

Duarte and Duarte Dispatch

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CITY OF DUARTE
1600 E. HUNTINGTON DRIVE
DUARTE CA 91010

FILE NO. Reso 14-08 Intent to Levy 2014

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

STATE OF CALIFORNIA
County of Los Angeles

I am a citizen of the United States, and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of DUARTEAN and DUARTEAN DISPATCH, a newspaper of general circulation printed and published weekly in the City of Duarte, County of Los Angeles, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Los Angeles, State of California, on the date of July 6, 1948, Case Number POMO C986. The notice, of which the annexed is a true printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

5/3/2014

I declare under the penalty of perjury that the foregoing is true and correct.

Executed at West Covina, LA Co. California
On this 12th day of May, 2014.

Courtney Kastemer

Signature

LLP7-03/28/14

(Space below for use of County Clerk Only)

Legal No. 0010514370

RESOLUTION NO. 14-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, DECLARING ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS FOR FISCAL YEAR 2014-2015 WITHIN THE CITYWIDE LANDSCAPE AND LIGHTING MAINTENANCE DISTRICT, PURSUANT TO THE LANDSCAPE AND LIGHTING ACT OF 1972; AND FIXING A TIME AND PLACE FOR THE PUBLIC HEARING TO HEAR OBJECTIONS THERETO

The City Council of the City of Duarte, pursuant to the provisions of the Landscape and Lighting Act of 1972, Division 15 of the Streets and Highways Code of the State of California, does resolve as follows:

DESCRIPTION OF WORK

SECTION 1. That the public interest and convenience requires and it is the intention of the City Council of the City of Duarte, California, to levy and collect assessments within the Citywide Landscape and Lighting Maintenance District for Fiscal Year 2014-2015 within which the following work is to be done:

1. Maintenance and servicing of street landscaping and street trees.
2. Maintenance and servicing of street lighting facilities.
3. Maintenance and servicing of traffic signals.
4. The cleaning, sandblasting and painting of walls and other improvements to remove or cover graffiti within street right-of-way.
5. Funding for the construction of the Senior Center.
6. Maintenance and servicing of Parks.
7. Any and all work and materials appurtenant thereto.

LOCATION OF WORK

SECTION 2. The foregoing described work is to be located within streets, easements and City-owned property within the City of Duarte particularly described on a map on file in the City Clerk's office entitled "Landscape and Lighting Maintenance District, Assessment Diagram," said district boundary being the same as the City boundary.

DESCRIPTION OF ASSESSMENT DISTRICT

SECTION 3. That the contemplated work, in the opinion of said City Council, is of benefit to and the said City Council hereby makes the expense of the said work chargeable upon a district, which said district is assessed to pay the costs and expenses thereof and which district is described as follows:

The City Council has determined that pursuant to Section 22595 of the Streets and Highways Code of the State of California that the public utility property is to be assessed.

All that certain property within the City of Duarte, exclusive of public streets.

REPORT OF THE ENGINEER

SECTION 4. The City Council of said City does hereby tentatively approve the report of the Engineer, which indicates the amount of the proposed assessments, the district boundary, assessment zones, detailed description of improvements, and the method of assessment. The report entitled "Engineer's Report, Landscape and Lighting Maintenance District" is on file in the Office of the City Clerk and reference to said report is hereby made for all particulars.

ASSESSMENTS

SECTION 5.

(a) Pursuant to Section 5 of Article XIID of the California Constitution an assessment existing on November 5, 1996 imposed exclusively to finance capital costs of maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control is exempt from the procedures and approved process set forth in Section 5 of Article XIID of the California Constitution.

(b) The proposed assessments relating to Zones 1 through 15 were existing on the effective date of Article XIID of the California Constitution and were previously imposed and are proposed for fiscal year 2014-2015 to be imposed exclusively to finance the capital costs of maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control.

(c) The proposed assessments relating to Zones 16 through 18 were voted upon and approved by a majority of property owners in accordance with the requirements of Article XIID of the California Constitution.

(d) The assessments are proposed to increase by 1.1% in Zones 4, 7 and 8 as previously approved by the property owners; and also by 1.1% in Zones 14, 15, 16, 17, and 18 as allowed for in the formation of the zones, and in the Citywide assessment, which is subject to the notice, protest, and hearing requirements of Section 53753 of the Government Code.

TIME AND PLACE OF PUBLIC HEARING

SECTION 6. Notice is hereby given that on the 10th day of June 2014, at

the hour of 7:00 p.m., in the Council Chambers of City Hall, 1600 Huntington Drive, Duarte, California, any and all persons having any objections to the work or intent of the assessment district may appear and show cause why said work should not be done or carried out, or why said assessments should not be levied in accordance with this Resolution of Intention. The City Council will consider all oral and written protests.

LANDSCAPING AND LIGHTING ACT OF 1972

SECTION 7. All work herein proposed shall be done in accordance with the Landscape and Lighting Act of 1972, Division 15 of the Streets and Highways Code of the State of California.

NOTICE

SECTION 8. The City Clerk is hereby ordered to give notice in accordance with Section 22626 of the Streets and Highways Code of the State of California.

PASSED, APPROVED and ADOPTED this 22nd day of April, 2014.

/s/ Elizabeth Nowak Reilly

Mayor Elizabeth Nowak Reilly

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF DUARTE

} ss.

I, Maria Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution 14-08 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 22nd day of April 2014, by the following vote:

AYES: Councilmembers: Fasano, Finlay, Kang, Paras-Caracci, Reilly
NOES: Councilmembers: None
ABSENT: Councilmembers: None

/s/ Maria Akana

City Clerk Maria Akana
City of Duarte, California

Published: May 3, 2014
The Duartean

Ad#



MEMORANDUM

TO: Mayor and City Council
FROM: Community Development Department 
DATE: June 10, 2014
SUBJECT: Establish property assessments for the Citywide Landscape and Lighting Assessment District and Neighborhood Districts.

Annually, City Council holds a Public Hearing to establish property assessments for the Citywide Landscape and Lighting Assessment District and for the City's Neighborhood Districts.

At its April 22 meeting, the City Council adopted the Resolution that declared the City Council's intention to levy and collect assessments for fiscal year 2014-2015; (2) approved the Engineer's Report indicating the amounts of the proposed assessment, district boundaries, assessment zones, descriptions of improvements, and method of assessment; and (3) set this date for the evening's Public Hearing.

This year, the assessments are proposed to increase by CPI (1.1%) in special Zones 4, 7, 8, 14, 15, 16, 17 and 18 as allowed for in their formation or by previous approval.

Staff recommends that the City Council adopt Resolution 14-R-12 providing for the annual levy for Fiscal Year 2014-2015.

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE
ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS
FOR FISCAL YEAR 2014-2015 WITHIN THE LANDSCAPE
AND LIGHTING DISTRICT PURSUANT TO THE
LANDSCAPE AND LIGHTING ACT OF 1972**

The City Council of the City of Duarte, pursuant to the provisions of the Landscape and Lighting Act of 1972, Division 15 of the Streets and Highways Code of the State of California, does resolve as follows:

SECTION 1. RECITALS. The City Council of the City of Duarte does hereby find, determine and declare as follows:

- A. On the 22nd day of April, 2014, the City Council adopted Resolution No. 14-08 (the "Resolution of Intention") which declared its intent to levy and collect assessments for Fiscal Year 2014-2015 within the District and Zones and set a time and place for a public hearing. The Resolution of Intention was duly and legally published in the time, form and manner as required by law, shown by the Affidavit of Publication of the Resolution of Intention on file in the office of the City Clerk; and
- B. At the time and place for which notice was given, the City Council conducted a public hearing and gave every interested person an opportunity to object to the proposed boundary, work or assessment; and
- C. The City Council, having duly received and considered oral and documentary evidence concerning the jurisdictional facts in this proceeding and concerning the necessity for the contemplated work and benefits to be derived therefrom, has acquired jurisdiction to order the proposed assessment.

SECTION 2. That the proposed assessments relating to the District and Zones 1-15 were existing on the effective date of Article XIID of the California Constitution. Zones 16, 17 & 18 were approved per the requirements of Article XIID of the California Constitution. All zones were previously imposed, and for Fiscal Year 2014-2015 Zones 4, 7, 8, 14, 15, 16, 17, and 18 are proposed to be increased by a CPI of 1.1%, all of which are allowed in the formation of the zones or previously voter approved, and all other zones are contemplated to be imposed without increase. Funds are to be used exclusively to finance the capital costs or maintenance and operation expenses for landscaping sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Pursuant to Section 5 (a) of Article XIID of the California Constitution, the proposed assessments to be levied and collected in the District and Zones 1-18 are, therefore, exempt from the procedures and approval process set forth in Section 4 of Article XIID of the California Constitution.

SECTION 3. That the proposed assessments relating to Zones 1-18 were existing on the effective date of Article XIID of the California Constitution or were voter approved and all such assessments were imposed pursuant to a petition signed by the persons owning all of the parcels, subject to the assessment at the time the assessment was initially imposed. Pursuant to Section 5 (b) of Article XIID of the California Constitution, the proposed assessments to be levied and collected in Zones 1-18 are, therefore, exempt from the procedures and approval process set forth in Section 4 of Article XIID of the California Constitution.

SECTION 4. The Engineer's Report on file with the City Clerk, and each component part of it, including each exhibit incorporated by reference, as amended, if applicable, is hereby finally approved and adopted.

SECTION 5. The diagram and assessment prepared in connection with the District are hereby confirmed.

SECTION 6. The public interest and convenience requires the ordering the levy and collection of assessment for Fiscal Year 2014-2015 and the City Council hereby orders the levy and collection of assessments within the district and the zones, as set forth and described in the Resolution of Intention and in the Engineer's Report.

SECTION 7. The adoption of this Resolution constitutes the levy of the assessments as set forth in the Engineer's Report for Fiscal Year 2014-2015.

SECTION 8. The City Clerk is authorized and directed to file a certified copy of the diagram and assessment with the County Auditor of the County of Los Angeles no later than the 7th day of August 2014.

SECTION 9. The City Clerk is hereby authorized and directed to certify as to the adoption of this Resolution.

PASSED AND ADOPTED this 10th day of June 2014.

Mayor Elizabeth Nowak Reilly

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution No. 14-12 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 10th day of June, 2014, by the following vote:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:

City Clerk Marla Akana
City of Duarte, California

ENGINEER'S REPORT
SIDEWALKS, STREETS, SENIOR CENTER PAYMENT,
PARK AND SPECIAL ZONES
OF THE CITY OF DUARTE
LANDSCAPE AND LIGHTING MAINTENANCE DISTRICT
2014-2015 ASSESSMENT LEVY

SECTION 1. AUTHORITY FOR REPORT

This report is prepared pursuant to an order of the City Council of the City of Duarte in compliance with the requirements of Article 4, Chapter 1, Landscape and Lighting Act of 1972, being Part 2, Division 15, of the Streets and Highways Code of the State of California (The "Act").

The Act was originally created by the State Legislature in 1972. On June 13, 1978, the City of Duarte created the City of Duarte Landscape and Lighting Maintenance District for the maintenance and servicing of Landscaping and Lighting. Since 1972, the Legislature has expanded the definition of landscaping, lighting, and the work that may be done under the Act. The City of Duarte has, over time; expanded the work to be done by the District to include all the work allowed under the Act.

This Assessment District, by special benefit assessments, provides funding for the maintenance of City-owned parks, for the maintenance of the public landscaping in public owned properties or public right-of-way within the City, graffiti removal, maintenance of public-owned lighting, street lighting, traffic signals within the City, and funding towards the debt service of the Senior Center bond issue.

The voters on November 5, 1996 voted to adopt Proposition 218. Proposition 218 has the potential to have a great impact upon the way special assessments are used and assessed. The City Council has determined that the portion of the assessment devoted to street maintenance and the payment of the Senior Center bond is exempt from Prop. 218. In 1997, by majority vote of the property owners of all single family and condominiums within the City, it was determined to levy a park assessment of \$59.42 against single family and condominium units within the City.

SECTION 2. PLANS AND SPECIFICATIONS FOR THE IMPROVEMENTS

The plans and specifications for the irrigation, landscaping and lighting of streets, traffic signals and easements and authorized improvements within the City are on file in the Department of Community Development. The lighting locations and specifications for Edison-owned lights are on file with Southern California Edison Company. Reference is hereby made to said plans and specifications for the exact location and nature of the landscape and lighting of park improvements. Said plans and specifications by reference are hereby made a part of this report.

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SECTION 3. ESTIMATE OF COST OF IMPROVEMENT

The cost of the initial improvements of median island landscaping, street landscaping, traffic signals, street lighting, parking lot lighting, and bike paths were paid for from capital improvement funds, special grants, gas tax, prior assessment districts, subdividers, and general City revenues. The City Council in 1991 and 1992, as a result of two public hearings, determined to fund a portion of the Senior Center construction from the landscape assessment in accordance with the Act. With the exception of the Senior Center, no other facilities are proposed to be funded from the district.

SECTION 4. CITYWIDE STREET AND SIDEWALK LANDSCAPING

The cost to maintain street landscaping, and parkway trees as described in this section. The following is a general description of the areas being maintained:

1. All parkway trees maintained by the City.
2. Trees adjacent to Caltrans right-of-way on Evergreen Avenue, Flower Avenue to Brightside Avenue, Central Avenue, Buena Vista Street to Santo Domingo Avenue and Evergreen Street east of Mountain Avenue.
3. Street Landscaping
 - A. Duarte Road – Highland Avenue to Mountain Avenue hardscape, turf, trees, irrigation and groundcover.
 - B. Buena Vista Street – North and south of the 210 freeway turf, irrigation and groundcover.
 - C. Mountain Avenue – North and south of the 210 freeway turf, irrigation and groundcover.
 - D. Central Avenue – East and west of Buena Vista Street turf, trees, irrigation and groundcover.
 - E. Huntington Drive – Mountain Avenue to the east City limits, hardscape, turf, trees, irrigation and groundcover.
 - F. Encanto Parkway –Huntington Drive to Markwood, west side landscaping and irrigation. Fifty percent only of landscaping along Zone 5.

The cost to maintain shall include, but not limited to, watering, fertilizing, mowing, weed control, shrubbery, tree removal and pruning, maintenance of irrigation facilities, removal or covering of graffiti and repair and replacement of lighting.

The cost to maintain and construct these facilities is considered a general property benefit and is assessed as a unit cost to each lot within the City, and to each apartment unit, hotel/motel room, trailer park space, and nursing home bed.

SECTION 5. CITYWIDE LANDSCAPING AND PARK COSTS

The cost to maintain parks, landscape area, and recreational facilities is described in this section. The following is a general description of the areas, parks and related landscaped areas being maintained as approved in the special assessment vote:

Parks

- A. Bike Trail – Turf, trees, groundcover, asphalt and irrigation.
- B. Thorsen Park – Turf, trees, groundcover and irrigation.
- C. Moore Park – Turf, trees, groundcovers, playground and irrigation.
- D. Entrance Park – Turf, trees, groundcover and irrigation.
- E. Encanto Park – Turf, trees, groundcover, irrigation, tennis courts, basketball courts, athletic courts, restrooms and parking areas.
- F. Beardslee Park – Turf, trees, groundcover, irrigation, hardscape and playground.
- G. Duarte Park – Turf, trees, groundcovers, irrigation, hardscape, recreation building, playground and athletic courts.
- H. Royal Oaks Park and Extension – Turf, trees, groundcover, irrigation, hardscape, recreation building, tennis courts, playgrounds and parking area.
- I. Glenn Miller Park – Turf, trees, groundcover, irrigation, hardscape and playgrounds.
- J. Hacienda Park – Turf, trees, groundcover, irrigation and playground.
- K. Third Street Park – Turf, trees, groundcovers, irrigation, and playground.
- L. Town Center – Turf, trees, groundcover, irrigation, hardscape, swimming pool, recreation building, and parking area.
- M. Northview Park – Turf and irrigation.
- N. Senior Center – Turf, trees, groundcover, irrigation hardscape, recreation area and parking lot.
- O. Otis Gordon Park
- P. Lena Valenzuela Park

The cost to maintain shall include, but not limited to, watering, fertilizing, mowing, weed control, shrubbery, tree removal and pruning, maintenance of irrigation facilities, maintenance of park building and equipment, maintenance and replacement of recreation equipment, removal or covering of graffiti and repair and replacement of lighting.

SECTION 6. SENIOR CENTER

The City Council first in Fiscal Year 1991-92 and reconfirmed in Fiscal Year 1992-93 that it is determined to amend and provide for the inclusion of a senior citizen/community center facility as one of the improvements to be financed with the assessments from the Citywide Landscape and Lighting District. Pursuant to Resolution No. 92-25, the City Council determined that the Senior center would be financed from a portion of the proceeds of a Certificate of Participation advanced by the City which would be repaid to the City in whole or in part from the levy of annual assessments within the District. The maximum number of annual assessments (30 years), the fiscal years in which such assessments are

levied and the estimated maximum amount of each annual installment of each assessment was set forth in the resolution. The resolution set forth periodic increases in the assessment. The assessment is at the maximum allowed per resolution 92-25 of two-hundred twenty-five thousand dollars (\$225,000). This two hundred twenty-five thousand dollars (\$225,000) is to repay the Senior Center construction, which is allowed under the resolution.

SECTION 7. LIGHTING MAINTENANCE

The cost to maintain shall include, but not limited to, electrical service for all public lighting including parking lighting, repair and replacement of City-owned lights within public right-of-way, servicing of Southern California Edison owned lights as defined by the Act, repair and replacement of traffic signals.

The net amount to be assessed upon lands within the Assessment District in accordance with this Report is apportioned by a formula and method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each lot or parcel from the improvements, namely the maintenance and servicing of public lighting facilities within such District. The maintenance and servicing of public lighting facilities installed and constructed in public places provides a special benefit which is received by each and every assessed lot or parcel within the District, tending to enhance their value. The streets within the District improve access to all lots or parcels assessed. Street lighting also provides advertising visibility for business and commercial establishments. The intensity or degree of illumination provided can have a bearing on the benefits of street lighting. Thus, primary benefits of street lighting are for the convenience, safety, security, and protection of people. Secondary benefits are security or protection to property, property improvements and goods as set forth below:

1. Improvement to traffic circulation.
2. Reduction in night accidents and attendant human misery and economic loss.
3. Less vulnerability to criminal assault at night.
4. Promotion of business during nighttime hours for commercial properties.
5. Increased nighttime safety on roads and highways.
6. Improved ingress and egress to lots and parcels.
7. Reduction in vandalism and other criminal acts.
8. Reduction in burglaries.
9. The enhancement to the value of property which results from the foregoing benefits.

Intensity or degree of illumination provided on streets varies with the type of street, date of installation and the use of the property adjacent thereto.

The majority of parcels within the Lighting District are residential properties. A value of one (1) basis unit has been assigned to a residential unit. A residential unit is defined as a single-family unit, condominium unit, rental unit or apartment unit. Parcels in other land use categories, not used as residential, were then evaluated and rated by comparison with the basis unit.

Each land use evaluation takes into consideration – foot traffic, vehicular traffic, and hours of occupancy. Commercial and industrial properties have been assigned additional units based on the comparative benefits, number of people that would be expected to benefit from the lighting, security and intensity of the lights provided. The average light intensities and energy consumption for commercial areas is greater than that required for residential areas.

SECTION 8. GRAFFITI REMOVAL

The cost for graffiti removal shall include, but not limited to, the cost of cleaning, sandblasting and painting of walls and other improvements to remove or cover graffiti. Graffiti removal is considered a general property benefit and is assessed in the same manner and is included in the Street and Sidewalk Landscape Assessment.

SECTION 9. TRAFFIC SIGNALS

The following traffic signals are entirely or partially maintained by the City.

- * Mountain Avenue and Huntington Drive.
- * Mountain Avenue and Central Avenue.
- * Mountain Avenue and Evergreen Street.
- * Mountain Avenue and Duarte Road.
- * Mountain Avenue at Walmart/Home Depot
- * Mountain Avenue at Best Buy
- * Buena Vista Street and Huntington Drive.
- * Buena Vista Street and Central Avenue.
- * Buena Vista Street and Evergreen Street.
- * Buena Vista Street and Duarte Road.
- * Highland Avenue and Huntington Drive.
- * Mount Olive Drive and Huntington Drive.
- * Las Lomas Road and Huntington Drive.
- * Crestfield Road and Huntington Drive
- * Mountain Vista Plaza at Huntington Drive
- * Huntington Drive and Pops Road

SECTION 10. DIAGRAM FOR THE ASSESSMENT DISTRICT

A copy of the proposed assessment diagram is on file in the City Clerk’s office, and includes all the property within the City limits of the City of Duarte. Reference is made to the Los Angeles County Assessor Maps as to parcel location and dimensions. The City Council, at the time of formation of the District of 1978, determined that the public utilities right-of-ways should be assessed based upon the actual benefit to the public utility right-of-ways.

SECTION 11. ASSESSMENT ZONES

Zone 1 All the Property within the City except those Properties in Zones 2 through 18

All properties that are not in a special zone are assessed within this zone. Assessment for areas without street lighting are reduced to reflect the cost component of the City's budget. Areas with street lighting are assessed based upon a unit basis for single family zoned property and residentially used property. Commercial, industrial and multi-residential zone properties are assessed based upon lot size and street frontage.

All of the properties in Zones 3 through 18 are assessed their share of the citywide lighting, street, sidewalk and park maintenance in addition to special maintenance assessment. Zone 2 is assessed specifically for their gas lights.

Street Lighting

The cost for street lighting in all zones is assessed to all residential lots based upon the special benefit and to commercial and industrial based upon frontage and area benefit.

Citywide Park Maintenance

The cost of park maintenance determined as a direct benefit is assessed to all single-family units and all condominium units based upon a unit assessment.

Citywide Street Maintenance Cost

The cost in all zones is assessed to all lots on a unit cost per lot, and to each apartment unit, hotel/motel room, trailer park space, and nursing home bed.

Zone 2 Mesa Area GasLights

This area is served by gaslights. The cost of gas lighting is assessed equally to all lots. The cost to maintain the Rim Road slope constructed in 2008, which was a general fund expense is no longer included in this report. Reserve in this district is held for future fixture replacements and refurbishments over time.

Zone 3 Emblem House Tract 33532

This zone was created at the request of the Developer (Emblem Homes), in lieu of a homeowner's association. The Developer installed sprinkler guns to irrigate the natural area north of the homes for fire protection. The maintenance of the sprinkler guns is a special benefit to all lots within the subdivision. The areas adjacent to the landscaping are given a benefit of 30% greater than the remainder of the lots.

Lots 1, 2, 18-119 are not adjacent to landscape areas

Lots 3-17 are assessed a 30% surcharge.

As in previous years, the City's General Fund has paid for this fire protection.

Zone 4 Las Lomas Villas Tracts 33964, 34892 & 35709

This zone was created at the request of the Developer in lieu of a homeowner's association maintaining the landscaping. The Developer, for the benefit of all lots, installed the landscaping as a special benefit to all lots, within the tract and is assessed equally to all lots. The assessment is based on a voter-approved formula, which provides for an annual C.P.I. increase not to exceed 3%. The C.P.I. for the year ending December 31, 2013 was 1.1%. This would allow for an assessment increase of \$4.04 per parcel to \$371.55 per parcel. A 1.1% increase in levy is proposed for Fiscal Year 2014-15.

Zone 5 Kaufman and Broad Development Phase I – Tract 35415(Encanto Parkway)

This zone was created at the request of the Developer in lieu of a homeowner's association maintaining the landscaping. The entrance landscaping on Encanto Parkway was installed by the Developer, as a special benefit to all lots, within the tract and is assessed equally to all lots. Since the extension landscaping along Encanto Parkway is also being considered a Citywide benefit, fifty (50) percent of the cost (\$7532.00) has been moved to the Citywide Street portion of the Assessment District. An increase in assessment was proposed for Fiscal Year 2010-11. This increase was subject to the requirements of Proposition 208 "the Right to Vote on Taxes Act". The increase was not approved by the property owners. Consequently, the level of maintenance was reduced to balance the expenditures with the assessment.

Zone 6 Kaufman and Broad Development Phase II – Tracts 35631 and 41717 (Rancho Verde)

This zone was created at the request of the Developer in lieu of a homeowner's association maintaining the landscaping. The landscaping was installed by the Developer, for the special benefit to all lots, and is assessed equally to all lots. An increase in assessment was proposed for Fiscal Year 2010-11. This increase was subject to the requirements of Proposition 208 "the Right to Vote on Taxes Act". The increase was not approved by the property owners. Consequently, the level of maintenance was reduced to balance the expenditures with the assessment.

Zone 7 Amberwood Tract 35711

This zone was created at the request of the Developer in lieu of a homeowner's association maintaining the landscaping. The landscaping was installed by the Developer, for the special benefit to all lots, and is assessed equally to all lots. The assessment formula is based upon a voter approved formula which provides for an assessment increase (CPI) not to exceed 3% a year. The C.P.I. for the year ending December 31, 2013 was 1.1%. This would allow for an assessment increase of \$4.58 per parcel to \$420.68 per parcel. A C.P.I. increase of 1.1% is proposed for fiscal year 2014-15.

Zone 8 Village at Windsor Tract 39457

This zone was created at the request of the Developer in lieu of a homeowner's association maintaining the landscaping. The landscaping was installed by the Developer, for the special benefit of all lots, and is assessed equally to all lots. The assessment formula is based upon a voter approved formula which provides for an assessment increase (CPI) not to exceed 3% a year. The C.P.I. for the year ending

December 31, 2013 was 1.1%. This would allow for an assessment increase of \$3.66 per parcel to \$336.57 per parcel. A C.P.I. increase of 1.1% is being proposed for Fiscal Year 2014-15.

Zone 9 Tract 32993 (Kendick Tract) and Tracts 35135, 35136, 35137 (Hearthstone Homes)

This zone was created at the request of the Developer in lieu of a homeowner's association maintaining the landscaping. The landscaping was installed by the Developer, for the special benefit of all lots, and is assessed equally to all lots. An increase in assessment was proposed for Fiscal Year 2010-11. This increase was subject to the requirements of Proposition 208 "the Right to Vote on Taxes Act". The increase was not approved by the property owners. The level of maintenance was reduced to balance the budget with the assessment.

Zone 10 Tracts 35138, 35139, 38393 & 39932 (Hearthstone Del Norte)

This zone was created at the request of the Developer in lieu of a homeowner's association maintaining the landscaping. The tracts are specially benefited equally by the landscaping installed by the Developer except for the lots adjacent to that landscaping maintained by the district, which has an additional special benefit of 10%.

Total lot count not assessed the additional 10% = 170 lots

Lots assessed 10% additional benefit:

- (2) Lots 18,20 (Tract 35139)
- (4) Lots 25-28 (Tract 39932)
- (11) Lots 10, 11, 17-20, 31-34, 39 (Tract 38393)

Zone 11 Tract 42150 (TKI Townhomes)

This zone was created at the request of the Developer in lieu of a homeowner's association maintaining the landscaping. The landscaping was installed by the Developer, for the special benefit to all lots. The Board of Directors of the Home Owners Association in 2004 requested that the City allow the Home Owners Association to maintain the landscaping. The request was approved. A zero assessment for the landscaping within this zone has thus been shown.

Zone 12 Tract 33704 (Benchmark Homes)

This zone has been eliminated.

Zone 13 Mike's Center

This zone was created, at the request of the property owners, to maintain improvements installed by the City and financed by the property owners with assistance from Community Development Block Grant Funds. The lighting and landscaping was installed as a special benefit to all lots and is assessed based on lot area.

Zone 14 Tract 51911 (Las Brisas Development)

This zone was created upon the request of the Developer in lieu of a homeowner's association maintaining the landscaping. The landscaping was installed by the Developer, for the special benefit to all lots, and is assessed on a per lot basis. This zone was formed in 1995. At the time of the formation of this zone, the assessment was based upon a formula, which recognized the increase of inflation. The C.P.I. for the year ending December 31, 2013 was 1.1%. This would allow for an assessment increase of \$5.27 per parcel to \$484.32 per parcel. A C.P.I. increase of 1.1% is proposed for this fiscal year.

Zone 15 Tracts 52121 and 52255 (Las Posadas Development)

This zone was created in 1997 upon the request of the developer in lieu of a homeowners association maintaining the landscaping. The landscaping was installed by the developer, for the special benefit to all lots, and is assessed on a per lot basis. At the time of formation of the zone, the assessment was based upon a formula which allows for an assessment increase of up to 3 percent per year. The C.P.I. for the year ending December 31, 2013 was 1.1%. This would allow for an assessment increase of \$4.91 per parcel to \$450.96 per parcel. A C.P.I. increase of 1.1% is proposed for Fiscal Year 2014-15.

Zone 16 Tract 52337 (Buena Vista Villas)

This zone was created upon the request of the developer and a vote of the property owner in 1998. The developer installed all the landscaping to specially benefit all lots equally, therefore the assessment is levied on a per lot basis. This zone was created in 1998. The assessment is based upon a formula which provides for an assessment increase of up to 3 percent per year. The C.P.I. for the year ending December 31, 2013 was 1.1%. A C.P.I. increase of 1.1% raises the maximum assessment by \$5.23 per parcel from \$475.36 to \$480.59 per parcel. A C.P.I. increase of 1.1% is proposed for Fiscal Year 2014-15.

Zone 17 Tract 52704 (Citrus Collection)

This zone was created upon the request of the developer and a vote of the property owner in 2000. The developer installed all the landscaping to specially benefit all lots equally, therefore the assessment is levied on a per lot basis. The assessment formula is based upon a formula which provides for an assessment increase of up to 3 percent per year. The C.P.I. for the year ending December 31, 2013 was 1.1%. A C.P.I. increase of 1.1% raises the maximum assessment by \$7.45 per parcel from \$677.44 to \$684.89 per parcel. For Fiscal Year 2014-15, a levy of \$522.73 per parcel is required to balance expenses which are less than the maximum allowed assessment of \$684.89 per parcel.

Zone 18 Tract 52867(Ridgecrest Estates)

This zone was created upon the request of the developer and a vote of the property owners in 2011. The developer installed all the landscaping to specially benefit all lots equally and the drainage improvements to benefit the development specifically and the City generally equally. The development share of the drainage improvements benefits all the lots equally. The assessment is levied thus on a per lot basis. The assessment formula is based upon a formula which provides for an assessment increase based on the CPI with a maximum of 3% per year. The special assessment was approved on December 13, 2011 per Resolution 11-49. The CPI for the year ending December 31, 2013 was 1.1%. A CPI increase of 1.1% raises the maximum assessment by \$15.46 per parcel from \$1,405.71 to \$1,421.17. A CIP increase of 1.1% is proposed for fiscal year 2014-15. It is necessary to maintain reserve in this district to provide for brush clearance and flood control basin clearing costs that fluxuate.

**2014-15 CITYWIDE DISTRICT,
SENIOR CENTER BOND PAYMENT
AND SPECIAL BENEFIT ZONE CALCULATIONS**

Citywide Lighting, Street, Senior Center Bond Payment and Special Zone Costs

Lighting, Street & Civic Center Bond Payment Expenses	\$1,160,700.00	
General Fund Contribution (Deficit)	\$ <u>237,494.00</u>	
<u>Total Citywide Assessment for 2014-2015</u>		\$ 923,206.00

Parks

Park Maintenance*	\$ 355,839.00	
General Fund Contribution (Deficit)	\$ <u>(19,829.00)</u>	
Total Parks Assessment		\$ 335,010.00

Street Lighting

Lighting Maintenance Cost	\$ 311,900.00	
General Fund Contribution (Deficit)	\$ <u>(131,806.00)</u>	
Total Citywide Lighting Assessments		\$ 180,094.00

Citywide Street

Street Maintenance Cost	\$ 267,961.00	
General Fund Loan Repayment 2010-11	\$ <u>(84,859.00)</u>	
Total Citywide Street Assessments for 2014-15		\$ 183,102.00

Senior Center Bond Payment

Bond Payment	\$ 225,000.00	
General Fund Contribution	\$ <u>0</u>	
Total Senior Center Bond Payment		\$ 225,000.00

Special Benefit Zone Maintenance Cost

Maintenance Cost	\$ 285,753.00	
Transfer to Reserve	\$ 2,060.00	
Transfers from Reserve (Deficit)	\$ 83.00	
General Fund Contribution (Deficit)	\$ 0	
Credited Surplus	\$ (1,000.00)	
General Fund Expenses **	\$ <u>(12,332.00)</u>	
<u>Total Special District Assessments for 2014-2015</u>		\$ 274,564.00

Grand Total Citywide Senior Center Bond Payment and Special Benefit Zones Assessments for 2014-15 **\$ 1,197,770.00**

* This does not include the sports park maintenance costs which cannot be included in the District.

** Includes \$3,800.00 (Emblem Homes), \$7,532.00 (Encanto Parkway), and \$1,000.00 (Ridgecrest Estates).

**2014-15 CITYWIDE STREET LIGHTING AND
SENIOR CENTER BOND PAYMENT
AND SPECIAL BENEFIT ZONE CALCULATIONS**

ZONE	DISTRICT	2012-13	2013-14	2014-15
1	Lighting	\$30.44	\$30.44	\$30.44
	Street Maintenance	\$34.96	\$34.96	\$34.96
	Parks	\$59.42	\$59.42	\$59.42
	(Average Single Family)			
	Sub-Total	\$124.82	\$124.82	\$124.82
2	Mesa Area	\$237.60	\$237.60	\$237.60
3	Emblem Homes			
	Base Cost	\$124.82	\$124.82	\$124.82
	Surcharge Lots	\$124.82	\$124.82	\$124.82
4	Las Lomas Villas	\$487.61	\$492.33	\$496.37
5	Encanto Parkway	\$186.56	\$186.56	\$186.56
6	Rancho Verde	\$343.32	\$343.32	\$343.32
7	Amberwood	\$535.58	\$540.92	\$545.50
8	Windsor	\$453.46	\$457.73	\$461.39
9	Kendick, Hearthstone	\$158.27	\$158.27	\$158.27
10	Hearthstone			
	Base Cost	\$270.81	\$270.81	\$270.81
	Surcharge Lots	\$287.03	\$287.03	\$287.03
11	T.K.I. Townhomes	\$124.82	\$124.82	\$124.82
12	Benchmark Homes	\$124.82	\$124.82	\$124.82

SPECIAL DISTRICT ASSESSMENT COMPARISON

ZONE	DISTRICT	2012-13	2013-14	2014-15
13	Mike's Center			
	8530-018-027	\$2,334.91	\$2,334.91	\$2,334.91
	8530-018-028	\$1,151.76	\$1,151.76	\$1,151.76
	8530-018-029	\$1,198.19	\$1,198.19	\$1,198.19
	8530-018-030	\$ 548.67	\$ 548.67	\$ 548.67
	8530-018-031	\$ 548.67	\$ 548.67	\$ 548.67
	8530-018-032	\$ 548.67	\$ 548.67	\$ 548.67
	8530-018-033	\$2,395.96	\$2,395.96	\$2,395.96
	8530-018-034	\$3,013.36	\$3,013.36	\$3,013.36
	8530-018-054	\$1,880.36	\$1,880.36	\$1,880.36
	8530-018-055	\$9,119.66	\$9,119.66	\$9,119.66
		<u>\$22,743.65</u>	<u>\$22,743.65</u>	<u>\$22,743.65</u>
14	Las Brisas	\$ 597.72	\$603.87	\$609.14
15	Las Posadas	\$ 565.15	\$570.87	\$575.78
16	Buena Vista Villas	\$ 594.08	\$600.18	\$605.41
17	Citrus Collection	\$ 647.55	\$647.55	\$647.55
18	Ridgecrest Estates	\$1,387.67	\$1,530.53	\$1,545.99

**ZONE 2 – MESA AREA
(FUND 2430)**

ESTIMATED EXPENSES 2014-15

Gas	\$ 8,500.00	
Repairs and Replacement	\$ 3,000.00	
Personnel	\$ 2,300.00	
Transfer to Reserve	\$ 0.00	
Total Expenses		\$13,800.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$12,800.00	
Transfer From Reserve	\$ 0.00	
Credited Surplus	\$ 1,000.00	
Transfer From General Fund	\$ 0.00	
Total Revenue		\$13,800.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$3,389.00
2012	\$3,389.00
2013	\$4,604.02
2014	\$7,893.02 (est.)

Zone 2 Information

Number of lots to be assessed		100
GAS LIGHTING – COST PER LOT	\$	128.00
Intersection Only Lighting – Cost Per Lot	\$	15.22
Citywide Street Maintenance - Cost Per Lot *	\$	34.96
Park Assessment Per Lot	\$	59.42
TOTAL COST PER LOT	\$	237.60

*Includes Senior Center Bond Issue

**ZONE 3 – EMBLEM HOMES
(FUND 2429)**

ESTIMATED EXPENSES 2014-15

Water	\$ 1,400.00	
Electric	\$ 300.00	
Repairs and Replacement	\$ 1,000.00	
Personnel	\$ 1,100.00	
Transfer to Reserve	\$ 0	
Total Expenses		\$3,800.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$ 0.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	\$ 3,800.00	
Total Revenue		\$3,800.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

Zone 3 Information

Number of lots to be assessed		<u>121</u>
<u>LANDSCAPE COST PER LOT</u>		
Base Cost 100	\$	0
Surcharge Lots 19 + 30%	\$	0
Street Lighting Cost Per Lot	\$	30.44
City-Wide Street Maintenance Per Lot*	\$	34.96
Park Assessment Per Lot	\$	59.42
TOTAL COST PER LOT		
Base Cost	\$	124.82
Surcharge	\$	124.82

*Includes Senior Center Bond Issue

**ZONE 4 – LAS LOMAS VILLAS
(FUND 2421)**

ESTIMATED EXPENSES 2014-15

Water	\$ 14,000.00	
Electric	\$ 500.00	
Repairs and Replacement	\$ 3,915.00	
Landscape Maintenance	\$ 15,600.00	
Personnel	\$ 12,200.00	
Transfer to Reserve	\$ 600.00	
Total Expenses		\$46,815.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$ 46,815.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	\$ 0.00	
Total Revenue		\$46,815.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$1,398.00
2012	(\$2,453.00)
2013	\$2.89
2014	(\$2,450.30 est.)

Zone 4 Information

Number of lots to be assessed	126	
Landscape Per Lot	\$ 371.55	
Street Lighting Cost Per Lot	\$ 30.44	
Citywide Street Maintenance Cost Per Lot *	\$ 34.96	
Park Assessment Per Lot	\$ 59.42	
TOTAL COST PER LOT		\$ 496.37

*Includes Senior Center Bond Issue

**ZONE 5 – ENCANTO PARKWAY
(FUND 2422)**

ESTIMATED EXPENSES 2014-15

Water	\$ 3,200.00	
Electric	\$ 1,100.00	
Repairs and Replacement	\$ 1,864.00	
Landscape Maintenance	\$ 5,500.00	
Personnel	\$ 3,400.00	
Transfer to Reserve	\$ 0.00	
Total Expenses		\$15,064.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$ 7,532.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	\$ 7,532.00	
Total Revenue		\$15,064.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$2,405.00
2012	\$2,594.00
2013	\$1,771.88
2014	\$4,365.25 (est.)

Zone 4 Information

Number of lots to be assessed		122
Landscape Per Lot	\$	61.74
Street Lighting Cost Per Lot	\$	30.44
Citywide Street Maintenance Cost Per Lot*	\$	34.96
Park Assessment Per Lot	\$	59.42
TOTAL COST PER LOT	\$	186.56

*Includes Senior Center Bond Issue

**ZONE 6 – RANCHO VERDE
(FUND 2427)**

ESTIMATED EXPENSES 2014-15

Water	\$ 7,500.00	
Electric	\$ 600.00	
Repairs and Replacement	\$ 2,746.00	
Landscape Maintenance	\$ 8,600.00	
Personnel	\$ 5,900.00	
Transfer to Reserve	\$ 0.00	
Total Expenses		\$25,346.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$ 25,346.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	\$ 0.00	
Total Revenue		\$25,346.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$5,602.00
2012	\$4,572.00
2013	\$5,249.09
2014	\$9,821.54 (est.)

Zone 6 Information

Number of lots to be assessed		116
Special Landscape Per Lot	\$	218.50
Street Lighting Cost Per Lot	\$	30.44
Citywide Street Maintenance Cost Per Lot*	\$	34.96
Park Assessment Per Lot	\$	59.42
TOTAL COST PER LOT	\$	343.32

*Includes Senior Center Bond Issue

**ZONE 7 – AMBERWOOD
(FUND 2423)**

ESTIMATED EXPENSES 2014-15

Water	\$ 7,000.00	
Electric	\$ 300.00	
Repairs and Replacement	\$ 1,538.00	
Landscape Maintenance	\$10,500.00	
Personnel	\$ 2,200.00	
Transfer to Reserve	\$ 0.00	
Total Expenses		\$21,538.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$ 21,455.00	
Transfer From Reserve	\$ 83.00	
Transfer From General Fund	\$ 0.00	
Total Revenue		\$21,538.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$2,417.00
2012	\$638.00
2013	\$1,177.76
2014	\$1,815.64 (est.)

Zone 7 Information

Number of lots to be assessed		51
Landscape Per Lot	\$	420.68
Street Lighting Cost Per Lot	\$	30.44
Citywide Street Maintenance Cost Per Lot*	\$	34.96
Park Assessment Per Lot	\$	59.42
TOTAL COST PER LOT	\$	545.50

*Includes Senior Center Bond Issue

**ZONE 8 – WINDSOR
(FUND 2424)**

ESTIMATED EXPENSES 2014-15

Water	\$ 2,459.00	
Electric	\$ 300.00	
Repairs and Replacement	\$ 917.00	
Landscape Maintenance	\$ 6,600.00	
Personnel	\$ 2,800.00	
Transfer to Reserve	<u>\$ 0.00</u>	
Total Expenses		\$13,126.00

ESTIMATED REVENUE

Special Zone Assessment 2014-15	\$13,126.00	
Transfer From Reserve	\$ 0.00	
Transfer from General Fund	<u>\$ 0.00</u>	
Total Revenue		\$13,126.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$1,189.00
2012	\$297.00
2013	\$139.69
2014	\$436.67 (est.)

Zone 8 Information

Number of lots to be assessed		39
Special Landscape per Lot	\$	336.57
Street Lighting Cost Per Lot	\$	30.44
Citywide Street Maintenance Cost Per Lot*	\$	34.96
Park Assessment Per Lot	\$	59.42
CITYWIDE ONLY COST PER LOT	\$	461.39

*Includes Senior Center Bond Issue

**ZONE 9 – KENDICK (TRACT 32993)
HEARTHSTONE (TRACTS 35135, 35136, 35137)
(FUND 2420)**

ESTIMATED EXPENSES 2014-15

Water	\$ 1,500.00	
Repairs and Replacement	\$ 500.00	
Landscape Maintenance	\$ 4,100.00	
Personnel	\$ 2,162.00	
Transfer to Reserve	\$ 0.00	
Total Expenses		\$8,262.00

ESTIMATED REVENUE 2014-145

Special Zone Assessment 2014-15	\$ 8,262.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	\$ 0.00	
Total Revenue		\$8,262.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	(\$376.00)
2012	(\$104.00)
2013	(\$384.22)
2014	(\$488.28 est.)

Zone 9 Information

Number of lots to be assessed		<u>247</u>
Special Landscape Per Lot	\$	33.45
Street Lighting Cost Per Lot	\$	30.44
Citywide Street Maintenance – Cost Per Lot*	\$	34.96
Park Assessment Per Lot	\$	59.42
TOTAL COST PER LOT	\$	158.27

*Includes Senior Center Bond Issue

ZONE 10 – HEARTHSTONE DEL NORTE
(TRACTS 35128, 35139, 38393, 39932)
(FUND 2425)

ESTIMATED EXPENSES 2014-15

Other Services	\$ 5,300.00	
Water	\$ 9,400.00	
Electric	\$ 2,800.00	
Repairs and Replacements	\$ 500.00	
Landscape Maintenance	\$ 6,400.00	
Personnel	\$ 3,176.00	
Transfer to Reserve	\$ 0.00	
Total Expenses		\$27,576.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$ 27,576.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	\$ 0.00	
Total Revenue		\$27,576.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$9,547.00
2012	\$9,654.00
2013	\$4,194.33
2014	\$3,848.32 (est.)

Zone 10 Information

Number of lots to be assessed		187
LANDSCAPE COST PER LOT		
Base Cost (170)	\$	145.99
Surcharge Lots (17)	\$	162.21
Street Lighting Cost Per Lot	\$	30.44
Citywide Street Maintenance Cost Per Lot*	\$	34.96
Park Assessment Per Lot	\$	59.42

ZONE 10 – HEARTHSTONE DEL NORTE
(TRACTS 35128, 35139, 38393, 39932)
(FUND 2425)

TOTAL COST PER LOT

Base Cost	\$ 270.81
Surcharge Lots	\$ 287.03

*Includes Senior Center Bond Issue

**ZONE 11 – T.K.I. TOWNHOMES
(FUND 2428)**

ESTIMATED EXPENSES 2014-15 **\$0**

ESTIMATED REVENUE 2014-15 **(\$0)**

Zone 11 Information

Number of lots to be assessed		17
LANDSCAPE COST PER LOT	\$	0
Street Lighting Cost Per Lot	\$	30.44
Citywide Street Maintenance Cost Per Lot*	\$	34.96
Park Assessment Per Lot	\$	59.42
 TOTAL COST PER LOT		 \$ 124.82

*Includes Senior Center Bond Issue

**ZONE 13 – MIKE’S CENTER
(FUND 2426)**

ESTIMATED EXPENSES 2014-15

Parking Lot Sweeping	\$ 7,200.00	
Water	\$ 800.00	
Electric	\$ 7,128.00	
Repairs and Replacements	\$ 700.00	
Landscape Maintenance	\$ 2,200.00	
Personnel	\$ 2,600.00	
Transfer to Reserve	<u>\$ 0.00</u>	
Total Expenses		\$20,628.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$20,628.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	<u>\$ 0.00</u>	
Total Revenue		\$20,628.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	(\$629.00)
2012	(\$258.00)
2013	(\$806.56)
2014	(\$1,064.10 est.)

Zone 13 Information

Number of lots to be assessed 10
 LANDSCAPE COST PER LOT
TOTAL COST PER AREA: **\$0.09503/sq. ft.**

**ZONE 13 – MIKE’S CENTER
(FUND 2426)**

Parcel Number	Square Feet	2014/15 Landscape Assessment	Frontage Feet	2014/15 Citywide Street Maintenance	2014/15 Total Assessment
8530-018-027	22,216	\$2,111.24	89.21	\$223.67	\$2,334.91
8530-018-028	10,890	1,034.90	43.92	116.86	1,151.76
8530-018-029	11,325	1,076.24	46.08	121.65	1,198.19
8530-018-030	5,125	487.04	20.50	61.63	548.67
8530-018-031	5,125	487.04	20.50	61.63	548.67
8530-018-032	5,125	487.04	20.50	61.63	548.67
8530-018-033	23,087	2,194.01	80.00	201.95	2,395.96
8530-018-034	28,750	2,732.18	115.00	284.50	3,013.36
8530-018-054	17,860	1,697.28	72.00	183.08	1,880.36
8530-018-055	<u>87,560</u>	<u>8,321.03</u>	<u>333.00</u>	<u>798.63</u>	<u>9,119.66</u>
	217,063	\$20,628.00	840.71	\$2,115.23	\$22,743.65

**ZONE 14 – LAS BRISAS HOMES
(FUND 2431)**

ESTIMATED EXPENSES 2014-15

Water	\$ 3,200.00	
Electric	\$ 400.00	
Repairs and Replacements	\$ 2,689.00	
Landscape Maintenance	\$ 9,600.00	
Personnel	\$ 3,500.00	
Transfer to Reserve	\$ 468.00	
Total Expenses		\$19,857.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$ 19,857.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	\$ 0.00	
Total Revenue		\$19,857.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$3,334.00
2012	(\$453.00)
2013	\$1,934.33
2014	\$1,481.40 (est.)

Zone 14 Information

Number of lots to be assessed		41
Landscape Per Lot	\$	484.32
Street Lighting Cost Per Lot	\$	30.44
Citywide Street Maintenance*	\$	34.96
Park Assessment Per Lot	\$	59.42
TOTAL COST PER LOT	\$	609.14

*Includes Senior Center Bond Issue

**ZONE 15 – LAS POSADAS HOMES
(FUND 2432)**

ESTIMATED EXPENSES 2014-15

Water	\$ 2,100.00	
Electric	\$ 300.00	
Repairs and Replacements	\$ 1,355.00	
Landscape Maintenance	\$ 10,000.00	
Personnel	\$ 6,500.00	
Transfer to Reserve	\$ 489.00	
Total Expenses		\$20,744.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$20,744.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	\$ 0.00	
Total Revenue		\$20,744.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	(\$908.00)
2012	(\$620.00)
2013	(\$827.00)
2014	(\$1,446.57 est.)

Zone 15 Information

Number of lots to be assessed	46	
LANDSCAPE COST PER LOT	\$ 450.96	
Street Lighting Cost Per Lot *	\$ 30.44	
City-wide Street Maintenance	\$ 34.96	
Park Assessment Per Lot	\$ 59.42	
TOTAL COST PER LOT		\$ 575.78

*Includes Senior Center Bond Issue

**ZONE 16 – BUENA VISTA VILLAS
(FUND 2433)**

ESTIMATED EXPENSES 2014-154

Water	\$ 3,863.00	
Electric	\$ 300.00	
Repairs and Replacements	\$ 1,116.00	
Landscape Maintenance	\$ 6,400.00	
Personnel	\$ 3,700.00	
Transfer to Reserve	\$ 0.00	
Total Expenses		\$15,379.00

Estimated Revenue 2014-15

Special Zone Assessment 2014-15	\$ 15,379.00	
Transfer From Revenue	\$ 0.00	
Transfer From General Fund	\$ 0.00	
General Revenue		\$15,379.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$1,508.00
2012	\$1,038.00
2013	\$2,148.50
2014	\$3,186.40 (est.)

Zone 16 Information

Number of lots to be assessed		32
LANDSCAPE COST PER LOT	\$	480.59
Street Lighting Cost per Lot	\$	30.44
Citywide Street Maintenance*	\$	34.96
Park Assessment Per Lot	\$	59.42
TOTAL COST PER LOT	\$	605.41

*Includes Senior Center Bond Issue

**ZONE 17 – CITRUS COLLECTION
(FUND 2434)**

ESTIMATED EXPENSES 2014-15

Water	\$ 1,500.00	
Electric	\$ 1,500.00	
Repairs and Replacements	\$ 1,200.00	
Landscape Maintenance	\$ 4,400.00	
Personnel	\$ 2,900.00	
Transfer to Reserve	\$ 0.00	
Total Expenses		\$11,500.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$ 11,500.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	\$ 0.00	
Total Revenue		\$11,500.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	(\$83.00)
2012	\$665.00
2013	\$2,026.35
2014	\$2,691.54 (est.)

Zone 17 Information

Number of lots to be assessed		22
LANDSCAPE COST PER LOT	\$	522.73
Street Lighting Cost Per Lot	\$	30.44
Citywide Street Maintenance *	\$	34.96
Park Assessment Per Lot	\$	59.42
TOTAL COST PER LOT	\$	647.55

*Includes Senior Center Bond Issue

**ZONE 18 – RIDGECREST ESTATES
(FUND 2435)**

ESTIMATED EXPENSES 2014-15

Fuel Modification	\$ 4,500.00	
Water	\$ 5,000.00	
Electric	\$ 400.00	
Repairs and Replacements	\$ 500.00	
Landscape Maintenance	\$ 6,200.00	
Debris Basins/Storm Drain System***	\$ 2,000.00	
Observation/Oversight	\$ 1,500.00	
Reserve/Contingency (15%)	\$ 2,715.00	
Transfer to Reserve	<u>\$ 503.00</u>	
Total Expenses		\$22,318.00

ESTIMATED REVENUE 2014-15

Special Zone Assessment 2014-15	\$21,318.00	
Transfer From Reserve	\$ 0.00	
Transfer From General Fund	<u>\$ 1,000.00</u>	
Total Revenue		\$22,318.00

5-YEAR CAPITAL LANDSCAPE RESERVE FUND

Fiscal Year Ending	Balance
2010	\$0
2011	\$0
2012	\$0
2013	\$14,203.09
2014	\$14,203.09 (est.)

Zone 18 Information

Number of lots to be assessed		15
LANDSCAPE COST PER LOT		\$1,421.17
Street Lighting Cost per Lot		\$ 30.44
Citywide Street Maintenance *		\$ 34.96
Park Assessment Per Lot		\$ 59.42
TOTAL COST PER LOT		\$1,545.99

*Includes Senior Center Bond Issue

**Previously approved by Resolution 11-49.

***One half actual estimated cost, City general fund contributing one half for General benefit.

Duartean and Duartean Dispatch

Affiliated with SGV Newspaper Group
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West Covina, CA 91790
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5007700

CITY OF DUARTE
1600 E. HUNTINGTON DRIVE
DUARTE CA 91010

FILE NO. notice-public hearing-Tobacco It

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

STATE OF CALIFORNIA
County of Los Angeles

I am a citizen of the United States, and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of DUARTEAN and DUARTEAN DISPATCH, a newspaper of general circulation printed and published weekly in the City of Duarte, County of Los Angeles, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Los Angeles, State of California, on the date of July 6, 1948, Case Number POMO C986. The notice, of which the annexed is a true printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

5/31/2014

I declare under the penalty of perjury that the foregoing is true and correct.

Executed at West Covina, LA Co. California
On this 2nd day of June, 2014.



Signature

LFP-09/28/14

(Space below for use of County Clerk Only)

Legal No. 0010524538

**CITY OF DUARTE
CITY COUNCIL
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that pursuant to State Law, the City Council of the City of Duarte will hold a Public Hearing at 7:00 p.m., on Tuesday, June 10, 2014, in the Council Chambers, 1600 Huntington Drive, Duarte, California, to consider the following:

Municipal Code Amendment 14-1: The City Council will consider adoption of Municipal Code Amendment 14-1, a City initiated request to amend various sections of the Duarte Development Code including Table 2-5 of DDC Section 19.12.020 (Land Uses and Permit Requirements), DDC Chapter 19.60 (Standards for Specific Land Uses), and DDC Chapter 19.160 (Definitions), to regulate tobacco shops and the accessory retail sale of tobacco products, e-cigarette and vaping devices, and tobacco paraphernalia under specific locational, development, and operational standards; prohibit vaping establishments in all zones; and add new definitions related to the proposed amendments. On May 19, 2014, the Planning Commission approved Planning Commission Resolution 14-2, recommending the City Council adopt proposed Municipal Code Amendment 14-1.

Municipal Code Amendment 14-2: The City Council will consider Municipal Code Amendment 14-2, a City initiated request to amend Duarte Municipal Code (DMC) Chapter 5.09 (Tobacco Retailer License) to require a tobacco retailer license for the sale of electronic cigarettes, personal vaporizers and related products.

Municipal Code Amendment 14-4: The City Council will consider Municipal Code Amendment 14-4, a City initiated request to amend Duarte Municipal Code (DMC) Chapter 5.04 (Business Licenses and Regulations) to revise the grounds for revocation or suspension of business licenses; and to amend DMC Title 6 (Health and Sanitation) to add Chapter 6.21 (Psychoactive Bath Salts, Psychoactive Herbal Incense and Other Synthetic Drugs) to prohibit the sale, distribution and possession of synthetic drugs.

The proposed municipal code amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to the following exemptions, each of which is independently sufficient to support the City's environmental determination. (1) Title 14 California Code of Regulations Section 15061(b)(3), in that it can be seen with certainty that the adoption of the municipal code amendments propose no activity that may have a significant effect on the environment, (2) Title 14 California Code of Regulations Section 15301, in that the municipal code amendments involve no expansion of use of existing facilities, and (3) Title 14 California Code of Regulations Section 15378, in that the municipal code amendments are not a project

under CEQA because they will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. All of these exemptions apply to all of the proposed municipal code amendments because all of the proposed municipal code amendments are regulatory measures that do not involve a land use application.

Any interested party may appear in person, or by agent, and be heard. If this matter is challenged in Court, there will be a limit to only those issues that were raised at the Public Hearing described in this Notice, or in written correspondence delivered to the City Council at, or prior to, the Public Hearing. Written correspondence may be sent to Duarte City Hall, City Clerk's Office, at 1600 Huntington Drive, Duarte, CA 91010.

For further information regarding this application, please contact Irma Hernandez, Senior Planner in the Community Development Department, 1600 E. Huntington Drive, Duarte, CA, 91010, Monday through Thursday at (626) 357-7931, ext. 238, between the hours of 7:30 a.m. and 6:00 p.m.

María Akana
City Clerk

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CITY COUNCIL STAFF REPORT

Date: June 10, 2014

To: Honorable Mayor and City Council

From: Irma Hernandez, Senior Planner

Subject: **MUNICIPAL CODE AMENDMENT 14-1** (Ordinance 14-O-05): The City Council will consider a City initiated request to amend various sections of the Duarte Development Code (DDC) to regulate tobacco shops and the accessory retail sale of tobacco products, e-cigarette and vaping devices, and tobacco paraphernalia under specific locational, development, and operational standards; prohibit vaping establishments in all zones; and add new definitions related to the proposed amendments. On May 19, 2014, the Planning Commission approved Planning Commission Resolution 14-2, recommending the City Council adopt proposed Municipal Code Amendment 14-1.

MUNICIPAL CODE AMENDMENT 14-2 (Ordinance 14-O-06) - The City Council will consider a City initiated request to amend Duarte Municipal Code (DMC) Chapter 5.09 (Tobacco Retailer License) to require a tobacco retailer license for the sale of electronic cigarettes, vaping devices and related products.

MUNICIPAL CODE AMENDMENT 14-4 (Ordinance 14-O-04) - The City Council will consider a City initiated request to amend Duarte Municipal Code (DMC) Chapter 5.04 (Business Licenses and Regulations) to revise the grounds for revocation or suspension of business licenses; and to amend DMC Title 6 (Health and Sanitation) to add Chapter 6.21 (Psychoactive Bath Salts, Psychoactive Herbal Incense and Other Synthetic Drugs) to prohibit the sale, distribution and possession of synthetic drugs.

Location/Applicant Citywide, City Initiated Municipal Code Amendments

SUMMARY

On May 19, 2014, the Planning Commission held a public hearing and unanimously recommended the City Council adopt proposed Municipal Code Amendment (MCA) 14-1 (**Exhibit 1, Ordinance 14-O-05**). MCA 14-1 amends various sections of the Duarte Development Code to regulate tobacco shops, the accessory retail sale of tobacco products, e-cigarettes and

vaping devices, and tobacco paraphernalia under specific locational, development, and operational standards; prohibits vaping establishments in all zones; and adds new definitions related to the proposed amendments.

The City Council will also consider MCA 14-2, a City initiated request to amend DMC Chapter 5.09 to require a tobacco retailer license for the sale of electronic cigarettes, personal vaporizers and related products (**Exhibit 2, Ordinance 14-O-06**); and MCA 14-4, a City initiated request to amend Duarte Municipal Code (DMC) Chapter 5.04 to revise the grounds for revocation or suspension of business licenses and to add Chapter 6.21 to prohibit the sale, distribution and possession of synthetic drugs (**Exhibit 3, Ordinance 14-O-4**).

BACKGROUND

On July 23, 2013, the City Council adopted Urgency Ordinance No. 841, extending an initial June 25th moratorium which temporarily discontinued the establishment of any new smoke shops, new businesses selling paraphernalia and electronic cigarettes, or the granting of conditional use permits for tobacco smoking establishments in Duarte. The City Council adopted the moratorium to allow staff time to study the issues and to present to the Planning Commission and City Council a proposal for new or updated Municipal Code regulations and procedures. California Government Code Section 65858 allows cities and counties to adopt urgency ordinances to protect the public safety, health, and welfare of residents from a current and immediate threat.

When the moratorium was adopted, the City had experienced an influx of new tobacco shops establishments and during the moratorium staff has continued to receive a number inquiries from prospective proprietors wanting to establish new “tobacco shops”, “vaping lounges” and “electronic cigarette/vape shops” in Duarte.

Electronic cigarettes or “personal vaporizers” are battery-operated devices designed to be used with liquid nicotine (zero nicotine liquids are also available for personal vaporizers), and produce a vapor that resembles smoke. The act of inhaling this vapor is often referred to as “vaping” and stores that retail products used for “vaping” are often referred to as “vape shops”. “Vaping lounges” are generally defined as a fixed location dedicated for patrons to use electronic and/or battery powered devices. Smoke is not produced in “vaping” since there is no ignition process, only the heating process of the liquid that cause the white vapor that resembles smoke.

Currently, there are six tobacco shops operating in the City that were approved as “retail store” commercial uses (**Map 1**) prior to the moratorium. All existing tobacco shops are concentrated between the 1000-2200 blocks of Huntington Drive. These tobacco shops sell tobacco products (i.e. cigarettes), tobacco paraphernalia (i.e. “water pipes”), and most recently some shops have added the sales of electronic cigarettes (e-cigarettes) and other personal vaporizer devices.

Each existing shop was permitted as “retail store” use as defined in the Duarte Development Code. A retail store is permitted in all commercial zones by right without any study on the potential impacts to its surroundings or consideration for location or operational issues unlike other business that are only permitted with the approval of a conditional use permit, such as those that sell alcohol. A retail store (defined by the Duarte Development Code) is as an establishment which offers goods such as books, gifts, and clothing to the general public.

ANALYSIS

The current moratorium allowed staff time to research community concerns associated with tobacco shops and related uses including but not limited to (1) clarification and definition of electronic cigarette and personal vaporizer uses (2) sale of tobacco products to minors (3) access to display of tobacco or drug paraphernalia by youth (4) potential overconcentration of tobacco shops in Duarte (5) sales of products associated with illegal and synthetic drugs and (6) monitoring of tobacco shops operations.

The Duarte Municipal Code (DMC), including Title 19 Duarte Development Code (DDC) does not address new technology in the tobacco and nicotine consumption industry. The Duarte Development Code does not provide a definition for a “tobacco shop” or similar related uses, such as electronic cigarettes, personal vaporizers or vaping establishments and does not define locational or operational standards to address potential impacts to the community. The proposed amendments to the Duarte Development Code (MCA 14-1) will address these various Code deficiencies.

In addition to the proposed amendments to the Duarte Development Code (MCA 14-1), staff is proposing the City Council consider amendments to Title 5 (Business Licenses and Regulations) and the addition of a new chapter to address the public safety concerns related to synthetic drugs (described in MCA 14-2 and MCA 14-4). These proposed Municipal Code Amendments give the Public Safety Department the tools to enforce the prohibition on the sale, distribution, and possession of synthetic drugs in Duarte as required by State Law; defines the process for monitoring tobacco shops including those selling electronic cigarettes or vaping devices to prevent the establishment of “headshops” known to focus on the sale of drug paraphernalia; while extending the requirement for a tobacco retailer license to establishments engaged in the sale of electronic cigarettes, vaping devices and tobacco related accessory products. Each section below summarizes each proposed municipal code amendments described in the attached Ordinances (**Exhibits 1-3**).

Municipal Code Amendment 14-1, includes the following changes to the Duarte Development Code:

Amend Chapter 19.160 (“Definitions”) to Title 19 (“Development Code”) of the City of Duarte Municipal Code by adding the following new definitions:



Electronic cigarette and vaping accessories. Means atomizers, atomizer tanks, metal mesh, heating coils, atomizer base with battery thread, cartomizer, cartomizer tanks, polyfill material, cartomizer base with battery thread, clearomizer, drip tip, clearomizer tank, cords, wicks, clearomizer base with thread, cartridges, tips, electronic cigarette device batteries, electronic cigarette device chargers, and any other item specifically designed for the preparation, charging, or use with an electronic cigarette and device used for vaping.

Electronic cigarette and vaping device. An electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other tobacco derived product. "Electronic smoking and vaping device" includes any such electronic smoking or vaping device, whether manufactured, distributed, marketed, or sold as an electronic cigarette (e-cigarette), an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, personal product vaporizer (i.e. liquid, dry herb, oils, wax, etc.), electronic nicotine delivery system, e-hookah, or any other similar system. "Electronic smoking and vaping device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

Electronic Cigarette and Vaping Establishments. Clubs, lounges, or similar businesses that are dedicated for patrons to use electronic and/or battery powered devices.

Self-service display. The display or storage of products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

Tobacco paraphernalia. Any instrument or paraphernalia that is designed for the smoking or ingestion of lawful tobacco products including without limitation cigarette papers, cigarette wrappers, cigar wrappers, blunt wraps, pipes, holders, clips, and cigarette rolling machines. "Tobacco paraphernalia" excludes "drug paraphernalia" as that term is defined in Health and Safety Code Section 11364.5(d), as amended from time to time.

Tobacco product. Any substance containing tobacco or derived from tobacco and any substance used in electronic cigarette and vaping devices including but not limited to cigarettes, cigars, e-juice, e-liquid, e-nicotine, smoke juice, pipe tobacco, rolling tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, nicotine gel, nicotine lollipops, or any other preparation of tobacco; and any product or formulation

of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body. "Tobacco products" do not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

Tobacco shop. A retail establishment that primarily sells tobacco products, tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories. A "tobacco shop" does not include any type of "tobacco smoking establishment" or "electronic cigarette and vaping establishment."

Vaping. Inhaling vapor from an electronic cigarette and vaping device. "Vaping" produces vapor, not smoke.

It is also proposed that Section 19.12.020 ("Land Uses and Permit Requirements") of Chapter 19.12 ("Commercial Uses") to Title 19 ("Development Code") of the City of Duarte Municipal Code be amended as follows (deletion shown as strike out and addition as underline):

TABLE 2-5 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Zone Permit Requirements			
	P = Permitted By Right A = Permitted as Accessory Use MUP = Minor Use Permit CUP = Conditional Use Permit --- = Not Allowed			
Land Use	C-P	C-G	C-F	Specific Use Regulations
Retail Trade Uses				
<u>Tobacco Shop</u>	---	<u>MUP</u>	<u>MUP</u>	<u>19.60.165</u>
<u>Tobacco Product, Electronic-Cigarette and Vaping Devices, Electronic Cigarette and Vaping Accessories, and Tobacco Paraphernalia Sales</u>	---	<u>A</u>	<u>A</u>	<u>19.60.167</u>
Service Uses - Restricted				
Tobacco Smoking Establishments		CUP		
<u>Electronic Cigarette and Vaping Establishments</u>	---	---	---	

The proposed amendments to Table 2-5 will clarify that tobacco shops, which by definition will include businesses that sell electronic cigarettes, personal vaporizers, are allowed in the



Commercial General (C-G) and Commercial Freeway (C-F) zones subject to the minor use permit approval process. The minor use permit (MUP) process is described in Duarte Development Code Section (DDC) Chapter 19.114 and requires that the applicant first demonstrate that the proposed use and the location will meet the new proposed standards for a tobacco shop land use as specified in DDC Chapter 19.60 (Standards for Specific Land Uses and Activities).

One of the main differences between a minor use permit and a conditional use permit is that a minor use permit may be approved by the Community Development Director whereas the Conditional Use Permit is required to go before the Planning Commission. The use of the MUP process is proposed instead of a CUP since the proposed specific land use standards (described below) for tobacco shops define the locational and operational standards for the use which have been crafted to lessen the possibility of potential impacts to the community. Under a MUP, the Planning Division under the direction of the Community Development Director provides a public notice; if a public hearing is requested by the public, and the Director finds the request has merits based on the provision of evidence that the request cannot meet the required findings, then the MUP is elevated up to the Planning Commission for review with a publicly noticed hearing. If no public hearing is requested, then the Community Development Director makes the final decision on the MUP and that decision may be appealed and heard by the Planning Commission.

Section 19.60.165 (“Tobacco Shops”) of Chapter 19.60 (“Standards for Specific Land Uses and Activities”) to Title 19 (“Development Code”) of the City of Duarte Municipal Code will be added to the Duarte Development Code.

This purpose of this new section is to provide concentration, separation, spacing and distance, and operational standards for tobacco shops in the City of Duarte in order to maintain the City's character, the diversity and vitality of the community's commercial areas, and the quality of life of Duarte residents.

Each new tobacco shop will be required to be located a minimum of six hundred feet away from any parcel of land that contains any one or more of the following specific land uses: a tobacco shop; a private or public preschool, kindergarten, elementary, middle, or high school; a library open to the public; a youth center; or a public playground/plaza/park/recreation area. It is also proposed that a standard be set to limit the maximum number of tobacco shops within the City of Duarte to no more than one tobacco shop for each 2,500 inhabitants of the City (or fraction thereof). These proposed separation and distancing standards for new tobacco shop uses are intended to minimize access of tobacco shop products to youth and prevent an overconcentration of tobacco shops in Duarte. By setting a maximum ratio of one tobacco shop per 2,500 inhabitants in the City, the City will essentially set the limit to no more than eight tobacco shops in Duarte, based on Duarte's current population.



Tobacco shops will also be required to adhere to a limited display of paraphernalia, with no more than five percent of the gross floor area dedicated to tobacco paraphernalia and no self-service access to the tobacco products, tobacco paraphernalia, electronic cigarettes and vaping devices and electronic cigarette and vaping accessories and tobacco paraphernalia products. The limitation of the floor area is proposed to prevent tobacco shops from operating as “headshops” which concentrate on the sale of devices that are known to be used for ingesting illegal drugs (drug paraphernalia) but display the merchandise under the guise and label of “tobacco paraphernalia”. The proposal to limit public access to paraphernalia is also consistent with California Health and Safety Code Section 11364.5. The requirement to require clerk assistance and limited access for viewing or purchasing tobacco products or tobacco paraphernalia will additionally discourage the unauthorized access to tobacco products by minors.

The proposed code amendments will result in all six existing tobacco locations in Duarte becoming “non-conforming uses” (**Map 1**) due to a lack of a minor use permit and five of the six tobacco shops will not comply with the minimum 600’ separation and distancing requirements. The non-conforming tobacco shops will be allowed to continue in the approved locations without having to meet the separation and distancing requirements. However, the non-conforming use status does not legalize any existing non-compliance with business licensing requirements in Duarte Municipal Code Chapters 5.04, 5.08, 5.09 or other operational standards listed in proposed Section 19.60.165 (E)(5)-(8), such as limited floor area for the sale and display of tobacco paraphernalia.

Municipal Code Amendment 14-2 (**Exhibit 2, Ordinance 14-O-06**), revises Duarte Municipal Code Chapter 5.09 (Tobacco Retailer License) requiring a tobacco retailer license for establishments engaged in the sale of electronic cigarettes, personal vaporizers and associate accessory products. All six existing tobacco shops in Duarte already have tobacco retailer licenses. Chapter 5.09 includes existing provisions for tobacco sales compliance monitoring using peace and code enforcement officers and youth decoys from time to time. The proposed amendment to Chapter 5.09 adds language requiring a floor plan of the business establishment showing compliance with municipal code requirements and requires an inspection of the establishment by Public Safety personnel prior to license renewal or issuance of a new license. The new requirement provides an additional opportunity to educate the applicant on the maximum permitted floor area dedicated to tobacco paraphernalia sales (maximum five percent of floor area) and creates a timeframe by which to remedy any nonconformities identified through the inspection process. Finally, each non-conforming use would be subject to DDC Article 6 (Nonconformities) which limits expansion of a legal non-conforming use under section 19.96 (Nonconforming uses).

Section 19.60.167 (“Accessory retail sales of tobacco products, electronic cigarette and vaping devices, electronic cigarette and vaping accessories and tobacco paraphernalia”) of Chapter



19.60 (“Standards for Specific Land Uses and Activities”) to Title 19 (“Development Code”) of the City of Duarte Municipal Code will be added to the Duarte Development Code.

The purpose of this section is to provide operational standards for land uses associated with the accessory retail sales of tobacco products, electronic cigarette and vaping devices, electronic cigarette and vaping accessories and tobacco paraphernalia sales in the City of Duarte in order to maintain the City's character, the diversity and vitality of the community's commercial areas, and the quality of life of Duarte residents.

This section is different from proposed section 19.60.165 (Tobacco Shops) since it will allow accessory retails sale of tobacco products, electronic cigarette and vaping devices, electronic cigarette and vaping accessories and tobacco paraphernalia in the C-G and C-F zones by right, subject to meeting the operational standards. This section will apply to any existing or new business that operates under a non-tobacco use business license and provides accessory product sales as defined per proposed DDC Section 19.60.167. Examples of these existing businesses include, ARCO AM/PM, Huntington 76 Carwash, Mobil Gas Station, Tropicana Market, and approximately 20 other businesses in Duarte that have a current tobacco retailer license.

The proposed operational standards require that “Accessory Products” be displayed away from direct view from public right of way and internal sidewalks or areas accessible to the public, self-service displays are not permitted, and limits the display area to no more than five percent of the floor area for all accessory products. There are no proposed distance or separation requirements for this accessory use.

Vaping Establishments

A “vaping establishment” provides a fixed “vaping” location for use by business patrons, either for no cost or for a cost to the patron. A vaping establishment serves as a place for patron to come “vape” using an e-cigarette or personal vaporizer device. Smoke is not produced in “vaping” since there is no ignition process, only the heating process of the liquid that causes the white vapor (“vape”) that resembles smoke. This type establishment would be similar to a location where patrons smoke cigarettes, known as smoking lounges. It is possible to sell electronic cigarettes and personal vaporizers as a “tobacco shop” use without being a “vaping establishment.”

Staff proposes to prohibit “vaping establishments” in all zones in order to protect the public safety, health, and welfare of residents from a current and immediate threat. Planning staff has consulted with Public Safety staff on the proposed prohibition of “vaping establishments”. It has been determined that the use would be a detrimental to public safety of the community and that it would be impossible for Pubic Safety personnel to monitor that patrons of vaping establishments are actually “vaping” legal, tobacco derived products. Personal vaporizer

devices are flexible instruments that are not pre-filled with nicotine. The personal vaporizers can be filled with any type of liquid (potentially illegal substances) and can even be adapted to for use with dry herbs. Furthermore, e-cigarette, e-liquid and pre-filled nicotine cartridge manufacturing remains unregulated by the FDA. There are no legal requirements for ingredient labeling or manufacturing of liquid nicotine derived products that are currently available for use with vaping devices.

On April 24, 2014, the Federal Drug Administration (FDA) issued a proposed rule that would extend the FDA's authority to regulate additional types of tobacco products, such as electronic cigarettes. The FDA is accepting public comments on the proposed rule for 75 days beginning April 25, 2014 and more developments on this issue are expected in the months to come. There are many unknowns and little reliable science on the effects of chemicals contained in the nicotine liquids. There are some preliminary studies indicating that chemicals considered harmful by the Food and Drug Administration such as nickel, lead and chromium have been detected in e-cigarettes.

Tobacco Smoking Establishments

There are no proposed changes for tobacco smoking establishments. There is currently no approved tobacco-smoking establishment in Duarte. Any proposal for tobacco smoking establishment in a C-G zone would require the review and approval of a conditional use permit by the Planning Commission pursuant to DDC 19.12.020 (Land Use and Permit Requirements).

Unlike electronic cigarettes, the manufacturing, distribution, and marketing of tobacco products *is* regulated by the U.S. Food and Drug Administration (FDA), pursuant to The Family Smoking Prevention and Tobacco Control Act, commonly referred to as the Tobacco Control Act. The Tobacco Control Act was signed on June 22, 2009, ushering in a new era of tobacco control by recognizing that almost all new users of tobacco products are under age 18, the minimum legal age to purchase and that there was a need to protect public health.

Amendment to Duarte Municipal Code (DMC) Chapter 5.04 (Business Licenses and Regulations) and Add DMC Chapter 6.21 Addressing the Prohibition of Synthetic Drugs In Duarte

Municipal Code Amendment 14-2 (**Exhibit 2, Ordinance 14-O-06**) amends DMC Chapter 5.04 (Business Licenses and Regulations) and adds DMC Chapter 6.21 to address synthetic drugs in the City of Duarte. DMC Chapter 6.21 prohibits the possession, distribution and sale of synthetic drugs. DMC Chapter 5.04 amendments would create a process to revoke the business license of any business found to violate DMC Chapter 6.21.

According to a comprehensive White House report (June, 2014) synthetic drugs are extremely dangerous and are gaining popularity at an alarming rate, especially among young people. A



September 2013 report by the Office of National Drug Control Policy concluded that traditional drug tests administered to arrestees, parolees and probationers, and drug court participants failed to detect emerging synthetic drugs.

These dangerous synthetic drugs have been known to be widely available in stores, despite the State of California's attempt to ban such drugs under Health & Safety Code Sections 11357.5 and 11375.5. On July 9, 2012, the President signed into law the Synthetic Drug Abuse Prevention Act of 2012 (SDAPA). The Synthetic Drug Abuse Prevention Act of 2012 bans synthetic marijuana, "bath salts" and other synthetic drugs. Often marketed as legal substances, synthetic drugs are often sold in small pouches or packets over the Internet, in tobacco and smoke shops, drug paraphernalia shops, gas stations, and convenience stores. A continuous challenge by law enforcement is that manufacturers of synthetic drugs change the drug's chemical composition in order to keep these drugs off the Federal List of Schedule (illegal) Drugs. The Drug Enforcement Agency estimates that five different synthetic drugs are introduced to the US market every month.

Many communities throughout California and across the United States have recognized the danger of synthetic drugs and their potential lethal consequences. The inclusion of Chapter 6.21 into the Duarte Municipal Code demonstrates the City's commitment to protect the public health, safety, and welfare of the community and amendment to Chapter 5.04 (Licenses and Permits Required) creates a process for holding businesses accountable that violate DMC Chapter 6.21. The proposed amendments to Chapter 5.04 would create a process by which to revoke a business license when it is being used in contravention of any Federal, State, or local laws, such as a violation of the proposed synthetic drug prohibition ordinance. On May 19, 2014, the Planning Commission had an opportunity to review and comment on the proposed ordinance. The Commission's comments have been addressed in this report and/or attached ordinance.

Amendment to Duarte Municipal Code (DMC) Chapter 5.09 (Tobacco Retailer License)

Municipal Code Amendment 14-4 (**Exhibit 3, Ordinance 14-O-04**) amends DMC Chapter 5.09, requiring tobacco retailer license to sell electronic cigarettes and vaping devices, requires a plan be submitted to Public Safety personnel demonstrating compliance with all applicable sections of the code, and requires an inspection of the business establishment prior to license renewal or issuance. The City has a substantial interest in requiring a tobacco retailer license for the sale of electronic cigarettes and vaping devices and associated retail sales of associated accessories because the widespread presence of electronic cigarettes and vaping devices in retail settings has similar impacts as traditional tobacco products. On May 19, 2014, the Planning Commission had an opportunity to review and comment on the proposed ordinance. The Commission's comments have been addressed in this report and/or attached ordinance.

RECOMMENDATION

Staff recommends that City Council hold a public hearing, and review, consider and approved the proposed Ordinances in the following order:

- (1) Review, consider and approve **Municipal Code Amendment 14-4 (Exhibit 3, Ordinance 14-O-04)**; to add Chapter 6.21 to prohibit the possession, distribution and sale of synthetic drugs and amend Chapter 5.04 to create a process to revoke the business license of any business found to violate DMC Chapter 6.21; and
- (2) Review, consider and approve **Municipal Code 14-1 (Exhibit 1, Ordinance 14-O-05)** to amend various sections of the Duarte Development Code Chapter 19, to regulate tobacco, electronic cigarette, personal vaporizer, electronic cigarette and vaping accessories and tobacco paraphernalia retail uses in specific zones under specific locational, development, and operational standards; prohibit vaping establishments in all zones; and add new definitions related to the proposed amendments; and
- (3) Review, consider and approve **Municipal Code Amendment 14-2 (Exhibit 2, Ordinance 14-O-06)** to amend Chapter 5.09 to require a tobacco retailer license for the sale of electronic cigarettes, vaping devices and related products.

ATTACHMENTS

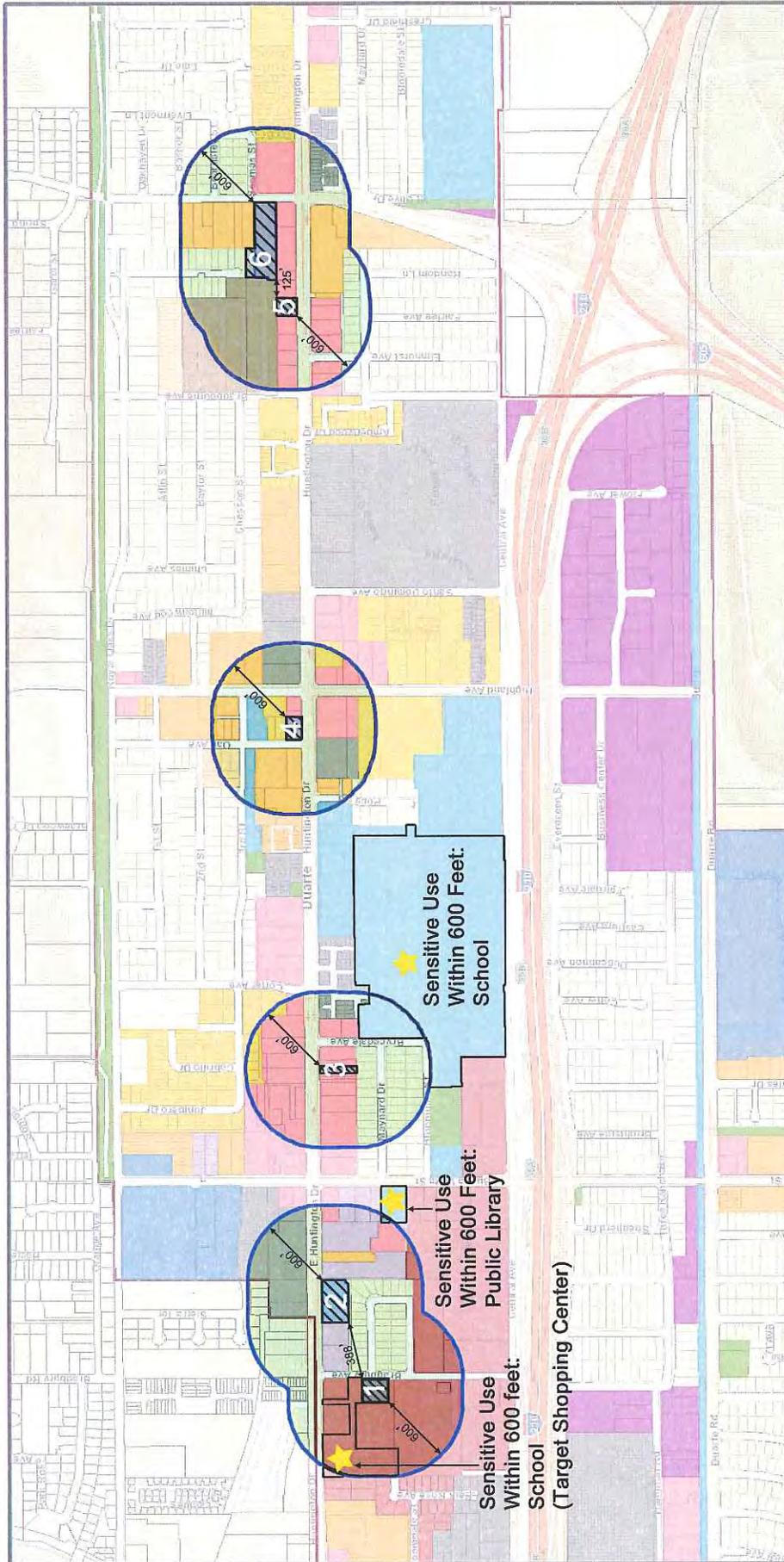
Map 1 - Existing Tobacco Shops in Duarte

Exhibit 1 - Ordinance 14-O-05, Municipal Code Amendment 14-1

Exhibit 2 - Ordinance 14-O-06, Municipal Code Amendment 14-2

Exhibit 3 - Ordinance 14-O-04, Municipal Code Amendment 14-4





Map 1

Existing Tobacco Retailers in Duarte ("Tobacco Shops")

1. Smoke N' Stuff - 1094 Huntington (Mountain Vista Plaza)
2. Smoke Shop - 1144 Huntington (Near KFC Restaurant)
3. Huntington Tobacco - 1398 Huntington (Mikes Food Center)
4. Tobacco Land Plus - 1735 Huntington (NEC Huntington/Oak)
5. Tony's Smoke & Gift - 2165 Huntington (Former Keg N Cork Bar)
6. Cig Mart - 2237 Huntington (Fresh & Easy Center)

Summary: This map depicts the location of existing tobacco shops in Duarte and a 600' radius buffer measured around the property boundary of each tobacco shop. Three tobacco shops are located within 600 feet of a Sensitive Use. Two pairs of tobacco shops are located within 600' of each other (tobacco shop 1 and 2 approximately 388' a part; tobacco shop 5 and 6 approximately 125' a part).

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE,
CALIFORNIA TO:

(1) AMEND TABLE 2-5, "ALLOWED USES AND PERMIT REQUIREMENTS," OF SECTION 19.12.020, "LAND USES AND PERMIT REQUIREMENTS," OF CHAPTER 19.12, "COMMERCIAL ZONES (C-P, C-G, C-F)," OF ARTICLE 2, "ZONES, ALLOWABLE USES, AND DEVELOPMENT STANDARDS," TO TITLE 19, "DEVELOPMENT CODE," OF THE DUARTE MUNICIPAL CODE;

(2) ADD SECTION 19.60.165, "TOBACCO SHOPS," OF CHAPTER 19.60, "STANDARDS FOR SPECIFIC LAND USES AND ACTIVITIES," OF ARTICLE 4, "STANDARDS FOR SPECIFIC LAND USES AND ACTIVITIES," TO TITLE 19, "DEVELOPMENT CODE," OF THE DUARTE MUNICIPAL CODE;

(3) ADD SECTION 19.60.167, "ACCESSORY RETAIL SALES OF TOBACCO PRODUCTS, ELECTRONIC CIGARETTE AND VAPING DEVICES, AND ASSOCIATED PARAPHERNALIA," OF CHAPTER 19.60, "STANDARDS FOR SPECIFIC LAND USES AND ACTIVITIES," OF ARTICLE 4, "STANDARDS FOR SPECIFIC LAND USES AND ACTIVITIES," TO TITLE 19, "DEVELOPMENT CODE," OF THE DUARTE MUNICIPAL CODE; AND

(4) AMEND CHAPTER 19.160, "DEFINITIONS," OF ARTICLE 9, "DEFINITIONS," TO TITLE 19, "DEVELOPMENT CODE," OF THE DUARTE MUNICIPAL CODE;

TO REGULATE TOBACCO SHOPS AND THE ACCESSORY RETAIL SALE OF
TOBACCO PRODUCTS, ELECTRONIC CIGARETTE AND VAPING DEVICES,
AND ASSOCIATED PARAPHERNALIA (MCA 14-1)

WHEREAS, the City Council of the City of Duarte is committed to protecting the public health, safety, and welfare of the community, and to meet these goals it is necessary for the City Council to adopt measures, from time to time, to meet threats to the public health, safety, and welfare; and

WHEREAS, the overconcentration of tobacco and electronic cigarette retailers in an area and the proximity of these retailers near residences or areas frequented by youth threatens the public health, safety, and welfare; and

WHEREAS, if adopted, this Ordinance would amend the Duarte Development Code to regulate the location, spacing and concentration of tobacco shops and provide

operational standards for all tobacco retailers; prohibit vaping establishments in all zones, and add new definitions associated with the proposed amendments; and

WHEREAS, the Planning Commission conducted a duly-noticed public hearing on May 19, 2014, pursuant to Development Code section 19.142.040 to consider public testimony on the proposed amendments to the Development Code and considered all relevant public comments; and

WHEREAS, after careful study, the Planning Commission recommended approval of the proposed amendments to the Development Code; and

WHEREAS, the City Council conducted a duly-noticed public hearing on June 10, 2014, pursuant to Development Code section 19.142.050 to consider public testimony on the proposed amendments to the Development Code and has considered all relevant public comments; and

WHEREAS, the record of proceedings on which the City Council's decision is based is located at City Hall for the City of Duarte, located at 1600 E Huntington Drive, Duarte, California and the custodian of record of proceedings is the City Clerk.

THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS FOR DEVELOPMENT CODE AMENDMENTS

The City Council of the City of Duarte makes the following findings:

- (1) The proposed amendments to the Development Code are consistent with the General Plan and any applicable specific plan.
 - (A) General Plan, Land Use Element Goal 1, Objective 1 to improve on Duarte's balance of commercial activities and improve the balance of land uses.
 - (B) General Plan, Land Use Element Goal 2, to develop compatible and harmonious land uses by providing a mix of uses consistent with projected future social, environmental, and economic conditions and Policy 2.1.2 to ensure that uses and activities along Huntington Drive should reflect economic market conditions and incompatible uses and activities be eliminated.
 - (C) General Plan, Land Use Element Goal 3, Objective 3.1 to improve the land mix in selected areas so that it generates synergy and convenience to patrons and residents.
- (2) The proposed amendments to the Development Code will not be detrimental to the public interest, health, safety, convenience, or welfare of

the City for the following reasons:

- (A) A high density of tobacco retailers has been associated with increased smoking rates, particularly among youth. (Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210-214.)
- (B) A study of California neighborhoods found that the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day. (Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210-214.)
- (C) Studies show that the number and density of tobacco retailers serving areas of economic disadvantage are disproportionately high. (Novak SP, Reardon SF, Raudenbush SW, et al. 2006. "Retail Tobacco Outlet Density and Youth Cigarette Smoking: A Propensity Modeling Approach." *American Journal of Public Health* 96: 670-676.)
- (D) If tobacco retailers concentrate in a particular geographic area, market conditions could impact community health. For example, competition among retailers can lead to special promotions such as sales or discounts that drive additional demand and increase smoking by youth, who are particularly sensitive to the cost of tobacco products. (Feighery EC, Schleicher NC, Boley Cruz T, et al. 2008. "An Examination of Trends in Amount and Type of Cigarette Advertising and Sales Promotions in California Stores, 2002–2005." *Tobacco Control*. 17(2): 93-98.) And, manufacturers may offer discounts on their products more frequently in saturated markets. (Chaloupka FJ, Cummings KM, Morley CP, et al. 2002. "Tax, Price and Cigarette Smoking: Evidence from the Tobacco Documents and Implications for Tobacco Company Marketing Strategies." *Tobacco Control*. 11: i62-i72.)
- (E) The Institute of Medicine recommends restricting the number and location of tobacco outlets to discourage tobacco use and to reduce tobacco-related disease. (Institute of Medicine. 2007. *Ending the Tobacco Problem: A Blueprint for the Nation*. Washington, DC: National Academies Press, p. 307, www.iom.edu/Reports/2007/Ending-the-Tobacco-Problem-A-Blueprint-for-the-Nation.aspx)

- (F) Over 8 percent of all tobacco retailers statewide were witnessed unlawfully selling to minors in 2012, and tobacco stores (defined as businesses in which at least 80 percent of merchandise was tobacco products) sold to minors at a much higher rate than the statewide average, as high as 20.5 percent.
- (G) The density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates. (Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210-214.)
- (H) A study of California high school students found that the prevalence of smoking was higher at schools in neighborhoods with five or more tobacco outlets than at schools in neighborhoods without tobacco outlets. (Henriksen, L., Feighery, E., Schleicher, N., Cowling, D., Kline, R., Fortmann, S. *Is Adolescent Smoking Related to the Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?* *Preventive Medicine*, 2008. 47(2): p. 210-214.)
- (I) A California study found that the density of tobacco retailers near schools was positively associated with the prevalence of students reporting experimental smoking. (McCarthy WJ, Mistry R, Lu Y, et al. 2009. "Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students." *American Journal of Public Health*, 99(11): 2006-2013.)
- (J) Exemptions from smokefree air laws have facilitated the emergence of niche tobacco markets, such as tobacco shops. (Maher JE, Morris DS, Girard KE, et al. 2012. "Consequences of Clean Indoor Air Exemptions in Oregon: The Hookah Story." *Tobacco Control*.)
- (K) The widespread presence of tobacco in retail settings normalizes the use of tobacco products and triggers smoking urges among former smokers and those attempting to quit. (McDaniel PA and Malone RE. 2011. "Why California Retailers Stop Selling Tobacco Products, and What Their Customers and Employees Think About It When They Do." *BMC Public Health* 11: 848.)
- (L) Several California cities require compliance with State drug

paraphernalia laws as a condition of obtaining and maintaining approvals. American Lung Association in California, Center for Tobacco Policy and Organizing. 2012. *Matrix of Strong Local Tobacco Retailer Licensing Ordinances*, www.center4tobaccopolicy.org/CTPO/_files/_file/Matrix%20of%20Strong%20Local%20Tobacco%20Retailer%20Licensing%20Ordinances%20June%202012.pdf

- (M) There are approximately 36,700 licensed tobacco retailers in California — one for every 254 children. (California Board of Equalization. Licensed Tobacco Retailers in California, 2011; 20 U.S. Census Bureau. American Fact Finder: California - Population Under 18 Years by Age, California . 2010.)
 - (N) Many items tobacco items are commonly known to be drug paraphernalia, including bongs and pipes used to smoke methamphetamine and other illicit and synthetic drugs, and claim that such items are intended for tobacco or tobacco derived nicotine use (National Drug Intelligence Center. Department of Justice. Drug Paraphernalia Fast Facts, <http://www.justice.gov/archive/ndic/pubs6/6445/6445p.pdf>.)
 - (O) Retailers that have a state license to sell alcohol for consumption off the premises must be approved through a state application process. Factors examined upon such applications—including whether there is an overconcentration of retailers in an area and whether a retailer is too close to residences or areas frequented by youth—are also relevant to whether a retailer should be granted a tobacco retailer license.
- (3) The proposed amendments to the Development Code are internally consistent with other applicable provisions of this Development Code.
- (A) The proposed amendments to various sections in Chapter 19 will ensure continued internal consistency in the Development Code.
 - (B) The proposed specific use regulations in Chapter 19.60 and references to specific land use regulations in Section 19.12.020 will ensure continued internal consistency in the Development Code.
 - (C) The proposed definitions added to Chapter 19.160 related to tobacco uses and paraphernalia will ensure continued clarity and consistency in the Development code.

SECTION 2. TABLE 2-5 OF SECTION 19.12.020 AMENDED

Table 2.5 (“Allowed Uses and Permit Requirements”) of Section 19.12.020 (“Land Uses and Permit Requirements”) of Chapter 19.12 (“Commercial Zones (C-P, C-G, C-F)”) of Article 2 (“Zones, Allowable Uses, and Development Standards”) to Title 19 (“Development Code”) of the City of Duarte Municipal Code is amended as follows (deletion shown as strike out and addition as underline):

TABLE 2-5 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Zone Permit Requirements			
	P = Permitted By Right A = Permitted as Accessory Use MUP = Minor Use Permit CUP = Conditional Use Permit --- = Not Allowed			
Land Use	C-P	C-G	C-F	Specific Use Regulations
Retail Trade Uses				
Tobacco Shop	---	<u>MUP</u>	<u>MUP</u>	<u>19.60.165</u>
Tobacco Product, Electronic Cigarette and Vaping Devices, <u>Electronic Cigarette and Vaping Accessories, and Tobacco Paraphernalia Sales</u>	---	<u>A</u>	<u>A</u>	<u>19.60.167</u>
Service Uses - Restricted				
Tobacco Smoking Establishments		CUP		
<u>Electronic Cigarette and Vaping Establishments</u>	---	---	---	

SECTION 3. SECTION 19.60.165 ADDED

A new Section 19.60.165 (“Tobacco Shops”) is added to Chapter 19.60 (“Standards for Specific Land Uses and Activities”) of Article 4 (“Standards for Specific Land Uses and Activities”) to Title 19 (“Development Code”) of the Duarte Municipal Code to read, in its entirety as follows:

19.60.165 Tobacco Shops

- A. Purpose. The Section provides concentration, separation, spacing and distance, and operational standards for tobacco shops in the City of Duarte in order to maintain the City's character, the diversity and vitality of the community's

commercial areas, and the quality of life of Duarte residents.

- B. **Applicability.** The provisions in this Section shall apply to tobacco shops where allowed in compliance with Article 2 (Zones, Allowable Uses, and Development Standards) and the standards set forth in this Section.
- C. **Nonconforming Tobacco Shops.** Tobacco shops that do not comply with the concentration, separation, spacing and distance requirements set forth in Section 19.60.165(E)(1)–(4), but which were legally in existence on the date this Section was adopted, shall, upon the effective date of this Section, acquire the status of a legally nonconforming use and shall be allowed to remain in existence subject to the provisions of this Section and Article 6 (Nonconformities) of this Code. The Director of Community Development shall create and maintain a list of the tobacco shops that were legally in existence on the date this Section was adopted. Notwithstanding the foregoing, nonconforming use status does not authorize non-compliance with the operational requirements set forth in Section 19.60.165(E)(5)–(8), the Business License requirements set forth in Chapters 5.04 and 5.08 of the Duarte Municipal Code, and the Tobacco Retailer License requirements set forth in Chapter 5.09 of the Duarte Municipal Code.
- D. **No person shall cause or permit the creation, operation, or intensification of any of any tobacco shop use without first obtaining and maintaining a minor use permit pursuant to Chapter 19.114 (Conditional Use Permits and Minor Use Permits).**
- E. **City Standards.** Each tobacco shop shall comply with the all of the following standards.
 - 1. A tobacco shop shall not be located within six hundred (600) feet of any parcel of land that contains any one or more of the following land uses:
 - a. another tobacco shop;
 - b. a private or public preschool, kindergarten, elementary, middle, or high school;
 - c. a library open to the public;
 - d. a youth center; and
 - e. a public playground/plaza/park/recreation area.
 - 2. The maximum number of tobacco shops within the City

of Duarte shall not exceed one (1) tobacco shop for every twenty-five hundred (2,500) inhabitants of the City.

3. For the purposes of this subsection, the total number of inhabitants of the City shall be determined by the most current published data available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the application is filed.
 4. The distance between any structure subject to a tobacco shop use and any other structure with a tobacco shop use or sensitive use set forth in Section 19.60.165(E)(1)(a)–(e) shall be measured in a straight line, without regard to intervening structures, from the closest property line of the structure subject to the tobacco shop use to the closest property line of the other structure with a tobacco shop or sensitive use.
 5. A tobacco shop located in a building sharing one or more common walls or sharing common attic space with another retail or commercial establishment shall not allow tobacco product use on the premises in a manner that interferes with any other establishment’s use or enjoyment of the premises.
 6. Tobacco products and tobacco paraphernalia shall be kept and displayed in a secure and locked enclosure, which can only be accessed with the assistance of a clerk. Self-service displays of tobacco products and tobacco paraphernalia are prohibited.
 7. Tobacco products, tobacco paraphernalia, electronic cigarettes and vaping devices, and electronic cigarette and vaping accessories shall not be visible through storefront windows.
 8. The area dedicated for the sale of tobacco paraphernalia shall not exceed five (5) percent of gross floor area.
- F. Sale of Drug Paraphernalia. Tobacco retailers should be aware that the sale of “drug paraphernalia” (as that term is defined in Health and Safety Code Section 11364.5(d)) is regulated by the California Uniform Controlled Substances Act (specifically, Health and Safety Code Sections 11364 to 11376.5), as amended from time to time.

- G. Revocation of a Business and/or Tobacco Retailer License. In addition to any other penalty authorized by law or the Duarte Municipal Code, the business license and/or tobacco retailer license of any business that violates any provision of this Section, the California Uniform Controlled Substances Act (including without limitation Health and Safety Code Sections 11364 to 11376.5), as amended from time to time, or any other local, State or Federal law or regulation may be revoked pursuant to the procedure set forth in Sections 5.04.250 and 5.09.120 of the Duarte Municipal Code.

SECTION 4. SECTION 19.60.167 ADDED

A new Section 19.60.167 (“Accessory Retail Sales of Tobacco Products, Electronic Cigarette and Vaping Devices, Electronic Cigarette and Vaping accessories and Tobacco Paraphernalia”) is added to Chapter 19.60 (“Standards for Specific Land Uses and Activities”) of Article 4 (“Standards for Specific Land Uses and Activities”) to Title 19 (“Development Code”) of the Duarte Municipal Code to read, in its entirety as follows:

19.60.167 Accessory retail sales of tobacco products, electronic cigarette and vaping devices, electronic cigarette and vaping accessories, and tobacco paraphernalia.

- A. Purpose. The Section provides operational standards for land uses associated with the accessory retail sale of tobacco products, electronic cigarette and vaping devices, electronic cigarette and vaping accessories, and tobacco paraphernalia in the City of Duarte in order to maintain the City's character, the diversity and vitality of the community's commercial areas, and the quality of life of Duarte residents.
- B. Applicability. The provisions in this Section shall apply to the accessory retail sale of tobacco products, electronic cigarette and vaping devices, electronic cigarette and vaping accessories, and tobacco paraphernalia where allowed in compliance with Article 2 (Zones, Allowable Uses, and Development Standards) and the standards set forth in this Section.
- C. City Standards. Accessory retail sales of tobacco products, electronic cigarette and vaping devices, electronic cigarette and vaping accessories, and tobacco paraphernalia (collectively, “Accessory Products”) shall comply with all of the following standards.
 - 1. The sale of Accessory Products shall be an accessory

use (i.e., not the primary use) of the establishment.

2. The primary use must be permitted or conditionally permitted in the zone in which the establishment is located.
 3. Accessory Products shall be located within an enclosed business establishment.
 4. Accessory Products shall be kept and displayed in a secure and locked enclosure, which can only be accessed with the assistance of a clerk. Self-service displays of Accessory Products are prohibited.
 5. Accessory Products shall not be visible from the public right of way and internal sidewalks or areas accessible to the public.
 6. The area dedicated for Accessory Products shall not exceed five percent of the gross floor area.
 7. Any permitted sign, including but not limited to wall sign(s), monument identification signs, and other signage authorized pursuant to Chapter 19.42 of this Code, shall identify the business using the name associated with its primary use.
- D. Sale of Drug Paraphernalia. Tobacco retailers should be aware that the sale of “drug paraphernalia” (as that term is defined in Health and Safety Code Section 11364.5(d)) is regulated by the California Uniform Controlled Substances Act (specifically Health and Safety Code Sections 11364 to 11376.5), as amended from time to time.
- E. Revocation of a Business and/or Tobacco Retailer License. In addition to any other penalty authorized by law or the Duarte Municipal Code, the business license and/or tobacco retailer license of any business that violates any provision of this Section, the California Uniform Controlled Substances Act (including without limitation Health and Safety Code Sections 11364 to 11376.5), as amended from time to time, or any other local, State or Federal law or regulation may be revoked pursuant to the procedure set forth in Sections 5.04.250 and 5.09.120 of the Duarte Municipal Code.

SECTION 5.

CHAPTER 19.160 AMENDED

Chapter 19.160 (“Definitions”) of Article 9 (“Definitions”) to Title 19 (“Development Code”) of the City of Duarte Municipal Code is amended to include the following new definitions (which shall be inserted alphabetically in the existing Chapter):

Electronic cigarette and vaping accessories. Atomizers, atomizer tanks, metal mesh, heating coils, atomizer base with battery thread, cartomizer, cartomizer tanks, polyfill material, cartomizer base with battery thread, clearomizer, drip tip, clearomizer tank, cords, wicks, clearomizer base with thread, cartridges, tips, electronic cigarette device batteries, electronic cigarette device chargers, and any other item specifically designed for the preparation, charging, or use with an electronic cigarette and vaping.

Electronic cigarette and vaping device. An electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other tobacco derived product. “Electronic smoking and vaping device” includes any such electronic smoking or vaping device, whether manufactured, distributed, marketed, or sold as an electronic cigarette (e-cigarette), an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, personal product vaporizer (i.e. liquid, dry herb, oils, wax, etc.), electronic nicotine delivery system, e-hookah, or any other similar system. “Electronic smoking and vaping device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

Electronic cigarette and vaping establishments. Clubs, lounges, or similar businesses that are dedicated for patrons to use electronic cigarette and vaping devices.

Self-service display. The display or storage of products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

Tobacco paraphernalia. Any instrument or paraphernalia that is designed for the smoking or ingestion of lawful tobacco products including without limitation cigarette papers, cigarette wrappers, cigar wrappers, blunt wraps, pipes, holders, clips, and cigarette rolling machines. “Tobacco paraphernalia” excludes “drug paraphernalia” as that term is defined in Health and Safety Code Section 11364.5(d), as amended from time to time.

Tobacco product. Any substance containing tobacco or derived from tobacco and any substance used in electronic cigarette and vaping devices including but not

limited to cigarettes, cigars, e-juice, e-liquid, e-nicotine, smoke juice, pipe tobacco, rolling tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, nicotine gel, nicotine lollipops, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body. "Tobacco products" do not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

Tobacco shop. A retail establishment that primarily sells tobacco products, tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories. A "tobacco shop" does not include any type of "tobacco smoking establishment" or "electronic cigarette and vaping establishment."

Vaping. Inhaling vapor from an electronic cigarette and vaping device. "Vaping" produces vapor, not smoke.

SECTION 6. CEQA DETERMINATION.

In adopting this Ordinance, the City Council finds and determines, based on all of the information in the record and on the basis of its independent judgment, that this Ordinance is exempt from the California Environmental Quality Act pursuant to the following exemptions, and each of them independently: Title 14 California Code of Regulations Section 15061(b)(3), in that it can be seen with certainty that the adoption of the municipal code amendments propose no activity that may have a significant effect on the environment, pursuant to Title 14 California Code of Regulations Section 15301, in that the municipal code amendments involve no expansion of use of existing facilities, and Title 14 California Code of Regulations Section 15378, in that the municipal code amendments are not a project under CEQA because they will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Therefore, no further environmental review is necessary. A notice of exemption will be prepared for this project.

SECTION 7. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs,

sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 8. POSTING OF ORDINANCE.

The City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner provided for in the Duarte Municipal Code.

SECTION 9. EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days following its second reading.

PASSED, APPROVED, AND ADOPTED this ___ day of _____, 2014.

Mayor Elizabeth Nowak Reilly

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Ordinance No. ____ was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the ____ day of _____, 2014, by the following Roll Call vote:

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

City Clerk Marla Akana
City of Duarte, California

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA AMENDING CHAPTER 5.09, "TOBACCO RETAILER LICENSE," TO TITLE 5, "BUSINESS LICENSES AND REGULATIONS," OF THE DUARTE MUNICIPAL CODE TO REQUIRE A TOBACCO RETAILER LICENSE TO SELL E-CIGARETTES AND VAPING DEVICES (MCA 14-2)

THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION 1. CHAPTER 5.09 AMENDED

Chapter 5.09 ("Tobacco Retailer License") to Title 5 ("Business Licenses") of the City of Duarte Municipal Code is amended and restated in its entirety to read as follows (deletion shown as ~~strike out~~ and addition as underline):

Chapter 5.09 TOBACCO RETAILER LICENSE

Sections:

- 5.09.010 Legislative findings.**
- 5.09.020 Definitions.**
- 5.09.030 Requirements and prohibitions.**
- 5.09.040 Limits on eligibility for a tobacco retailer license.**
- 5.09.050 Application procedure.**
- 5.09.060 Issuance of license; term of license.**
- 5.09.070 License renewal and expiration.**
- 5.09.080 Licenses non-transferable.**
- 5.09.090 License conveys a limited, conditional privilege.**
- 5.09.100 Fee for license.**
- 5.09.110 Compliance monitoring.**
- 5.09.120 Revocation of license.**
- 5.09.130 Tobacco retailing without a license.**
- 5.09.140 Enforcement.**

5.09.010 Legislative findings.

- A. Based in part on the information contained in this section, the city council finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the city.

- B. The city council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the city, to protect the health, safety, and welfare of our residents.
- C. Approximately four hundred thirty-eight thousand people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death. (U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report: Annual Smoking - Attributable Mortality, Years of Potential Life Lost, and Productivity Losses - United States 1997-2001. 2005, 54(25): p. 625-628.)
- D. The World Health Organization (WHO) estimates that by 2030, tobacco will account for 8.3 million deaths per year, killing fifty percent more people in 2015 than HIV/AIDS, and will be responsible for ten percent of all deaths worldwide. (World Health Organization. World Health Statistics 2007, Part 1: Ten Statistical Highlights in Global Public Health. 2007, p. 12.)
- E. The California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:
 - 1. The legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950).
 - 2. State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code § 308).
 - 3. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under eighteen years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952).
 - 4. State law prohibits the sale of tobacco products and paraphernalia through self-services displays with limited exceptions for tobacco stores (Cal. Bus. & Prof. Code § 22960, 22962).
 - 5. State law prohibits the sale of "bidis" (hand-rolled filter-less cigarettes imported primarily from India and Southeast Asian countries) except in adult-only establishments (Cal. Pen. Code § 308.1).
 - 6. State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than twenty and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than six-tenths ounces of tobacco (Cal. Pen. Code § 308.3).
- F. State law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972).

- G. State law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3).
- H. California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of cities to regulate business activity in order to discourage violations of law.
- I. Despite the state's efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the following facts:
1. Each day, nearly four thousand children under eighteen years of age smoke their first cigarette, and almost one thousand five hundred children under eighteen years of age begin smoking daily. (Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies. Results from the 2004 National Survey on Drug Use and Health: National Findings. 2005.)
 2. More than seventy-five percent of all current smokers in 2001 began smoking before the age of eighteen. (Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies. 2003 National Survey on Drug Use and Health: Results. 2003.)
 3. Among middle school students who were current cigarette users in 2004, seventy and six-tenths percent were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and sixty-six and four-tenths percent were not refused purchase because of their age. (U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report: Tobacco Use, Access & Exposure to Tobacco Among Middle & High School Students, U.S., 2004. 2005, 54: p. 297-301.)
 4. In 2002, youth smoked approximately five hundred forty million packs of cigarettes, generating nearly \$1.2 billion in tobacco industry revenue. (Healton C, Farrelly MC, Weitzenkamp D, et al. "Youth Smoking Prevention and Tobacco Industry Revenue." *Tobacco Control*, 15: 103-106, 2006.)
- J. Research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes, as evidenced by the following:
1. A review of thirteen California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in twelve of the thirteen communities, with an average decrease of sixty-eight percent in the youth sales rate. (American Lung Association of California, Center for Tobacco Policy and Organizing. Tobacco Retail Licensing is Effective. 2007.)
 2. A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from eighty-five

percent in 1994 to forty-three percent in 1998. (Ma GX, Shive S and Tracy M. "The Effects of Licensing and Inspection Enforcement to Reduce Tobacco Sales to Minors in Greater Philadelphia, 1994-1998." *Addictive Behaviors*, 26(5): 677-87, 2001.)

3. A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from thirty-nine and eight-tenths percent to four and nine-tenths percent in the number of youth able to purchase tobacco. (Forster JL et al. "The Effects of Community Policies to Reduce Youth Access to Tobacco." *American Journal of Public Health*, 88(8): 1193-1197, 1998.)

K. The implementation of tobacco retailer licensing requirements is supported by most Californians, as evidenced by the following:

1. Statewide, over eighty percent of California adults think tobacco retailers should be licensed. (Department of Health Services, Tobacco Control Section. California Tobacco Control Update. 2004.)
2. Similarly, in rural areas in California, seventy-eight percent of adults think tobacco retailers should be licensed, and ninety-one percent agree that a store owner who repeatedly sells cigarettes to minors should no longer have the right to sell cigarettes. (American Lung Association of California, Center for Tobacco Policy and Organizing. Survey of California Rural and Small Town Voters About Local Tobacco Retail Licensing Ordinances. 2008.)
3. Sixty-five percent of California's key opinion leaders surveyed support implementation of tobacco-licensing requirements. (California Department of Health Services, Tobacco Control Section. Final Report, Independent Evaluation of the California Tobacco Control Prevention & Education Program: Waves 1, 2, and 3 (1996-2000). 2003.)
4. Over ninety percent of enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco. (California Department of Health Services, Tobacco Control Section. Final Report, Independent Evaluation of the California Tobacco Control Prevention & Education Program: Waves 1, 2, and 3 (1996-2000). 2003.)

L. Approximately eighty cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from smoking. (American Nonsmokers' Rights Foundation. California Municipalities With Ordinances Restricting Youth Access To Tobacco. 2008.)

M. California retailers continue to sell tobacco to underage consumers, evidenced by the following:

1. Nearly eleven percent of all tobacco retailers unlawfully sold to minors in 2007. (California Department of Health Services, Tobacco Control Section. Youth Purchase Survey, 2007: Percent of Retailers Selling Tobacco to Youth by Store Type. 2007.)

2. Non-traditional tobacco retailers such as deli, meat, and donut shops sold to minors in 2007 at a much higher rate than the statewide average, as high as sixteen percent. (California Department of Health Services, Tobacco Control Section. Youth Purchase Survey, 2007: Percent of Retailers Selling Tobacco to Youth by Store Type. 2007.)
 3. Teens surveyed in 2002 say they bought their cigarettes at: gas stations (fifty-eight percent), liquor stores (forty-five percent), and supermarkets and small grocery stores (twenty-nine percent combined). (California Department of Health Services, Tobacco Control Section. Final Report, Tobacco Control Successes in California: A Focus on Young People, Results from the California Tobacco Surveys, 1990-2002. 2003, p. 11-12.)
 4. Twenty-three "youth tobacco purchase surveys" in 2011 resulted in thirteen percent of Duarte tobacco retailers willing to sell tobacco products to minors under eighteen years of age.
- N. A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults, but it will allow the city to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws.
- O. The city has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults.
- P. It is the intent of the city council, in enacting the ordinance establishing this chapter, to ensure compliance with the business standards and practices of the city and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.
- Q. The city has a substantial interest in requiring a tobacco retailer license for the sale of electronic cigarettes and vaping devices and electronic cigarettes and vaping accessories because:
1. The widespread presence of electronic cigarettes and vaping devices, most of which use nicotine, in retail settings normalizes the use of nicotine products and triggers smoking urges among former smokers and those attempting to quit;
 2. The electronic cigarettes and vaping devices can be lawfully used with nicotine derived from tobacco or other sources;
 3. The widespread presence of electronic cigarettes and vaping devices in retail settings has similar impacts as traditional tobacco products;

4. The electronic cigarettes and vaping devices and electronic cigarettes and vaping accessories can be used a drug paraphernalia, because they can be customized to be used with non-nicotine products, such as synthetic drugs or dry herb products that are unlawful; and
5. The use of electronic cigarettes and vaping accessories in an electronic cigarette and vaping establishment similar to a tobacco smoking establishment would create a threat to public health, safety, and welfare because nicotine derived products such as e-liquids are not regulated by the State and, therefore, it would be impossible for law enforcement to monitor.

5.09.020 Definitions.

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

- (a) "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.
- (b) "Department" means the city's public safety department, and any agency or person designated by the department to enforce or administer the provisions of this chapter.
- (c) "Electronic cigarette and vaping accessory" includes atomizers, atomizer tanks, metal mesh, heating coils, atomizer base with battery thread, cartomizer, cartomizer tanks, polyfill material, cartomizer base with battery thread, clearomizer, drip tip, clearomizer tank, cords, wicks, clearomizer base with thread, cartridges, tips, electronic cigarette device batteries, electronic cigarette device chargers, and any other item specifically designed for the preparation, charging, or use with an electronic cigarette and vaping.
- (d) "Electronic cigarette and vaping device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine, herbs or other substances. "Electronic smoking and vaping device" includes any such electronic smoking or vaping device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, personal product vaporizer (i.e. liquid, dry herb, oils, wax, etc.), electronic nicotine delivery system, e-hookah, or any other similar system. "Electronic smoking and vaping device" does not include any product specifically

approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

- (e)(e) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (d)(f) "Proprietor" means a person with an ownership interest or managerial role in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial role shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.
- (e)(g) "Self-service display" means the display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.
- (f)(h) "Smoking" means possessing a lighted tobacco product, lighted tobacco paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind) and also means the lighting of a tobacco product, tobacco paraphernalia, or any other weed or plant (including, but not limited to, a pipe, cigar, hookah pipe, or cigarette of any kind).
- (g)(i) ~~"Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products. includes any instrument or paraphernalia that is designed for the smoking or ingestion of lawful tobacco products including without limitation cigarette papers, cigarette wrappers, cigar wrappers, blunt wraps, pipes, holders, clips, and cigarette rolling machines. "Tobacco paraphernalia" excludes "drug paraphernalia" as that term is defined in Health and Safety Code Section 11364.5(d), as amended from time to time.~~
- (h)(j) ~~"Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. includes any substance containing tobacco or derived from tobacco and any substance used in electronic cigarette and vaping devices~~

including but not limited to cigarettes, cigars, e-juice, e-liquid, e-nicotine, smoke juice, pipe tobacco, rolling tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, nicotine gel, nicotine lollipops, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body. "Tobacco products" do not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(k) "Tobacco retailer" means any person, whether or not a tobacco proprietor, who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, ~~or tobacco paraphernalia,~~ electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, ~~or tobacco paraphernalia,~~ electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories sold, offered for sale, exchanged, or offered for exchange.

(l) "Youth decoy" means a person under the age of eighteen who, solely for the purposes of conducting compliance checks pursuant to this chapter, has received training by the department, has received written authorization from the department, or has received an immunity letter from the Los Angeles County District Attorney's Office and has provided a true and correct copy of that immunity letter to the department. The city shall not enforce any law establishing a minimum age for purchase of tobacco products against a youth decoy if the violation occurs when the youth decoy is participating in a compliance check supervised by the department or other peace officer or city code enforcement, or the youth decoy is participating in a compliance check supervised by a person designated in writing as an agent of the department for purposes of monitoring compliance with this chapter.

5.09.030 Requirements and prohibitions.

- A. TOBACCO RETAILER LICENSE REQUIRED. It shall be unlawful for any person to act as a tobacco retailer in the city without first obtaining and maintaining a valid tobacco retailer license pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law and a violation of this code.
- B. LAWFUL BUSINESS OPERATION. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law or regulation

applicable to tobacco products, tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories and/or tobacco retailing including without limitation the provisions of the California Uniform Controlled Substances Act relating to the sale and display of "drug paraphernalia" (specifically, Health and Safety Code Sections 11364 to 11376.5, as amended from time to time), chapter 6.21 of this code relating to the possession, sale and distribution of synthetic drugs, and sections 19.60.165 and 19.60.167 of the Duarte Development Code, which set forth operational requirements for tobacco shops and accessory tobacco uses.

- C. DISPLAY OF LICENSE. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- D. POSITIVE IDENTIFICATION REQUIRED. No person engaged in tobacco retailing shall sell, exchange, or transfer in any manner a tobacco product, tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories to another person who appears to be under the age of twenty-seven years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco product, tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories.
- E. MINIMUM AGE FOR PERSONS ENGAGING IN TOBACCO RETAILING. No person who is younger than the minimum age of 18 years or as established by state law for the purchase or possession of tobacco products, tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories shall engage in tobacco retailing.
- F. SELF-SERVICE DISPLAYS PROHIBITED. Tobacco retailing by means of a self-service display is prohibited.
- G. ~~FALSE AND MISLEADING SALE, DISPLAY AND ADVERTISING FOR TOBACCO RETAILING PROHIBITED WITHOUT A VALID TOBACCO RETAILER LICENSE.~~ A tobacco retailer or proprietor without a valid tobacco retailer license, including, but not limited to, a person whose license has been suspended or revoked:
 - (1) Shall not sell or offer to sell any tobacco products, tobacco paraphernalia, electronic cigarette and vaping devices, or electronic cigarette and vaping accessories.
 - (1)(2) Shall keep all tobacco products, ~~and tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories~~ out of public view. The public display of any of these products ~~tobacco products or tobacco paraphernalia~~ in violation of this provision shall constitute tobacco retailing without a license under this chapter.
 - (2)(3) Shall not display any advertisement relating to tobacco products, and tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories that promotes the sale or distribution of such products from the tobacco retailer's location or that

could lead a reasonable consumer to believe that such products can be obtained at that location.

5.09.040 Limits on eligibility for a tobacco retailer license.

- A. LICENSE FOR FIXED LOCATION ONLY. No license may issue to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles is prohibited.
- B. APPLICABILITY OF ZONING. A No license may only be issued to authorize tobacco retailing at any fixed location where allowed in compliance with Title 19 of this code (the Duarte Development Code) that is not in a zone where tobacco retailing is prohibited.

5.09.050 Application procedure.

- A. APPLICATION. Application for a tobacco retailer license shall be submitted in the name of each proprietor proposing to engage in tobacco retailing—conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof.
- B. LICENSE NOT SUBSTITUTE FOR COMPLIANCE WITH ALL LAWS. It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retailer license. No proprietor may rely on the issuance of a tobacco retailer license as a determination by the city that the proprietor has complied with all laws applicable to tobacco retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to the applicable provisions of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer license any status or right to act as a tobacco retailer in contravention of any provision of law.
- C. APPLICATION FORM. All applications shall be submitted on a form supplied by the department and shall contain the following information and may require an applicant to provide other and additional information:
 - (1) The name, address, telephone number, and email address of each proprietor of the business seeking a license.
 - (2) The business name, address, telephone number, and email address of the single fixed location for which a license is sought.
 - (3) A single name and mailing address authorized by each proprietor to receive all communications and notices (the "authorized address") required by, authorized by, or necessary to the enforcement of this chapter. If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (2) above.

- (4) Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
- (5) Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years.
- (6) Such other information as the department deems reasonably necessary for the administration or enforcement of this chapter as specified on the application form required by this section, which may include, but not necessarily limited to, social security number and driver's license number.

D. INSPECTION FOR NEW RETAILERS AND RENEWAL LICENSES. In order to verify compliance with all Title 19 of this code (the Duarte Development Code) and tobacco retailer licensing requirements, the Public Safety Director or his designee shall:

- (1) Require the submittal and approval of a floor plan showing compliance with all regulations prior to approving a new or renewal tobacco retailer license, and
- (2) Inspect the business location prior to license issuance or license renewal.

ED. CHANGE IN INFORMATION PROVIDED. A licensed tobacco retailer shall inform the department in writing of any change in the information submitted on an application for a tobacco retailer license within ten business days of a change.

FE. APPLICATION INFORMATION SUBJECT TO PUBLIC DISCLOSURE. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.

5.09.060 Issuance of license; term of license.

A. LICENSE ISSUANCE. Upon the receipt of a complete application for a tobacco retailer's license and the license fee required by this chapter, the department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- 1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.
- 2. The application seeks authorization for tobacco retailing at a location for which this chapter prohibits issuance of tobacco retailer licenses.
- 3. The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued.

4. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter or that is unlawful pursuant to other provisions of this code, or that is unlawful pursuant to any other law.
- B. TERM OF LICENSE. The term of a tobacco retailer license is one year commencing on the date of issuance of the license unless earlier revoked pursuant to the provisions of this chapter.
- C. PAYMENT OF LICENSE FEE. A tobacco retailer license is invalid if the license fee as established by resolution of the city council has not been timely paid in full.

5.09.070 License renewal and expiration.

- A. RENEWAL OF LICENSE. A tobacco retailer license is invalid upon the date of its expiration unless renewed prior to the expiration date. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer license and submit the license fee no later than thirty days prior to expiration of the license term.
- B. To renew a tobacco retailer license, the proprietor must:
 1. Submit the license fee and application renewal form.
 2. Submit a signed affidavit affirming that the proprietor:
 - a. Has not sold and will not sell any tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed.
 - b. Has waited the applicable ineligibility period established for tobacco retailing without a license, as set forth in Section 5.09.130(a) before seeking renewal of the license.

5.09.080 Licenses non-transferable.

- A. NO TRANSFER OF LICENSE. A tobacco retailer license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietor(s) or a tobacco retailing location has a change in location.
- B. EFFECT OF PRIOR VIOLATIONS. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
 1. The location has been fully transferred to a new proprietor or fully transferred to entirely new proprietors.
 2. The new proprietor(s) provide the city with clear and convincing evidence that the new proprietor(s) have acquired or is acquiring the location in an arm's length transaction.

5.09.090 License conveys a limited, conditional privilege.

Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the city identified on the face of the permit. For example and not by way of limitation, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. For example and not by way of limitation, obtaining a tobacco retailer license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

5.09.100 Fee for license.

The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the city council. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example and without limitation, issuing a license, administering the license program, retailer education, retailer inspection, and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law. The license fee is nonrefundable except as may be provided by law.

5.09.110 Compliance monitoring.

- A. DEPARTMENT; PEACE OFFICERS. Compliance with this chapter shall be monitored by the department including but not limited to peace officers and city code enforcement officers. In addition, any peace officer may enforce the penal provisions of this chapter. The city may designate any number of additional persons to monitor compliance with this chapter.
- B. PURPOSE OF COMPLIANCE CHECK. Compliance checks shall be conducted so as to allow the department to determine, at a minimum, if the tobacco retailer is conducting business in a manner that complies with laws regulating youth access to tobacco products, ~~and tobacco paraphernalia,~~ electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories. When the department deems appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco retailing.
- C. YOUTH DECOYS. From time to time, and at a time of the department's choosing, the department may, but is not obligated to, use one or more youth decoys to determine if a proprietor or tobacco retailer is complying with the requirements of this chapter and other laws with respect to the prohibition on the sale, exchange, or transfer of any tobacco product, ~~and tobacco paraphernalia,~~ electronic cigarette and vaping device, and/or electronic cigarette and vaping

accessory to a minor. Youth decoys, at the direction and under the supervision of the department, or other peace officers, may enter a tobacco retailer location as a customer and attempt to obtain through lawful means a tobacco product, ~~and~~ tobacco paraphernalia, electronic cigarette and vaping device, and/or electronic cigarette and vaping accessory and if so obtained then report to the department officer or other peace officer supervising the youth decoy that the proprietor or tobacco retailer has sold, exchanged, or transferred the tobacco product, ~~and~~ tobacco paraphernalia, electronic cigarette and vaping device, and/or electronic cigarette and vaping accessory to the youth decoy. Nothing in this chapter shall prohibit the department officer or other peace officer supervising the youth decoy to enforce the provisions of this chapter or other applicable laws pursuant to the information provided by the youth decoy.

5.09.120 Revocation of license.

- A. REVOCATION OF LICENSE FOR VIOLATION. In addition to any other penalty authorized by law, a tobacco retailer license shall be revoked if any court of competent jurisdiction determines, or the department finds based on a preponderance of the evidence after the licensee is afforded reasonable notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the provisions, requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law pertaining to the display, sale, exchange, or transfer of any tobacco products, ~~and-tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories~~ including but not limited to the requirements of Section 5.09.030.
- B. APPEAL OF REVOCATION. A decision of the department to revoke a tobacco retailer license is appealable to the city manager and must be filed with city clerk within ten days of mailing of the department's decision. If such an appeal is made, it shall stay enforcement of the appealed action. An appeal to the city manager is not available for a revocation made pursuant to subsection C. below.
- C. REVOCATION OF LICENSE WRONGFULLY ISSUED. A tobacco retailer's license shall be revoked if the department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 5.09.060 existed at the time application was made or at any time before the license issued. The decision by the department shall be the final decision of the city. Such a revocation shall be without prejudice to the filing of a new license application.
- D. NEW LICENSE AFTER REVOCATION. In addition to other applicable provisions of this chapter pertaining to obtaining a tobacco retailer license, the following requirements shall also apply in the situation where a proprietor or tobacco retailer seeks to obtain a new tobacco retailer license after such person or tobacco retailer has had a tobacco retailer revoked:

1. After revocation for a first violation of this chapter at a location within any sixty-month period, no new license may issue for the location until ten days have passed from the date of revocation.
2. After revocation for a second violation of this chapter at a location within any sixty-month period, no new license may issue for the location until thirty days have passed from the date of revocation.
3. After revocation for a third violation of this chapter at a location within any sixty-month period, no new license may issue for the location until ninety days have passed from the date of revocation.
4. After revocation for four or more violations of this chapter at a location within any sixty-month period, no new license may issue for the location until five years have passed from the date of revocation.

5.09.130 Tobacco retailing without a license.

- A. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the department finds based on substantial evidence, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailing license as follows:
1. After a first violation of this section at a location within any sixty-month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until thirty days have passed from the date of the violation.
 2. After a second violation of this section at a location within any sixty-month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until ninety days have passed from the date of the violation.
 3. After of a third or subsequent violation of this section at a location within any sixty-month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until five years have passed from the date of the violation.
- B. SEIZURE OF TOBACCO PRODUCTS, TOBACCO PARAPHERNALIA, AND TOBACCO E-CIGARETTE AND VAPING PARAPHERNALIA DEVICES. Tobacco products, ~~and tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories~~ offered for sale, exchange, or transfer in violation of this section are subject to seizure by the department or any peace officer and shall be forfeited after the licensee and any other owner of the tobacco products, ~~and tobacco paraphernalia, electronic~~

cigarette and vaping devices, and/or electronic cigarette and vaping accessories seized is given reasonable notice and an opportunity to demonstrate that the tobacco products, ~~and~~-tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories were not offered for sale or exchange in violation of this chapter. The decision by the department may be appealed pursuant to the procedures set forth in Section 5.09.120(B). Forfeited tobacco products, ~~and~~-tobacco paraphernalia, electronic cigarette and vaping devices, and/or electronic cigarette and vaping accessories shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure Section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after dismissal of that suit or judgment in that suit becomes final and non-appealable.

- C. SEPARATE VIOLATIONS. For the purposes of the civil remedies provided in this chapter:
1. Each day on which a tobacco product, ~~and~~-tobacco paraphernalia, electronic cigarette and vaping device, and/or electronic cigarette and vaping accessory is offered for sale, exchange, or transfer in violation of this chapter constitutes a separate violation of this chapter.
 2. Each individual retail tobacco product, ~~and~~-tobacco paraphernalia, electronic cigarette and vaping device, and/or electronic cigarette and vaping accessory that is distributed, sold or offered for sale, exchanged or offered for exchange, or transferred or offered for transfer, in violation of this chapter constitutes a separate violation of this chapter.

5.09.140 Enforcement.

- A. REMEDIES CUMULATIVE. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. EVIDENCE PROVIDED BY MINOR. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen years old, including but not limited to a youth decoy, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- C. AIDING AND ABETTING. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- D. VIOLATIONS ARE A PUBLIC NUISANCE. Violations of this chapter are hereby declared to be public nuisances.
- E. OTHER PENALTIES AND REMEDIES. Notwithstanding any other penalty provided by this code or otherwise by law, any person who violates any provision

of this Chapter 5.09 shall be guilty of a misdemeanor for each such violation and, in addition, the city may enforce the provisions of this Chapter 5.09 for any violations hereof by means of a criminal or civil enforcement process including, without limitation, through nuisance abatement proceedings, a restraining order, a preliminary or permanent injunction, or by any other means available in law or equity. Violations of this chapter are also subject to Chapters 1.04 and 1.08 of this code.

SECTION 2. CEQA DETERMINATION.

In adopting this Ordinance, the City Council finds and determines, based on all of the information in the record and on the basis of its independent judgment, that this Ordinance is exempt from the California Environmental Quality Act pursuant to the following exemptions, and each of them independently: Title 14 California Code of Regulations Section 15061(b)(3), in that it can be seen with certainty that the adoption of this Ordinance proposes no activity that may have a significant effect on the environment, and pursuant to Title 14 California Code of Regulations Section 15301, in that this Ordinance involves no expansion of use of existing facilities.

SECTION 3. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 4. POSTING OF ORDINANCE.

The City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner provided for in the Duarte Municipal Code.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days following its second reading.

PASSED, APPROVED, AND ADOPTED this ___ day of _____, 2014.

Mayor Elizabeth Nowak Reilly

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Ordinance No. ____ was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the ____ day of _____, 2014, by the following Roll Call vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

City Clerk Marla Akana
City of Duarte, California

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA AMENDING SECTION 5.04.240, "GROUNDS FOR REVOCATION OR SUSPENSION," TO TITLE 5, "BUSINESS LICENSES AND REGULATIONS" OF THE DUARTE MUNICIPAL CODE AND ADDING A NEW CHAPTER 6.21, "PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE AND OTHER SYNTHETIC DRUGS," TO TITLE 6 OF THE DUARTE MUNICIPAL CODE TO PROHIBIT THE POSSESSION, DISTRIBUTION AND SALE OF CERTAIN INTOXICATING CHEMICAL COMPOUNDS KNOWN AS SYNTHETIC DRUGS (MCA 14-4)

WHEREAS, the City Council of the City of Duarte is committed to protecting the public health, safety, and welfare of the community, and to meet these goals it is necessary for the City Council to adopt measures, from time to time, to meet threats to the public health, safety, and welfare; and

WHEREAS, California State Law, through the recently enacted Health & Safety Code Sections 11357.5 and 11375.5, and Federal Law through the recently enacted "Combating Dangerous Synthetic Stimulants Act of 2011" (S.409), "Dangerous Synthetic Drug Control Act of 2011" (S.605), and "Combating Designer Drugs Act of 2011" (S.839) (amending the "Controlled Substances Act," 21 U.S.C. § 812) prohibit the sale or any other distribution of certain synthetic drugs often marketed as "bath salts" and/or "incense" in response to increased incidents, particularly among adolescents, resulting from the use of these drugs; and

WHEREAS, to avoid the threat to public health, safety, and welfare that would occur if these intoxicating synthetic chemical compounds were permitted in the City and to ensure the City complies with California State Law, the City finds that it is necessary to declare that an individual or business which possesses, provides, distributes or sells Synthetic Drugs as defined herein is a threat to public health, safety and welfare and, as such, is subject to the City's administrative, criminal and civil enforcement procedures (set forth in Chapters 1.04 and 1.08 of the Duarte Municipal Code) and, in the case of a business, revocation of a business license (pursuant to Section 5.01.120 of the Duarte Municipal Code); and

WHEREAS, the adoption of this chapter is consistent with Federal Law and Sections and 11375.5 of the Health and Safety Code of the State of California, as amended;

THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION 1. SECTION 5.04.240 AMENDED

Section 5.04.240 ("Grounds for revocation or suspension") of Chapter 5.04 ("Licenses and Permits Generally") to Title 5 ("Business Licenses and Regulations") of the City of Duarte

Municipal Code is amended and restated in its entirety to read as follows (deletion shown as ~~strike out~~ and addition as underline):

5.04.240 Grounds for revocation or suspension.

(a) Any license or permit granted or issued under the provisions of this title may be revoked or suspended ~~at any time by the finance director for a material false statement contained in the application or for a failure to comply with any regulatory provisions contained in the statutes of the state, this code or the ordinances of the city regulating such business or for any failure to operate such business in an orderly and businesslike manner, in compliance with such orders, rules and regulations as may be applicable thereto under the provisions of this title, or statutes of this state, or for conducting such business in an illegal, improper or disorderly manner or in a manner which endangers the public welfare~~ if the finance director or his or her designee determines, after a hearing pursuant to section 5.04.250 of this code, that:

(1) The holder of the license or permit has obtained the license or permit by misrepresentation;

(2) The holder of the license or permit has failed to comply with one or more of the specific provisions of this code or any other resolution or ordinance of this City;

(3) The license or permit is being used in contravention of any State or Federal law or regulation;

(4) The holder of the license or permit has not obtained or does not currently hold each and every one of the additional governmental approvals or entitlements required in order to lawfully operate the business, or alternatively, that the holder of the license or permit did not identify, on the application, certain required government approvals or entitlements that the licensee does not have;

(5) The premises wherein any business described in this title is conducted, are not in good and sanitary condition, or have become dangerous to or adversely affect the public health, safety, welfare, morals or peace;

(6) The business of the person to whom such license or permit was issued has been conducted in a manner that is dangerous to or adversely affects the public health, safety, welfare, morals or peace; or

(7) The license or permit is being used for a purpose different from that for which it was issued.

(b) Sale of Synthetic Drugs Prohibited.

No person owning or operating a business in the City, and no business holding

a business license may sell or offer to sell “Synthetic Drugs” as that term is defined under section 6.21.020(1) of this code or engage in any other conduct that is prohibited under sections 6.21.030, 6.21.040, or 6.21.050 of this code.

(c) Revocation of Business License for Synthetic Drug Sales.

In addition to any other penalty authorized by law or this code, the penalty for selling, or offering to sell “Synthetic Drugs” as that term is defined under section 6.21.020(1) of this code or engaging in any other conduct that is prohibited under sections 6.21.030, 6.21.040, or 6.21.050 of this code shall be as follows:

- (1) First Violation. When a person or business is found to violate this section, that person or business shall be issued a formal, written warning from a City Code Enforcement Officer to cease the prohibited activity.
- (2) Second Violation. When a person or business is found to violate this section after being issued a formal, written warning for a previous violation, that person or relevant agent for the business shall be given a written notice of violation directing that a management level representative must attend an education course of not less than one hour, on the topic of (and taught by a person reasonably knowledgeable in) the identification and consequences of using Synthetic Drugs, along with information on how to register for such a course. Formal documentation of the completion of this course shall be provided to the City’s Code Enforcement Officer within four weeks of a Second Violation, and failure to provide such documentation shall result in the Code Enforcement Officer moving forward with summary revocation of the relevant business license as set forth in the following Section (e)(3).
- (3) Third Violation. When a person or business is found to violate this section or chapter 6.21 of this code for a third time, or if a person or business that has violated this section twice fails to timely complete the required education course pursuant to subsection (2) above, that person or business shall be given written notice by the Code Enforcement Officer that its business license for the premises in question is immediately and summarily revoked, and that continued operation of the business in question thereafter shall be deemed a violation of the City’s Municipal Code. A copy of such notice shall be posted at a prominent location upon the property in question. An action to revoke a business license under this section may be appealed within ten days of the date of the written notice of the summary revocation, pursuant to the procedure set forth in section 5.04.260 of this Code. Notwithstanding any provision of the Municipal Code to the contrary, and because the City Council has declared that a business operating in violation of

this section poses an immediate threat to public health, safety and welfare, the filing of an appeal in connection with the immediate, summary revocation of a business license under this section shall not stay the effectiveness of the revocation during the pendency of an appeal.

SECTION 2. CHAPTER 6.21 ADDED

A new Chapter 6.21 (“Psychoactive Bath Salts, Psychoactive Herbal Incense and Other Synthetic Drugs”) is added to Title 6 (“Health and Sanitation”) of the City of Duarte Municipal Code to read, in its entirety as follows:

Chapter 6.21 Psychoactive Bath Salts, Psychoactive Herbal Incense and Other Synthetic Drugs

- 6.21.010 Purpose, Findings and Scope**
- 6.21.020 Definitions**
- 6.21.030 Provision, Sale and/or Distribution of Synthetic Drugs Prohibited**
- 6.21.040 Provision, Sale and/or Distribution of Substances Claimed or Represented to be Synthetic Drugs Prohibited**
- 6.21.050 Possession of Synthetic Drugs Prohibited**
- 6.21.060 Enforcement**
- 6.21.070 Seizure of Evidence**

6.21.010 Purpose, Findings and Scope.

(a) Purpose. Recreational use of psychoactive bath salts, psychoactive herbal incense and similar products commonly known as "Synthetic Drugs" has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, and death (National Institute on Drug Abuse. DrugFacts: Spice (Synthetic Marijuana <http://www.drugabuse.gov/publications/drugfacts/spice-synthetic-marijuana>, accessed June 2014). While State and Federal laws and regulations prohibit some Synthetic Drugs, the makers of these drugs continually alter the composition of the compounds in their products so as to escape the purview of these laws and regulations. The purpose and intent of this chapter is to provide the City with reasonable measures to address the dangers to the community posed by Synthetic Drugs that are not regulated by State or Federal law by enforcing of the City’s administrative, criminal and civil enforcement procedures (set forth in chapters 1.04 and 1.08 of this code) against any individual who possesses, distributes, or sells Synthetic Drugs, and by revoking the business license (pursuant to sections 5.04.240 and 5.04.250 of this code) of any business that knowingly sells Synthetic Drugs.

(b) Findings. The City of Duarte finds and declares that:

- (1) Synthetic Drugs are extremely dangerous and are gaining popularity at an alarming rate among high school and college aged individuals, as well as among parolees and probationers. These drugs are widely available in stores throughout the City, despite the State of California's attempt to ban such drugs under Health & Safety Code Sections 11357.5 and 11375.5. The City further finds that virtually every community in California has recognized the danger of Synthetic Drugs and their potential lethal consequences.
- (2) While California Health & Safety Code Sections 11357.5 and 11375.5 and the Federal "Combating Dangerous Synthetic Stimulants Act of 2011" (S.409), the "Dangerous Synthetic Drug Control Act of 2011" (S.605), and the "Combating Designer Drugs Act of 2011" (S.839) (amending the "Controlled Substances Act," 21 U.S.C. § 812 et seq.) (collectively, "State and Federal Synthetic Drug Laws") prohibit certain compounds that are used to create synthetic drugs, they are not comprehensive enough to eliminate the provision, distribution and sale of Synthetic Drugs in the City. Specifically, the City finds that the makers of Synthetic Drugs continually alter the composition of the compounds in their products so as to not come under the purview of State and Federal Synthetic Drug Laws and other laws and regulations attempting to prohibit the sale of Synthetic Drugs. In fact, products which plainly are being marketed for use as Synthetic Drugs are now being packaged with advertisements stating that the product does not contain the compounds specifically banned by Health & Safety Code Section 11375.5. Thus, the City finds that in order to implement an effective measure prohibiting the sale of Synthetic Drugs, it is necessary to look at all factors related to their sales and marketing to determine if a given product is intended for recreational drug use, in the same or a similar manner as drugs which are banned by State and Federal Synthetic Drug Laws, to determine if a given product is in fact a Synthetic Drug.
- (3) Evidence that a given product is a Synthetic Drug may be found from its intended use, which can be determined from its price, packaging, marketing, and the location and manner in which a given Synthetic Drug is sold. While the question of whether a given product is being sold or offered for sale for use as a Synthetic Drug must be evaluated on its specific facts, the City finds that any of the following evidentiary issues, or any

combination of the following, may be utilized to determine a given product is in fact a Synthetic Drug:

(A) Price: Synthetic Drugs are typically more expensive than products that are used for the Synthetic Drug's marketed use. For example, a Synthetic Drug marketed as "glass cleaner" might be priced at approximately \$35.00 for an eighth of an ounce (*i.e.*, \$10.00 for a one gram), while bona fide glass cleaner is priced at approximately \$5.00 for 26 ounces.

(B) Sales Location: Synthetic Drugs are typically sold in liquor stores, smoke shops and gas stations, yet they are marketed as products that are not typically sold at these locations. For example, Synthetic Drugs are most commonly marketed as bath salts, spice, incense, potpourri, skin treatments, cleaning products, plant food, and other similar products; yet, these types of products are typically not sold at locations such as liquor stores, smoke shops or gas stations.

(C) Marketing: Synthetic Drugs are rarely, if ever, suitable for their marketed uses. For example, Synthetic Drug may be marketed as a "glass cleaner" even though it cannot reasonably be used for that purpose.

(D) Warning Labels: Synthetic Drugs often use warning labels such as: "not for human consumption" and "not for purchase by minors." Bona fide bath salts, incense and the like would not bear labels such as "not for human consumption," and would certainly not bear labels allowing only adults to purchase these products. No age limit exists for the purchase of bona fide bath salts, incense or cleaning productions. Of particular relevance are labels that indicate a given product "does not contain the specific chemical compounds banned by Section 11375.5," which no bona fide bath salts, incense, cleaner or the like would have any reason to advertise.

(E) Similarity to Illicit Street Drugs: The packaging and brand names for Synthetic Drug are often designed to make the them appear similar to common street drugs. Many Synthetic Drugs are sold as white powders packaged in vials (resembling cocaine) or made to appear similar to marijuana. Additionally, brand names are often similar to street slang for these drugs and have no relation to the products that are purportedly being sold, such as

bath salts, incense, and the like. These brand names are always changing, but include "Eight Ballz," "Glass Cleaner," "Spice," "Black Mamba," "K-2," "Puff," "Sugar Sticks," "Green Buddha," "Diable Botanical Incense," "Scooby Snax Potpourri," Grape Ape Herbal Incense," "Aurora Incense," "Three Monkey Incense," Mr. and Mrs. Marley," Cloud 9 Incense," and a group of Synthetic Drugs marketed as from "The Spice Guy."

- (4) An effective way to prevent and abate the health, safety and welfare concerns that exist as a result of the marketing, distribution and sale of Synthetic Drugs in manners that brazenly seek to circumvent State and Federal Synthetic Drug Laws is through the enforcement of the City's administrative, criminal and civil enforcement procedures (set forth in chapters 1.04 and 1.08 of this code) and through the revocation of a business license (pursuant to sections 5.04.240 and 5.04.250 of this code).
 - (5) Because the chemical composition of Synthetic Drugs is constantly evolving and because determining whether a substance is one of the Synthetic Drugs prohibited by State and Federal Synthetic Drug Laws requires expensive and time consuming chemical tests, it is necessary to look at the facts and circumstances surrounding the possession, distribution or sale of any given substance to determine if it is being sold with the intent that it be used as a Synthetic Drug; and, further, that evidence of such intent may suffice to determine whether administrative, criminal and civil enforcement procedures are warranted or whether a business license may be revoked.
 - (6) In order to protect the due process rights of businesses that may believe they are selling legitimate products, not Synthetic Drugs, a first and second violation of this chapter and section 5.04.240(b) of this code will result in only a warning and mandatory education courses regarding Synthetic Drugs, as to allow businesses to ensure they do not sell or otherwise make Synthetic Drugs available without prior knowledge as to what is considered a Synthetic Drug for the purposes of this chapter. Any business that continues to operate after having twice been cited for violating the provisions of this chapter and section 5.04.240(b) of this code poses an immediate threat to public health, safety and welfare and accordingly must be closed during the pendency of any appeal related to violations hereof.
- (c) Scope. This chapter and section 5.04.240(b)-(c) of this code shall not apply to any activity already regulated by State and Federal Synthetic Drug Laws or any other applicable State or Federal law or regulation.

6.21.020 Definitions

For the purpose of this chapter, unless it is plainly evident from the context that a different meaning is intended, the words and phrases used herein shall have the following meaning:

- (a) "Business" means the operation of any private, nonprofit or public enterprise for which a city business license is required. Such term, used alone, shall be held and construed to include "business," "profession," "trade," "calling," "occupation," "show," "exhibition," or "game," and all kinds of calling carried on for profit or livelihood.
- (b) "Consume," "consuming" or "consumption" means to ingest, inhale, inject, smoke or snort (insufflate).
- (c) "Distribute", "distributing" or "distribution" means to furnish, give away, exchange, transfer, deliver or supply, whether for monetary gain or not.
- (d) "Person" has the same meaning as the term is defined in section 5.09.020 of this code.
- (e) "Possess," "possessing" or "possession" means to have for consumption, distribution or sale in one's actual or constructive custody or control, or under one's authority or power, whether such custody, control, authority and/or power be exercised solely or jointly with others.
- (f) "Provide," "providing" or "provision" means offering to distribute or sell a product or substance to any person.
- (g) "Psychoactive bath salts" means any crystalline or powder product that contains a synthetic chemical compound that, when consumed, elicits psychoactive or psychotropic stimulant effects. The term "psychoactive bath salts" includes without limitation:
 - (1) products that elicit psychoactive or psychotropic stimulant effects and contain any of the following intoxicating chemical compounds:
 - (A) cathinone (2-amino-1-phenyl-1-propanone), 4-methylmethcathinone (2-methylamino-1-(4-methylphenyl)propan-1-one), 4-

methoxymethcathinone (1-(4-methoxyphenyl)-2-(methylamino)propan-1-one), MDPV (methylenedioxypropylamphetamine), MDMA (3,4-methylenedioxy-N-methylamphetamine), methylone (3,4-methylenedioxy-N-methylcathinone), methcathinone (2-(methylamino)-1-phenyl-propan-1-one), flephedrone (4-fluoromethcathinone), 3-FMC (3-fluoromethcathinone), ethcathinone (2-ethylamino-1-phenyl-propan-1-one), butylone (beta-keto-N-methylbenzodioxolylbutanamine), alpha-PPP (alpha-pyrrolidinopropiophenone), MPPP (4'-methyl-alpha-pyrrolidinopropiophenone), MDPPP (3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone), alpha-PVP (1-phenyl-2-(1-pyrrolidinyl)-1-pentanone), or naphyrone (1-naphthalen-2-yl-2-pyrrolidin-1-ylpentan-1-one);

- (B) any derivative of the above listed intoxicating chemical compounds;
 - (C) any synthetic substance and its isomers with a chemical structure similar to the above listed compounds;
 - (D) any chemical alteration of the above listed intoxicating chemical compounds; or
 - (E) any other substantially similar chemical structure or compound; and
- (2) products that elicit psychoactive or psychotropic

stimulant effects and are marketed under any of the following trade names: Bliss, Blizzard, Blue Silk, Bonzai Grow, Charge Plus, Charlie, Cloud Nine, Euphoria, Hurricane, Ivory Snow, Ivory Wave, Lunar Wave, Ocean, Ocean Burst, Pixie Dust, Posh, Pure Ivory, Purple Wave, Red Dove, Scarface, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Night and White Lightning.

The term "psychoactive bath salts" shall not include any product, substance, material, compound, mixture or preparation that is specifically excepted by the California Uniform Controlled Substances Act ("UCSA") (Health & Safety Code section 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health & Safety Code sections 11053-11058), regulated by one of the UCSA's Synthetic Drug Laws (Health & Safety Code sections 11357.5, 11375.5 and 11401), regulated by the Federal Controlled Substances Act (the "CSA") (21 USC section 81 et seq.) or approved by the Food and Drug Administration ("FDA").

- (h) "Psychoactive herbal incense" means any organic product consisting of plant material that contains a synthetic stimulant compound that, when consumed, elicits psychoactive or psychotropic euphoric effects. The term "psychoactive herbal incense" includes without limitation:
- (1) products that elicit psychoactive or psychotropic euphoric effects and contain any of the following intoxicating chemical compounds:
- (A) cannabicyclohexanol (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol), JWH-018 (naphthalen-1-yl-(1-pentylindol-3-yl)methanone), JWH-073 (naphthalen-1-yl-(1-butylindol-3-yl)methanone), JWH-200 ((1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-yl)methanone), HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol), CP 47,497 (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol), or AM-

2201 (1-[5-fluoropentyl]-1H-indol-3-yl)-(naphthalen-1-yl)methanone);

- (B) any derivative of the above listed intoxicating chemical compounds;
 - (C) any synthetic substance and its isomers with a chemical structure similar to the above listed intoxicating chemical compounds;
 - (D) any chemical alteration of the above listed intoxicating chemical compounds; or
 - (E) any other substantially similar chemical structure or compound; and
- (2) products that elicit psychoactive or psychotropic euphoric effects and are marketed under any of the following trade names: K2, K3, Spice, Genie, Smoke, Pot- Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Black Mamba, Stinger, Ocean Blue, Stinger, Serenity, Fake Weed and Black Mamba.

The term "psychoactive herbal incense" shall not include any product, substance, material, compound, mixture, or preparation that is specifically excepted by the UCSA (Health & Safety Code section 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health & Safety Code sections 11053-11058), regulated by one of the USCA's Synthetic Drug Laws (Health & Safety Code sections 11357.5, 11375.5 and 11401), regulated by the CSA (21 USC section 81 et seq.) or approved by the FDA.

- (i) "Psychoactive or psychotropic stimulant effects" means affecting the central nervous system or brain function to change perception, mood, consciousness, cognition and/or behavior in ways that are similar to the effects of cocaine, methylphenidate or amphetamines.
- (j) "Psychoactive or psychotropic euphoric effects" means affecting the central nervous system or brain function to change perception, mood, consciousness, cognition and/or behavior in ways that are similar to the effects of cannabis.

- (k) "Sell," "selling" or "sale" means to furnish, exchange, transfer, deliver or supply for monetary gain.
- (l) "Synthetic Drug" includes psychoactive bath salts and psychoactive herbal incense, as those terms are defined hereinabove.

6.21.030 Provision, Sale and/or Distribution of Synthetic Drugs Prohibited.

- A. It is unlawful for any person to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, any Synthetic Drug within the City of Duarte.
- B. Merely disclaiming a Synthetic Drug as "not safe for human consumption" will not avoid the application of this section.

6.21.040 Provision, Sale and/or Distribution of Substances Claimed or Represented to be Synthetic Drugs Prohibited.

- A. It is unlawful for any person to claim or represent that a product that person is providing, distributing or selling is a Synthetic Drug within the City of Duarte.
- B. To determine if a person is claiming or representing that a product is a synthetic drug, the enforcing officer may consider any of the following evidentiary factors:
 - (1) The product is not suitable for its marketed use (such as a crystalline or powder product being marketed as "glass cleaner");
 - (2) The business providing, distributing or selling the product does not typically provide, distribute or sell products that are used for that product's marketed use (such as a liquor store selling "plant food");
 - (3) The product contains a warning label that is not typically present on products that are used for that product's marketed use (such as "not for human consumption," "not for purchase by minors," or "does not contain chemicals banned by section 11375.5");
 - (4) The product is significantly more expensive than products that are used for that product's marketed use

(such as one gram of a substance marketed as "glass cleaner" costing approximately \$10.00);

- (5) The product resembles an illicit street drug (such as cocaine, methamphetamine or marijuana); or
 - (6) The product's name or packaging uses images or slang referencing an illicit street drug (such as "Eight Ballz" or "Green Buddha").
- C. Merely disclaiming a substance claimed or represented to be a synthetic drug as "not safe for human consumption" will not avoid the application of this section.

6.21.050 Possession of Synthetic Drugs Prohibited.

It is unlawful for any person to possess any Synthetic Drug within the City of Duarte.

6.21.060 Enforcement.

- A. REMEDIES CUMULATIVE. The remedies provided by this chapter and section 5.04.240(c) of this code are cumulative and in addition to any other remedies available at law or in equity.
- B. VIOLATIONS ARE A PUBLIC NUISANCE. Violations of this chapter and section 5.04.240(b) of this code are hereby declared to be a public nuisance.
- C. REVOCATION OF BUSINESS LICENSE. In addition to any other penalty authorized by law or this code, the business license of any business that violates any provision of this chapter or section 5.04.240(b) of this code may be revoked pursuant to the procedure set forth in section 5.04.240(c) of this code.
- D. OTHER PENALTIES AND REMEDIES. Notwithstanding any other penalty provided by this code or otherwise by law, any person who violates any provision of this chapter or section 5.04.240(b) of this code, is guilty of a misdemeanor for each such violation and, in addition, the City may enforce the provision of this chapter or section 5.04.240(b) of this code for any violations hereof by means of a criminal or civil enforcement process including, without limitation, through nuisance abatement proceedings, a restraining order, a preliminary or permanent injunction, or by any other means available in law or equity. Violations of this chapter are also subject to chapters 1.04 and 1.08 of this code.

6.21.070 Seizure of Evidence.

Any product(s) or substance(s) possessed, provided, distributed or sold in violation of any provision of this chapter or section 5.04.240(b) of this code may be seized by the enforcing officers and removed and stored in accordance with law.

SECTION 3. CEQA DETERMINATION.

In adopting this Ordinance, the City Council finds and determines, based on all of the information in the record and on the basis of its independent judgment, that this Ordinance is exempt from the California Environmental Quality Act pursuant to the following exemptions, and each of them independently: Title 14 California Code of Regulations Section 15061(b)(3), in that it can be seen with certainty that the adoption of this Ordinance proposes no activity that may have a significant effect on the environment, and pursuant to Title 14 California Code of Regulations Section 15301, in that this Ordinance involves no expansion of use of existing facilities.

SECTION 4. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 4. POSTING OF ORDINANCE.

The City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner provided for in the Duarte Municipal Code.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days following its second reading.

PASSED, APPROVED, AND ADOPTED this ___ day of _____, 2014.

Mayor Elizabeth Nowak Reilly

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Ordinance No. ____ was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the ____ day of _____, 2014, by the following Roll Call vote:

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

City Clerk Marla Akana
City of Duarte, California



CITY COUNCIL STAFF REPORT

To: City Council

From: Rafael Casillas, PE, Public Works Manager

Date: June 10, 2014

Subject: Traffic Commission Recommendation to Establish a Two Hour Parking Restriction on Portions of Duarte Road Near the City of Hope and Resident Only Parking Restrictions in the Cinco Robles Area

Last year, the City Staff held a community meeting for Cinco Robles neighborhood residents to discuss the upcoming City of Hope Master Plan. At the meeting, several neighborhood residents complained about overflow parking from the City of Hope parking in the neighborhood and on Duarte Road during daytime hours. City Staff promised the neighborhood residents that the issue would be addresses as soon as possible.

Currently, there is no parking on the south side of Duarte Road east of Hope Drive to the City boundary, but parking is permitted west of Hope Drive to Buena Vista. There is no parking permitted on the north side of Duarte Road.

In the weeks after the neighborhood meeting, Staff conducted an informal windshield survey and determined that there was a heavy use of parking on Duarte Road and streets in the Cinco Robles neighborhood during the day. It was also observed that there was adequate available parking in official City of Hope lots each time the area was surveyed. In addition, in almost every case there were no events being conducted in Cooper Auditorium or adjacent gathering places. The conclusion is that some City of Hope employees and contractors are using these spaces rather than spaces on the City of Hope campus and congestion is caused as a result. Staff contacted the City of Hope and discussed the results and possible solutions. Representatives of the City of Hope had attempted to address the issue by requiring its employees to park in on-site lots but had not had successful compliance. The City of Hope supports parking restrictions on Duarte Road and in the Cinco Robles neighborhood.

On February 4, 2014, the Traffic Safety Commission discussed the issue of vehicles parking on streets for extended periods of time and increased traffic congestion on Duarte Road. The Commission felt that the excessive street parking was creating an adverse impact. The Commission voted (5-0) to implement a two (2) hour parking restriction on Duarte Road from 6:00 a.m. to 10:00 p.m. and requested that before taking the recommendation to the City Council for action that Staff: 1) study the impacts of the proposed Duarte Road parking limitations on the Cinco Robles neighborhood; 2) develop a preliminary plan of action to address parking for residents and their guests in the Cinco Robles neighborhood; and 3) invite input from the residents Cinco Robles and the cul-de-sacs that access the street.

All neighborhood property owners and the City of Hope were invited to the May 6, 2014 Traffic Commission meeting and input was taken. At the meeting, Staff presented several alternatives for parking restrictions in the area (see attached Commission Staff Report for details) and the Commission voted to recommend to the City Council: establishing a two (2) hour parking restriction, from 6:00 A.M. to 10:00 P.M., on any day, on the south sides of Duarte Road from Buena Vista Street to Hope Drive (City of Hope Entrance); and resident only parking restriction from 6:00 A.M. to 10:00 P.M., on any day, on Cinco Robles Drive, Noyon Street, Pengra Street, Marand Street, Asti Street and portions of Duarte Road.

The City of Hope and all neighborhood property owners were notified for this City Council meeting.

If Council concurs with the Traffic Commission recommendation, Staff recommends that City Council direct Staff to prepare a Resolution of approval and that it be placed on the consent calendar at the next meeting.

Attachments:

Traffic Commission Staff Reports 2-4-14 and 5-6-14



STAFF REPORT

To: Traffic Safety Commission

From: Rafael Casillas, PE, Public Works Manager

Date: February 4, 2014

Subject: Parking Study at Duarte Road East of Cinco Robles Drive

BACKGROUND

Over the past several months, complaints have been raised regarding parking conflicts on the south side of Duarte Road between Buena Vista and Highland. Based on an informal survey conducted by Staff over the past few months, it appears that City of Hope employees are utilizing the south side of Duarte Road as an alternative to parking at designated employee campus parking lots. This parking issue has also overflowed into the Cinco Robles neighborhood.

Duarte Road is classified as a minor arterial street with a curb-to-curb width of eighty (80) feet, raised median island, four travel lanes and provide access to the City of Hope, Single Family Residential (SFR), Commercial and Manufacturing Zones. The average daily traffic count (ADT) on Duarte Road is 12,740 vehicles. Parking restriction exists on the north side of Duarte Road and east of the City of Hope campus.

The initial investigation indicates that City of Hope employees are parking on the street for extended periods of time as an alternate to parking at designated employee campus parking lots. This condition has been observed at all hours in the work day and it appears that one reason for this is smoking restrictions on the City of Hope campus. Many open spaces in City of Hope parking areas were also observed, so parking availability to employees is not the issue.

ANALISYS

A Parking Study was conducted on Duarte Road and Cinco Robles Drive neighborhood. The study identified the existing parking demands of the area and peak parking hours. The results of the study are as follows:

- On street parking on the north side and south side east of the City of Hope campus is posted no parking or stopping any time.
- On street parking on the south side is unrestricted during the daytime.
- Parking counts of the area indicate that many vehicles are parking on the south side of Duarte Road and east side of Cinco Robles Drive between the hours of 7:00 a.m. to 5:00

p.m. There were multiple observations of Duarte Road being nearly full with parking with parking also being full on the north 200+ feet of Cinco Robles.

- Parking availability increases on Duarte Road and Cinco Robles Drive during evening hours.

There are several negative effects of the existing situation: on-street parking for City of Hope employees creates decreased safety and visibility on Duarte Road; employee parking on Cinco Robles and in front of houses on Duarte Road limits the parking availability for residents; and additional traffic is created on Cinco Robles Drive. Residents in the Cinco Robles neighborhood raised each of these concerns in a recent neighborhood meeting.

Staff believes that this is an issue that needs to be addressed soon. When the Gold Line begins service in 2015-2016, parking restrictions along Duarte Road will be necessary. Addressing these restrictions now will put the City ahead and will also address the existing conditions that are negatively impacting residents.

Staff recommends the implementation of a two (2) hour parking restriction Monday through Friday on Duarte Road. This would allow Duarte Road parking for City of Hope special events which are mostly short term events but would eliminate all day overflow parking. This restriction alone will not address the problem since the probability is that Duarte Road restrictions will increase the overflow on Cinco Robles and cul-de-sacs off of Cinco Robles. The Staff recommendation addresses this issue.

RECOMMENDATION

Staff recommends the following action(s) be taken:

That the Traffic Commission recommend that City Council implement a two (2) hour parking restriction, from 6:00 A.M. to 10:00 P.M. on the south side of Duarte Road and that the Commission request that Staff return with a proposal for daytime parking restrictions in the Cinco Robles and that residents of the neighborhood be involved in the development of those restrictions. The specific intent of the Cinco Robles neighborhood restrictions will be to allow resident (and resident visitor) parking only during the daytime hours at no cost to the residents and to limit non-resident parking. The intent would be to have the Cinco Robles neighborhood permit parking plan reviewed at an upcoming Commission meeting.



STAFF REPORT

To: Traffic Safety Commission
Date: May 6, 2014
Subject: Parking Study at Cinco Robles Drive south of Duarte Road

BACKGROUND

At its February 4, 2014 meeting the Commission discussed the existing parking conditions and traffic circulation on Duarte Road. The Commission recommended that there be consideration for time limited parking on the south side of Duarte Road between Buena Vista Street and Highland Avenue. Prior to taking the recommendation to City Council, it was recommended that potential impacts on the Cinco Robles neighborhood be analyzed to ensure that parking overflow was not forced onto residential streets. In the past, residents of this the neighborhood have expressed concerns about overflow City of Hope parking.

Based on a survey conducted by Staff over the past few months, it appears that City of Hope employees are utilizing the south side of Duarte Road as an alternative to parking at designated employee campus parking lots. The initial investigation indicates that employees are parking on the Duarte Road and east side of Cinco Robles Drive for extended periods of time as an alternate to parking at designated employee campus parking lots. This condition has been observed at all hours of the workday.

The intersection of Cinco Robles Drive and Duarte Road is the only point of access into the cul-de-sac residential neighborhood. Cinco Robles Drive provides access to fifty-five (55) residential properties within the residential neighborhood. In addition, five single-family residences and two multi-family zoned properties have frontage onto Duarte Road. The T-intersection is controlled with a stop sign (R1-1) for northbound direction and permitted left/U-turn movements in the east/west bound directions.

Duarte Road is classified as a minor arterial street with a curb-to-curb width of eighty (80) feet, raised median island, four travel lanes and provide access to the City of Hope, Single Family Residential (SFR), Commercial and Manufacturing Zones. The average daily traffic count (ADT) on Duarte Road is 12,740 vehicles. Parking restriction exists on the north side of Duarte Road and east of the City of Hope campus.

Cinco Robles Drive is classified as a local street with a curb-to-curb width of thirty-five (35) feet, two travel lanes, full sidewalk on the eastside of street and provides access to SFR. The ADT is five hundred (500) vehicles per day. Additionally, four (4) cul-de-sac streets (Asti Street, Marand Street, Pengra Street and Noyon Street) are accessed from Cinco Robles Drive. Parking is permitted on both sides of the street with no existing parking restrictions.

Asti Street, Marand Street, Pengra Street and Noyon Street are classified as local streets with curbs-to-curbs widths of twenty-four (24) feet, shared bi-direction lane, no sidewalks and provide access to SFR. The ADT's are eight-four (84) vehicles per day. Parking within the cul-de-sacs is permitted on both sides of the street with no existing parking restrictions.

ANALISYS

A Parking Study was conducted on Duarte Road and Cinco Robles Drive neighborhood, see exhibit 1. The study identified the existing parking demands of the area and peak parking hours. The results of the study are as follows:

- On street parking is restricted on the north side and south side of Duarte Road east of the City of Hope campus.
- On street parking is unrestricted on the south side of Duarte Road west of City of Hope entrance.
- On street parking is unrestricted within the Cinco Robles Drive neighborhood.
- Parking counts of the area indicate that many vehicles are parking on the south side of Duarte Road and east side of Cinco Robles Drive between the hours of 7:00 A.M. to 5:00 P.M. There were multiple observations of Duarte Road being nearly full with parking with parking also being full on the north 200+ feet of Cinco Robles Drive.
- Parking availability increases during evening hours on Duarte Road and Cinco Robles Drive.

The negative effects of the existing parking situation are; on-street parking for commuters creates decreased safety and visibility on Duarte Road and Cinco Robles Drive; commuters parking on Cinco Robles Drive and in front of houses on Duarte Road limits the parking availability for residents; and additional traffic is generated on Cinco Robles Drive.

Staff presented a recommendation to the Traffic Commission to implement a two (2) hour parking restriction Monday through Friday, from 6:00 A.M. to 10:00 P.M. on the south side of Duarte Road east of Cinco Robles Drive. This parking restriction will improve Duarte Road parking for City of Hope special events; eliminate all day overflow employee parking; and will be a required change when the Duarte Gold Line station begins operation to eliminate all day commuter parking.

To address potential parking impacts in the Cinco Robles neighborhood (Cinco Robles Drive, Asti Street, Marand Street, Pengra Street and Noyon Street, and Duarte Road west of Cinco Robles), staff has developed four possible alternatives:



Alternative 1. Implement a two (2) hour parking restriction for the area consistent with Duarte Road.

Alternative 2. Implement a resident parking only restriction* in the area Monday through Friday, from 6:00 A.M. to 10:00 P.M.

Alternative 3. Implement a 24 hour a day resident parking only restriction.*

Alternative 4. Take no action and continue to monitor the situation.

* Parking restrictions for non-residents would be implemented. Only residents would be issued parking permits for all registered vehicles and two visitor passes for each address.

RECOMMENDATION

Staff recommends the following action(s) be taken:

That Traffic Commission recommends to City Council the following:

- a) Implement a two (2) hour parking restriction, from 6:00 A.M. to 10:00 P.M. on the south side of Duarte Road from Cinco Robles to Highland Avenue; and
- b) Alternative 2 or 3, resident only parking restriction in the Cinco Robles area.

Respectfully Submitted By,

Rafael O. Casillas, PE
Public Works Manager

Exhibit 1 – Area Map

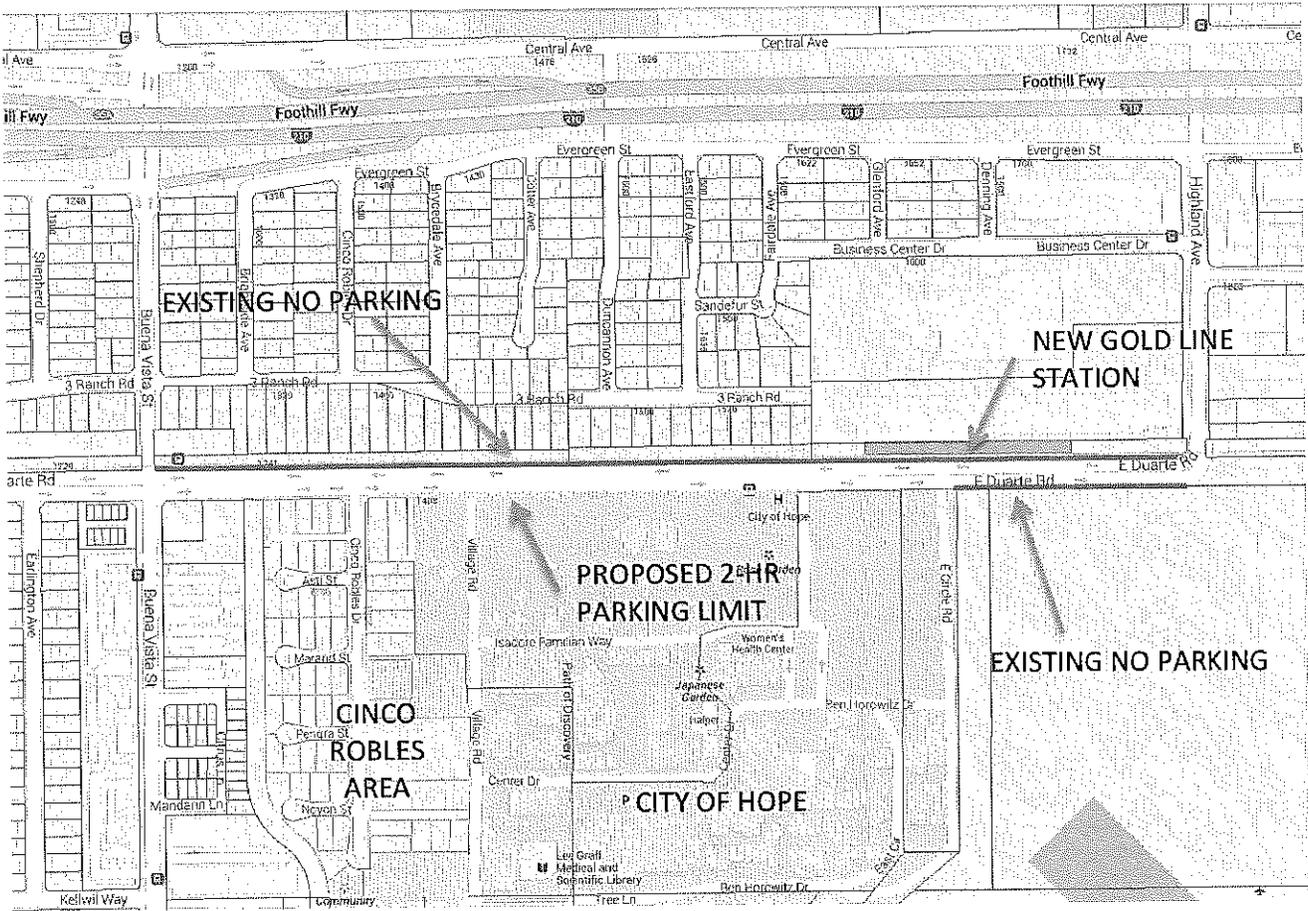


EXHIBIT 1 – AREA MAP

Traffic Safety Commission
 May 6, 2014



Staff Report
 Cinco Robles Drive
 Parking Study
 Page 4 of 4

June 10, 2014

To the Honorable Mayor, City Council, and Housing Authority Board of the City of Duarte

Ladies and Gentlemen:

**FISCAL YEAR 2014/15 OPERATING BUDGET
AND CAPITAL IMPROVEMENT PROGRAM**

It is my pleasure to present to you the City of Duarte's operating budget and capital improvement program for fiscal year 2014/15. This document addresses the financial activities of the City and the Housing Authority. The Council and Authority discussed the budget and certain changes at a workshop held on May 5th, 2014. The following amounts reflect authorized expenses based on the workshop and updated information provided since that time.

<u>City of Duarte:</u>	<u>Prior Year Budget</u>	<u>FY 2014/15 Budget</u>
General Fund:		
City Council	\$ 107,200	\$ 112,200
City Manager/City Clerk	773,400	781,200
Legal Services	217,000	175,000
Promotions & Memberships	364,500	188,200
Public Safety	3,892,200	4,069,500
Community Development	3,450,500	3,043,900
Parks and Recreation	2,395,100	2,515,100
Administrative Services	1,885,500	2,018,400
Transfers Out	<u>271,600</u>	<u>300,200</u>
Total General Fund	\$ 13,357,000	\$ 13,203,700
Special Revenue Funds	\$ 3,930,700	\$ 3,756,000
Capital Project Funds	624,800	-
Debt Service Funds	<u>185,400</u>	<u>153,000</u>
Total Other City	\$ 4,740,900	\$ 3,909,000
<u>Duarte Housing Authority:</u>		
Total Housing Authority	\$ 73,900	\$ 150,900
Total Authorized Expenditures	\$ 18,171,800	\$ 17,263,600

BUDGET PREPARATION

The process used for the preparation of the fiscal year 2014/15 budget was similar to that used in previous years as we conducted a workshop to discuss budget related items. The Budget workshop was held on May 5th, and was open to the public. At this meeting, the Council and Authority reviewed the recommended budget prepared by staff, heard testimony from the public on budget related matters, and considered various revenue and expenditure alternatives, and the resulting budget is set forth in this document.

REVENUES AND RESOURCES

Total revenues and other resources received by the City and the Housing Authority during fiscal year 2014/15 are estimated to be \$17.35 million. This amount represents an overall decrease of \$721,500 or 4% as compared to the 2013/14 amended budget. However, as discussed below, when one time revenues included in the 2013/14 budget are taken out of the comparison, the cumulative revenues and resources have actually increased from last year. The following items summarize significant revenue highlights for the City and Housing Authority's Funds.

General Fund

- Total General Fund revenues are projected to be \$13.2 million, with a decrease of \$520,000, or 4%, compared to the 2013/14 budget. However, as mentioned above, we received a one time residual payment of \$693,000 in 2013/14 from Los Angeles County as a result of the \$7.4 million in redevelopment funds that were taken from the former Redevelopment Agency and distributed to the taxing entities. In addition, approximately \$300,000 in one time MTA grant funding for Gold Line related projects was received in 2013/14. Ignoring these anomalies, actual General Fund revenues are projected to increase by approximately \$440,000 or 3.4% in 2014/15.
- Another important change in the City's 2014/15 General Fund is that there will be only 6 months remaining on the CalGRIP grant that has provided 50% of the funding for a Special Assignment Deputy, a Probation Officer and DART activities. This will represent a loss of approximately \$100,000 in one time grant funding. The proposed budget assumes that these positions and activities will continue in 2014/15 even after the grant has ended and as a result, the General Fund will be funding these costs.
- Based on the sales tax projections provided by our consultants HdL, staff is anticipating increased revenues in the autos/transportation sales, general consumer goods, restaurants, business and industry, and building and construction in 2014/15. The only category expected to see a drop in sales tax revenue is fuel and service stations, mostly because of reductions in

consumption. Based on this information, we are anticipating a \$281,000 or 5.7% increase in sales tax revenue over our 2013/14 estimated actual.

- While last year saw a drop in Motor Vehicle License fees due in large part to SB 89, which reduced our VLF funds and transferred the amounts to the Public Safety COPS funds, the State Department of Finance is projecting a 3% or \$123,000 increase over current year revenues for 2014/15.

EXPENDITURES AND USES

In total, expenditures and other uses for fiscal year 2014/15 are budgeted to be \$17.3 million. This amount represents a decrease of \$908,200 as compared to the 2013/14 budget. Significant expenditure highlights are discussed below.

General Fund

Total General Fund expenditures are projected to be \$13.2 million, including the recommended ongoing expense increases and one-time expenses in vehicle replacements and capital improvements. Noteworthy General Fund expenditure issues are as follows:

- Full time employee salary and benefit costs represent about 38% of the City's General Fund expenditures. The City recently negotiated a three-year Memorandum of Understanding with both units that included a 6% salary increase over three years, a 1% increase to the employee's own contribution towards retirement, and an increase to the on-call pay. The new MOU is estimated to increase the 2014/15 expenses by approximately \$106,000.
- As part of this budget, staff is recommending the creation of a new full time Administrative Assistant position in the City Manager's Department. Pursuant to the terms of the MOU, we notified the SEIU General Unit Board members on May 14th of our intention to recommend this position and invited them to contact us if they wanted to discuss any of the effects of the creation of this position. We did not receive any request for discussion or any contact for questions or concerns. In conjunction with the new position, staff is recommending that the part time College Intern position in the City Manager's Department be eliminated, and the scope of the Public Relations Contract that is managed by the City Manager's Office be rewritten for fiscal year 2014/15. Staff believes that a full time in house Administrative Assistant will be more immersed in the day to day operations and events of the City Manager's office. This position will handle the tasks related to the eliminated part time position, as well as take on an expanded role with social media, legislation, special projects, community relations, grant writing and website maintenance. Staff is proposing that the scope of the Public Relations Contract be changed so that it can be used on an as-needed basis when large scale special events and projects arise. For example, a Community Outreach

Campaign with surveys and education on possible Revenue Measures or tasks related to holding a Gold Line Station Grand Opening. We suggest that this revised scope be set up with a budget not to exceed \$15,000. With the costs of the new full time position offset by the elimination of the part time position and the renegotiation of the public relations contract, the net cost to the General Fund is approximately \$26,000.

- Part time employees represent more than 40% of Duarte's workforce hours. It has been four years since the part time salaries have been increased. As a result, staff is recommending a 2% cost of living adjustment to the part time salaries. The estimated impact of this increase is \$20,000. A formal part time salary resolution will be brought to City Council for approval if this increase is approved during the final budget approval.
- Over the years, City Council training and travel budgets have been greatly reduced due to the loss of Redevelopment and the economic impact on General Fund revenues. However, the importance of training and the costs of travel have only grown over this period. Staff is recommending that each Councilmember's training and travel expense account be increased by \$500, and that the Mayor's account be increased by \$1,000.
- As announced during the mid year review, the administration of the Duarte's Promise program will be transferred to the Parks and Recreation Department. As a result, there is a substantial reduction in the Community Promotions expense budget, and an equal increase in the Parks and Recreation expense budget as that program is transferred on July 1, 2014. At this point, we are not positive how many Promise Fellow positions we will request and/or be granted so adjustments will be made during mid year budget review as needed.
- Legal expenses are actually projected to decrease by approximately \$42,000 in 2014/15. The budgeted amount includes estimated funding for the State Department of Finance litigation and the legal proceedings related to the National Pollution Discharge Elimination System (NPDES) and water quality issues. We have assumed that the currently proposed MOU will be approved and as a result, we anticipate reduced labor legal expenses, as we would not be conducting MOU negotiations in 2014/15.
- The City's projected cost for the Los Angeles County Sheriff's contract in Duarte in 2014/15 is \$3,056,000, which represents approximately 23% of the General Fund budget. This includes an assumption of status quo on the number of deputies in the contract, and a 2.6% cost increase that was recently announced by the Los Angeles County Sheriff's Department. Please note that JPIA recently met and decided that the liability trust fund surcharge will be increased to 5% in January. As a result, we have used a 4.5% liability trust fund surcharge to represent the 4% from July through December 2014, and the 5% from January 2015 through June 2015. Approximately \$100,000 of the Sheriff's contract amount will be funded by the City's Supplemental Law Enforcement (COPS) funds and another \$50,000 with Bradbury's

COPS funds. As a result, the General Fund expenses budgeted for this item are \$2,906,000. In addition, we have approximately \$42,000 in CalGRIP grant funds remaining to offset the Sheriff's contract, so that the net cost to the General Fund in 2014/15 is actually projected to be \$2,864,000.

- Over the years, the City of Duarte has been very successful at securing grant funding for public safety programs. For example, the same Cal Grip grant used to offset the cost of a Special Assignment Deputy was used to offset the cost of a Probation Officer. Unfortunately, all grant funding eventually ends and with only 6 months of CalGRIP grant funding in 2014/15, the remaining amount will increase the expenses that must be funded by the General Fund.
- \$35,000 in CalGRIP grant funds are included in the 2014/15 budget, which were recently awarded to the City in order to hire outreach consultants through the Flintridge Center to work with formerly incarcerated people in the community. The goal of this program is for consultants to connect these people with resources, job development, placement, and overall support.
- Several major studies will be conducted by the Community Development Department in 2014/15. \$30,000 has been budgeted for an Americans with Disability Act (ADA) study aimed at identifying all of the City's noncompliant facilities and improvements. The results of that study will be incorporated into our Capital Improvement Plan for future consideration. \$25,000 has been included in the budget for a consultant to assess and conduct outreach on the Neighborhood Landscaping and Lighting Assessment Districts, and \$30,000 has been budgeted for a Comprehensive Citywide Multimodal Transportation Assessment. All of these studies will be going through an RFP/RFQ process and as a result these are just estimated budgets. Council will be given the opportunity to review the proposals and approve actual contract amounts accordingly.
- Costs related to NPDES continue to increase. This year we have budgeted \$80,000 for the Coordinated Integrated Monitoring Plan (CIMP) that we are partnering on with adjacent cities, and \$30,000 for fees related to being a part of the Rio Hondo and San Gabriel River water quality groups. As discussed earlier, an additional \$30,000 was included in the legal services budget for NPDES legal issues and litigation.
- You will recall that we budgeted \$21,000 in the current year budget for new servers to be installed in City Hall. One of the capital improvements recommended in the 2014/15 budget is \$10,000 for the installation of an independent air conditioning unit in the City Hall server room. This will ensure that we can protect our investment in servers by adequately controlling the often-extreme temperatures caused by the operation of the equipment without impacting the efficiency and temperatures in the rest of City Hall.

- Last year we received a \$41,000 cost increase to our insurance, with \$40,000 of that specifically related to Worker's Compensation insurance. This year, we are expecting an increase of only \$26,000 and the largest portion is related to General Liability insurance.
- It is important to note that the recommendation for vehicle replacement is done through a detailed annual evaluation process. Staff considers the vehicle's age, odometer reading, miles traveled in last 12 months, cost of maintenance and repairs, cost per mile, and whether the vehicle is used to transport members of the public (youth, seniors, etc.) or is used only for staff transportation. Given this criteria and discussions with staff using these vehicles, we are recommending that we replace a Parks and Recreation truck that is used by everyone, but particularly by the Facilities Maintenance staff, for the pickup of sidewalk trash receptacles. This vehicle is 14 years old, has over 85,000 miles, and substantial annual repair costs. We estimate that a replacement vehicle will cost approximately \$30,000. Staff is also recommending that we replace a Public Safety seven-passenger van used for Teen Center and DART youth excursions. A replacement vehicle is estimated to cost \$35,000. In both cases we will look into alternative fuel vehicles and utilize the General Funds designated specifically for vehicle replacement by City Council. After the vehicles are replaced, staff will conduct an assessment of whether the vehicle can be effectively transferred to another department for reuse, or whether it should be disposed of through the auction process.

Other City Funds

The following are highlights for City funds other than the General Fund:

- As discussed at a recent workshop on the Landscape and Lighting Districts, the Neighborhood Districts are largely balanced because staff is able to adjust the water usage and maintenance levels. Unfortunately, in the Citywide District, while significant and noticeable reductions in service and operating efficiencies have been implemented over the last few years, we project that a subsidy of \$300,000 will be needed from the General Fund to operate even at this lower level of service. This is a \$28,000 increase from the 2013/14 subsidy and, as we discussed last year, the sole reason for this increase is the projected cost of water.
- The PAEG revenues are fees paid for by cable providers who operate in the City of Duarte under the State's Digital Infrastructure and Video Competition Act of 2006. The only cable provider currently required to pay PAEG fees is Charter Communication, and we receive approximately \$20,000 per year. The City first began receiving these funds in 2007, and we estimate that we will have approximately \$138,000 in the PAEG fund by the end of 2013/14. These funds can only be used for capital projects that involve government, education, or public access. Staff has been researching the replacement of the onsite digital recording

system and the sound system and microphones. Most recently, staff has worked with a consultant to develop specification and drawings for an RFP that is scheduled for distribution in May. Once we receive the bids in late June, we will bring back a recommendation to City Council for approval and a PAEG fund budget allocation in July.

Housing Authority

The Duarte Housing Authority was activated by the City Council in March 2011 by Resolution 11-08 for the purpose of implementing the City and Agency's affordable housing efforts. On the same day, the Redevelopment Agency adopted Resolution RA-391, which provided a grant by the Agency to the Authority from the Agency's existing balance of Low and Moderate Income Housing Funds. Since that time, the Department of Finance conducted an audit of our Affordable Housing Funds through a DDR process and demanded that \$9.4 million be paid out to Los Angeles County. The City authorized the City Attorney to initiate litigation on this issue. However, in the meantime, the Housing Authority does not receive any revenue and therefore is running at a deficit. Once Housing Authority properties can be sold, these funds can be used to offset the negative cash balances. The role of the Housing Authority is up in the air pending a final determination on the litigation against the Department of Finance.

At this point, we have budgeted expenses related to the implementation of affordable housing efforts with a consideration to the fact that AB471 gave a \$150,000 annual administrative allowance for housing entities. However, we are currently not receiving housing revenue, and receiving revenue in the future is uncertain. Budgeted expenditures are \$150,900 to cover direct administrative costs, legal and audit services, and the operation of acquired properties. To the extent that affordable housing projects evolve, estimates are prepared, and the Authority approves moving forward, the budget will be amended as needed.

RESERVES

It is projected that the General Fund will end the fiscal year with a reserve of \$7.27 or 55% of the General Fund operating budget.

The Housing Authority is projected to end the fiscal year with a negative reserve of \$1.8 million, but it separately holds \$2.7 million in land assets.

ORGANIZATION AND STAFFING

The fiscal year 2014/15 budget includes the addition of one full time Administrative Assistant and the elimination of one part time College Intern in the City Manager's Office. There are no other organizational changes at this time. In total, the City's authorized staffing for the upcoming year includes 42 full time positions, and enough part-time positions to be equivalent to another

29 full-time employees.

OVERALL BUDGET PERSPECTIVE

The 2014/15 General Fund budget includes a surplus of \$30,800. This means that revenues are expected to exceed expenditures by that amount. Please note that \$65,000 of the General Fund expenses are for the replacement of City vehicles and as a result will be paid from \$365,000 of General Fund reserves that the City Council has specifically designated for vehicle replacement.

This budget continues to largely operate at a status quo; however, for the first time in a long time it includes salary increases for both part and full time personnel, the continuation of the Nutrition Program, which lost its grant funding in 2013/14, and \$112,000 in one time expenses and capital improvements.

Obviously these margins are very small, and the cost of providing services to Duarte continues to grow faster than the revenues and as a result, we do not have enough to annually set aside substantial reserves. It will be necessary to re-evaluate programs or identify alternative funding opportunities in the future, because the steady increase of costs cannot be managed with the slow recovery of current revenues. There continues to be a commitment on the part of staff and the City Council to pursuing sound financial management practices.

CONCLUSION

It is with great pleasure that I present the City's first surplus budget in many years. While the surplus may only be \$30,800, it comes with much hard work, sacrifice, cooperation, and an overall conservative approach toward fiscal responsibility. Through all of the economic hardships of a national recession, significant job loss, and the dissolution of redevelopment in California, the City of Duarte has continued to offer programs and services of which the City Council and the community can be proud.

The balanced 2014/15 budget comes with many significant programs and projects that will continue to add to the quality of life for all Duarte residents. It also provides for salary increases for all full and part time employees, with the recently negotiated three-year Memorandums of Understanding. A new Administrative Assistant in the City Manager's Office, along with the transfer of the successful Promise Fellow program to the Parks and Recreation Department will provide for the higher levels of coverage in the day to day operations and community outreach emanating from the City Manager's Office. In addition, the City can now expand its role with social media, grant writing, website advancements, and monitoring of legislation.

Through the ongoing cooperation, communication, support, and direction provided by the City

Council, staff is in a stronger position to advance the goals and objectives outlined in this 2014/15 budget. With many of the stated obstacles hopefully behind us, the future looks bright, and Duarte has positioned itself to take advantage of the strong economic base we currently enjoy. Once again, I wish to express my appreciation to both the City Council and staff for their hard work and support in the preparation of this budget.

Respectfully Submitted,

/Darrell J. George/

Darrell J. George
City Manager



MEMORANDUM

To: City Council

From: Rafael O. Casillas, PE, Public Works Manager *po*

Date: June 10, 2014

Subject: Agreement for Contract Graffiti Removal Services for City Owned and Maintained Property

RECOMMENDATION

Staff recommends that the City Council enter into a graffiti removal services contract agreement with Superior Property Services, Inc. of Pico Rivera, CA.

BACKGROUND

On April 22, 2014, the City received proposals for graffiti removal services for public property. The scope of services consists of the contractor furnishing all labor, equipment and materials necessary for the satisfactory performance of graffiti removal. The services are defined in the Request for Proposals and Agreement for Services Contract. The City's top goal is to have graffiti removed throughout the City.

ANALYSIS

On March 19, 2014, the City issued a Request for Proposals (RFP) for graffiti removal services. Solicitation packets were issued to six (6) graffiti removal companies. The City received RFPs from three (3) companies by the April 22, 2014 deadline. The three companies were interviewed and evaluated on response to the RFP, professional reputation, experience, qualifications, type and amount of equipment, number and experience of personnel, references provided and costs. Based on cost and Staff's evaluation of the contractors in the interview process, Superior Property Services, Inc. was selected as the top candidate.

Staff contacted references and all gave Superior Property Services, Inc. and the proposed project manager excellent reviews and complimented its thoroughness, timing, efficiency and level of expertise.

Respectfully Submitted By,

Rafael O. Casillas, PE
Public Works Manager

Enclosed: Graffiti Removal Services Agreement



**CITY OF DUARTE
AGREEMENT FOR SERVICES CONTRACTOR**

THIS AGREEMENT FOR SERVICES CONTRACTOR ("Agreement") is made and effective as of **July 1, 2014** ("Effective Date"), by and between the **CITY OF DUARTE**, ("City") and **Superior Property Services**, a California Corporation ("Contractor"). City and Contractor may sometimes herein be referred to individually as a "party" and collectively as the "parties." In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. TERM

This Agreement shall commence on the Effective Date and shall remain and continue in effect until **June 30, 2015**, unless sooner terminated pursuant to the provisions of this Agreement. The term may be extended upon execution of a written amendment between the parties.

2. SERVICES AND PERFORMANCE

- A. In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. The Scope of Service may also include the Contractor's proposal, which is incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of Contractor's proposal and this Agreement, the terms of this Agreement shall govern.
- B. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is experienced in performing the work and services contemplated herein and, in light of such experience, Contractor covenants that it shall perform all services in a manner consistent with standards generally recognized as being employed by like services contractors under similar circumstances.
- C. The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for City to enter into this Agreement. Therefore, without the prior written approval of City, which may be given or withheld at City's sole and absolute discretion, Contractor shall not (i) contract with any other entity to perform in whole or in part the services required hereunder, or (ii) transfer, assign, convey, or encumber (voluntarily or by operation of law) this Agreement.
- D. Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services

required by this Agreement.

- E. Contractor shall provide all services rendered hereunder in accordance with all applicable ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included, and this Agreement shall be read and enforced as though they were included.

3. MANAGEMENT

The City's City Manager shall represent City in all matters pursuant to the administration of this Agreement, review and approval of the services performed by Contractor, including the authority, subject to the limitations set forth in Section 4, to enlarge the Scope of Services or increase the compensation due to Contractor. Contractor's official representative in the administration of this Agreement shall be Ron Bruneck Principal In Charge who shall have the authority to make all decisions for Contractor and bind Contractor to the terms of this Agreement.

4. COMPENSATION

- A. City agrees to pay Contractor, in accordance with the payment rates and terms contained in its proposal as set forth in Exhibit "A" or as otherwise provided in "Exhibit A." Subject to the City Manager's authority set forth in subparagraph (B) below, the total compensation paid to Contractor hereunder shall not exceed twenty thousand (\$20,000) for the total term of this Agreement unless otherwise authorized in advance and in writing by the City Manager.
- B. Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Contractor at the time City's written authorization is given. The City Manager may approve additional work up to but not exceeding twenty percent (25%) of the amount of this Agreement.
- C. Contractor shall be paid on a monthly basis and shall submit monthly invoices/reports to City, within ten (10) days following the end of each month, showing actual services performed. Contractor shall be paid on the next regular council warrant after all required paperwork is submitted and accepted. If the City disputes whether Contractor has earned its fee or any portion, City shall give written notice to Consultant within thirty (30) days of receipt of Contractor's monthly report stating the basis for such dispute.

5. SUSPENSION OR TERMINATION OF AGREEMENT

- A. City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving written notice upon Contractor. Upon receipt of said notice, Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. In the event this Agreement is suspended or terminated pursuant to this subparagraph (a), Contractor shall submit a final report to the City pursuant to Section 4, and City shall be entitled to receive a return of the fee paid to Contractor, or portion thereof, if the reason for the termination is failure by Contractor to have timely performed the services set forth in Exhibit "A." In City's sole and absolute discretion, prior to effecting a suspension or termination pursuant to this subparagraph (a), the City may first serve upon the Contractor a written notice of the default specifying the default and the amount of time that Contractor shall have to cure, correct, or remedy the default. In the event that the Contractor fails to cure the default within the specified period of time, the City shall have the right to immediately terminate this Agreement pursuant to subparagraph (a). Notwithstanding any other provision of this Agreement to the contrary, City's termination of this Agreement pursuant to this subparagraph (a) shall not preclude or prejudice any other remedy to which City may be entitled in law or in equity.
- B. Contractor may terminate this Agreement only due to a material breach by City, and only upon not less than thirty (30) days' prior written notice to the City which notice shall specify the material default. Upon receipt of such notice, City may, but shall not be obligated to, effect to remedy of such default.

6. RECORDS AND OWNERSHIP OF DOCUMENTS

- A. Contractor shall maintain complete and accurate records with respect to costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to produce an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment
- B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed

pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Contractor. Contractor shall provide such items to City promptly upon completion of the Agreement. Any use of such documents for other projects by the City shall be without liability to Contractor.

- C. Any information gained by Contractor in the performance of this Agreement shall be considered confidential and such information and the reports, records, documents and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly or to any other client of Contractor without the prior written approval of the City Manager.

7. INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless the City from and against all damages and liability caused by the negligent actions or willful misconduct of the Contractor or its employees, agents, or representatives. Contractor shall not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the City or any of its employees, agents, or representatives acting in an official capacity.

8. INSURANCE

Without limiting Contractor's indemnification obligations as set forth in this Agreement, the Contractor shall procure and maintain, at its sole cost and expense, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

- A. Commercial General Liability insurance written on a per occurrence basis in an amount not less than \$1,000,000 per occurrence.
- B. Business Auto Coverage written on a per accident basis in an amount not less than \$1,000,000 per accident. If Consultant or Consultant's employees use personal autos in connection with the performance of work under this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person.
- C. Worker's Compensation providing statutory benefits as required by California law.
- D. The General Liability and Business Automobile insurance policies required hereunder, shall comply with the following requirements:
 - (1) All insurance shall be written by insurers that are authorized and licensed to do business in the State of California and with A.M. Bests rating of B++ or better and a minimum financial size VII.

- (2) The policies shall be endorsed to name the City and its officers, officials, employees, agents, and designated volunteers as additional insureds.
 - (3) All of Contractor's insurance: (i) shall contain no special limitations on the scope of protection afforded to the additional insureds; (ii) shall be primary insurance and any insurance or self-insurance maintained by the additional insureds or any of them shall be in excess of the Contractor's insurance and shall not contribute with it; (iii) shall be "occurrence" rather than "claims made" insurance; (iv) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (v) shall prohibit Contractor from waiving the right of subrogation prior to a loss except for professional liability; and (vi) shall not contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured.
 - (4) The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change.
- E. Contractor shall renew the required coverage annually as long as City or its employees or agents face an exposure from the Contractor's operations pursuant to this Agreement, provided such coverage remains commercially available at reasonable rates. Termination of this obligation shall survive the termination or expiration of this Agreement and shall not be effective until City executes a written statement to that effect.
- F. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance evidencing the above insurance coverages and said Certificates of Insurance are reasonably approved by the City. Certificates are to reflect that the insurer will provide 30 days written notice to City of any cancellation of coverage. In the event any of said policies of insurance are reduced in limits or cancelled for any reason, the Contractor shall, prior to the cancellation date, submit new evidence of insurance, in conformance with this Paragraph 8.
- G. The provisions of any workers' compensation or similar act will not limit the obligations of Contractor under this Agreement. Contractor expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
- H. Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the work performed under this Agreement. City assumes no obligation or liability by such notice, but has the right to monitor the handling of any such claim or claims if they are likely to involve City.

9. INDEPENDENT CONTRACTOR

- A. Contractor is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, officials, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents is in any manner officers, officials, employees, or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.
- B. No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

10. NO UNDUE INFLUENCE

Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City shall receive compensation, directly or indirectly, from Contractor, or from any officer, employee or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement.

11. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or has responsibilities with respect to the Agreement during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the services performed under this Agreement.

12. COVENANT AGAINST DISCRIMINATION

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this Agreement there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

13. NONLIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer, official, employee, agent, representative, or volunteer of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

14. NOTICES

Any notices which either party may desire to give or may be required to give to the other party under this Agreement must be in writing and may be given either by (a) personal service, or (b) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (c) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

If to City: City of Duarte
 City Manager's Office
 1600 Huntington Drive
 Duarte, California 91010

If to Consultant: Mr. Ron Bruneck
 Superior Property Services, Inc.
 9129 Perkins Street
 Pico Rivera, CA 90660-4512

15. GOVERNING LAW; ATTORNEY'S FEES; LITIGATION MATTERS

The internal laws of the State of California, without regard to principles of conflicts of laws, shall govern the interpretation of this Agreement. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding anything in this Agreement to the contrary, in no event shall City or Contractor be entitled to economic or consequential damages or to punitive damages. In the event of any litigation arising from or related to this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred, including staff time, court costs, reasonable attorney fees, expert witness fees, and other related expenses. The Municipal and Superior Court of the County of Los Angeles shall have exclusive jurisdiction over any litigation between the parties hereto concerning this Agreement. Service of process on City shall be made in the manner required by law for service on a public entity. Service of process on Contractor shall be made in any manner permitted by law and shall be effective whether served inside or outside of California.

16. RIGHTS AND REMEDIES ARE CUMULATIVE; AND WAIVER

- A. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
- B. No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

17. SEVERABILITY

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

18. INTERPRETATION; ENTIRE AGREEMENT

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect.

19. EXECUTION OF CONTRACT

The persons executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

20. EFFECTIVE DATE

The Effective Date of this Agreement is July 1, 2014.

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Agreement as of the Effective Date.

CITY OF DUARTE

SUPERIOR PROPERTY SERVICES, INC.

By _____
Darrell George

By _____
Principal Name

City Manager

Its: Principal In Charge

Date: _____

Date: _____

EXHIBIT "A"
SCOPE OF SERVICES
SEE FOLLOWING PAGES

**PROPOSAL
GRAFFITI REMOVAL
DECLARATION**

Pursuant to the Notice inviting proposals for the above described work, the undersigned as a Contractor, declares that he/she has carefully examined the proposed described work and that he/she has read and examined the contract documents and is familiar with all proposal requirements and hereby proposed and agrees. If the proposal is accepted by the City of Duarte, that within ten (10) days, excluding Saturdays, after written notice of aware of contract is mailed to Contractor, Contractor will execute and deliver to the City Clerk the contract form provided in the contract documents, the insurance certificates and the special endorsements required therein in a form approved by the City Attorney. Contractor will also furnish all labor, materials and services necessary to perform and complete all work required by the contract documents and all addenda thereto issued by the City of Duarte prior to the receipt of the proposals, for the above described work for the lump sum or unit price set forth in the proposals schedule which is attached hereto and by this reference is incorporated herein.

Said Contractor further agrees to complete all work required under the contract within the time stipulated in said contract documents and to accept in the full payment therefore the price in the Proposal Schedule.

Date: April 21, 2014

Name of Contractor: Superior Property Services, Inc.
(Complete Corporate, Partnership, Fictitious or Sole Proprietorship Name)

By: 
(Signature)

Name Printed: Ron Bruneck

Title: President
(Proof of authority to bind Contractor must be submitted with proposal)

Address: 9129 Perkins St., Pico Rivera, CA 90660

Telephone: (562) 801-9200

Attachment 2

REMOVAL OF GRAFFITI FROM PUBLIC RIGHT OF WAY:

Examples of items in the public right of way that could require removal of graffiti include but are not limited to utility control boxes, tree, block walls, park benches, light standards/utility poles, utility boxes, wooden fences, curbs, waste containers, and guardrails. In addition, play equipment at City parks may also be included.

Often several items are tagged within a short distance. Please define for us what a location would be in terms of removal of graffiti for your company, i.e., so many items within a location or within so many feet of a location. _____

SEE BELOW

If different methods were used within the same location, would separate location minimums be charged for each method? Yes No

Usually a site or location would be any graffiti found at a specific address. However, if we are billing based on a per site amount we must be more specific and a site would be any graffiti found without moving to a different location usually about a 25 foot radius. For instance, an alley wall we would remove all graffiti or spray out entire wall and count each move as a site, approximately every 25 feet would be one site or stop.

We have always been very fair with our billing and have never been questioned or accused of over charging.

We do not charge separate location minimums for each method. However, when pressure washing you tend to have more frequent graffiti spots so each stop may be 10 or 15 feet instead of 25 feet.

LIST QUANTITY OF FOLLOWING EQUIPMENT OWNED:

<u>Equipment</u>	<u>Quantity</u>
1. Sandblasters	4
2. Airless Sprayer	40
3. Trucks	32
4. Water Blasting Equipment	10
Model of Water Blaster	Hydro Tech
PSI 3,000 ~ 3,500	Temperature 190 degrees
Use Baking Soda	<input checked="" type="radio"/> Yes <input type="radio"/> No
Use Sand	<input checked="" type="radio"/> Yes <input type="radio"/> No
5. Others <u>SEE BELOW</u>	

The Farrow System - uses lower pressure, less water and an environmentally friendly blasting material.

We are also testing the Tornado ACS advanced cleaning system for graffiti removal. An Eco-friendly surface restoration. This system is a blasting system, which is entirely self contained, recapturing and recycling all blasting material and uses no water or chemicals.

www.tornadoACS.com

CITY OF DUARTE
References

SUBMIT SEPARATELY A LIST OF ALL CONTRACTS IN FORCE AS OF THIS DATE:

1. City of Anaheim
Telephone (714) 765-4413
Contact Person Sandra Sagert
Contract Amount \$ 924,000.00
Check one box below:
 Annual Contract Bid Project
County _____
2. ~~City of~~ Los Angeles
Telephone (626) 458-4062
Contact Person Ari DeChellis
Contract Amount \$ 1.1 Million
Check one box below:
 Annual Contract Bid Project
County _____
3. ~~City of~~ Orange
Telephone (714) 955-0347
Contact Person Forrest DeSpain
Contract Amount \$ 100,000
Check one box below:
 Annual Contract Bid Project
County _____
4. City of Simi Valley
Telephone (805) 583-6459
Contact Person John Parris
Contract Amount \$ 25,000
Check one box below:
 Annual Contract Bid Project
County _____
5. City of West Hollywood
Telephone (323) 848-6400
Contact Person Kevin Trudeau
Contract Amount \$ 145,000
Check one box below:
 Annual Contract Bid Project
County _____

SCHEDULE OF FEES

Please provide a complete schedule of graffiti removal fees by all methods available for use by the consultant including but not limited to sandblasting, water blasting, painting, chemical/solvent removal, etc.

Sand Blasting	.10 cents/ sq. ft.	Min. \$15.25
Water Blasting	.10 cents/ sq. ft.	Min. \$15.25
Soda Blasting	.10 cents/sq. ft.	Min. \$15.25
Painting	.10 cents/sq. ft.	Min. \$15.25
Chemical/solvents	.10 cents/sq. ft.	Min. \$15.25
Glass Restoration/Etched Glass		\$75.00 minimum or \$35.00/hour
Anti-graffiti Film/Glass		\$4.00/sq. ft.
Anti-graffiti Film/Signs		\$5.00/sq. ft.
Anti-graffiti Film/mirrors		\$6.00/sq. ft.
Anti-graffiti Coating		\$.50 cents/sq. ft.
Low pressure Blasting (The Farrow System)		\$2.25/sq. ft.

Based on 16 hours per month (not to exceed \$15,000/year)

Attachment 6

Please complete the following:

REMOVAL OF GRAFFITI FROM PRIVATE PROPERTY:

Using the contractor's complete schedule of graffiti removal fees, please enter the cost per location for each of the following graffiti removal methods.

Type	Minimum Cost		Additional Cost Over Minimum Cost
Sandblasting	\$ <u>15.25</u>	For <u>10</u> sq. ft.	\$ <u>.10 cents</u> /sq. ft.
Water blasting	\$ <u>15.25</u>	For <u>10</u> sq. ft.	\$ <u>.10 cents</u> /sq. ft.
Water blasting with baking soda	\$ <u>15.25</u>	For <u>10</u> sq. ft.	\$ <u>.10 cents</u> /sq. ft.
Painting – "matching paint"	\$ <u>15.25</u>	For <u>10</u> sq. ft.	\$ <u>.10 cents</u> /sq. ft.
Chemical/Solvents	\$ <u>15.25</u>	For <u>10</u> sq. ft.	\$ <u>.10 cents</u> /sq. ft.
Other (describe): _____	\$ _____	For _____ sq. ft.	\$ _____/sq. ft.

Please complete the following schedule of fees:

		Cost per sq. ft.	Charged in increments of	Minimum Charge per location
A.	Non-Porous Surface	.10 cents	10 sq. ft.	\$15.25
B.	Painted Surface	.10 cents	10 sq. ft.	\$15.25
C.	Porous Surface	.10 cents	10 sq. ft.	\$15.25
D.	Emergency Call Out	.10 cents	100	\$75.00

Definitions of the terms used above:

Non-Porous Surface	Glass windows, mirrors, metal, street signs, poles, baked enamel, traffic control boxes, etc.
Painted Surface	Previously painted surfaces such as stucco, block walls, tilts, ups, fences, etc.
Porous Surface	Natural unpainted surfaces such as block walls, concrete walls, curbs, sidewalks, etc.
Emergency Call Out	Sending a work crew out of schedule.

Please complete the following schedule of fees for sidewalk power washing services:

Cost per square foot or cost per linear foot	Charged in Increments of	Minimum charge per location
.35 cents per linear ft.	50 linear ft.	\$25.00