Specific Plan seek, among other things, to preserve the unique character of the area and to ensure that the area continues primarily to serve the retail needs of the surrounding community.¹⁸²

¹⁸⁰ Section 5(B), Westwood Village Specific Plan, Westwood Village, Los Angeles, California. Available at: <http://cityplanning.lacity.org/complan/specplan/sparea/wwdvillagepage.htm>.

¹⁸¹ Exhibit A, Westwood Village Specific Plan, Westwood Village, Los Angeles, California.

¹⁸² Section 2, Westwood Village Specific Plan, Westwood Village, Los Angeles, California.

The City of Bainbridge Island, Washington, in addition to severely restricting the location of fast food outlets discussed above, sets forth specific design guidelines for formula take-out restaurants, which include a density limitation:

Any formula take-out food restaurant may not exceed 4,000 square feet and must be in a building that is shared with at least one other business that is not a formula take-out food restaurant. Only one formula take-out food restaurant is permitted per parcel, lot or track on which all or a portion of a building is located. No drive-through facilities are allowed.¹⁸³

The Town of Warner, New Hampshire (population 2,760 and total area 55.9 square miles) takes a somewhat different approach by requiring a specified distance between fast food outlets in its Commercial District:

No fast-food or drive-in restaurant shall be located on a site, lot or parcel within two thousand (2,000) feet of any other site, lot or parcel occupied by another fast-food or drive-in restaurant, with such distance measured along and/or across one (1) or more public highway rights-of-way.¹⁸⁴

The description of the Commercial District states that its purpose “is to encourage growth of [business and commercial establishments as well as certain dwelling and light industrial uses] in the proximity of the interstate highway interchanges” as well as “to promote a scale and quality of development compatible with the rural character of the community.”¹⁸⁵

VI. Regulating Distance from Other Uses

Fast food outlets are historically perceived as having the potential to create a nuisance with the litter, noise, traffic, loitering, air pollution, and odors they can

¹⁸³ Section 18.41.050, Bainbridge Island Municipal Code, Bainbridge Island, Washington.

¹⁸⁴ Article XI(H), Town of Warner, NH Zoning Ordinance, Warner, New Hampshire. Available at: <http://www.warner.nh.us/regulations.htm>.

¹⁸⁵ Article XI, Town of Warner, NH Zoning Ordinance, Warner, New Hampshire.

generate. Accordingly, some zoning laws require a specified distance between a fast food outlet and other uses such as schools, churches, hospitals, and nursing homes.¹⁸⁶

The City of Detroit, Michigan (population 911,000 and total area 142.9 square miles) provides an example of this approach. Its zoning ordinance states, with respect to certain standard, carry-out, fast-food, and drive-in restaurants, that “[a] minimum distance of five hundred (500) feet shall exist between the subject site and the nearest point of an elementary, junior high, or senior high school site.”¹⁸⁷

The City of Arden Hills, Minnesota (population 9,692 and total area 9.4 square miles) has a similar provision in its zoning ordinance:

Because drive-in businesses, fast food restaurants and automobile service stations present certain unusual problems, they are hereby required to meet the following requirements in addition to the general requirements applicable to them in the zoning district in which they are to be located ...

Proximity to Schools, Churches, Public Recreational Areas and Residential Lots. No drive-in business or fast food restaurant shall be located on a site that is within four hundred (400) feet of a public, private or parochial school, a church, a public recreation area, or any residentially zoned property.¹⁸⁸

These examples demonstrate that municipalities across the country have developed different types of zoning approaches, with various justifications for the laws, to regulate the presence of fast food outlets. Although none of the municipalities mentioned in this section chose to justify their zoning regulations on the issue of

¹⁸⁶ McAllister A. *Zoning for Fast-Food and Drive-In Restaurants*.

¹⁸⁷ Sections 92.0379A(j), B(j) & C(j) and 94.0379D(i), City of Detroit, Official Zoning Ordinance. Available at: http://www.municode.com/resources/code_list.asp?stateID=22.

¹⁸⁸ Section 6(D)(a), Arden Hills Zoning Ordinance, Arden Hills, Minnesota. Available at: http://www.ci.arden-hills.mn.us/Departments/Community_Development/Zoning_Ordinance/zoning_ordinance.htm.

obesity, such a justification seems warranted based on both scientific findings and legal precedent governing the relationships between zoning and public health.

Part III: Case Law Supporting Zoning of Fast Food Outlets

Several courts have upheld zoning laws that restrict fast food outlets or upheld decisions made by zoning officials applying such laws. Although none of the court decisions that we found discusses zoning restrictions on fast food outlets enacted specifically to reduce obesity, some of the decisions involve zoning ordinances aimed at achieving other public health goals such as protecting pedestrian safety. Courts responded favorably to these laws as long as there was evidence that the laws would, in fact, promote the public's health and safety. Because there is no dispute that obesity is a significant public health problem in the United States, courts should recognize addressing obesity as a legitimate objective of zoning. Courts have also upheld zoning restrictions on fast food outlets enacted for goals unrelated to public health, such as compatibility with the surrounding community. These cases suggest that if courts are willing to uphold zoning restrictions on fast food outlets for other reasons, given that public health arguably provides the strongest basis for zoning laws, courts should be more inclined to uphold zoning laws aimed at obesity. Finally, zoning cases not involving fast food outlets can sometimes suggest arguments that could be used to justify regulations on fast food outlets. In this section, we discuss judicial decisions involving all of these issues.

I. Public Health Objectives

A. Traffic Concerns

The most common public health concern raised with respect to fast food outlets is that the traffic generated from drive-through service will adversely affect such things as pedestrian safety, congestion, and air and environmental quality. In general, courts

find that preventing traffic hazards is a legitimate objective of zoning.¹⁸⁹ With respect to fast food outlets, in particular, courts have upheld laws regulating drive-through service based on these concerns when the zoning authority offered evidence that drive-through service would generate more traffic than permitted uses.

For example, in *Bellas v. Planning Board of Weymouth* (Massachusetts, 2002) (unpublished opinion)¹⁹⁰ a developer appealed from a lower court opinion that affirmed the decision of the planning board to deny a special permit for a drive-through window at a Dunkin' Donuts shop.¹⁹¹ Relying on "trip generation figures" (i.e., the number of vehicle trips the proposed business would likely generate during peak morning traffic time), the appellate court found that:

While most school children walking to the elementary school nearby do not pass by the site, some do. That fact, combined with evidence that a drive-through window in a fast food establishment such as this will generate more traffic than a similar facility without a drive-through window, especially during peak morning hours when much of the foot traffic by school children occurs, was sufficient to support the judge's conclusion that the board's concerns with traffic and pedestrian safety had a reasonable basis in fact.¹⁹²

In *Matter of Hobbs v. Albanese* (New York, 1979),¹⁹³ the Board of Trustees of the Village of Manlius denied landowners a special use permit to develop a McDonald's Drive-In Restaurant, in part because the proposed use would adversely impact traffic

¹⁸⁹ See, e.g., *Columbia Oldsmobile v. City of Montgomery*, 564 N.E.2d 455, 461 (Ohio 1990) ("This court has held several times that a '...city may lawfully regulate [safety hazards] pursuant to its police powers: protection of pedestrians and drivers, elimination of traffic congestion and reduction of air and noise pollution.'"), *rehearing denied* (Jan. 16, 1991), *cert. denied* (June 24, 1991).

¹⁹⁰ Unpublished opinions have limited precedential value in court cases, but do provide insight into how courts may view zoning restrictions placed on fast food outlets.

¹⁹¹ *Bellas v. Planning Bd. of Weymouth*, No. 00-P-1837, 2002 WL 31455225 (Mass. App. Ct. Nov. 4, 2002) (unpublished opinion).

¹⁹² *Bellas v. Planning Bd. of Weymouth*, 2002 WL 31455225 at 2.

¹⁹³ *Matter of Hobbs v. Albanese*, 417 N.Y.S.2d 556 (N.Y.A.D. 4th Dept. 1979).

congestion. Landowners petitioned the court to compel the village board to issue the permit, which the lower court denied. On appeal, the appellate court found that the village board could rely on the so-called “public health clause” of the special use ordinance (requiring applicants to show that “[t]he proposed use will not create a hazard to public health, safety, morals, or the general welfare”) to deny the permit if it found there would be an “increased traffic problem special to the proposed use.”¹⁹⁴ Because the evidence in the record was insufficient to establish that the proposed use “would have a greater impact on the traffic in the area than would other permitted uses not subject to special permits,” the court sent the case back to the board to provide further proof of the alleged traffic hazard or to issue a permit.¹⁹⁵

Similarly, in *Old Country Burgers Company, Inc. v. Town Board of Town of Oyster Bay* (New York, 1990),¹⁹⁶ the petitioner operated a Burger King restaurant and applied for a special permit to operate a drive-through window. The zoning board granted the application subject to several conditions including the so-called “meal-time restriction,” which prohibited drive-through service during meal-time hours. The zoning board justified this restriction by alleging that drive-through service would significantly increase the existing traffic flow. The court disagreed, finding that “there was no showing that the proposed use would have a greater impact on traffic than other uses which are unconditionally permitted in the area,” and found the restriction improper.¹⁹⁷

¹⁹⁴ *Matter of Hobbs v. Albanese*, 417 N.Y.S.2d at 557.

¹⁹⁵ *Matter of Hobbs v. Albanese*, 417 N.Y.S.2d at 557.

¹⁹⁶ *Matter of Old Country Burgers Co., Inc. v. Town Bd. of Town of Oyster Bay* 553 N.Y.S.2d 843 (N.Y.A.D. 2d Dept. 1990).

¹⁹⁷ *Matter of Old Country Burgers Co., Inc. v. Town Bd. of Town of Oyster Bay*, 553 N.Y.S. at 844.

Other court decisions, though, have upheld zoning authority decisions to deny special use permits for drive-through service without explicitly requiring proof that the proposed use would generate more traffic than permitted uses. For example, in *Bess Eaton Donut Flour Company, Inc. v. Zoning Board of Review of Town of Westerly* (Rhode Island, 2000) (unpublished opinion)¹⁹⁸ Bess Eaton Donut applied for a special use permit for a drive-through window at a bake shop. Despite favorable expert testimony, including a report by an independent traffic engineer that the proposed drive-through would not have an adverse impact on traffic or the neighborhood, the zoning board denied the special permit, in part because it found that the drive-through window would increase congestion and create a hazard in violation of the zoning code. The court gave great weight to facts within the personal knowledge of members of the zoning board. In discussing the proposed use, one of the board members stated “that he travels to the area when bringing his son to a school bus stop and observed other children also being dropped off at school bus stops or at the nearby school, that he has gone to the site to study the traffic, and that in the morning there is also a lot of foot traffic to the nearby school” to conclude that a drive-through at the particular site would be a nuisance and create a traffic hazard.¹⁹⁹ The chairman of the board also noted that, although the traffic would not increase with the proposed use, a nuisance would result from stopping and pulling into the lot and going in and out of the site and that any other drive-through that would create similar traffic would be a nuisance. Based on these

¹⁹⁸ *Bess Eaton Donut Flour Co., Inc. v. Zoning Bd. of Review of Town of Westerly*, No. 99-0209, 2000 WL 276818 (R.I. Super. Ct. Feb. 15, 2000) (unpublished opinion).

¹⁹⁹ *Bess Easton Donut Flour Co., Inc. v. Zoning Bd. of Review of Town of Westerly*, 2000 WL 276818 at 5.

statements, the court held that the board's denial was supported by substantial evidence in the record and not arbitrary and capricious.²⁰⁰

Public health concerns over traffic generated by fast food outlets are not exclusively related to drive-through service. In *McDonald's Corporation v. Board of Selectmen of Randolph* (Massachusetts, 1980),²⁰¹ McDonald's Corporation challenged a zoning board's denial of a license for a restaurant in a shopping center. The board claimed, among other things, that the proposed use would increase traffic which, in turn, would endanger students from a nearby high school who would be attracted to the restaurant. The lower court disagreed, finding that the restaurant would not increase traffic or materially hamper or interrupt traffic flow in the area, and thus, would not pose a threat to student safety. The appellate court agreed that the denial of the license on this basis was improper and found that the lower court's finding on this point was amply supported by the evidence:

There was also evidence that peak hours at the plaintiff's restaurant would not coincide with the arrival or departure of the buses at the high school and that police were assigned to traffic duty at those times. Further, it was significant on the safety claim that traffic signals had been approved for a site near the school some six years prior to McDonald's application but had never been installed. There was evidence that the accident rate in the vicinity was average to low and that most accidents were minor property damage cases occurring within the confines of the shopping center. Finally,

²⁰⁰ *But see Bess Easton Donut Flour Co., Inc. v. Zoning Bd. of Review of Town of Richmond*, No. C.A. 99-0132, 1999 WL 1062185 (R.I. Super. Ct. Nov. 10, 1999) (unpublished opinion). ("During deliberations, two Board members did state that they were familiar with the area and that they believed the drive-thru would cause an increase in traffic. However, these are exactly the kind of conclusory statements that our Supreme Court has rejected as not being substantial evidence sufficient to deny a request for a special use permit.").

²⁰¹ *McDonald's Corp. v. Board of Selectmen of Randolph*, 399 N.E.2d 38, 40 (Mass. App. Ct. 1980).

there was evidence that because the shopping center was not near a major highway the proposed restaurant would not draw additional traffic, but rather would serve those already in the immediate area on other business. In view of this evidence we conclude that the judge did not err in rejecting the board's second reason for denial of the license.²⁰²

B. Public Health Necessity

At least one case (not involving a fast food business) upheld the validity of a requirement in a conditional use permit provision that required the applicant to demonstrate that the proposed use was reasonably necessary for the public health or general welfare. In *SBA, Inc. v. City of Asheville City Council* (North Carolina, 2000)²⁰³ petitioners sought a conditional use permit to construct a telecommunications tower, which the city council denied and the lower court upheld. In order to approve the permit, seven general requirements had to be met, including: "That the proposed use is *reasonably necessary for the public health or general welfare*, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region."²⁰⁴ The city denied the conditional use permit because petitioners did not meet three of the seven requirements, including that they failed to show that the proposed tower was reasonably necessary for the general welfare. Although the public health clause in the same requirement of the conditional use provision was not addressed by the court, the fact that the petitioners were required to show reasonable necessity with respect to the general welfare clause suggests that, on its face, a requirement to affirmatively show

²⁰² *McDonald's Corp. v. Board of Selectmen of Randolph*, 399 N.E.2d at 40-41.

²⁰³ *SBA, Inc. v. City of Asheville City Council*, 539 S.E.2d 18, 21 (N.C. App. Ct. 2000).

²⁰⁴ *SBA, Inc. v. City of Asheville City Council*, 539 S.E.2d at 21(emphasis supplied).

public health necessity may also be a legitimate exercise of zoning power in North Carolina and perhaps other states as well.

A provision requiring a showing of public health or general welfare necessity is not valid in all jurisdictions. For example, New York courts have explicitly invalidated an almost identical provision setting forth the requirements for special use permits. In *Cove Pizza, Inc. v. Hirshon* (New York, 1978), to obtain a special use permit the applicant was required to show, among other things, that the use “is reasonably necessary for the public health or general interest and welfare.”²⁰⁵ *Cove Pizza, Inc.* was denied a special use permit, in part because it failed to show “any necessity for the use for which the application was made, nor that such prospective use was in any way related to the public health or general interest and welfare.”²⁰⁶ The court found that the planning board’s “interpretation of the ordinance placed an unwarranted burden on the applicant to show that the restaurant would advance the public health or general welfare.”²⁰⁷ Instead, the issue was whether the operation of the restaurant would be harmful to the public health or general welfare and, according to the court, there was “a complete lack of substantial evidence” that supported this finding.²⁰⁸ Other New York cases have reached similar conclusions. For example, citing *Cove Pizza*, the court in *Christie v. Hirshon* (New York, 1982) stated:

Although the ordinance calls for the board to find that the exception is reasonably necessary for the public health or general interest and welfare, to require an applicant to prove that a proposed relocation would advance the public health or general welfare is to impose an undue burden where

²⁰⁵ *Matter of Cove Pizza, Inc. v. Hirshon*, 401 N.Y.S.2d 838, 839 (N.Y.A.D. 2d Dept. 1978).

²⁰⁶ *Matter of Cove Pizza, Inc. v. Hirshon*, 401 N.Y.S.2d at 839.

²⁰⁷ *Matter of Cove Pizza, Inc. v. Hirshon*, 401 N.Y.S.2d at 840.

²⁰⁸ *Matter of Cove Pizza, Inc. v. Hirshon*, 401 N.Y.S.2d at 840.

there is evidence that the use would not be injurious to the public health or welfare.²⁰⁹

C. Community Need

Community need (or equivalent language) can support zoning restrictions in some jurisdictions and under some circumstances. For example, the Illinois Supreme Court lists 8 factors, none controlling, for Illinois courts to consider when determining whether a zoning ordinance is valid; one of those factors is the community's need for the proposed use.²¹⁰ However, in Illinois (and likely other states as well), depending on the context and language of a particular zoning ordinance, a community needs assessment may be more complicated than readily apparent.

In *Cosmopolitan National Bank v. Village of Niles* (Illinois, 1983)²¹¹ McDonald's Corporation, along with other plaintiffs, sued the Village of Niles, Illinois for denying a special use permit for the development of a McDonald's fast-food restaurant. Under the particular zoning ordinance, the Village Board could not grant a special use permit unless three standards were met, including that the proposed use "[i]s deemed necessary for the public convenience at that location."²¹² The trial court found that, because there were four other restaurants located within a two-block area of the proposed site, the restaurant was not necessary for the public convenience. The appellate court disagreed, finding that the term "necessary" as used in the ordinance did not mean "absolutely necessary" but "expedient" or "reasonably convenient" to the

²⁰⁹ *Christie v. Hirshon*, 449 N.Y.S.2d 771, 773 (N.Y.A.D. 2d Dept. 1982).

²¹⁰ *State Bank of Countryside v. City of Chicago*, 679 N.E.2d 435, 440-41 (Ill. App. Ct. 1997) (citing *Sinclair Pipe Line Co. v. Village of Richton Park*, 167 N.E.2d 406, 411 (Ill. 1960)).

²¹¹ *Cosmopolitan Nat'l Bank v. Village of Niles*, 454 N.E.2d 703 (Ill. App. Ct. 1983).

²¹² *Cosmopolitan Nat'l Bank v. Village of Niles* 454 N.E.2d at 705.

public welfare. Further, the issue is not “an absence of public necessity,” but rather that “[p]ublic necessity is relevant to determining the relative gain or detriment to the public caused by the development.” Because there was a “clear, commercial pattern” along the street where the proposed restaurant would be located, the appellate court found that the use was compatible with the surrounding area and was therefore not a detriment. The court held that the denial of the permit was unreasonable.

A later appellate case, *Scadron v. Zoning Board of Appeals of the City of Chicago* (Illinois, 1994), reviewing nearly identical language (“necessary for public convenience”) in a Chicago ordinance, elaborated on this language: “A use does not necessarily meet this standard, however, merely because it is a legitimate use or one which is commercially expedient to the applicant... Instead, the applicant must demonstrate that the community will derive at least some benefit from the proposed use.”²¹³

Other state courts have explicitly prohibited a community needs assessment in the context of a special use exception. In *Bess Easton Donut Flour Company, Inc. v. Zoning Board of Review of Town of Richmond* (Virginia, 1999) (unpublished opinion),²¹⁴ the court found that the zoning board’s decision to deny a special unit permit for a drive-through window in a bake shop was arbitrary and capricious, and ordered the zoning board to issue the permit, in part because two board members considered whether there was a community need for a drive-through at the site. According to the court, “[a]

²¹³ *Scadron v. Zoning Bd. of Appeals of City of Chicago*, 637 N.E.2d 710, 713 (Ill. App. Ct. 1994).

²¹⁴ *Bess Easton Donut Flour Co., Inc. v. Zoning Bd. of Review of Town of Richmond*, 1999 WL 1062185.

zoning board may not deny granting a special exception to a permitted use on the ground that the applicant has failed to prove that there is a community need.”²¹⁵

II. Non-Public Health Objectives

A. Preserving Neighborhood Character and Aesthetics

Courts have long recognized that preserving neighborhood character and concern about aesthetics are proper objectives of zoning. For example, in *Franchise Developers, Inc. v. City of Cincinnati* (Ohio, 1987),²¹⁶ the Cincinnati City Council denied Franchise Developer, Inc.’s application to remodel a theatre for use as a Wendy’s restaurant. The proposed site was in an overlay district with a provision stating that: “New businesses should contribute to the desired mix of commercial activities; franchise type establishments are acceptable provided that they are primarily pedestrian and not automobile oriented.”²¹⁷ Although the case was technically moot because the City had purchased the property at issue, the Supreme Court of Ohio addressed it nevertheless because the case involved “matters of great public interest” and a debatable constitutional question remained. In its opinion, the court initially noted that there is a strong presumption that the overlay ordinance is valid. The court also found that the particular provision in question could not be viewed in isolation as it was inextricably interwoven with other relevant provisions of the ordinance, as well as the City’s Urban Design Plan and its Coordinated City Plan, which specifically provided that drive-in restaurants and fast food restaurants were not appropriate at the site at issue. In finding the ordinance valid, the court found, among other things, that the City’s “attempt to

²¹⁵ *Bess Easton Donut Flour Co., Inc. v. Zoning Bd. of Review of Town of Richmond*, 1999 WL 1062185 at 5.

²¹⁶ *Franchise Developers, Inc. v. City of Cincinnati*, 505 N.E.2d 966 (Ohio 1987).

²¹⁷ *Franchise Developers, Inc. v. City of Cincinnati*, 505 N.E.2d at 968.

preserve and protect the character of certain neighborhoods” was a proper exercise of its zoning authority and that “[t]here is a legitimate governmental interest in maintaining the aesthetics of the community and, as such, aesthetic considerations may be taken into account by the legislative body in enacting zoning legislation.”²¹⁸ While aesthetics is a valid objective of zoning, courts differ over whether aesthetics alone can be the sole justification in support of a zoning regulation.²¹⁹

In *Bess Eaton Donut Flour Company, Inc. v. Zoning Board of Review of Town of Westerly* (Rhode Island, 2000) (unpublished opinion),²²⁰ the zoning board denied Bess Eaton Donut Flour Company’s request for a special use permit to develop a bake shop with drive-through service, in part because it failed to show that it was “compatible with neighboring uses” as required by the zoning ordinance.²²¹ On this issue, a member of the zoning board noted that allowing certain cars ingress and egress to the property would adversely change the neighborhood and another member stated that the area had no other drive-in businesses. The Superior Court of Rhode Island upheld the zoning board’s decision, finding that the zoning board had provided “reliable, substantial, and probative evidence” to support its decision and therefore did not exceed its authority.

²¹⁸ *Franchise Developers, Inc. v. City of Cincinnati*, 505 N.E.2d at 971 (citing *Hudson v. Albrecht, Inc.*, 458 N.E.2d 852 (Ohio 1984)).

²¹⁹ *Compare Transylvania County v. Moody*, 565 S.E.2d 720, 726 n.3 (N.C. App. Ct. 2002) (“Since aesthetics is listed as only one of the purposes for the [sign] ordinance, we need not consider whether the ordinance is constitutional as an aesthetics-only regulation.”) *with Parking Ass’n of Georgia, Inc. v. City of Atlanta*, 450 S.E.2d 200, 202 (GA. 1994) (“An ordinance is not unreasonable even if designed only to improve aesthetics. Legislation based on aesthetics is within the public welfare aspect of the police power.”), *reconsideration denied* (Dec. 20, 1994), *cert. denied* 515 U.S. 1116 (May 30, 1995), *rehearing denied* 515 U.S. 1178 (Aug. 11, 1995).

²²⁰ *Bess Eaton Donut Flour Co., Inc. v. Zoning Bd. of Review of Town of Westerly, C.A. No. 98-0648*, 2000 WL 976659 (R.I. Super. Ct. June 30, 2000) (unpublished opinion).

²²¹ *Bess Eaton Donut Flour Co., Inc. v. Zoning Bd. of Review of Town of Westerly*, 2000 WL 976659 at 3.

Other courts may require more substantial proof of the proposed use's incompatibility. For example, in *Westbury Trombo, Inc. v. Board of Trustees of Village of Westbury* (New York, 2003),²²² a New York appellate court found that zoning laws requiring fast food businesses to obtain a special use permit or variance to operate between 11:00 PM and 6:00 AM on property within 100 feet of land zoned for residential or apartment use were invalid absent evidence that a 24-hour retail business near the vicinity of a residential area had any detrimental impact on health, safety, welfare, or morals of the community. According to the court, "generalized concerns of the neighboring community uncorroborated by any empirical data" are not enough.²²³

B. Economic Considerations

One argument that has been made against the development of fast food restaurants is that large national chain restaurants squeeze out local food establishments because the smaller businesses do not have the economic resources to compete with the chains. Ultimately, the argument continues, the loss of neighborhood businesses will change the character of the community and potentially ruin the community's economic base. This reasoning has been the impetus behind many restrictions on so called formula fast-food restaurants. Using an economic argument to justify a zoning ordinance must be done cautiously, though, because it is well established across jurisdictions that zoning cannot be used to restrict competition.²²⁴

²²² *Westbury Trombo, Inc. v. Board of Trustees of Village of Westbury*, 763 N.Y.S.2d 674 (N.Y.A.D. 2d Dept. 2003).

²²³ *Westbury Trombo, Inc. v. Board of Trustees of Village of Westbury*, 763 N.Y.S.2d at 676 (citing *Matter of Framike Realty Corp. v. Hinck*, 632 N.Y.S.2d 177 (N.Y.A.D. 2d Dept. 1995)).

²²⁴ See, e.g., *Ensign Bickford Realty Corp. v. City Council of City of Livermore*, 137 Cal. Rptr. 304, 309 (Cal. Ct. App. 1977) ("Where the sole purpose of a zoning ordinance or

Although zoning may not be used to restrict competition, courts recognize that land use decisions will nearly always have an indirect impact on economic competition. If the goal is not to restrict competition and an otherwise legitimate purpose exists, the zoning provision should be deemed valid. For example, in *Coronadans Organized for Retail Enhancement v. City of Coronado* (California, 2003) (unpublished opinion)²²⁵ (case does not involve a fast food business), property owners and an unincorporated association challenged the constitutionality of a zoning ordinance that required a special use permit to open or expand a “formula retail” business in the city and limited the street level frontage size of these businesses. “Formula retail” was defined in the ordinance as:

a type of retail sales activity or retail sales establishment (other than a ‘formula fast food restaurant’) which is required by contractual or other arrangement to maintain any of the following: standardized (‘formula’) array of services and/or merchandise, trademark, logo, service mark, symbol, décor, architecture, layout, uniform, or similar standardized feature.²²⁶

decision is to regulate or restrict business competition, the regulation is subject to challenge. It is not the proper function of a zoning ordinance to restrict competition or to protect an enterprise which may have been encouraged by a prior zoning classification”); *Wyatt v. City of Pensacola*, 196 So.2d 777, 779 (Fla. Dist. Ct. App. 1967) (“According to this record, the sole basis for the sentence delaying the effective date [of the ordinance] was economical--that is, to restrict competition in this industry through the use of the police power. Municipalities may not use their zoning powers for this purpose.”); *Cosmopolitan Nat’l Bank v. Village of Niles*, 454 N.E. 2d at 705 (“...the control or restriction of competition is not a proper or lawful zoning objective.”); *In re Northeast Corner of E. Center St. and Chicago Ave., Marion, Ohio*, 186 N.E.2d 515, 521 (Ohio Com. Pl. 1962) (“A zoning ordinance cannot be used to control competition.”); *In re Lieb’s Appeal*, 116 A.2d 860, 865 (Pa. Super. Ct. 1955) (“zoning is not for the purpose of limiting or prohibiting competition, and when that is the only purpose of a zoning ordinance it must be declared invalid.”).

²²⁵ *Coronadans Organized for Retail Enhancement v. City of Coronado*, No. D040293, Super. Ct. No. 766111, 2003 WL 21363665 (CA. App. Ct. June 13, 2003) (unpublished opinion).

²²⁶ *Coronadans Organized for Retail Enhancement v. City of Coronado*, 2003 WL 21363665 at 1 (citing Coronado Mun. Code § 86.04.682).

The stated purpose of the ordinance was “to regulate the location and operation of formula retail establishments in order to maintain the City’s unique village character, the diversity and vitality of the community’s commercial districts, and the quality of life of Coronado...”²²⁷ Despite a challenge claiming, among other things, that the “true” purpose of the ordinance was to provide economic protection to local businesses, the court disagreed and rejected, among other things, challenges based on the commerce and equal protection clauses of the U.S. Constitution. With respect to the equal protection challenge, the property owners claimed that the ordinance regulated only one class of retail stores. Applying the rational basis standard, the court found that:

The Ordinance’s classifications (requiring only Formula Retail businesses to obtain special use permits and adhere to size limitations) are rationally related to a legitimate state interest. As discussed, Coronado has a legitimate interest in seeking to maintain the village ambiance of its commercial district and to ensure the long-term economic viability of the community. It was not irrational for the city council to decide that this objective could best be met by imposing a public permit process and frontage size limitation on “Formula Retail” businesses. The city council could reasonably conclude that this type of store requires special scrutiny because it is more likely to be inconsistent with Coronado’s land use goals than would be a unique one-of-a-kind business and that such “formula” businesses—by their nature—have a greater potential to conflict with the village atmosphere of the community.²²⁸

This case suggests that zoning laws that restrict fast food outlets may survive an anti-competition challenge provided that they have other legitimate objectives such as preserving neighborhood character and/or the economic vitality of a locality, or even preventing obesity.

²²⁷ *Coronadans Organized for Retail Enhancement v. City of Coronado*, 2003 WL 21363665 at 1.

²²⁸ *Coronadans Organized for Retail Enhancement v. City of Coronado*, 2003 WL 21363665 at 8.

III. Preventing Obesity

In general, the cases discussed in this section demonstrate that municipalities can constitutionally regulate fast food outlets based on both public health and non-public health reasons. The same reasoning applied in these cases could also support zoning restrictions on fast food outlets to prevent obesity. For example, suppose one of the requirements in a special use permit is that the applicant must prove that the proposed use is reasonably necessary for the public health or general welfare. Certainly, with what is now known about diet and obesity, it would be difficult for a fast food developer to suggest that a fast food outlet is reasonably necessary for the public health. The same developer would likely find it difficult to show reasonable necessity for the general welfare—especially in localities that already have one or more fast food outlets or in localities that regulate fast food businesses for reasons other than for public health objectives. By contrast, in many communities that lack access to healthy foods, healthier food retailers will likely be able to show that their proposed use is reasonably necessary for the public health or general welfare because it helps to create a healthier food retail environment. Thus, a provision requiring proof of public health necessity would pose challenges to developers of fast food and, at the same time, present an opportunity to healthier food retailers. In jurisdictions that do not allow a requirement that the applicant affirmatively show a public health or general welfare necessity, municipalities could argue that the proposed fast food outlet would be injurious to the public health to the extent that it undermines, prevents, or displaces the establishment of a healthy local food environment.

Spacing requirements and quotas of fast food outlets also could be justified with obesity prevention as the goal. At least two courts have reviewed and upheld a zoning ordinance that provides a spacing requirement for fast food outlets. In *McDonald's Corporation v. Board of Trustees, Village of Elmsford* (New York, 1994),²²⁹ McDonald's was denied a special permit to develop a drive-in restaurant within the village, in part because the restaurant was to be located 1,320 feet from an existing Wendy's drive-in restaurant and the zoning ordinance required 2,000 feet between such establishments.²³⁰ Similarly, in *Fain v. New Milford Zoning Commission* (Connecticut, 2005) (unpublished decision), the Superior Court of Connecticut rejected an argument that the zoning commission's denial of an application to amend a zoning regulation, which required that fast food restaurants, gasoline service stations, convenience stores, and auto dealerships be separated by at least one mile, was arbitrary and violated a statutory uniformity requirement that "[a]ll such regulations shall be uniform for each class or kind of buildings, structures or uses of land throughout each district..."²³¹ In part, the court found that "[t]he plaintiffs have not cited any cases which would prohibit a zoning commission from creating a town-wide regulation which treats certain uses

²²⁹ *McDonald's Corp. v. Board of Trustees, Village of Elmsford*, 610 N.Y.S.2d 387 (N.Y.A.D. 3d Dept. 1994).

²³⁰ Another case, *Ji v. City of Los Angeles*, No. B161391, Super. Ct. No. BC257676, 2003 WL 22017849 (Cal. Ct. App. August 27, 2003) (unpublished decision), involves property owners' request for a preliminary injunction to prevent the enforcement of a Los Angeles ordinance regulating the number of restaurants permissible along a particular section of a street. The ordinance stated: "[t]he total number of restaurants...may not exceed one for every 270 feet of public street lot frontage. Such businesses need not be spaced at said intervals, provided that the total number does not exceed the above ratio...Drive-through fast-food establishments are prohibited." Although the appellate court upheld the trial court's denial of the preliminary injunction, it did not specifically address the legitimacy of the density provision.

²³¹ *Fain v. New Milford Zoning Comm'n*, No. CV044000252S, 2005 WL 1154713 (Conn. Super. Ct. April 22, 2005) (unpublished decision).

differently based upon a rational basis related to a legitimate goal of zoning: reducing traffic congestion in this case.”²³² Finding the denial of the application was not “illegal, arbitrary or an abuse of discretion,” the court dismissed the case.

With respect to quotas, New York (and likely other jurisdictions) appears to allow zoning authorities to limit the number of restaurants in a particular area. In *Christie v. Hirshon* (New York, 1982), the planning board granted a special use permit for the relocation of a restaurant/bar. With respect to community opposition that the relocation would oversaturate the area with alcohol outlets, the court responded:

to deny a special use permit based on an overabundance of this type of permitted establishment in the neighborhood, as the petitioners argue should be done, would be contrary to the legislative finding implicit in the ordinance, i.e., that a restaurant/bar in the B-1 Central Commercial District would not adversely affect the neighborhood. The ordinance authorized the [planning] board to fix quotas for permitted uses within the district. Should there exist a saturation of permitted uses within a district, it is for the board to seek to amend the applicable ordinance rather than to apply it in a discriminatory fashion.²³³

A municipality could argue that the quota or spacing requirement will prevent an oversaturation of fast food outlets and thereby help to promote a healthier local food environment.

IV. Practical Suggestions

Clearly obesity is a significant public health problem in the United States and addressing a significant public health problem is a legitimate objective of zoning. The following question remains: is there sufficient scientific evidence to link obesity to fast food and a sufficient legal basis to use zoning to regulate fast food outlets? In Part I of

²³² *Fain v. New Milford Zoning Comm’n*, 2005 WL 1154713 at 2.

²³³ *Christie v. Hirshon*, 449 N.Y.S.2d at 773 (citing *Matter of Cove Pizza, Inc. v. Hirshon*).

this monograph, we argue that there is ample scientific evidence and legal basis to support zoning fast food outlets. In Part II, we provide many examples of zoning restrictions placed on fast food outlets for other purposes that could be used as models for zoning laws aimed at obesity. And in Part III, we show that some courts have upheld zoning laws that regulate fast food outlets for both public health and non-public health reasons. Given the significance of the obesity epidemic in the United States and the scientific evidence and legal basis supporting the zoning of fast food outlets, municipalities have an effective, yet untried, tool to address obesity in their communities. We conclude Part III with a few general legislative drafting suggestions. Of course, municipalities will have to use their discretion regarding these suggestions depending upon their particular circumstances and applicable law.

Zoning restrictions on fast food outlets have been upheld for various reasons, and perhaps historically and most successfully, based on traffic concerns and the preservation of neighborhood character. If a zoning ordinance restricting fast food outlets can be justified by what has been successful in the past, one might argue that it is unnecessary to proffer an untried justification such as addressing the problem of obesity. In other words, even if the primary goal of the ordinance is to address obesity, if it can be achieved through a secondary consideration such as controlling traffic, why not use the established justification? As a general rule, there is little reason not to offer multiple justifications for a particular zoning decision, because a zoning law will be upheld if it rationally relates to only one legitimate purpose.²³⁴ In *TPW, Inc. v. City of*

²³⁴ See *Bell v. Planning & Zoning Comm'n of City of Bridgeport*, No. CV 95322396, 1997 WL 133447, at 3 (Conn. Super. Ct. March 7, 1997) (unpublished decision) (“The Commission’s decision must be sustained if any one of the reasons given for the

New Hope (Minnesota, 1986), New Hope’s city council denied, among other things, a conditional use permit for the construction of a Taco John’s fast food restaurant.²³⁵ The developer filed a writ of mandamus asking the court to order the city to issue a conditional use permit, which the trial court granted. The appellate court reversed the trial court and dismissed the writ of mandamus, finding that the city council had provided “legally sufficient and factually supported reasons” for its denial: “Although the record does not support the city council’s concerns regarding noise and traffic, its findings of inadequate parking and inadequate stacking lane are factually supported and legally sufficient under the code.”²³⁶ Thus, the invalidity of one zoning objective does not mean the zoning law will fail if another objective is deemed valid. The greatest legal risk appears to be that the untried justification will be rejected by the courts and unfavorable law will be established on that point.

In addition, not specifically stating that the zoning law was adopted to address obesity limits zoning’s potential contribution to addressing the obesity epidemic. Zoning laws generally need only pass the rational basis test (see Part I, Section III and Appendix B) and therefore, the law is conducive to innovative approaches. For example, suppose a locality would like to limit fast food restaurants and encourage healthier food alternatives. The purpose section of the zoning ordinance could not only include the preservation of the unique character and economic vitality of the community, but also a statement of purpose related to obesity: “to protect the public health and address

decision are [sic] substantially supported in the record.”) (citing *Huck v. Inland Wetlands and Watercourses Agency*, 525 A.2d 940 (Conn. 1987)).

²³⁵ *TPW, Inc. v. City of New Hope*, 388 N.W.2d 390 (Minn. App. Ct. 1986), review denied (Aug 13, 1986).

²³⁶ *TPW, Inc. v. City of New Hope*, 388 N.W.2d at 394.

obesity by creating a local food retail environment that provides our communities access to healthy foods and encourages healthier eating.” The goal is to make the objective of addressing obesity as common and accepted in zoning ordinances as the objectives of addressing traffic issues and neighborhood character. Over time, a body of judicial law may develop that specifically recognizes that addressing obesity is a valid objective of zoning.

In addition, and to the extent possible, the objective of addressing obesity should be included in all levels of land use regulation including enabling legislation, comprehensive plans, municipal codes, and zoning ordinances. For example, often state or local law requires that a zoning ordinance conform to the “comprehensive plan.” King County, Washington’s 2004 Comprehensive Plan specifically addresses the relationship between obesity and physical activity:

Focusing development in urban areas can have a positive effect on public health. The percentage of King County residents who are overweight or obese has risen rapidly since the late 1980s. With obesity comes increased risk for diabetes, hypertension and heart disease. Evidence suggests one major reason for rising obesity is the lack of physical activity. Growth patterns in suburban areas, which discourage walking and promote a reliance on private auto use, have contributed to this public health problem. Communities that feature many land uses, higher housing density, sidewalks and street connections and nearby services encourage physical activity such as walking or bicycling.²³⁷

Several other sections of King County’s Comprehensive Plan also mention the importance of physical activity to health (e.g., “Neighborhood plans may include... Specific land uses and zoning that encourage healthy, livable communities by

²³⁷ 2004 King County Comprehensive Plan, Chapter 2, Section I(A)(2). Available at: http://www.metrokc.gov/ddes/compplan/2004/PDFs/mkcc_ord_15028_attachment_A.pdf.

promoting physical activity of walking and bicycling”).²³⁸ While food diversity is not directly discussed in King County’s Comprehensive Plan, the importance of healthy food is an acknowledged goal:

Every resident of King County has an equal right to a healthy and safe environment. This requires that our air, water, earth and food be of a sufficiently high standard that individuals and communities can live healthy, fulfilling and dignified lives...²³⁹

Agricultural lands and farming provide many benefits to the citizens of King County including scenic open space, a connection to our cultural heritage, fresh local foods and a diverse economy.²⁴⁰

Along these same lines, a comprehensive plan could acknowledge the importance of healthy eating and explicitly state the goal of creating a retail market that offers healthy food. If a comprehensive plan specifically states something to the effect that one of its objectives is “to promote the public health of the community and reduce the prevalence of obesity by creating an environment that promotes healthier lifestyles, including access to healthy foods,” a zoning ordinance with a similarly stated purpose will more likely be upheld if challenged. Similarly, just as special use permits often require that the applicant show that the proposed use will not cause a traffic hazard, another requirement might be that food retailers demonstrate that the proposed use helps to create a local environment that promotes healthier lifestyles, including access to healthy foods. If this language tracks similar language in a comprehensive plan, again a court would be more likely to uphold it. Finally, as seen in New York, if a planning board has explicit power to set quotas, a zoning ordinance setting up a quota system for fast food outlets has a greater chance of withstanding judicial scrutiny. The guiding principle here

²³⁸ 2004 King County Comprehensive Plan, Chapter 2, Section II(E).

²³⁹ 2004 King County Comprehensive Plan, Chapter 4, Section I(A).

²⁴⁰ 2004 King County Comprehensive Plan, Chapter 3, Section V(C).

is to ensure that the zoning authorities are given the necessary authority to achieve their stated goals and that the goals are repeatedly stated in the various levels of land use regulations.

Conclusion

Scientists tell us that obesity is a life-threatening epidemic in the United States and it involves two facts of modern life--we consume too many calories, and we burn off too few.

This monograph focuses on the consumption side of the equation and, in particular, the use of zoning to regulate fast food outlets. By the proposed regulation of these establishments, we examine how zoning laws can help to limit the proliferation of food that can be harmful and to encourage the availability of nutritious food. We focus on fast food because of its unique role in the obesity epidemic.

Space does not permit a discussion about everything related to the potential use of zoning as a tool to address obesity. For example, a discussion about how zoning has been used with respect to the sale of other products such as alcohol and firearms, and how courts have ruled on those laws, would be beneficial to understanding zoning's potential with respect to fast food sales. Additionally, advertising, marketing, and promotion heavily influence product sales, especially to children. The extent to which zoning can be used to control advertising of fast food in light of *Lorillard v. Reilly*,²⁴¹ the 2001 U.S. Supreme Court case striking down regulations promulgated by the Attorney

²⁴¹ *Lorillard v. Reilly*, 533 U.S. 525 (2001); see also Hackbarth DP, Schnopp-Wyatt D, Katz D, Williams J, Silvestri B, Pflieger M. Collaborative research and action to control the geographic placement of outdoor advertising of alcohol and tobacco products in Chicago. *Public Health Reports* 2001;116:558-567; Ashe et al. Land use planning and the control of alcohol, tobacco, firearms, and fast food restaurants.

General of Massachusetts restricting tobacco sales and advertising, should be further explored. There has also been no discussion about site development standards (e.g., parking, ingress and egress, signs, landscaping) often found in zoning codes and how they could be used to address obesity. Moreover, some zoning laws might actually impede the opportunities for healthier food retail outlets. Current zoning laws should be examined in this regard and those obstacles removed.²⁴² Finally, this monograph raises many issues and discusses them in general terms. Municipalities interested in adopting zoning laws that regulate fast food outlets and promote healthier alternatives will need to evaluate their own local and state laws, and more fully explore the federal issues, to determine the best regulation for their communities.

More fundamentally, though, while zoning can help establish a local environment that provides access to healthy food, access alone will not solve the obesity problem in the United States. Zoning cannot guarantee that people will choose a healthy diet and that businesses offering healthy foods will be successful. Thus, simplistic zoning solutions such as mandating grocery stores in every neighborhood will not solve the problem.²⁴³ Significant progress toward the Nation's Healthy People 2010 objectives will require a collaborative effort involving numerous partners, including zoning and planning authorities, city and state governments, corporate and local food producers and retailers, public health agencies, neighborhood associations and more.²⁴⁴ For example, local and state governments must find ways to attract supermarkets and other healthier

²⁴² Perdue et al. National challenges in population health: public health and the built environment: historical, empirical, and theoretical foundations for an expanded role.

²⁴³ Perdue et al. National challenges in population health: public health and the built environment: historical, empirical, and theoretical foundations for an expanded role.

²⁴⁴ Institute of Medicine of the National Academies. *Preventing Childhood Obesity: Health in the Balance*.

food retailers to communities that lack them (e.g., tax incentives).²⁴⁵ Members of the public health community, including state and local authorities and research institutions, must develop and implement community-level interventions that encourage healthier eating habits and create a market demand for healthy foods. The fast food industry has a vital role to play as well, which includes offering healthier food that consumers want to eat, providing nutritional and caloric information at the point of sale, and engaging in responsible advertising, marketing, and promotional practices. Ultimately, Americans need to embrace a healthier lifestyle, including changes to both diet and levels of physical activity, in order to reach the nation's goals. While zoning's contribution to this effort is limited, it is not insignificant.

The law, in all its forms, has an enormous impact on the preservation, protection, and enhancement of the public's health. Mandatory childhood immunization laws, vehicle and traffic safety laws, building codes, product liability litigation, food and drug regulations, air and water quality laws and regulations, and many other forms of law have saved and will continue to save countless lives. It is well within public health tradition and legal precedent to explore the ways new forms of law, such as zoning law, might successfully address new threats to the public's health, such as the epidemic of obesity.

²⁴⁵ Trust for America's Health. *F as in Fact: How Obesity Policies are Failing in America*.

APPENDIX A: State Delegation of Zoning Authority

There is tremendous variation in how states distribute their zoning authority, and the methods of distribution can be complex. States may grant local governments the authority to zone to the full extent of the police power or may grant more limited authority.¹ Moreover, a single state may vary how much authority it delegates according to whether the local government is a city, town, village, or county. Given these differences across and within states, we cannot describe how zoning authority is distributed in each particular state. Instead, our goal is to give a general overview of the three factors that determine the scope of local zoning authority: 1) the terms of the state's "zoning enabling legislation"; 2) the scope of "home rule" powers within the state; and 3) the existence of conflicting state and local legislation.

Zoning enabling statutes are the most common means of delegation. They became popular after 1924, when an advisory committee to the Department of Commerce released the Standard State Zoning Enabling Act (SZEA). The SZEA provided a template for states that wanted to delegate their zoning authority, and eventually all fifty states adopted legislation based on the SZEA. Over the years, states have modified their enabling statutes in a variety of ways, but the SZEA remains the basic model in most states.²

The impact of zoning enabling legislation on local zoning authority varies by state. In some states, courts have held that zoning enabling legislation is just one source of local zoning authority and that local governments may also issue zoning

¹ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law*, 51 (West Group 1998).

² Kenneth H. Young, *Anderson's American Law of Zoning* § 7.2 (4th ed. 1996).

ordinances based on “home rule powers.” By contrast, in states where courts follow the so-called “Dillon’s Rule” (municipalities have only that power granted to them by the state), enabling statutes are the only source of local zoning authority, and local governments cannot exceed the boundaries of those statutes.³

Local zoning authority in states that follow Dillon’s Rule tends to be more restricted because zoning enabling statutes frequently place limitations on local zoning powers and impose detailed procedures for enacting and administering zoning ordinances.⁴ Many zoning enabling acts, for example, impose rigid notice and hearing requirements and detailed restrictions on the make-up and voting procedures of local zoning commissions.⁵ These restrictions have been criticized, but they are still pervasive.

Home rule provisions, found in a state’s constitution, can provide an additional source for local zoning authority. Home rule provisions grant municipalities the general authority to manage their local affairs. Whereas zoning enabling statutes are specific to zoning, home rule provisions are broad grants of power that provide municipalities the general authority to manage their local affairs without having to rely on specific enabling statutes. Courts are split as to whether home rule provisions provide a basis for zoning power, but where they are found to, municipalities may have greater flexibility to zone because they are not restricted by the requirements of the state's enabling statutes.

Two conditions must be present for a municipality to issue zoning laws based on home rule authority. First, the municipality must be in a state that recognizes home rule

³Patrick J. Rohan, *Zoning and Land Use Controls*, § 35.03[2] (Patrick J. Rohan & Damien Kelly eds., 2004).

⁴ Patrick J. Rohan, *Zoning and Land Use Controls*, § 35.03[2].

⁵ Patrick J. Rohan, *Zoning and Land Use Controls*, § 35.03[3].

as a basis for local zoning authority, i.e. not a Dillon Rule state. Second, the municipality must adopt a charter that includes a specific zoning provision. If a municipality satisfies both of these requirements, then the scope of its zoning authority is determined by its particular charter, not the state's zoning enabling statute.⁶ If, however, a municipality has not adopted a charter or has adopted a charter with no zoning provision, then it must abide by the requirements of the state's zoning enabling statute, even if courts in that state recognize home rule power as a valid source of zoning authority.⁷

Municipalities with zoning authority based on home rule have greater autonomy over zoning matters, but their authority is not unlimited. In a regime where home rule is a source of zoning authority, the municipality adopts its own charter and, therefore, gets to set the scope of its zoning powers. The charter then becomes the “organic law of the municipality” on matters of local concern.⁸ Because zoning is generally considered a matter of local concern, the charter’s zoning provisions will not be preempted by state zoning enabling statutes. The charter must, however, be consistent with the state’s constitution and general laws. In addition, a local zoning ordinance enacted under home rule powers may be preempted if it conflicts with a state law that is not specific to zoning. For example, a California statute giving firearm dealers a range of options for storing their firearms was held to preempt a zoning ordinance that required firearm

⁶ Patrick J. Rohan, *Zoning and Land Use Controls*, §35.03[3].

⁷ 2A Eugene McQuillan, *The Law of Municipal Corporations* § 9.03 at 165 (3d ed. 1996) (noting that a home rule charter authorized by a state constitution becomes “the organic law of the people promulgating it in all matters pertaining to the local civil government of the municipality,” while legislative charters are merely grants of power to the locality) as cited in Charles B. Ferguson, Hamlets: Expanding the Fair Share Doctrine under Strict Home Rule Constitutions, 49 *Emory Law Journal* 255, 258 n.15 (2000).

⁸ Patrick J. Rohan, *Zoning and Land Use Controls*, § 35.03[3].

dealers to store their firearms in a particular way.⁹ Thus, even when a zoning ordinance is based on home rule powers, it is important to make sure that the ordinance does not conflict with the general laws of the state.

⁹ *Suter v. City of Lafayette*, 67 Cal. Rptr.2d 420 (Cal. Ct. App. 1997), *review denied* (Dec. 10, 1997).

APPENDIX B: Possible Constitutional Challenges to Zoning Fast Food Outlets

Equal Protection

Equal protection requires zoning laws to be *rationally related* to a legitimate government purpose and to treat all similarly situated individuals alike.¹ Courts may apply a stricter standard if a zoning law were to facially or purposefully discriminate on the basis of a particular characteristic, such as race, gender, or nationality,² or to discriminate in a way that interferes with a fundamental right.³ It is difficult, however, to conceive when such discrimination would be necessary in the case of zoning restrictions on food retailers. Therefore, courts will most likely apply the deferential “rational basis” standard when reviewing the types of zoning laws with which we are concerned.

Due Process

The due process clause provides both substantive and procedural protections. *Procedural due process* requires zoning authorities to give affected parties adequate notice and an opportunity to be heard. *Substantive due process* generally requires that zoning ordinances be rationally related to a legitimate government interest and not be arbitrary or capricious.⁴ In the case of most public health zoning laws, this “rational basis” standard is relatively easy to meet. Public health has long been considered a

¹ Patrick J. Rohan, *Zoning and Land Use Controls*, § 35.04[1][c] (Patrick J. Rohan & Damien Kelly eds., 2004).

² Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (University of California Press 2000) at 76.

³ See *Sullivan v. Reilly*, No. CIV.A.00446-H, 2000 WL 776414, at 4 (Mass. Super. Ct. 2000) (unpublished decision) (refusing to apply strict scrutiny in an equal protection challenge to a law restricting firearms sales because “the right to pursue one’s business is not a fundamental right necessitating strict scrutiny.”).

⁴ Patrick J. Rohan, *Zoning and Land Use Controls*, § 35.04[1][b].

legitimate basis for zoning laws and, in fact, arguably provides legislatures with broader discretion to zone than would other goals.⁵ Moreover, under the rational basis standard, courts are reluctant to question the wisdom or logic of legislative choices, and public health zoning ordinances will generally be upheld as long as there is “any reasonably conceivable state of facts that could provide a rational basis for the classification.”⁶

Substantive due process does, however, place some restrictions on state and local zoning authority. Courts may strike down a zoning ordinance justified on public health grounds if there is really no evidence that the ordinance will promote or protect public health. For example, one court invalidated a moratorium on cell phone antennas that was purportedly based on public health concerns because “there [was] not a scintilla of evidence in the record indicating that the installation of cellular antennas in accordance with the plaintiff’s proposed plan will be inimical to the well-being of the Village citizenry.”⁷ Furthermore, courts will scrutinize a zoning ordinance more closely if it infringes upon a fundamental right, such as freedom of speech.⁸ Courts apply “strict scrutiny” when a fundamental right is at stake, which means that the burden is on the government to show that the zoning ordinance is necessary to achieve a compelling government interest.⁹ Zoning ordinances that simply prohibit individuals from operating

⁵ Norman Williams Jr. & John M. Taylor, *American Land Planning Law: Land Use and the Police Power*, § 8.0 (Callaghan & Company 1988); Kenneth H. Young, *Anderson’s American Law of Zoning* § 7.08 (4th ed. 1996).

⁶ Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* at 78.

⁷ *Cellular Telephone Co. v. Village of Tarrytown*, 624 N.Y.S.2d 170, 176 (N.Y.A.D. 2d Dept. 1995).

⁸ See *Suter v. City of Lafayette* 67 Cal. Rptr.2d 420,431 (Cal. Ct. App. 1997), review denied (Dec. 10, 1997). (“It is true that ordinances impinging on First Amendment activities are subjected to strict scrutiny.”).

⁸ Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* at 80-81.

⁹ Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* at 80-81.

fast food restaurants are unlikely to implicate a fundamental right and are likely to be reviewed under the lenient “rational basis” test.

Takings Clause

The takings clause of the Fifth Amendment, as applied to the states through the Fourteenth Amendment, requires governments to provide just compensation whenever a zoning ordinance imposes an unfair burden on a landowner, known as a “regulatory taking.”¹⁰ Although takings challenges are common in zoning disputes, they are unlikely to be successful against zoning laws that impose restrictions on where food retailers can operate. To constitute a taking, a zoning ordinance must “deny an owner economically viable use of his land.”¹¹ Prohibiting a few specific types of retail operations does not deprive a landowner of all economically viable uses and, therefore, does not constitute a taking.¹²

Commerce Clause

The Commerce Clause not only empowers Congress to regulate interstate commerce, but also prohibits states from regulating in a manner that places an undue burden on interstate commerce.¹³ Lawyers refer to this limiting element of the Commerce Clause as the Dormant Commerce Clause. As a general rule, as long as the

¹⁰ Julian Conrad Juegensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law*, 682 (West Group 1998).

¹¹ *Downie v. Liverpool Township Trustees*, No. 1662, 1988 WL 49413, 3 (Ohio Ct. App. 1988) (unpublished decision).

¹² See *Downie v. Liverpool Township Trustees*, 1988 WL 49413 (finding no regulatory taking where a zoning ordinance allowed only certain industrial activities and prohibited plaintiffs from using their land for various retail and service operations).

¹² Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* at 41.

¹³ Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* at 41.

law is not aimed at restricting competition, local zoning measures aimed at promoting safety and health are unlikely to violate the Commerce Clause.

First Amendment

The First Amendment protects speech and religion. Zoning laws aimed at obesity are unlikely to implicate religion. They may, however, restrict free speech. Historically, two types of zoning laws have been challenged on free speech grounds: 1) sign and billboard controls; and 2) restrictions on business that engage in non-obscene sexually oriented speech, such as adult bookstores and movie theaters.¹⁴ Sign and billboard controls provide a fairly obvious method for fighting obesity: a municipality may, for example, want to restrict advertisements of unhealthier foods. A 2001 U.S. Supreme Court case, *Lorillard v. Reilly*, which held invalid several zoning restrictions on tobacco advertising, might limit what can be accomplished in this regard with respect to fast food.¹⁵

¹⁴ Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* at 475.

¹⁵ *Lorillard v. Reilly*, 533 U.S. 525 (2001).

APPENDIX C: Zoning Code Websites

a. *Zoning Codes**

Arden Hills, Minnesota, Arden Hills Zoning Ordinance, Arden Hills, Minnesota.
Available at: http://www.ci.arden-hills.mn.us/Departments/Community_Development/Zoning_Ordinance/zoning_ordinance.htm.

Bainbridge Island, Washington, Bainbridge Island City Code.
Available at:
[http://search.mrsc.org/nxt/gateway.dll/bnbgmc?f=templates&fn=bnbgpage.htm\\$vid=mun icipalcodes:BainbridgeIsland](http://search.mrsc.org/nxt/gateway.dll/bnbgmc?f=templates&fn=bnbgpage.htm$vid=mun icipalcodes:BainbridgeIsland).

Berkeley, California, Berkeley Zoning Code.
Available at: http://www.ci.berkeley.ca.us/bmc/Berkeley_Zoning_Code/index.html.

Calistoga, California, Calistoga Municipal Code, Title 17 Zoning.
Available at: http://www.thefiengroup.com/municipal_codes.html.

Carlsbad, California, Carlsbad Municipal Code, Title 21 Zoning, The Zoning Ordinance.
Available at: <http://municipalcodes.lexisnexis.com/codes/carlsbad>.

Concord, Massachusetts, Town of Concord Zoning Bylaw.
Available at: <http://www.bostonrealestate.com/downloads/Concordzoning.pdf>.

Davis, California, Davis Municipal Code, Chapter 40 Zoning.
Available at: <http://www.city.davis.ca.us/cmo/citycode/chapter.cfm?chapter=40>.

Detroit, Michigan, City of Detroit, Official Zoning Ordinance.
Available at: http://www.municode.com/resources/code_list.asp?stateID=22.

Newport, Rhode Island, Codified Ordinances of the City of Newport, Rhode Island, Title 17 The Zoning Code.
Available at: <http://municipalcodes.lexisnexis.com/codes/newport>.

San Francisco, California, San Francisco Planning Code.
Available at: <http://www.amlegal.com/library/ca/sanfrancisco.shtml>.

Solvang, California, Solvang Zoning Ordinance.
Available at: <http://www.sterlingcodifiers.com/CA/Solvang>.

Town of Warner, New Hampshire, Town of Warner, NH Zoning Ordinance.
Available at: <http://www.warner.nh.us/regulations.htm>.

Westwood Village, Los Angeles, California: Westwood Village Specific Plan.
Available at:
<http://cityplanning.lacity.org/complan/specplan/sparea/wwdvillagepage.htm>.

*b. General Zoning Code Databases and Land Use Resources**

California Land Use Planning Information Network (LUPIN), County Zoning Ordinances. Available at: <http://ceres.ca.gov/planning/zoning/county.html>.

LexisNexis™ Municipal Codes. Available at: <http://www.bpcnet.com/codes.htm>.

Municipal Research and Services Center of Washington, Comprehensive Planning/Growth Management.

Available at: <http://www.mrsc.org/subjects/planning/compplan.aspx?r=1>

Municode.com Online Library.

Available at: http://www.municode.com/resources/online_codes.asp.

The Fien Group, infobase library, municipal codes.

Available at: http://www.thefiengroup.com/municipal_codes.html.

The New Rules Project, The Hometown Advantage, *Formula Business Restrictions*. Available at: <http://www.newrules.org/retail/formula.html>.

* All websites accessed August 24, 2005.

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 10

To: The Honorable Mayor and City Council

From: Rose Hess, Public Works Director

Meeting Date: October 22, 2015

Subject: Highway 246 Sidewalk Project - Consideration of Approval of Caltrans Cooperative Agreement

BACKGROUND

On February 12, 2015, The City Council approved Cooperative Agreements with Caltrans and the Santa Barbara County Association of Governments to fund the Highway 246 Sidewalk Projects as part of the Caltrans Cap-M Project. Since this time, Caltrans' Legal Department and Headquarters Cooperative Agreement Unit has not accepted the changes the City had proposed. To facilitate this process, Caltrans' Project Manager, Kathy DiGrazia has provided the Standard Agreement, but amended the project description to include the scope of work the City is requesting (Attachment 1). The City Attorney has reviewed the agreement and provided comments. Generally the terms are acceptable as this will enable the City to maintain the lump sum contribution to the project.

Although the Cooperative Agreement is not in final form, staff recommends that the Council authorize the City Manager to complete the review/approval of the Cooperative Agreement, subject to the City Attorney's approval as to form, provided that the major items such as funding contribution has not changed.

To provide a background, the City has worked with Caltrans for several years regarding the construction of the Highway 246 Sidewalk Project on the south side of Highway 246 between Avenue of Flags and Highway 101. The project will include street reconstruction to correct the grades between the street and adjacent properties and certain drainage corrections. At our request, the project will also include "Streetscape" design elements, such as pavers and lighting conduit, to match (to the extent possible) the north Highway 246 sidewalk. Caltrans has incorporated this project into the larger CAP-M project for Highway 246, which extends from Drum Canyon Road to Highway 101.

The following is the latest schedule and progress status: (Attachment 2 - full schedule)

95% PS&E	October 2015
100% PS&E	November 2015
Ready to List	March 2016
Begin Construction	Fall 2016

Caltrans is aware of the City's request to have Buellton's sidewalk sections completed at the start of the project. They are incorporating that into their plans. The only issue at this time is the PG&E vaults that are within the sidewalk/driveway locations. These will need to be approved by PG&E and Caltrans has already submitted information and requests for approvals. However, the project schedule is still current and the project is progressing.

FISCAL IMPACT

The City's contribution to this project is \$500,000. This will be funded by the Measure A Regional Project Savings (\$250,000) and by the City's Capital Improvement Program (\$250,000 from general fund and local STP funds). This is included in the Fiscal Year 2015/2016 Budget.

RECOMMENDATION

That the City Council authorize the City Manager to execute the Caltrans Cooperative Agreement subject to the City Attorney's approval as to form.

ATTACHMENTS

Attachment 1 – Caltrans' Draft Cooperative Agreement
Attachment 2 – Project Schedule

COOPERATIVE AGREEMENT Local Contribution Only

This Agreement, effective on _____, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Buellton, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

RECITALS

1. PARTNERS are authorized to enter into a cooperative agreement for improvements to the state highway system (SHS) per the California Streets and Highways Code sections 114 and 130.
2. CALTRANS is constructing highway paving improvements to SR 246 from postmile R20.7 to 26.3 in and near the City of Buellton, including approximately 700 feet of new sidewalk with decorative pavers and electrical conduit for future pedestrian lighting on the south side of SR 246 between Avenue of the Flags and the Highway 101 southbound on-ramp referred to herein as PROJECT.
3. CITY will contribute a fixed amount of \$500,000 to the PROJECT. Contributed funds will be used for the PROJECT.
4. PARTNERS agree that funds will be contributed to the following PROJECT COMPONENTS:
 - CONSTRUCTION CAPITAL
5. PARTNERS hereby set forth the terms, covenants, and conditions for CITY's contribution toward the PROJECT.

ROLES AND RESPONSIBILITIES

6. CALTRANS is the SPONSOR and IMPLEMENTING AGENCY for the PROJECT.

7. CITY is a FUNDING PARTNER contributing a fixed amount toward the PROJECT as defined in the FUNDING SUMMARY.
8. CALTRANS is responsible for completing all work for the PROJECT.

GENERAL CONDITIONS

9. All obligations of CALTRANS under the terms of this agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
10. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this Agreement. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this Agreement.
11. This agreement is intended to be PARTNERS’ final expression and supersedes any oral understanding or writings pertaining to PROJECT.

INVOICE AND PAYMENT

12. CITY will contribute the funds listed below:

FUNDING SUMMARY			
Fund Source	Fund Type	Project Component	Amount
LOCAL	City	Construction Capital	\$500,000
Total Funds			\$500,000

13. CALTRANS will invoice CITY for a lump sum (single payment) , as a fixed cost, after execution of this Agreement.
14. CITY will pay the invoiced amount within forty-five (45) calendar days of receipt of the invoice unless CITY is paying with Electronic Funds Transfer (EFT). When paying with EFT, CITY will pay the invoiced amount within five (5) calendar days of receipt of the invoice.
15. If CITY has received Electronic Funds Transfer (EFT) certification from CALTRANS then CITY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
16. This Agreement will terminate upon CALTRANS' receipt of the PROJECT funds. However, all indemnification articles will remain in effect until terminated or modified in writing by mutual agreement.

DEFINITIONS

FUNDING PARTNER – A partner who commits a defined dollar amount to the PROJECT.

FUNDING SUMMARY – The tabular listing of a FUNDING PARTNER'S commitments including the dollar amount, fund source, fund type, and, if applicable, the PROJECT COMPONENT in which funds are to be spent. Funds listed in the FUNDING SUMMARY are “not-to-exceed” amounts.

IMPLEMENTING AGENCY – The partner responsible for managing the scope, cost, and schedule of a project component to ensure the completion of that component.

PARTNERS – The term that collectively references all of the signatory agencies to this agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one partner's individual actions legally bind the other partners.

SPONSOR – The PARTNER that accepts the obligation to secure financial resources to fully fund PROJECT. This includes any additional funds beyond those committed in this agreement necessary to complete the full scope of PROJECT.

PROJECT COMPONENT – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

- **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for PROJECT.

- **PA&ED (Project Approval and Environmental Document)** – The activities required to deliver the project approval and environmental documentation for PROJECT.
- **PS&E (Plans, Specifications, and Estimate)** – The activities required to deliver the plans, specifications, and estimate for PROJECT.
- **R/W (Right of Way) SUPPORT** – The activities required to obtain all property interests for PROJECT.
- **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for PROJECT.
- **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for PROJECT.
- **CONSTRUCTION CAPITAL** – The funds for the construction contract.

CONTACT INFORMATION

The information provided below indicates the primary contact information for each PARTNER to this Agreement. PARTNERS will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this Agreement.

The primary Agreement contact person for CALTRANS is:
Kathy DiGrazia, Project Manager
50 Higuera Street
San Luis Obispo, CA 93401
Office Phone: 805-542-4718

The primary Agreement contact person for CITY is:
Rose Hess, Public Works Director
PO Box 1819
Buellton, CA 93427
Office Phone: (805) 688-5177

SIGNATURES

PARTNERS declare that:

1. Each PARTNER is an authorized legal entity under California state law.
2. Each PARTNER has the authority to enter into this Agreement.
3. The people signing this Agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF BUELLTON

By: _____
TIMOTHY M. GUBBINS
District Director

By: _____
Marc Bierdzinski
City Manager

CERTIFIED AS TO FUNDS:

ATTEST:

By: _____
Julia Bolger
Resource Manager

By: _____
Linda Reid
City Clerk

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
Steve McEwen
City Attorney

**City of Buellton
Streetscape and Sidewalk Project
Timeline**

Milestone	Responsible	Date
NC Subregional Committee Recommend Allocating Funding	SBCAG	10/1/2014
Letter Sent to Caltrans Outlining Funding Commitment to Project	City of Buellton	October 2014
ED approved for new local features	Caltrans	October 2014
Draft Measure A Funding Agreement is provided to City Staff for review	SBCAG	Late October 2014
Approval of Investment Plan Amendment by SBCAG Board and Funding	SBCAG	11/20/2014
45 Day Period for Finalization of Investment Plan Amendment	SBCAG	12/30/2014
City Council Approves Funding Agreement with SBCAG and Agreement with Caltrans	City of Buellton	January 2015
SBCAG Approves Measure A Funding Agreement	SBCAG	February 2015
Caltrans Approves Contribution Agreement	Caltrans	October February 2015
100% PS&E Complete	Caltrans	December 2015
Ready to List	Caltrans	March 2016
Begin Construction	Caltrans	November 2016
End Construction	Caltrans	2017

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 11

To: The Honorable Mayor and City Council

From: Rose Hess, Public Works Director

Meeting Date: October 22, 2015

Subject: Approval of Internet Services to Support Live Video Streaming of Council Meetings

BACKGROUND

On May 28, 2015, the City Council approved the Live Video Streaming of the Council meetings and authorized expenditures for FY 15/16 to Mr. Silvio Motta. Mr. Motta's proposal included a video system consisting of one camera, video switcher and video streaming encoder. This also includes annual streaming video subscription service. The system has been purchased and installed. However, live streaming capabilities have not been completed.

In order to provide live streaming, a direct internet cable connection is required. The City does not currently have a direct internet connection available in the Council Chambers. The library WiFi is not strong enough for live streaming. Staff discussed the possibility of partnering with the Library's Black Gold System to directly connect to their internet service during the evenings of the Council and Planning Commission meetings. However, the Black Gold Board denied the request to share services.

Staff has contacted Comcast to request a cost estimate and was provided with a monthly service cost of \$117.85 with a 36-month commitment, for a total of \$4,242.60.

FISCAL IMPACT

Internet service for the Council Chambers was not budgeted for this Fiscal year. However, approval of the item would require a budget adjustment to the General Fund, Account No. #001-401-5603-000 by \$942.80 for this FY 2015-16. The monthly service charge would need to be budgeted each subsequent fiscal year.

RECOMMENDATION

That the Council authorize the City Manager to complete the service transaction with Comcast to install internet service for the Council Chambers and bring back a budget adjustment at the mid-year budget review.

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 12

To: The Honorable Mayor and City Council

From: Stephen A. McEwen, City Attorney

Meeting Date: October 22, 2015

Subject: Medical Marijuana Update and Discussion

BACKGROUND

In 2008, the City Council adopted Ordinance No. 08-01, which established Municipal Code section 9.08.020 defines medical marijuana dispensaries broadly as “any facility, site, cooperative, location, use, or mobile vending vehicle where medicinal marijuana is cultivated, distributed, sold, exchanged, given away, or made available for medical purposes in accordance with Health and Safety Code Section 11362.5.” In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court ruled unanimously that the Compassionate Use Act (Proposition 215) (“CUA”) and the Medical Marijuana Program Act of 2004 (“MMPA”), which, at the time, comprised California’s medical marijuana regulations, did not preempt local ordinances that completely and permanently ban medical marijuana facilities.

On September 11, 2015, the California Legislature passed three bills that will create a broad state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, as well as physician recommendations for medical marijuana. Governor Brown signed the three bills, Assembly Bills 243 and 266 and Senate Bill 643, on October 9, 2015 (Attachment 1 is a summary of these bills). While the new legislation preserves local control over marijuana facilities and land uses, including the authority to prohibit dispensaries completely, counties and cities that wish to prohibit cultivation facilities and mobile marijuana deliveries must enact express bans in order to avoid preemption by the state.

In light of the new legislation, City staff and the City Attorney seek the City Council’s direction on medical marijuana issues and policy. Section 9.08.010 currently bans both dispensaries and cultivation sites. If the City Council wishes to continue this prohibition, the language of section 9.08.010 should be updated to reflect the new legislation and to ensure that the prohibition covers the various types of medical marijuana facilities that have opened throughout the state over the past eight years and/or that will likely operate

in the state under the new regulatory system. With regard to mobile delivery services, the Municipal Code is silent. Should the City Council wish to prohibit this activity, an ordinance revision will be required.

FISCAL IMPACT

This agenda item will not have any fiscal impact on the City.

RECOMMENDATION

That the City Council discuss the new medical marijuana legislation and provide direction to City staff and the City Attorney on the need for revising our existing medical marijuana ordinance.

ATTACHMENT

Attachment 1 – Summary of AB 243, AB 266, and SB 643

Summary of AB 243, AB 266, and SB 643

Under the new legislation, state licenses will be required for all facets of the medical marijuana industry:

- AB 243 establishes the Department of Food and Agriculture (DFA) as the licensing and regulatory authority for medical marijuana cultivation. Any person who wishes to engage in commercial cultivation of medical marijuana must obtain a state license from the DFA. AB 243 also requires (1) the DFA to work with other state agencies to develop environmental protection standards, (2) the Department of Pesticide Regulation to establish medical marijuana pesticide standards, and (3) the Department of Public Health to create standards for labeling of marijuana edibles.
- AB 266 creates the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs (DCA) to issue state licenses for medical marijuana dispensaries and develop regulations governing dispensaries. AB 266 also establishes licensing requirements for activities related to medical marijuana dispensaries, such as marijuana distribution and transportation.
- SB 643 establishes standards for physicians that recommend medical marijuana, including discipline for physicians who recommend excessive amounts. SB 643 also creates standards for state license applications and enforcement.

The new legislation expressly preserves local control over medical marijuana land uses. AB 266 states that nothing in its provisions or implementing regulations shall be deemed to limit a city's authority or remedies "under any provision of law, including but not limited to, Section 7 of Article XI of the California Constitution." As the Supreme Court held in *Inland Empire*, that constitutional authority includes the power to ban medical marijuana facilities completely. Similarly, AB 243 provides that all medical marijuana cultivation must be conducted in accordance with both state and local laws and recognizes that local jurisdictions may ban medical marijuana cultivation completely. In addition, both AB 243 and AB 266 require a local license, permit, or approval as a prerequisite to a state medical marijuana license. A marijuana business cannot apply for a state license unless that business is operating in compliance with local laws and if a city revokes a local permit, the marijuana business loses the ability to operate in that jurisdiction.

There are, however, two provisions in the new legislation that require action by cities. First, AB 243 provides that if a city does not have a land use ordinance regulating or prohibiting medical marijuana cultivation or chooses not to implement a regulatory scheme by March 1, 2016, the state shall become the sole licensing authority for cultivation applicants in that jurisdiction. Second, AB 266 states that medical marijuana deliveries can only be made by a dispensary in a

city, county, or city and county that does not explicitly prohibit it by local ordinance. Therefore, in order for a city to prohibit medical marijuana delivery services by a state-licensed dispensary, it must enact an express ban.

The DCA does not anticipate issuing any state dispensary licenses until January 2018. Therefore, cities that do not have express mobile delivery bans do not have an urgent need to enact such bans. Until 2018, those local agencies can continue to rely on the principles of permissive zoning, under which non-listed land uses are deemed prohibited, should they want to prohibit medical marijuana delivery services.

The situation with medical marijuana cultivation, however, is more pressing due to the preemption provision in AB 243. In order to avoid state preemption, those cities that do not have express cultivation bans and wish to prohibit cultivation activities will need to have an express ban in place by March 1, 2016. Starting March 1, 2016, such local agencies will lose the ability to regulate cultivation businesses.

As noted above, Buellton includes cultivation within its medical marijuana dispensary ban. However, the medical marijuana dispensary definition is based solely with reference to the CUA. It is anticipated that new marijuana business will develop under the new legislation and accompanying regulations. In order to ensure that the Buellton regulations encompass all of the new marijuana businesses that will result from the new legislation, staff and the City Attorney recommend some minor edits to the existing ordinance. With regard to medical marijuana delivery services, which are increasingly common following the Supreme Court's decision in *Inland Empire*, the City Council will need to provide direction on whether to develop an express prohibition on such activities.

Of course, the City Council has authority to either ban or regulate medical marijuana businesses. As both *Inland Empire* and the new state medical marijuana legislation demonstrate, state law is not an obstacle to local control over medical marijuana. Counties and cities can ban dispensaries and cultivation operations completely or regulate them without concern regarding state law preemption. In *Inland Empire*, the Court stated that "localities in California are left free to accommodate such conduct, if they choose, free of state interference." The new legislation reaffirms this holding and essentially invites counties and cities to enact regulatory and permitting schemes for medical marijuana.

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 13

To: The Honorable Mayor and City Council

From: Rose Hess, Public Works Director

Meeting Date: October 22, 2015

Subject: Resolution No. 15-28 – “A Resolution of the City Council of the City of Buellton, California Approving the Quitclaim of Certain Portions of Excess Street Right-of-Way Easement West of Industrial Way and Located on the Properties of Assessor’s Parcel Numbers (APN) 099-820-011 and 099-820-012 and Accepting the New Street Right-of-Way Easement Located on the Properties of APN 099-820-011 and 099-820-012”

BACKGROUND

On September 17, 2015, the Planning Commission held a public hearing in which they approved Resolution No 15-11 (Attachment 1) making findings with General Plan Consistency for the easement quitclaim.

The property owners of lots 11 and 12 in the Santa Rita Gateway Center at 65 and 67 Industrial Way have requested the quitclaim of excess street right-of-way easement located within the west portion of their property. The property is the remaining undeveloped portion of the Santa Rita Industrial Park.

The property was originally dedicated in the 1970’s to the Buellton Community Services District as a potential street access to serve the Buellton Wastewater Treatment Plan and adjoining properties. The City of Buellton, upon incorporation, acquired the rights to the Property; however, the Property has never been improved for roadway purposes and is not necessary to serve the Buellton Wastewater Treatment Plant.

The majority of the 30-foot street right-of-way easement along the west side of lots 11 and 12 will not be required. During staff’s current review of the Circulation Element, the City determined that it would not build a 60-foot wide road over these lots and northerly through the existing easements. The steep grade differential would restrict that access driveway from being developed as a full public road. In addition, current access to the wastewater treatment plant has been through Pamela Way (a private road which the city has been provided access rights).

On July 9, 2015, the City Council adopted the Circulation Element Amendment that modified the “New Street” designation to a “Private Road”. This private road designation would allow a road to be built at a width less than public road requirements, suitable for access to the property south of the wastewater treatment plant. VMPI has contacted the Fire Department to verify that a private access with a width of 20-foot would be sufficient to serve their property.

Additionally, in discussion with the interested property owners and representatives, it is desired to retain a portion of the street easement that would sufficiently cover an existing 10-foot drainage easement and also provide enough room at the northwest corner of the property for truck turning movement. Subsequent to the action of quitclaiming the 30-foot street right-of-way easement, the property owners of lots 11 and 12 have agreed to grant the City a new street right-of-way easement as shown in Resolution No. 15-28 Attachment 2a/2b.

With the proposed grant of easement, this provides a width of 40-foot, with sufficient easement at the intersection at Pamela Way to provide truck turning movements.

RECOMMENDATION

That the City Council consider approval of Resolution No. 15-28 – “A Resolution of the City Council of the City of Buellton, California Approving the Quitclaim of Certain Portions of Excess Street Right-of-Way Easement West of Industrial Way and Located on the Properties of Assessor’s Parcel Numbers (APN) 099-820-011 and 099-820-012 and Accepting the New Street Right-of-Way Easement Located on the Properties of APN 099-820-011 and 099-820-012”

ATTACHMENTS

Resolution No. 15-28

- Attachment 1 – Quitclaim Deed (with Exhibit A -Legal Description and Exhibit B –Map)
- Attachment 2a – Grant of Easement from APN 099-820-011 (with Exhibit A - Legal Description and Exhibit B –Map)
- Attachment 2b – Grant of Easement from APN 099-820-012 (with Exhibit A - Legal Description and Exhibit B –Map)

Attachment 1 – Planning Commission Resolution No. 15-11

RESOLUTION NO. 15-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BUELLTON, CALIFORNIA, APPROVING THE QUITCLAIM OF CERTAIN PORTIONS OF EXCESS STREET RIGHT-OF-WAY EASEMENT WEST OF INDUSTRIAL WAY AND LOCATED ON THE PROPERTIES OF ASSESSOR'S PARCEL NUMBERS (APN) 099-820-011 AND 099-820-012 AND ACCEPTING THE NEW STREET RIGHT-OF-WAY EASEMENT LOCATED ON THE PROPERTIES OF APN 099-820-011 AND 099-820-012

WHEREAS, the City of Buellton desires to quitclaim a certain portion of excess street right-of-way located within a portion of lots 11 and 12 of the Santa Rita Gateway Center, located on Assessor's Parcel Numbers APN 099-820-011, and 099-820-012 (the Property); and,

WHEREAS, the Planning Commission has been informed that the Property was originally dedicated in the 1970's to the Buellton Community Services District as a potential street access to serve the Buellton Wastewater Treatment Plan and adjoining properties. The City of Buellton, upon incorporation, acquired the rights to the Property; however, the Property has never been improved for roadway purposes and is not necessary to serve the Buellton Wastewater Treatment Plant; and,

WHEREAS, the Planning Commission has reviewed the proposed quitclaim of the Property and determined that it will not adversely impact the Circulation Element or other planned uses of the General Plan district where the Property is located; thereby approving Planning Commission Resolution No. 15-11 finding consistency with the General Plan; and,

WHEREAS, the private road to the west of the APN 099-820-011 and 099-820-012 could be developed as sufficient access at a width of 20 feet for development of APN 099-690-001 through a development agreement at the appropriate time; and,

WHEREAS, the proposed Quitclaim Deed is attached hereto as Attachment 1 and incorporated herein by this reference; and

WHEREAS, the Property to be quitclaimed is legally described in "Exhibit A" to Attachment 1 and depicted on the map in "Exhibit B" to Attachment 1, both of which are attached hereto and incorporated herein by this reference; and,

WHEREAS, the City Council has reviewed the proposed quitclaim of the Property and is fully advised with respect thereto; and,

WHEREAS, the proposed Grants of Easement are attached hereto as Attachments 2A and 2B and incorporated herein by this reference; and

WHEREAS, the proposed easement properties are each legally described in and depicted in the exhibits to Attachments 2A and 2B, all of which are incorporated herein by this reference; and,

WHEREAS, the City Council has reviewed the proposed Grants of Easement and finds them acceptable.

BE IT RESOLVED by the City Council of the City of Buellton as follows:

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

SECTION 2: The Mayor is authorized to execute the attached Quitclaim on behalf of the City.

SECTION 3: The City Clerk is authorized to execute the Grants of Easement on behalf of the City.

PASSED AND ADOPTED this 22nd day of October 2015.

Holly Sierra
Mayor

Linda Reid
City Clerk

Recording Requested by:
CITY OF BUELLTON

When Recorded Mail to:
City of Buellton
P.O. Box 1819
Buellton, CA 93427

Attn: City Clerk

APN: 099-820-011 & 009-820-012

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned declares that the Documentary Transfer Tax is \$_____, based on:

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale.
- Unincorporated area
- No Beneficial Ownership Change

QUITCLAIM DEED

CITY OF BUELLTON, a municipal corporation in the County of Santa Barbara, State of California, hereby remises, releases and quitclaims to _____, all right title and interest the City of Buellton has in that certain real property described in Exhibit A and graphically depicted in Exhibit B, which are attached hereto and incorporated herein by reference ("**Property**").

Dated: _____, 2015

CITY OF BUELLTON:

Mayor, City of Buellton

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

On this ____ day of _____, 20__, before me, _____, City Clerk for the City of Buellton, County of Santa Barbara, State of California, personally appeared

_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledge to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

APPROVED AS TO FORM:

City Attorney

- Attachments:
Exhibit A - Legal Description of the Property
Exhibit B – Graphic Depiction of the Property

Exhibit A
(Legal Description)

A portion of that certain easement as granted to the Buellton Community Services District per document recorded March 26, 1973 as Instrument No. 11200 in Book 2453, Pages 899-902 O.R., in the office of the County Recorder, County of Santa Barbara, State of California, and conveyed to the City of Buellton by Quitclaim Deeds recorded as Instrument No. 95-060064, O.R. and 95-060100, O.R. in the office of said County Recorder. Said portion of said easement is described as follows;

That portion of said easement lying within Lots 11 and 12 of Tract 31,034 according to the map recorded June 21, 2004 in Book 189, Pages 83 and 84 of Maps, in the Office of the County Recorder of said County.

Containing an area of 6,595 square feet, more or less.

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Signature: 
Mark E. Reinhardt, PLS

Date: 8-20-2015



EXHIBIT "B"



QUIT CLAIM AREA
SQ FT 6,595'

#8 Book 2453, Page 899
95-060064 O.R.
95-060100 O.R.

PROPERTY LINE

Buellton Wastewater
Treatment Plant
APN 099-690-003,004

LOT 12
TRACT 31034
BK 189 PG 83-84
APN 099-820-012
SQ FT 14,585'

LOT 11
TRACT 31034
BK 189 PG 83-84
APN 099-820-011
SQ FT 14,611'

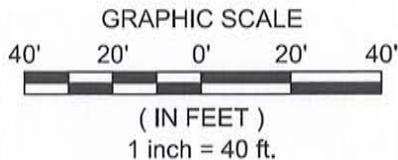


EXHIBIT SHOWING PORTION
OF EASEMENT TO
BE QUITCLAIMED.

MNS
ENGINEERS INC

201 N. Calle Cesar Chavez, Ste 300
Santa Barbara, CA 93103
805.692.6921 Phone

ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT

CIBUE.140209 * EXB.dwg * 8/11/2015 * RCS * E-FILE

Recording Requested by:
CITY OF BUELLTON

When Recorded Mail to:
City of Buellton
P.O. Box 1819
Buellton, CA 93427

Attn: City Clerk

APN: 099-820-011

No Fee Per Government Code 6103

GRANT OF EASEMENT
(Private Road and Public Utilities)

_____ (hereinafter referred to as "Grantor"),
hereby grants to the City of Buellton, a municipal corporation, within the County of
Santa Barbara, and State of California, and its successors and assigns (hereinafter
referred to as "Grantee"), an easement for private ingress, egress and public utility
purposes, with the right to convey the same to others, on, under, over, across and
along that certain real property in the County of Santa Barbara, State of California,
described as follows:

See attached legal description, Exhibit "A" and attached sketch Exhibit "B"

Grantor: _____

EXECUTED this _____ day of _____, 20____.

By: _____

By: _____

NOTARY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On this _____ day of _____, 20____, before me,
_____, a Notary Public, personally appeared

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____

(SEAL)

NOTARY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On this _____ day of _____, 20____, before me,
_____, a Notary Public, personally appeared

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____

(SEAL)

CERTIFICATE OF ACCEPTANCE
AND CONSENT TO RECORDATION OF
EASEMENT GRANT DEED

This is to certify that the interest in real property conveyed by the Deed of Easement dated _____ from _____ to the City of Buellton, a municipal corporation of the State of California, is hereby accepted by the undersigned City Clerk on behalf of the City Council, pursuant to the action of the City Council at its meeting of _____ and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

City of Buellton

by _____
City Clerk

APPROVED AS TO FORM:

City Attorney

Attachments:

- Exhibit A - Legal Description of the Property
- Exhibit B – Graphic Depiction of the Property

Exhibit A
(Legal Description)
Easement Over Lot 11

A portion of land in the City of Buellton, County of Santa Barbara, State of California, being a portion of Lot 11 of Tract 31,034 according to the map recorded June 21, 2004 in Book 189, Pages 83 and 84 of Maps, in the Office of the County Recorder of said County.

Said portion of land is described as follows:

The portion of the following described area that lies within said Lot 11. Beginning at the northwest corner of Lot 12 of said Tract 31,034; thence,

- 1st along the westerly boundary of said Lot 12 and said Lot 11 S 25° 00' 15" W, 219.94 feet to an angle point in the westerly boundary of said Lot 11; thence,
- 2nd S 64° 59' 45" W, 10.00 feet; thence,
- 3rd along a line parallel with and 10.00 feet easterly as measured at right angles to the westerly boundary of said Lots 11 and 12, N 25° 00' 15" E, 201.00 feet; thence,
- 4th N 63° 22' 37" E, 24.16 feet to a point on the northerly boundary of said Lot 12; thence,
- 5th along said northerly boundary N 64° 59' 45" W, 25.00 feet to the point of beginning.

Containing an area of 813 square feet, more or less.

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Signature: 
Mark E. Reinhardt, PLS

Date: 9-10-2015

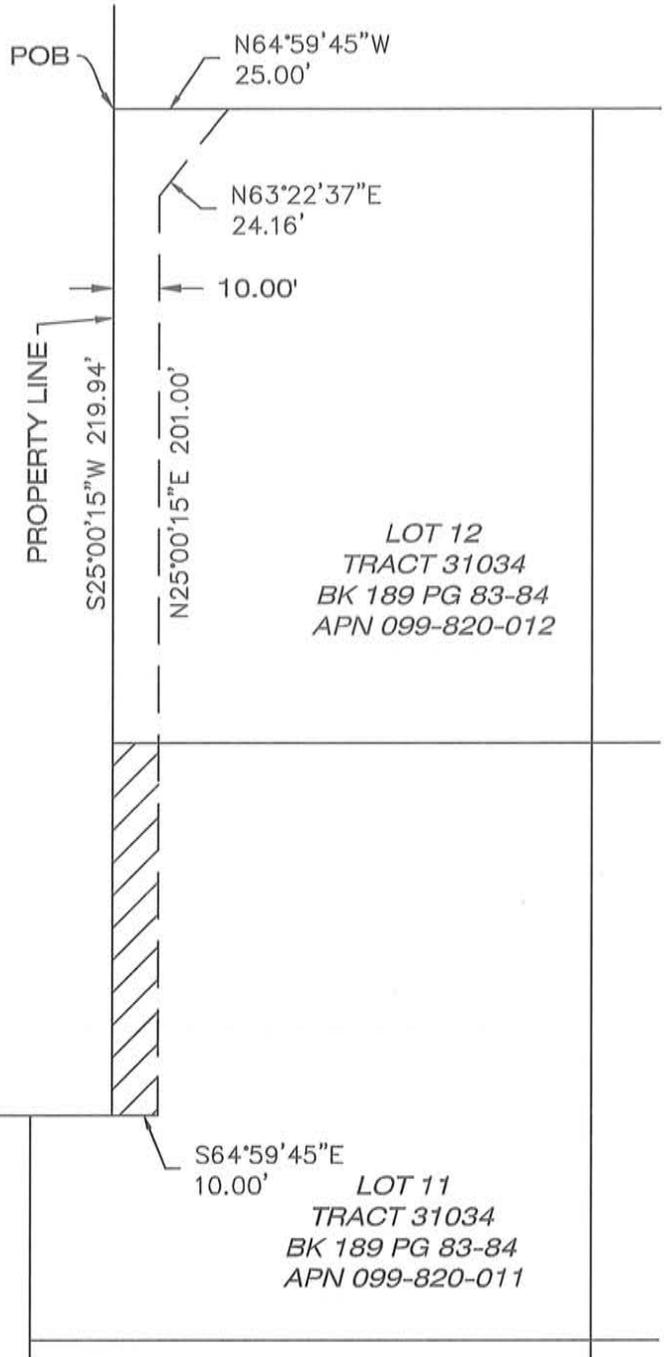


EXHIBIT "B"



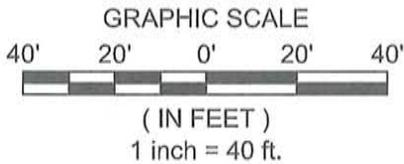
EASEMENT AREA

Buellton Wastewater
Treatment Plant
APN 099-690-003,004



LOT 12
TRACT 31034
BK 189 PG 83-84
APN 099-820-012

LOT 11
TRACT 31034
BK 189 PG 83-84
APN 099-820-011



SKETCH OF EASEMENT AREA

MNS
ENGINEERS INC
201 N. Calle Cesar Chavez, Ste 300
Santa Barbara, CA 93103
805.692.6921 Phone

ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT

CIBUE.140209 * EXB.dwg * 8/11/2015 * RCS * E-FILE

Recording Requested by:
CITY OF BUELLTON

When Recorded Mail to:
City of Buellton
P.O. Box 1819
Buellton, CA 93427

Attn: City Clerk

APN: 099-820-012

No Fee Per Government Code 6103

GRANT OF EASEMENT
(Private Road and Public Utilities)

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referred to as "Grantee"), an easement for private ingress, egress and public utility
purposes, with the right to convey the same to others, on, under, over, across and
along that certain real property in the County of Santa Barbara, State of California,
described as follows:

See attached legal description, Exhibit "A" and attached sketch Exhibit "B"

Grantor: _____

EXECUTED this _____ day of _____, 20____.

By: _____

By: _____

NOTARY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On this _____ day of _____, 20____, before me,
_____, a Notary Public, personally appeared

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____

(SEAL)

NOTARY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On this _____ day of _____, 20____, before me,
_____, a Notary Public, personally appeared

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____

(SEAL)

CERTIFICATE OF ACCEPTANCE
AND CONSENT TO RECORDATION OF
EASEMENT GRANT DEED

This is to certify that the interest in real property conveyed by the Deed of Easement dated _____ from _____ to the City of Buellton, a municipal corporation of the State of California, is hereby accepted by the undersigned City Clerk on behalf of the City Council, pursuant to the action of the City Council at its meeting of _____ and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

City of Buellton

by _____
City Clerk

APPROVED AS TO FORM:

City Attorney

- Attachments:
Exhibit A - Legal Description of the Property
Exhibit B – Graphic Depiction of the Property

Exhibit A
(Legal Description)
Easement Over Lot 12

A portion of land in the City of Buellton, County of Santa Barbara, State of California, being a portion of Lot 12 of Tract 31,034 according to the map recorded June 21, 2004 in Book 189, Pages 83 and 84 of Maps, in the Office of the County Recorder of said County.

Said portion of land is described as follows:

The portion of the following described area that lies within said Lot 12. Beginning at the northwest corner of Lot 12 of said Tract 31,034; thence,

- 1st along the westerly boundary of said Lot 12 and said Lot 11 S 25° 00' 15" W, 219.94 feet to an angle point in the westerly boundary of said Lot 11; thence,
- 2nd S 64° 59' 45" W, 10.00 feet; thence,
- 3rd along a line parallel with and 10.00 feet easterly as measured at right angles to the westerly boundary of said Lots 11 and 12, N 25° 00' 15" E, 201.00 feet; thence,
- 4th N 63° 22' 37" E, 24.16 feet to a point on the northerly boundary of said Lot 12; thence,
- 5th along said northerly boundary N 64° 59' 45" W, 25.00 feet to the point of beginning.

Containing an area of 1,528 square feet, more or less.

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Signature:  Date: 9-10-2015
Mark E. Reinhardt, PLS



EXHIBIT "B"



EASEMENT AREA



25' RADIUS
(REFERENCE ONLY)

*Buellton Wastewater
Treatment Plant
APN 099-690-003,004*

POB
N64°59'45"W
25.00'

N63°22'37"E
24.16'

10.00'

PROPERTY LINE

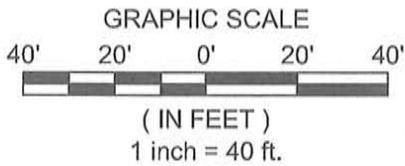
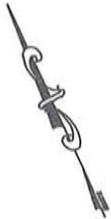
S25°00'15"W 219.94'

N25°00'15"E 201.00'

*LOT 12
TRACT 31034
BK 189 PG 83-84
APN 099-820-012*

S64°59'45"E
10.00'

*LOT 11
TRACT 31034
BK 189 PG 83-84
APN 099-820-011*



SKETCH OF EASEMENT AREA

MNS
ENGINEERS INC
201 N. Calle Cesar Chavez, Ste 300
Santa Barbara, CA 93103
805.692.6921 Phone

ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT

CIBUE.140209 * EXB.dwg * 8/11/2015 * RCS * E-FILE

PLANNING COMMISSION RESOLUTION NO. 15-11

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BUELLTON, CALIFORNIA, MAKING FINDINGS CONCERNING THE QUITCLAIM OF CERTAIN PORTIONS OF EXCESS STREET RIGHT-OF-WAY EASEMENT WITH RESPECT TO THE CONSISTENCY OF THE PROPOSED QUITCLAIM WITH THE CITY OF BUELLTON GENERAL PLAN PURSUANT TO THE REQUIREMENTS OF CALIFORNIA GOVERNMENT CODE SECTION 65402 FOR PROPERTY LOCATED ON ASSESSOR'S PARCEL NUMBERS APN 099-820-011, AND 099-820-012

WHEREAS, the City of Buellton desires to quitclaim a certain portion of excess street right-of-way located within a portion of lots 11 and 12 of the Santa Rita Gateway Center, located on Assessor's Parcel Numbers APN 099-820-011, and 099-820-012 (the Property); and,

WHEREAS, the Planning Commission has been informed that the Property was originally dedicated in the 1970's to the Buellton Community Services District as a potential street access to serve the Buellton Wastewater Treatment Plan and adjoining properties. The City of Buellton, upon incorporation, acquired the rights to the Property; however, the Property has never been improved for roadway purposes and is not necessary to serve the Buellton Wastewater Treatment Plant.

WHEREAS, the private road to the west of the APN 099-820-011 and 099-820-012 could be developed as sufficient access at a width of 20 feet for development of APN 099-690-001 through a development agreement at the appropriate time; and,

WHEREAS, the Property is legally described in Exhibit "A" and depicted on the map in Exhibit "B", both of which are attached hereto and incorporated herein by this reference; and,

WHEREAS, Government Code Section 65402 (a) provides, in pertinent part, as follows:

"If a general plan.... has been adopted, no real property shall be...disposed of, no street shall be vacated or abandoned, if the adopted general plan or part hereof applies thereto, ...until the location, purpose and extent of such street vacation or abandonment, ...have been submitted to and reported by the planning agency as to conformity with said general plan..."

WHEREAS, the proposed quitclaim of the Property will constitute an action within the meaning of Section 65402 (a); and,

WHEREAS, the Planning Commission has reviewed the proposed quitclaim of the Property and is fully advised with respect thereto. The proposed quitclaim will not adversely impact the Circulation Element or other planned uses of the General Plan district where the Property is located.

BE IT RESOLVED by the Planning Commission of the City of Buellton as follows:

SECTION 1: The Planning Commission finds that all of the facts, findings and conclusions set forth above are true and correct.

SECTION 2: In accordance with, and pursuant to, the requirements of California Government Code Section 65402 (a), the proposed quitclaim of the Property is hereby found to conform to the General Plan of the City of Buellton.

SECTION 3: The Planning commission Secretary shall certify to the adoption of this resolution and transmit a full, true and correct copy of the City Clerk of the City of Buellton.

PASSED AND ADOPTED this 17th day of September 2015.

Foster Reif
Chair

Clare Barcelona
Planning Commission Secretary

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) **SS**
CITY OF BUELLTON)

I, Clare Barcelona, Secretary of the Planning Commission of the City of Buellton, do hereby certify that the above and foregoing Resolution No. 15-11 was duly passed and adopted by the Planning Commission of said City at a regular meeting thereof, held on the 17^h day of September 2015, by the following vote, to wit.

AYES: (3) Commissioner Dunstan, Vice Chair Mercado and Chair Reif

NOES: (0)

ABSENT: (1) Commissioner Padilla

NOT VOTING: (0)

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of September 2015.

Clare Barcelona
Planning Commission Secretary