

Written materials relating to an item on this agenda that are distributed to the legislative bodies within 72 hours before the item is to be considered at its regularly scheduled meeting will be made available for public inspection at the Library, 251 South "A" Street and the City Clerk's Office, 305 West Third Street during customary business hours. Any materials to be presented at this meeting will be made available electronically 24 hours prior to the meeting, at the end of this agenda. The agenda reports are on the City of Oxnard web site at www.ci.oxnard.ca.us.



AGENDA

OXNARD CITY COUNCIL

*OXNARD COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY

*OXNARD FINANCING AUTHORITY

*OXNARD HOUSING AUTHORITY

Regular Meetings

City Council Chambers, 305 West Third Street, Oxnard

December 1, 2015

6:00 P.M.

A. ROLL CALL/POSTING OF AGENDA

*** The Oxnard Community Development Commission Successor Agency, the Oxnard Financing Authority and the Oxnard Housing Authority will not meet because there are no items requiring consideration on this date.**

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

At this time, a person may address the legislative body only on matters appearing on the closed session agenda. The presiding officer shall limit public comments to three minutes.

C. CLOSED SESSION

D. OPENING CEREMONIES – 6:00 P.M.

Pledge of allegiance to the flag of the United States.

E. CEREMONIAL CALENDAR

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA (30 Minutes)

At this time, the legislative body will consider public comments for a maximum of thirty minutes. A person may address the legislative body only on matters not appearing on the agenda and within the subject matter jurisdiction of the legislative body. A person not able to address the legislative body at this time because the thirty minutes expires may do so just prior to adjournment of the meeting. The legislative body cannot enter into a detailed discussion or take any action on any items presented during public comments at this time. Such items may only be referred to the City Manager/ Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion. Persons wishing to speak on public hearing items should do so at the time of the hearing. The presiding officer shall limit public comments to three minutes.

G. REVIEW OF INFORMATION/CONSENT AGENDA

The members of the legislative body will consider whether to remove Information/Consent Agenda items for discussion later during the meeting.

In compliance with the Americans with Disabilities Act, if you require special assistance to participate in a meeting, please contact the City Clerk's Office at 385-7803. Notice at least 72 hours prior to the meeting will enable the City to reasonably arrange for your accessibility to the meeting.

City of Oxnard internet address: www.ci.oxnard.ca.us.

H. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

At this time, a person may address the legislative body only on matters appearing on the information/consent agenda. The presiding officer shall limit public comments to three minutes.

I. INFORMATION/CONSENT AGENDA

City Clerk Department

1. SUBJECT: Minutes of the Regular Meetings of the Oxnard City Council for October 20, 2015.
(001)

RECOMMENDATION: Approve.

Legislative Body: CC

Contact: Daniel Martinez

Phone: 385-7803

City Manager Department

2. SUBJECT: Agreements for City Council Review. (007)
RECOMMENDATION: Pursuant to Ordinance 2835 and Resolution 13,932, approve and authorize the City Manager, to execute the attached agreements/contracts and change orders/amendments in amounts more than \$25,000 but no more than \$250,000, which are described on the attached list.
Legislative Body: CC Contact: Greg Nyhoff Phone: 385-7430

Development Services Department

3. SUBJECT: Installation of a Raised Median along Victoria Avenue from Gonzales Road to Fifth Street. (011)
RECOMMENDATION: 1) Adopt Project Specification No. DS 15-43 for the installation of a raised median along Victoria Avenue from Gonzales Road to Fifth Street; and 2) Approve a budget appropriation recognizing additional Federal grant funding of \$831,900 from the Highway Safety Improvement Program (HSIP) and appropriate additional match of \$251,834 from Circulation System Improvement Fund to the Victoria from 5th Street to Gonzales Project 143102.
Legislative Body: CC Contact: Ashley Golden Phone: 385-7868

J. PUBLIC HEARINGS – 6:15 P.M.

Development Services Department

1. SUBJECT: Review of Planning Commission's Approval of Planning and Zoning Permit No. 14-510-03 (Special Use Permit-Alcohol Sales) to allow an existing 76,639 square foot Wal-Mart, located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC Type 21) within the store. Filed by Brent McManigal on behalf of Wal-Mart Stores, Inc and the property owner, 550 East Hospitality Lane, Suite 300, San Bernardino, California 92408. (015)
RECOMMENDATION: Adopt a resolution upholding the Planning Commission's action and approve Planning and Zoning Permit No. 14-510-03 (Special Use Permit – Alcohol) to allow an existing 76,639 square foot Wal-Mart, located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC Type 21) within the store, subject to certain findings and conditions.
Legislative Body: CC Contact: Ashley Golden Phone: 385-7858

K. APPOINTMENT ITEMS

Public Works Department

1. **SUBJECT:** Appropriate Funds from Streets Improvement Fund Balance in the amount of \$1,250,000 to the La Colonia Resurfacing, Phase I, Project 143116. (087)
RECOMMENDATION: Approve a budget appropriation in the amount of \$1,250,000 from the Street Improvement Fund Balance to the La Colonia Resurfacing, Phase I, Project 143116.
 Legislative Body: CC Contact: Daniel Rydberg Phone: 385-8281

L. REPORTS

City Manager Department

1. SUBJECT: Presentation of Information Technology Four-Year Master Plan from NexLevel Information Technology, Inc. (089)
RECOMMENDATION: Receive a presentation and report on the Information Technology Four-Year Master Plan from NexLevel Information Technology, Inc.
Legislative Body: CC Contact: Keith Brooks Phone: 385-7597
2. SUBJECT: Third Amendment to Purchase Order No. 4203 with Kemira Water Solutions for Supply and Delivery of Ferric Chloride to the Wastewater Treatment Plant. (095)
RECOMMENDATION: Approve and authorize the Mayor to execute a Third Amendment to Purchase Order No. 4203 with Kemira Water Solutions (Kemira) for the supply and delivery of Ferric Chloride to the Wastewater Treatment Plant, extending the expiration date from October 16, 2015 to June 30, 2016 and adding \$175,000 to the amount, increasing the total from \$1,354,790 to \$1,529,790.
Legislative Body: CC Contact: Daniel Rydberg Phone: 385-8281

M. REPORT OF CITY MANAGER/EXECUTIVE DIRECTOR/SECRETARY

The City Manager/Executive Director/Secretary shall report on items of interest to the legislative body occurring since the last meeting. The legislative body cannot enter into detailed discussion or take action on any item presented during this report. Such items may only be referred to the City Manager/Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion.

N. CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY/FINANCING AUTHORITY
BUSINESS/COMMITTEE REPORTS

O. PUBLIC COMMENTS ON REPORTS

At this time, a person may address the legislative body only on matters appearing on the reports. The presiding officer shall permit a person to address the legislative body after the staff presentation on the report and before the consideration of the report by the legislative body. The presiding officer shall limit public comments to three minutes.

P. PUBLIC COMMENTS ON STUDY SESSION

At this time, a person may address the legislative body only on matters appearing on the study session agenda. The presiding officer shall permit a person to address the legislative body after the staff presentation on the item and before the consideration of the item by the legislative body. The presiding officer shall limit public comments to three minutes.

Q. STUDY SESSIONCity Attorney Department1. SUBJECT: Review and Discuss Whistleblower Policy Guidelines. (103)

RECOMMENDATION: Discuss a Whistleblower Policy and provide staff direction to return to Council with a recommended Whistleblower Policy for adoption.

Legislative Body: CC

Contact: Stephen Fischer

Phone: 385-7483

R. ADJOURNMENT

MINUTES
OXNARD CITY COUNCIL
Regular Meeting
October 20, 2015

**AGENDA ITEM NO.
I-I**

A. ROLL CALL/POSTING OF AGENDA

At 6:07 p.m., the regular meeting of the Oxnard City Council convened in the Council Chambers concurrently with Oxnard Community Development Commission Successor Agency. Councilmembers Tim Flynn, Carmen Ramirez, Bryan A. MacDonald, Dorina Padilla and Bert Perello were present. The City Clerk stated that the agenda was posted on Thursday in the Library and City Clerk's Office.

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

C. CLOSED SESSION

D. OPENING CEREMONIES

The meeting opened with the pledge of allegiance to the flag of the United States, followed by a moment of silence. Mayor Flynn presided and called the meeting to order. Staff members present were: Daniel Martinez, City Clerk; Greg Nyhoff, City Manager; Maria Hurtado, Assistant City Manager; Scott Whitney, Assistant City Manager; Stephen Fischer, Interim City Attorney; Jeri Williams, Police Chief; J Tobin Cosio, Human Resources Director; Kymberly Horner, Economic Development Director and Ashley Golden, Development Services Director.

E. CEREMONIAL CALENDAR

1. SUBJECT: Presentation of a Proclamation Designating October 13, 2015 as "Community Safety and Anti-Violence Day."
DISCUSSION: The Police Chief commented on the need for the City to work with the community to create a "safer" environment.

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Public comments were received from: Marisela Alatorre, (Police Chief); Pat Brown (pot hole fixed) and Lydia Kaplan (landscape districts).

The following individuals spoke against the proposed "utility" rate increase: Al Velasquez; Ventura Fernandez; Harold Ceja; Alicia Percell; Aaron Starr; Michael Gleason; George Miller; Inez Tuttle; Nancy Kobashigawa; Phillip Molina and Patrick Barrios.

The following individuals spoke supporting the Alfonso Limon family: Claudia Limon Regina Limon; Monica Morales; Karla Alejandra and Alejandra Limon.

G. REVIEW OF INFORMATION/CONSENT AGENDA

H. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

Public comment was received from: Pat Brown (I-3).

I. INFORMATION/CONSENT AGENDA**City Clerk Department**

1. **SUBJECT**: Minutes of the Regular Meetings of the Oxnard City Council for September 15, 2015; and Minutes of the Regular Meetings of the Oxnard Community Development Successor Agency for September 1, 15, 22 and October 6 and 13, 2015. (001)
RECOMMENDATION: Approve.

City Manager Department

2. **SUBJECT**: Agreements for City Council Review. (015)
RECOMMENDATION: Approve and authorize the City Manager, to execute the attached agreements/contracts and change orders/amendments in amounts more than \$25,000 but no more than \$250,000, which are described on the attached list.

General Services Division

3. **SUBJECT** Second Reading and Adoption of **Ordinance No. 2897** Adding Section 7-93 to Article V of Chapter 7 (Graffiti) of the Oxnard City Code Authorizing Graffiti Abatement Cost Recovery Through the Juvenile Courts and Setting Costs and Expenses for Such Recovery. (017)
RECOMMENDATION: Second reading and adoption.

INFORMATION/CONSENT AGENDA ACTION: Approved as recommended. (MacDonald/Perello) Ayes: Ramirez, MacDonald, Padilla, Perello and Flynn.

J. PUBLIC HEARINGS**K. APPOINTMENT ITEMS****L. REPORTS****Community Development Department**

1. **SUBJECT**: Sixth Amendment to the RiverPark Owner Participation Agreement (“RiverPark OPA”) and Corresponding Memorandum of Understanding. (021)
RECOMMENDATION: That the Oxnard Community Development Commission Successor Agency (“SA”): 1) Approve the proposed Sixth Amendment to the RiverPark OPA (A-5965) (Attachment 1) and authorize the Chairman (or designee) to execute the document with such non-substantive changes as may be acceptable to the SA’s Interim General Counsel and SA Special Counsel; and 2) Authorize the Executive Director of the SA (or designee) to prepare, revise and sign all associated documents necessary to carry out and implement the Sixth Amendment to the RiverPark OPA (A-5965), and to administer the SA’s obligations, responsibilities and duties thereto; and That the City Council of the City of Oxnard (“City”): 1) Approve the proposed Memorandum of Understanding (“MOU”) (Attachment 4) and authorize the Mayor (or designee) to execute the document with such non-substantive changes as may be acceptable to the Interim City Attorney and City Special Counsel; and 2) Authorize the City Manager (or designee) to prepare, revise and sign all associated documents necessary to carry out and implement the MOU, and to administer the City’s obligations, responsibilities and duties thereto.

DISCUSSION: The Economic Development Director reviewed proposed site of a “hotel” in the Riverpark area including: changes to Owner Participation Agreement (hotel type, rates, number of rooms), building of second hotel, approval rights and future sales taxes.

The Development Services Director stated an EIR was “not” necessary due to the fact that the site was zoned for hotel.

The Interim City Attorney reviewed entitlement right(s) of the developer.

Public comments received from: Larry Stein; Steve Nash; James Lavery; Aaron Starr and Pat Brown.

Andres Freeman, developer, commented on research to place hotel at the site and future projected sales taxes.

The City Council commented on: type of hotel to be sited at located; history of the RiverPark development; building a quality hotel and levee issue.

ACTION: Moved to have “Sixth Amendment to the “RiverPark OPA” and Corresponding Memorandum of Understanding” returned to staff in order to present other possible development options. (Flynn/Ramirez) Ayes: Perello, Flynn and Ramirez. Noes: MacDonald and Padilla.

RECESS

At 8:41 p.m., the City Council recessed and at 8:47 p.m., the City Council reconvened.

Q. STUDY SESSION

City Attorney Department

1. SUBJECT: Smoking Ordinance Study Session. (203)

RECOMMENDATION: Conduct a study session regarding a potential smoking ordinance and provide direction to staff.

DISCUSSION: The Interim City Attorney outlined: existing State regulations and options to the City Council regarding a possible “smoking” policy and need for public outreach including new municipal regulations, enforcement issues and violation penalties.

Public comments were received from: Rigoberto Vargas, Public Health Director; Primo Castro; Becky Haycox; Gabriel Teran; George Miller; Jack Villa; Kaz Iwamoto; Pat Brown; Vicky Gonzalez and Andrew Hernandez.

The City Council discussed several issues: public health issue of smoking; possible municipal “smoking” rules; smoking policy of other County cities and “smoking policy” of the Housing Authority.

ACTION: The City Council provided comments and directions to staff.

L. REPORTS

Finance Department

3. SUBJECT: Review of Proposed New Internal Audit Program and Request for Proposal (RFP). (127)

RECOMMENDATION: 1) Review and approve the proposed Internal Audit Program Charter; and 2) Review and approve the proposed Request for Proposals for Internal Audit Program services.

ACTION: The City Council concurred to continue to future date.

Human Resources Department

4. SUBJECT: Adoption of a Section 457 Deferred Compensation for Part-time, Temporary and Seasonal Employees. (187)

RECOMMENDATION: 1) Adopt a resolution authorizing the establishment of the Part-time, Temporary, and Seasonal 457(b) deferred compensation plan; and 2) Authorize the City Manager or designee to execute an agreement with the International City Management Association Retirement Corporation ("ICMA-RC") for administration of the plan.

DISCUSSION: The Human Resources Director outlined the need to approve the resolution to provide a 457(b) deferred compensation plan.

Public comments were received from: Larry Stein and George Miller.

The City Council discussed providing (part-time, temporary and seasonal) employees with a retirement option.

ACTION: Approved as recommended, adopting **Resolution No. 14, 866**. (MacDonald/Perello).

Ayes: Padilla, Perello, Flynn, Ramirez and MacDonald.

Fire Department

5. SUBJECT: Verbal Report on Evacuation Procedures for the City of Oxnard in the Event of a Major Emergency.

RECOMMENDATION: Receive and consider report.

ACTION: The City Council concurred to continue to future date.

RECESS

At 10:16 p.m., the City Council recessed while the Community Development Commission Successor Agency held a meeting and at 10:57 p.m., the City Council reconvened.

SUCCESSOR AGENCY

At 10:57 p.m. the joint meetings with the Community Development Commission Successor Agency concluded.

M. REPORT OF CITY MANAGER/EXECUTIVE DIRECTOR/SECRETARY

1. SUBJECT: Verbal Report of Implementation Action Plan Agreements.

RECOMMENDATION: Receive the report on agreements with Renee Sloan Holtzman Sakai, LLP. in the amount of \$98,000 for assistance with the Implementation Action Plan (Bob Deis) and an agreement with Management Partners in the amount of \$75,000 for assistance with implementation of priority base budgeting and financial advisory.

ACTION: The City Council concurred to continue to future date.

The City Manager commented on the “hard work” of City employees.

N. CITY COUNCIL BUSINESS/COMMITTEE REPORTS

The Council discussed: graffiti on Santa Clara bridge (MacDonald) and upcoming Veteran’s Day events (Flynn).

O. PUBLIC COMMENTS ON REPORTSP. PUBLIC COMMENTS ON STUDY SESSIONF. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Public comment was received from: Larry Stein.

R. ADJOURNMENT

At 11:27 p.m. the City Council concurred to adjourn the meeting.

DANIEL MARTINEZ
City Clerk

TIM FLYNN
Mayor



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: I-2

DATE: December 1, 2015

TO: City Council

FROM: Greg Nyhoff, City Manager
Office of the City Manager

A handwritten signature in dark ink, appearing to be "Gm", located to the right of the "FROM:" field.

SUBJECT: Agreements for City Council Review

CONTACT: Greg Nyhoff, City Manager
greg.nyhoff@ci.oxnard.ca.us, 385-7430

RECOMMENDATION

That City Council, pursuant to Ordinance 2835, and Resolution No. 13,932, approve and authorize the City Manager to execute the agreements/contracts and change orders/amendments in amounts more than \$25,000 but no more than \$250,000, which are described on the attached list.

BACKGROUND

On November 16, 2010, the City Council approved changes to the City's Purchasing Procedures reducing the threshold for City agreements/contracts and change orders/amendments requiring City Council approval to \$25,000. The agreements/contract and change orders/amendments described on the attached list involve amounts above \$25,000 and up to \$250,000.

FINANCIAL IMPACT

Funding information is included on the attached list.

Attachment - #1 – List of Agreements/Contracts and/or Change Orders/Amendments

NOTE: Copies of the agreement/contracts and change orders/amendments on the list are available in the City Clerk's Office prior to the Council meeting.

City Manager Contract List for 12/01/2015

Item Type	Department/Contact	Vendor/Agreement Number	Description/Purpose	Amount
A	Amendment	Fire Department	Second Amendment for Certified Unified Program Agency (CUPA) Services	\$24,499
	Sergio Martinez	Koester Environmental Compliance Services Agreement No. 7044-15-FI	This Second Amendment is a correction to the First Amendment which was intended to extend the date of Consultant Koester Environmental Services to February 2016 and increase the amount of the agreement from \$24,499 to \$72,019. The First Amendment only increased the amount to \$47,520 and did not include the outstanding contract amount of \$24,999.	
	385-7720	Amendment 2	Koester Environmental Compliance Services serves as the CUPA Coordinator until the full time position at the Fire Department opens for recruitment in January, 2016.	
			Total Contract Amount: \$72,019	Current FY Amount: \$47,520
			FundingSource: CUPA Operating Fund	
B	Task Order	Public Works, Capital Projects Management	On-Call Soils and Material Testing for Kingsbridge Way Wall Repairs	\$22,144
	Lou Balderrama	BTC Labs Vertical Five Agreement No. 6389-13-CM	Task Order No. 2 was approved for geotechnical and special inspection services, laboratory testing, and a final report for the Kingsbridge Way Wall Repairs. Task Order No. 2A adds additional scope for inspection and testing through the completion of the project and brings the total task order amount to \$44,891.25.	
	385-7839	Task Order 2A	A Request for Qualifications and a legal notice was issued on August 1, 2013. A total of 12 proposals were received and the City entered into agreements with the top four firms, one of which was BTC Labs Vertical 5. The contract total remains unchanged.	
			Total Contract Amount: \$250,000	Current FY Amount: \$44,891
			FundingSource: Waterways Assessment District Funds	
C	Purchase Order	Police	Taser Purchase	\$40,000
	Commander Kevin Baysinger	Proforce Law Enforcement Purchase Order No. 5659	The Police Department is requesting to purchase 35 new replacement Tasers, including holsters, batteries and cartridges, and an additional 20 batteries that work with older model Tasers currently in use.	
	385-8290		The selection is a sole source process because ProForce Law Enforcement is the only distributor of Taser products in California. Purchases from other than an authorized distributor are not allowed by Taser International.	
			Total Contract Amount: \$40,000	Current FY Amount: \$40,000
			FundingSource: Public Safety Funds	

ATTACHMENT 2
PAGE 1 OF 2

City Manager Contract List for 12/01/2015

Item Type	Department/Contact	Vendor/Agreement Number	Description/Purpose	Amount
D	Change Order	PW General Services Pat Friend for-Ralph Alamillo	GS11-06-Campus Park Gym North Wing Tenant Improvement Change Order No. 1 is to cover the additional concrete work required to complete the Campus Gymnasium (Gym) North Wing tenant improvement project. On June 24, 2014 City Council approved the plans and specification for the North Wing of the Campus Park Gym. On October 8, 2014, staff issued a Request for Bid and received three bids. On December 16, 2014 City Council approved the award of the contract to SBS Corporation as the lowest responsive bidder. On July 21, 2015 City Council approved a budget appropriation reprogramming \$35,000 of CDBG funding for Campus Park Gymnasium Project No. 137401.	\$38,245
	385-7821	Change Order 1	Total Contract Amount: \$1,296,074 Current FY Amount: \$1,296,074 FundingSource: Campus Park Gym -CDBG Entitlement Fac. Mfnce Svcs	



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: I-3

DATE: December 1, 2015

TO: City Council

THROUGH: Greg Nyhoff, City Manager
Office of the City Manager

FROM: Ashley Golden, Director
Development Services Department

SUBJECT: Installation of a Raised Median along Victoria Avenue from Gonzales Road to Fifth Street

CONTACT: Soher Abdel-Malik, Associate Traffic Design Engineer
soher.abdelmalik@ci.oxnard.ca.us, x7873

RECOMMENDATION

That City Council:

1. Adopt Project Specification No. DS 15-43 for the installation of a raised median along Victoria Avenue from Gonzales Road to Fifth Street.
2. Approve a budget appropriation recognizing additional Federal grant funding of \$831,900 from the Highway Safety Improvement Program (HSIP) and appropriate additional match of \$251,834 from Circulation System Improvement Fund to the Victoria from 5th Street to Gonzales Project 143102

BACKGROUND

In 2012, the City applied for and was awarded Federal grant funds in the amount of \$900,000 from the Highway Safety Improvement Program (HSIP) for the installation of a raised median along Victoria Avenue from Gonzales Road to Fifth Street. At that time, \$68,100 of the grant and matching funds of \$100,000 from Circulation System Improvement Funds were appropriated for preliminary engineering. The project, when completed, will provide a median with concrete curb, stamped concrete, and street lights. The new median will serve as a traffic calming measure for the high speed traffic along Victoria Avenue. The new installation of street lights will reduce the number of night time collisions, and enhance the safety of pedestrians and motor vehicles.

SUBJECT: Installation of a Raised Median along Victoria Avenue from Gonzales Road to Fifth Street

FINANCIAL IMPACT

The total estimated cost of this project is \$1,251,834, which will be funded with \$900,000 of Federal grant funds and \$351,834 of match from Circulation System Improvement Funds. These amounts include the \$68,100 of federal grant funds and \$100,000 of Circulation System Improvement Funds previously appropriated to the project for the preliminary engineering and design phases. This recommendation appropriates the remaining funds required to the construction of Project 143102 Victoria from 5th to Gonzales.

Attachments

Attachment 1 – Budget Appropriation

REQUEST FOR BUDGET APPROPRIATION

Department: Development Services
Project/Program
Manager: Soher Abdel-Malik

Date: November 17, 2015

Phone: 385-7873

Reason for Appropriation:

To recognize Federal grant funding authorized for Construction and Construction engineering per E-76 dated 07/18/2015 for federal project no. HSIPL-5129(083) and appropriate match funds from Circulation System Imprv. Fees (Fund 354).

Accounts and Descriptions

AMOUNT

Fund: **275 - FED. TRANSPORT. MY GRANTS**

Revenues/Transfers In

275-3080-531.7201	FEDERAL & STATE SOURCES/FEDERAL GRANT REV.	831,900
	Sub-total Revenues	831,900

Expenditures/Transfers Out

VICTORIA FROM 5TH TO GONZALES (Project 143102)		
275-3080-826.84-51	OTHER SERVICES/SERVICES FROM OTHER PROG	39,760
275-3080-826.86-05	CAPITAL OUTLAY-IMPROVEMENTS NOT BLDG-NEW	792,140
	Sub-total Expenditures	831,900
	Net Change to Fund Balance	0

Fund: **354 - CIRCULATION SYS. IMPR. FEES**

Expenditures/Transfers Out

VICTORIA FROM 5TH TO GONZALES (Project 143102)		
354-3080-826.86-05	CAPITAL OUTLAY-IMPROVEMENTS NOT BLDG-NEW	251,834
	Sub-total Expenditures	251,834
	Net Change to Fund Balance	(251,834)
	Net Appropriation Change	1,083,734

Approvals

Department Director

Chief Financial Officer

City Manager

ATTACHMENT 1
PAGE 1 OF 1

BA# (Finance Use Only) _____
BA Doc# (Finance Use Only) _____

REQUIRES CITY COUNCIL AUTHORIZATION

Revised : 2/23/2012



CITY COUNCIL
AGENDA REPORT

TYPE OF ITEM: Public Hearing

AGENDA ITEM NO.: 5-1

DATE: December 1, 2015

TO: City Council

THROUGH: Greg Nyhoff, City Manager
Office of the City Manager

FROM: Ashley Golden, Development Services Director
Development Services Department

SUBJECT: Review of Planning Commission's Approval of Planning and Zoning Permit No. 14-510-03 (Special Use Permit-Alcohol Sales) to allow an existing 76,639 square foot Wal-Mart, located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC Type 21) within the store. Filed by Brent McManigal on behalf of Wal-Mart Stores, Inc and the property owner, 550 East Hospitality Lane, Suite 300, San Bernardino, California 92408.

CONTACT: Juan Martinez, Associate Planner
Juan.martinez@ci.oxnard.ca.us, 805-385-7556

RECOMMENDATION

That City Council adopt a resolution upholding the Planning Commission's action and approve Planning and Zoning Permit No. 14-510-03 (Special Use Permit – Alcohol) to allow an existing 76,639 square foot Wal-Mart, located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC Type 21) within the store, subject to certain findings and conditions.

BACKGROUND

Planning Commission Review and Action - On October 1, 2015, the Planning Commission held a public hearing and considered a request for a special use permit to allow an existing 76,639 square foot Wal-Mart to sell beer, wine, and distilled spirits for off-site consumption (ABC Type 21) and allow authorized alcoholic beverage manufacturers, winegrowers and wholesalers ("Tasting Coordinator") to conduct "Instructional Tasting Event(s)" within the store (ABC Type 86).

At the public hearing held on October 1, 2015, the Planning Commission considered Staff's recommendation along with oral and written comments by persons who attended the meeting. The Commission's discussion, comments and concerns centered on the following issues:

1. At the meeting the Applicant requested that the Planning Commission reconsider Condition No. 34 of Resolution 2015-27. Condition No. 34 allows the sale of alcohol until 11 P.M. Walmart requested to extend the sale of alcohol to 2 A.M. Planning Commission did not support Walmart's request and the condition remained to limit the sale of alcohol to 11 P.M.
2. At the meeting the Applicant requested adding language to Condition No. 50 of Resolution 2015-27. Condition No. 50 prohibits the sale of cold alcohol. Typically a change to a condition of approval requires Planning Commission approval. The applicant requested that language be added to Condition No. 50 to allow under a future minor modification permit, and with the consent of the Police Department, that the Planning Manager be able to approve the sale of cold alcohol. A minor modification does not require public notice or a community workshop. This request was not supported by the Planning Commission, and no changes were made to Condition No. 50.
3. Lastly, the Planning Commission and the community expressed concerns, and had questions, on the requested instructional tasting events. As indicated in previous discussions and materials provided by the applicant, the Planning Commission Staff report indicated that Wal-Mart would hold approximately 8-12 events per year. At the hearing the applicant indicated there would be 24-36 events per year. The draft resolution of approval did not include a condition of approval that limited the number of instructional tasting events that could take place. The Applicant and Police Department representative answered questions and explained the permitting and regulatory standards that would apply should the license and permits be granted by the City and California Department of Alcohol Beverage Control (ABC). Although Staff's recommendation to the Planning Commission was to approve the instructional tasting events (Type 86), after much discussion, the Applicant proposed to eliminate the instructional tasting aspect of their request.

After the close of the public hearing and Commission deliberation, the Planning Commission voted (5-1) to adopt Resolution No. 2015-27, which revised the Project to eliminate instructional tasting (Type 86) and approved a special use permit to allow the sale of beer, wine, and liquor for off-site consumption (ABC Type 21). The adopted Resolution removed conditions relating to tasting events that were included in the *draft* Planning Commission staff report dated October 1, 2015.

On October 19, 2015, Bert E. Perello, City Councilmember filed a notice requesting review of the October 1, 2015 Planning Commission's approval of the subject special use permit. If the City Council agrees with the Planning Commission's decision, Staff recommends that after public comment and Council deliberation, that the City Council adopt a resolution upholding the decision of the Planning Commission and approving Planning and Zoning Permit No. 14-510-03 (Special Use Permit) to allow the existing 76,639 square foot Wal-Mart store to sell beer, wine, and liquor for off-site consumption (ABC Type 21), subject to certain findings and conditions.

December 1, 2015

Subject: Review of Planning Commission's Approval of Planning and Zoning Permit No. 14-510-03

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FINANCIAL IMPACT

None

ATTACHMENTS

1. Planning Commission Staff Report (October 1, 2015)
2. PowerPoint Presentation (Hearing of October 1, 2015)
3. Notice Requesting Review Filed October 19, 2015
4. Planning Commission Resolution No. 2015-27
5. City Council Resolution: Approval of PZ 14-510-03 (SUP)

**PLANNING COMMISSION
STAFF REPORT**

TO: Planning Commission

FROM: Juan Martinez, Associate Planner

DATE: October 1, 2015

SUBJECT: Planning and Zoning Permit No. 14-510-03, (Special Use Permit), Wal-Mart at Centerpoint Mall) Located at 2701 Saviers Road.

- 1) **Recommendation:** That the Planning Commission approve Planning and Zoning Permit No. 14-510-03, subject to certain findings and conditions.
- 2) **Project Description and Applicant:** A request for a special use permit to allow an existing 76,639 square foot Wal-Mart to sell beer, wine, and distilled spirits for off-site consumption (ABC Type 21) and allow authorized alcoholic beverage manufacturers, winegrowers and wholesalers ("Tasting Coordinator") to conduct "Instructional Tasting Event(s)" within the store (ABC Type 86). The store is located at 2701 Saviers Road within the Centerpoint Mall. No change is proposed to the existing hours of operations (6 am to 11 pm, seven days a week). For purposes of this Staff Report, the foregoing project description shall be referred to as the "Project." Filed by Brent McManigal on behalf of Wal-Mart Stores, Inc and the property owner, 550 East Hospitality Lane, Suite 300, San Bernardino, California 92408 (the "Applicant").
- 3) **Existing & Surrounding Land Uses:** The site is comprised of the main mall building that houses multiple tenants, several surrounding stand-alone buildings. Parking serving Wal-Mart and the shopping center is located to the east, south, and west sides of the buildings. The following table lists the surrounding land uses adjacent to the Centerpoint Mall.

Surrounding Land Uses			
Direction	Zoning	General Plan	Land Use
Project Site	CPD	Regional Commercial	Centerpoint Mall – Shopping Center
North	R-2	School	Santa Clara High School
East	C-2	Commercial General	Island Plaza Shopping Center
South	R-1	Residential Low/ Commercial General	Residential, Commercial, Gas Station
West	C-O/R3- PD	Commercial Office	Mortuary, Residential, Commercial Office, Nursing Home and St. Anthony's Church/School

4) Background Information:

In 1965, the Planning Commission approved Special Use Permit No. 187 for construction of "Unimart Store and commercial outlets." Several modifications have been approved to amend Special Use Permit 187 granting additional square footage and new uses. In 1979, the Planning Commission approved Special Use Permit No. 813 approving the enclosure of the mall and modifications to the parking lot. In April of 2008, the Planning Commission approved the demolition of an existing building (Yolanda's Restaurant) and construction of a new building near the corner of Channel Islands Boulevard and Saviers Road. On August 20, 2009, the Planning Commission approved the Centerpoint Mall Master Plan (PZ 08-540-01) including design guidelines and a master sign program applicable to the entire site. In 2010 and 2011, various development design review permits and modifications were reviewed and approved to consider various additions, remodels and new tenant accommodations. Minor Modification No. 11-140-66 approved a remodel of the former Mervyns department store to accommodate Wal-Mart along with parking lot enhancements, and upgrades to the existing mall entry driveways. Wal-Mart has been operating since January of 2013 at the subject location.

5) Environmental Determination: The Planning Division has determined that the proposed Project is categorically exempt from environmental review pursuant to State CEQA Guidelines Section 15301. A Class 1 categorical exemption under CEQA Guidelines Section 15301 consists of projects involving existing facilities where there is negligible or no expansion of an existing use. This Project proposes to incorporate the retail sales for off-site consumption and instructional tasting events of general alcohol within the existing retail leased area and therefore does not propose an expansion of an existing use. Since the Project is categorically exempt under a Class 1 categorical exemption, staff has determined that there is no substantial evidence that the proposed Project may have a significant effect on the environment and recommends that Planning Commission direct the Planning Manager to file the Notice of Exemption (See Attachment D).

6) Analysis:

a) General Discussion: The Project does not include building additions. Alcoholic retail products will be housed within an existing floor area of the store. The sale of beer, wine and liquor for off-site consumption will constitute a moderate portion of the total retail sales of the store. The application filed describes Wal-Mart as a retail store that provides a wide range of products and services that include, but are not limited to, home products, groceries, and health care products, allowing customers the convenience of enjoying a "one stop shopping" experience. Wal-Mart proposes to include beer, wine, and liquor to further provide and enhance to customers' "one-stop shopping" experience.

In addition, Wal-Mart is proposing to apply for a Type 86 "Instructional Tasting" License that would allow authorized alcoholic beverage manufacturers, winegrowers and wholesalers ("Tasting Coordinator") to conduct "Instructional Tasting Event(s)" within the stores. These Instructional Tasting Events are intended to inform Wal-Mart's customers on the subject of

wine, beer or distilled spirits, including (but not limited to) the history, nature, values, and characteristics of the beverage, along with preferred methods of presentation and serving of the featured wine, beer or distilled spirits. No charge will be made for tastings at an Instructional Tasting Event. The actual tasting events within the stores will occur during peak shopping hours approximately 8-12 times per year.

Based on Police Department special conditions and regulations regarding Instructional Tasting Events, Wal-Mart will implement policies for Instructional Tasting Events. Policies will include but not be limited to the following:

- The Instructional Tasting Event will be conducted in a separate area ("Tasting Area") within the alcohol display aisle or at the end of the alcohol display aisle. The Tasting Area will be separated from the remainder of the premises by a rope, cable, or other temporary barrier. Wal-Mart will prominently display signage prohibiting persons under 21 years of age from entering the Tasting Area, and all entrants will be required to show identification.
- No person under 21 years of age may serve, or be served, wine, beer, or distilled spirits at the Instructional Tasting Event.
- Instructional Tasting Events will only take place between the hours of 10:00 a.m. and 9:00 p.m. Generally, Wal-Mart will only host an Instructional Tasting Event during peak shopping days and hours. Wal-Mart anticipates little impact on traffic and parking because customers who will be participating are customers who would already be in the Store to shop. Wal-Mart anticipates 10-12 events per year.
- Participants will not be permitted to leave the Tasting Area with an open container of alcohol.
- Each Instructional Tasting Event will be limited to a single type of alcoholic beverage (distilled spirits, wine, or beer) and will be limited only to those products which are sold by Wal-Mart under its Type 21 license.
- Quantity: State law limits the number and size of the portions that may be provided to the customer. The state's rules are listed below:
 - Wine: A single tasting of wine will not exceed one ounce. A maximum of three tastings are allowed per day. Wal-Mart intends to limit its samples to one fourth of an ounce.
 - Distilled spirits: A single tasting will not exceed one-fourth of one ounce. A maximum of three tastings are allowed per day.
 - Beer: Will be limited to a maximum of eight ounces of beer per person per day.

The vendor will mark the customer's hand with a permanent marker to ensure no repeat samplers.

The store operates from 6:00 a.m. to 11:00 p.m. seven days a week and employs approximately 200-225 employees in varying shifts. In addition the City's required Responsible Beverage Sales and Service training; Wal-Mart trains its employees and managers on responsible policies and procedures for selling alcohol to the public. According, to the Responsible Vendor of Alcohol Policy (See Attachment E), the policy focuses on preventing sales to minors, to already intoxicated customers, and time or day sale restrictions.

- b) General Plan Consistency:** The City's 2030 General Plan land use designation for the subject site is for Regional Commercial (RC), which contemplates and allows for a wide range of commercial retail, office, restaurant, and commercial service uses. Approval of this permit will be consistent with the General Plan and the property's land use designation.

Consistency with the 2030 General Plan is defined by the relationship between 2030 General Plan policies and the proposed Project. The three consistency classification levels are:

- I. Direct Applicability to a Proposed Project or Program (full text of the policy and an explanation).
- II. Related or Indirect Applicability to the Proposed Project or Program (policy title and an explanation for each or groups of related or indirectly related policies).
- III. No or Distant Applicability to the Proposed Project or Program (all policies not listed as Level I and II are assumed to be consistent).

POLICY	LEVEL	POLICY OR TITLE	EXPLANATION
CD-2.1	I	Zoning and General Plan Consistency	- Zoning and General Plan are Consistent
CD-4.1	I	Mitigate Land Use Conflicts: Mitigate conflicts between commercial and other land uses, especially residential and recreational uses.	Police Department has recommended operating conditions to address policing issues
- CD-3.1	II	- Neighborhood Preservation	- Retail sales of alcohol use is permissible via a special use permit and is not considered an encroachment/ incompatible to surrounding uses. - Project site meets parking, lighting, and traffic safety within and around the
- CD-3.4		- Neighborhood Quality of life.	
- CD-3.5		- Code Compliance	
- CD-4.2		- Commercial Revitalization and Redevelopment	

POLICY	LEVEL	POLICY OR TITLE	EXPLANATION
			Project. - Tenant occupancy is consistent and no tenant improvements are anticipated within existing building.

c) **Conformance with Zoning Development Standards:** The proposed Project is located in the Commercial Planned Development (CPD) zone district. The Commercial Planned Development zone is best categorized as General Commercial with retail and service uses are principally permitted. In accordance with City Code Section 16-136(19), sale of alcoholic beverages for consumption off-site require the approval of a special use permit. Therefore, approval of this special use permit with the proposed conditions is consistent with the 2030 General Plan, the General Commercial zoning designation, and policies for reviewing use permits involving alcoholic beverages.

d) **Site Design, Circulation and Parking:** No site changes are proposed.

e) **Request for Sale of Alcoholic Beverages for Off-Site Consumption:** City Council Resolution No. 11,896 requires the Planning Commission to consider the Police Department report, as well as any other relevant evidence, in determining whether granting the ABC Type 21 permit would be detrimental to adjacent uses or buildings, or to the public health, safety or general welfare. Before making a determination, the Planning Commission must find that the proposal will not result in, or add to an undue concentration of establishments selling alcoholic beverages within 1,000 feet of the location. The resolution states that there is a presumption of undue concentration if an establishment with the same type of license exists within 350 feet. However, presumption of undue concentration may be rebutted by a preponderance of the evidence, based on the facts of a particular case.

Police Department Review: The Police Department reviewed the proposed alcohol use as required by City Council Resolution No. 11,896 for sale of alcoholic beverages. The Police Department's report (Attachment C) provides information regarding the number of incidents of police response, whether there is a presumption of undue concentration of establishments selling alcoholic beverages, and whether approval of the special use permit is likely to significantly aggravate policing problems.

The Police Department report states that the Project is located within a reporting district having a 62 percent higher than average crime rate, which is generally considered to be significant. The police report describes that it is not uncommon for higher than average crime rate to be reported in large commercial areas where the majority of the police reports

tend to be property crime or relative minor in nature. Incident averages where alcohol is a contributing factor is consistent with City averages. A more detailed crime rate analysis, with comparison tables is provided on page two and three of the Police report.

The Police Department report describes and compares the Project application request to a Wal-Mart store located at Rose Avenue and Gonzales Road. The Police report indicates that calls for service may not be significant because of the recommended conditions, Wal-Mart's security plan, theft reduction strategies, and operational practices already in place. However, the report does identify that there is an issue of undue concentration and the proximity to sensitive uses near the Project. Rite-Aid Pharmacy is approximately 50 feet away and operates with an ABC License Type 21 for off-site consumption of beer, wine and spirits. There are four off-sale alcohol outlets within 1000 feet and two outlets with on-sale for on-site consumption. AIsensitive uses that are nearby include multiple Ventura County Public Health offices throughout the shopping center that include wellness center, clinic, and women's shelter. There is also a parochial school approximately 500 feet west of the store and a private high school 1,000 feet to the north. Sensitive uses were visited by the Police Department and generally not concerned; however, the report describes some concern by St. Anthony's private school administrator and the possibility that adding alcohol could increase criminal activity due to a recent theft incident where school had to go on lock-down.

The Police Department provided a comprehensive list of recommended standards and special conditions that would lessen policing concerns related to crime and public safety. A condition of approval prohibits the sale or availability of cold alcohol which is expected to eliminate the likelihood that alcohol purchased at the site will be consumed on nearby properties. Standard operating conditions include but are not limited to, Responsible Beverage Sales and Service training, operational recommendations, restrictions, and prohibitions, including security measures inside and outside the premise. Alcohol sales will be prohibited between the hours of 11:00PM and 6:00AM. Recommended conditions are expected to address the Police Department's concerns and minimize potential impacts to the surrounding area.

- f) **Community Workshop:** On April 8, 2014, the Applicant mailed notices of the Community Workshop meeting to all property owners within the Blackstock North, CalGisler, Kamala Park, and Bryce Canyon Neighborhoods. A notice of this meeting was posted on the Project site with a brief description and contact information. The Community Workshop was conducted on Monday, April 21, 2014. Eight persons from the community, the Project Applicant and store representatives attended the meeting. Feedback and concerns related to the proximity and compatibility of schools and concentration of alcohol establishments in the vicinity.

- 10) **Appeal Procedure:** In accordance with Section 16-545 of the City Code, the Planning Commission's action may be appealed to the City Council within 18 days after the decision date. Appeal forms may be obtained from the City Clerk and must be submitted with the

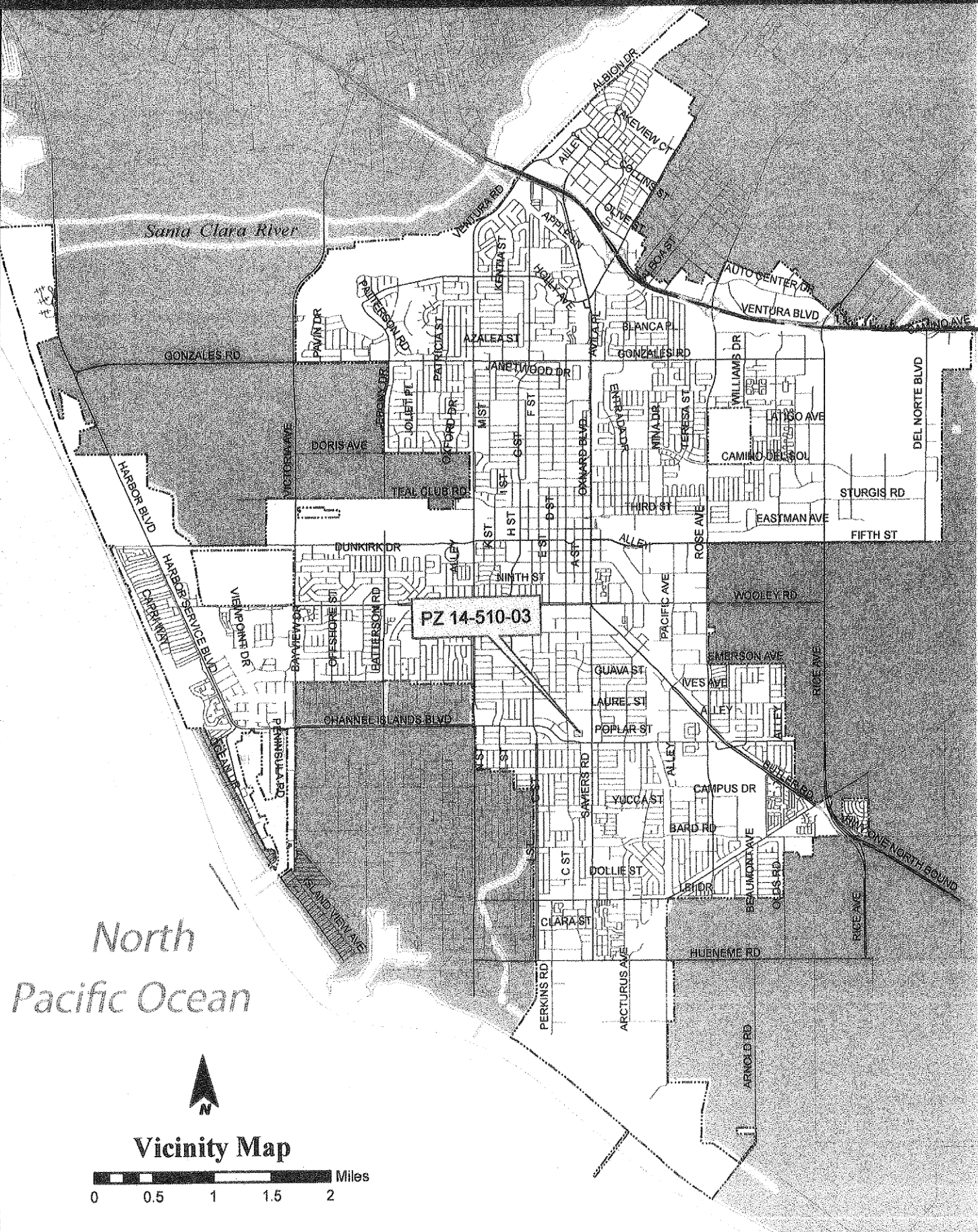
appropriate fees before the end of the appeal period. In accordance with Section 15-25 of the City Code, an appeal from the Planning Commission's action may be taken in the manner provided by Government Code Section 66452.5.

Attachments:

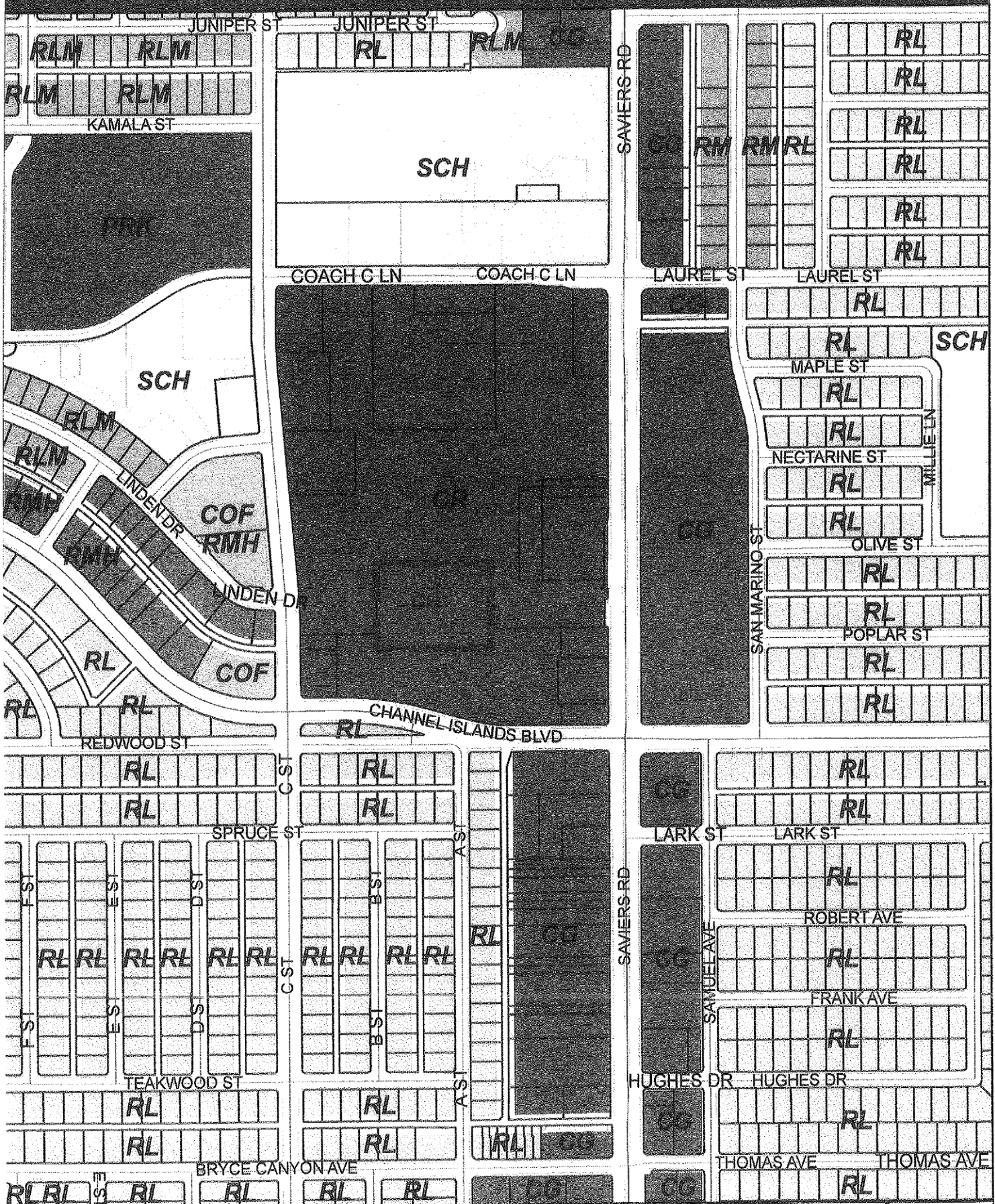
- A. Maps (Vicinity, General Plan, Zoning)
- B. Reduced Project Plans
- C. Oxnard Police Report
- D. Notice of Exemption
- E. Wal-Mart's Alcohol Policy
- F. Resolution for PZ 14-510-05 (SUP)

Prepared by:	 JM
Approved by:	 AG

**ATTACHMENT
A
MAPS
(VICINITY, ZONING, GENERAL PLAN MAP)**



2030 General Plan Land Use Map



CITY OF
OXNARD
CALIFORNIA

Oxnard Planning

April 2, 2014

PZ 14-510-03
Location: 2701 Saviers Rd
APN: 203032043
Walmart @ Centerpoint

0 100 200 400 600 800 Feet **27**

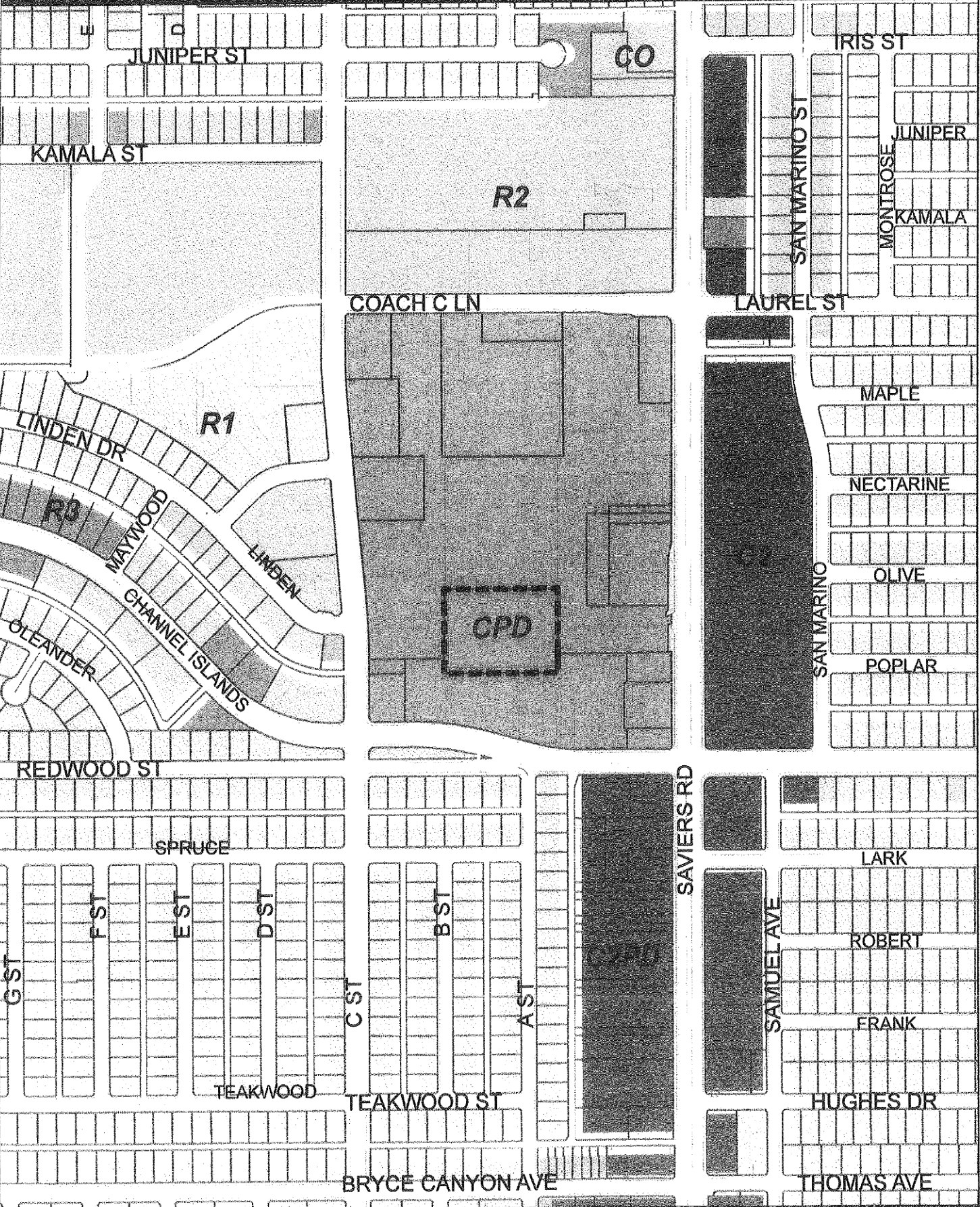
2030 General Plan Land Use Map

ATTACHMENT 1
PAGE 10 OF 42



1:5,000

Zoning/Specific Plan Map



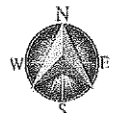
Oxnard Planning
April 2, 2014

PZ 14-510-03
Location: 2701 Saviers Rd
APN: 203032043
Walmart @ Centerpoint

0 100 200 400 600 800 Feet **28**

Zoning/Specific Plan Map

ATTACHMENT 1
PAGE 11 OF 42



1:5,000

ATTACHMENT C

OXNARD POLICE REPORT

WALMART #3087

OXNARD, CA
 SITE PLAN

GreenbergFarrow
 19000 MacArthur Blvd, Suite 250
 Irvine, CA 92612
 T: 949 296 0450 F: 949 296 0479

TENANT CONTROL AREA TABLE	
RETAIL	76,639 S.F.±
PARKING (EMPLOYEE AND CUSTOMER)	406 SPACES
ACCESSIBLE	12 SPACES
*TOTAL PARKING	418 SPACES
RATIO	5.45/1,000 S.F.
**STANDARD CART CORRALS	3 CORRALS / 6 SPACES
***CURBED CART CORRALS	8 CORRALS / 0 SPACES

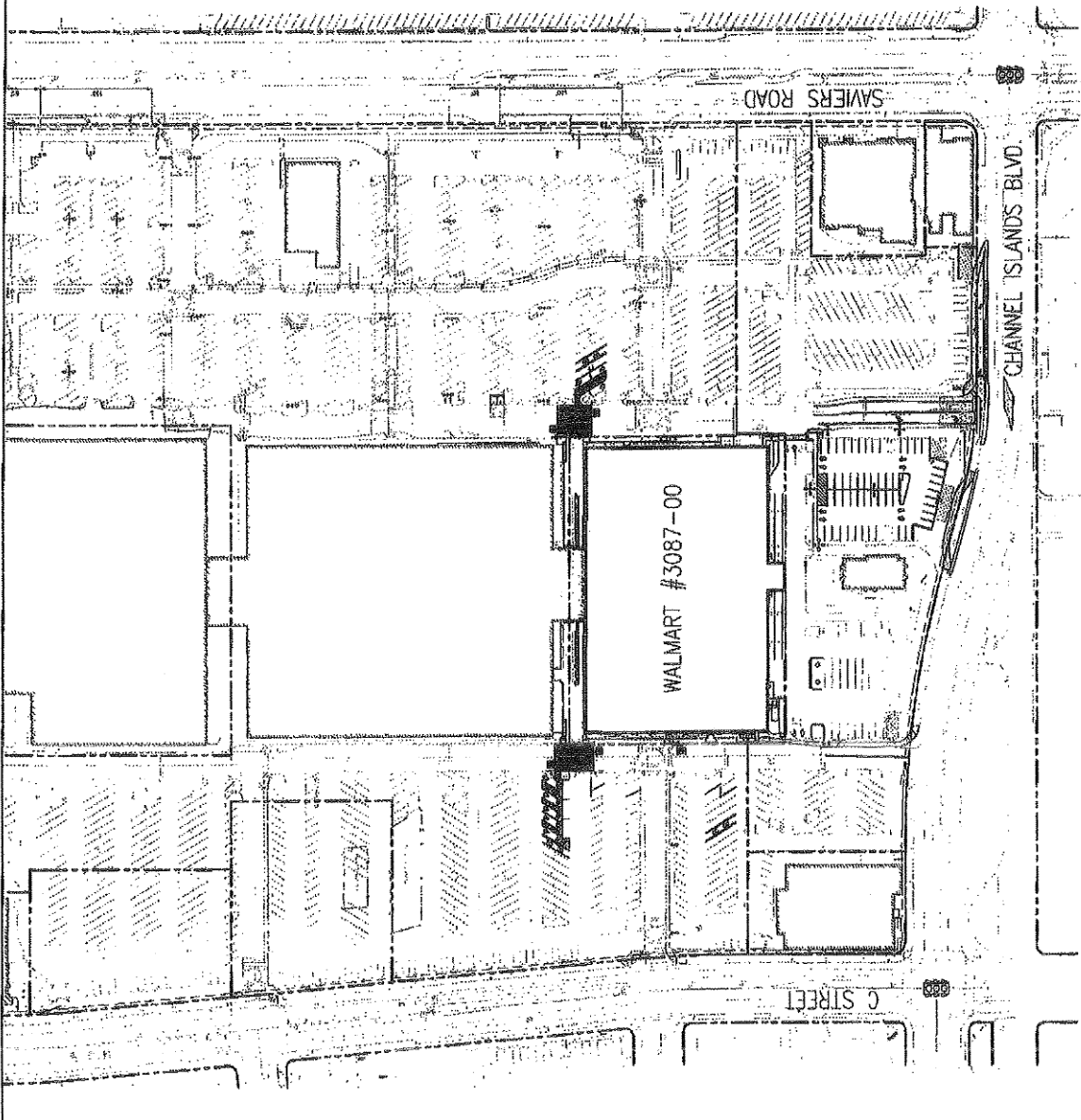
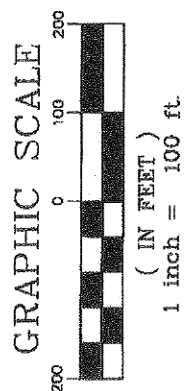
* MOTORCYCLE PARKING IS NOT INCLUDED IN THE PARKING COUNT.
 ** INDICATES NEW CART CORRALS CONFORMING TO STANDARD PIPE TYPE
 CART CORRALS.
 ***INDICATES CURB TYPE CART CORRALS CONSISTENT WITH OTHER CORRALS
 THROUGHOUT THE MALL PARKING AREA AND OTHER NON-STANDARD CART
 CORRALS.

CITY SITE ANALYSIS TABLE	
RETAIL	76,639 S.F.±
PARKING (EMPLOYEE AND CUSTOMER)	301 SPACES
ACCESSIBLE	8 SPACES
*TOTAL PARKING	309 SPACES
RATIO	4.03/1,000 S.F.
**CART CORRALS	3 CORRALS / 6 SPACES

* MOTORCYCLE PARKING IS NOT INCLUDED IN THE PARKING COUNT.
 ** PARKING SPACES OBSTRUCTED BY CART CORRALS ARE NOT INCLUDED IN
 OVERALL PARKING RATIO.

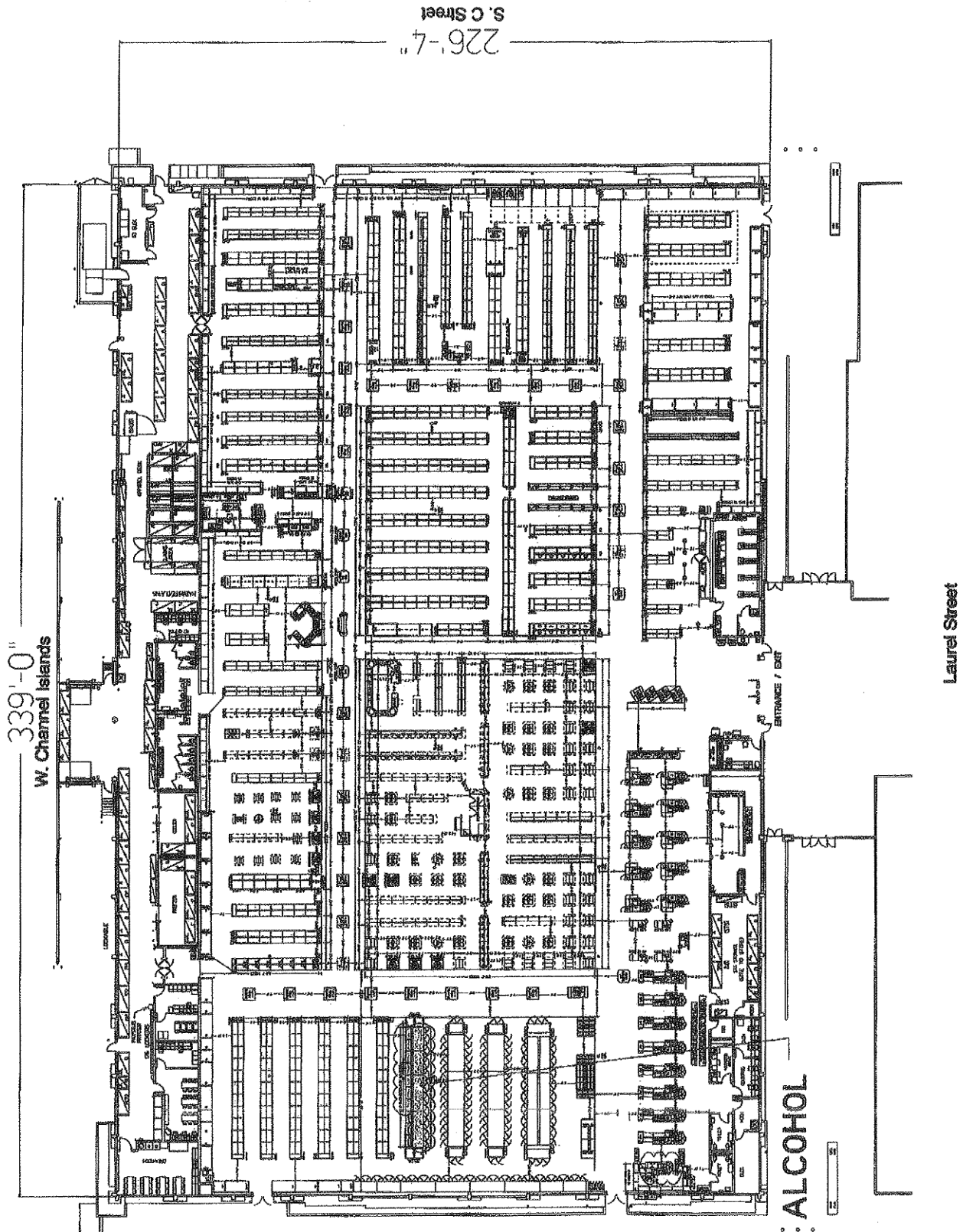
SITE INFORMATION:

ASSESSOR'S PARCEL NUMBER: 203-0-320-435
 PROPERTY ADDRESS: 2701 SAVIERS RD., OXNARD, CA 93033
 LAND AREA (PARCEL "W" OF LLA PZ 07-310-01): 2.22± ACRES
 ZONING: GENERAL COMMERCIAL PLANNED DEVELOPMENT (C-PD)



Walmart Store #3087
2701 Saviers Road
Oxnard, CA 93033

Saviers Road



ATTACHMENT C

OXNARD POLICE REPORT



Police Department

Jeri Williams, Public Safety Chief

Date: September 22, 2015
To: Juan Martinez, Associate Planner
From: Cliff Waer, Senior Alcohol Compliance Officer
Subject: 2701 Saviers Road (Wal-Mart)

Re: PZ 14-510-03

Site Information:

The proposed site is an existing Wal-Mart supercenter located at 2701 Saviers Road in the Centerpoint Mall retail center. The business is on the southernmost end of the complex near Channel Islands Boulevard with the front entrance facing north into the main mall. There are parking lots on three sides of the building that are shared with several nearby businesses. The bustling center is host to more than 45 businesses including a Rite Aid, Superior Grocers and several Ventura County Public Health facilities.

The site is generally bordered by commercial uses to the north, Channel Islands Boulevard to the south, "C" Street to the west and Saviers Road to the east. The nearest residences are approximately 300 feet to the west across "C" Street.

The applicant has requested to obtain a California Alcoholic Beverage Control (ABC) License Type-21 which is an Off-Sale License that allows for the sale of beer, wine and distilled spirits for consumption off the premises. The Applicant has also requested to be able to host "instructional tastings" of alcoholic beverages within the Off-Sale premises and will require a Type-86 ABC License to do so. There is one similar Off-Sale alcohol outlet within 350 feet of the site and three more within a 1000 foot radius.

Alcohol outlets located within 350 feet of the proposed site include:

BUSINESS NAME	LOCATION	LICENSE TYPE	LICENSE TITLE	BUSINESS TYPE	ALCOHOL ALLOWED
1. Rite Aid	2661 Saviers	Type 21	Off-Sale General	Market	Beer, Wine and Spirits

Alcohol outlets located within 1000 feet of the proposed site include:

BUSINESS NAME	LOCATION	LICENSE TYPE	LICENSE TITLE	BUSINESS TYPE	ALCOHOL ALLOWED
1. Superior Groceries	2401 Saviers	Type 21	Off-Sale General	Grocery Store	Beer, Wine and Spirits
2. El Super	2800 Saviers	Type 21	Off-Sale General	Grocery Store	Beer, Wine and Spirits
3. Liquor Cellar	150 W. Channel Islands	Type 21	Off-Sale General	Liquor Store	Beer, Wine and Spirits
4. Puerto Vallarta	3021 Saviers	Type 48	On Sale General	Restaurant	Beer, Wine and Spirits
5. Mariscos Las Adelitas	3045 Saviers	Type 48	On Sale General	Restaurant	Beer, Wine and Spirits

Crime Statistic Review:

For comparison purposes the Police Department calculates the average number of Part I and II crimes that occur per reporting district (grid) during a selected 12-month period. The average city-wide, per grid base number of Part I and II crimes is currently 125.

The average number of Part I and II crimes in the *applicant's* reporting district and all other districts within 1000 feet of the applicant is 202 during the same 12-month time period. This is 62% higher than the average crime rate citywide which is generally considered to be significant. However, a higher-than-average crime rate in large commercial areas is not necessarily uncommon and the majority of police reports tend to be property crimes or relatively minor in nature. The number of violent incidents and those that list alcohol as a contributing factor is consistent with city averages.

The heaviest concentration of incidents occurred at the two shopping centers on Saviers Road (Centerpoint Mall and Island Plaza). Wal-Mart had a total of 272 calls for service, most of which were fairly minor and did not generate police reports. If the statistics are filtered further to remove the relatively routine calls such as false alarms, traffic stops in the parking lot, accidental 911 calls and others, the actual number of either Part I or II crimes and those of some substance drops to a total of 154.

Police *calls for service* to the entire Centerpoint Mall during the last year totaled 812. Calls for service at Wal-Mart accounted approximately 33% of all the calls to the shopping center. For comparison, the Wal-Mart at Rose and Gonzales accounts for approximately 32% of all calls to the Shopping at the Rose center. For a further examination of police calls for service at Wal-Mart and how they compare to similar businesses in the City of Oxnard, please refer to the table below.

Business Name	Total Calls for Service	Theft Related	Disturbance Related
Wal-Mart (Saviers)	272	74	24
Wal-Mart (Rose)	259	65	71
Target	137	62	19
Vons (Rose Center)	81	23	20
Costco	60	21	14
Sam's Club	55	6	14

The Police Department also compared total police calls for service at other large retail centers in the City of Oxnard. The results show the Centerpoint Mall to be consistent with the similarly sized Shopping at the Rose center where there is also a Wal-Mart. Refer to the table below for details.

Commercial Center Name	Total Calls for Service	Theft Related	Disturbance Related
Shopping at the Rose	817	186	218
Centerpoint Mall	812	191	133
Fremont Center	676	62	225
Esplanade	457	133	124
The Palms	301	27	56

For reference, the category of Part I crimes include: murder, rape, robbery, theft, burglary, auto theft, assault, and arson. Part II crimes include: vandalism, weapons possession, other sex offenses, drug abuse violations, driving under the influence, liquor laws, drunkenness, and disorderly conduct. All references to "police calls for service" may include *any* type of police response to the area in addition to those classified as Part I or II.

Police Department Input:

The Beat Coordinator for the area was contacted and said the shopping center and the surrounding area is generally not considered to be a serious crime problem. He added that there is a police storefront a few doors down from the Wal-Mart entrance and that there has been an increased police presence there now that it is used as the office for the Beat Coordinator.

When this proposal was initially submitted, the Police Department was generally opposed to the idea of adding alcohol to the site. There were several factors that influenced that view including the number of calls for service to the site already, alcohol outlet density in the area, proximity to sensitive uses and the likelihood that the availability of alcohol would increase calls for service. This situation is nearly identical to a 2010 application when the Wal-Mart at Shopping at the Rose first submitted a request to add alcohol to that site. While that permit was eventually approved, the Police Department had strongly opposed the proposal due the same kind of issues facing this proposal including an alcohol outlet density rate more than double that of the current proposal.

However, as we progressed with our review of this new proposal, we discovered an unlikely and surprising change had occurred at the Rose Avenue Wal-Mart after the addition of alcohol. The

Rose site at the time of their proposal in 2010 had the highest number of police calls for service than did any other business in the City of Oxnard. They also had the most theft related calls with nearly double that of the next closest location. The Police Department had responded to 133 thefts and 140 disturbance calls at the time and the store was devouring police resources with more than one police response every day. Based upon numerous studies and past experience, it was reasonable to assume that adding the availability of alcohol to a location that already was a policing problem would be unwise.

When the permit was ultimately approved, we carefully constructed a set of innovative and comprehensive operating conditions that we hoped would help mitigate what we expected to be a disastrous situation. Among those conditions were restrictions on single servings of beer or malt liquor, drop down monitors and improved CCTV, distilled spirits had to be secured, and they had to develop a written security plan that included theft reduction plans with strategies to reduce the sales of alcohol to minors.

After four years of alcohol sales at the site, the number of thefts plummeted by more than half (133 to 65) and the number of disturbances was cut in half (140 to 71). Overall calls for service dropped from a total of 429 at the time of the original proposal, to 259 during the past year. While this seems contrary to our past experiences as well as multiple studies, some of the reductions may have been as a result of the improved security plan and theft reduction strategies put in place for the alcohol sales.

Consequently, the dramatic reductions in calls for service, thefts and disturbances seen at the Rose Wal-Mart had a significant impact on our position of opposition for this new proposal. In fact, the Rose Wal-Mart has fewer police calls for service *with* the availability of alcohol than does the Saviers location *without* alcohol. We are certainly not ready to proclaim that adding alcohol to a business reduces crime, but the addition of comprehensive operating conditions to a location that would otherwise be unregulated seemed to have a positive outcome in this case.

While the issue of crime and calls for service may be able to be mitigated as demonstrated by the Rose location, there are still issues of outlet density and the proximity to sensitive uses including a women's center and private high school. There are a total of four Off-Sale alcohol outlets within 1000 feet of the proposed site and two more On-Sale businesses. One of the Off-Sale sites (Rite-Aid) sit directly across the walkway approximately 50 feet away. Numerous studies have repeatedly shown that higher alcohol outlet density contributes to increased crime and violence in the surrounding community and also leads to other alcohol-related community problems.¹⁻³ Another study published in 2004 concluded: "The findings show a clear association between alcohol outlet density and violence, and suggest that the issues of alcohol availability and access are fundamental to the prevention of alcohol-related problems within communities."⁴

¹ Scribner RA; Cohen DA; Fisher W. Evidence of a Structural Effect for Alcohol Outlet Density: A Multilevel Analysis. *Alcoholism: Clinical & Experimental Research*. 24(2): 188-195, February 2000.

² LaBouvie E; Ontkush M. Violent crime and alcohol availability: relationships in an urban community. *Journal of Public Health Policy* 19(3): 303-318. 1998.

³ Scribner RA; Mackinnon D; Dwyer, J. The risk of assaultive violence and alcohol availability in Los Angeles County. *American Journal of Public Health* (85) 3: 335-340. 1995.

⁴ Zhu L, Gorman, D, Horel, S (2004) "Alcohol Outlet Density and Violence: A Geospatial Analysis", *Alcohol and Alcoholism* 39 (4), pp 369-375.

Some studies have also shown that increased availability of alcohol contributes to higher rates of driving under the influence while, conversely, reducing the availability of alcohol can result in fewer number of alcohol related crashes. A study published by the National Institution on Alcohol Abuse and Alcoholism (NIAAA) found that communities that employ strategies which include reducing alcohol availability showed a reduction in alcohol related crashes by as much as 22%. In other words, the easier and more convenient it is to purchase alcohol, the more likely it is that a community will see a higher rate of DUI and other alcohol related problems. It is widely known that Oxnard has the dubious honor of having the highest rate of alcohol related injury crashes than does any other city in the State of California. It seems only prudent and reasonable that we should be very cautious about where and how many alcohol outlets are permitted. While some would argue that the sale of alcohol is a "zero sum game" and that adding alcohol to a particular site does not increase the amount of alcohol purchased in a community, it only relocates the customer somewhere else; research repeatedly suggests that, as alcohol becomes more convenient, people will purchase alcohol in higher quantities than if it were sparsely available. Basically, customers purchasing alcohol at Wal-Mart will not necessarily be simply displaced from other nearby outlets. While some persons may be relocating away from a competitor, many will be new, compulsive buyers who may not have considered purchasing alcohol unless convenient (or cost effective) to do so.

That being said, we are one of very few communities that employs a thorough, comprehensive program to develop strategies that help reduce the risks related to the availability of alcohol and continually monitor the businesses so they do not become a nuisance. As revealed in the Rose Wal-Mart case, adding alcohol enabled us to require they adhere to strict operational conditions that actually helped improve the situation.

Additionally, the store plans to host alcoholic beverage "instructional tastings" where customers can sample various alcoholic beverages including beer, wine and distilled spirits. In order to host these tastings, they are required to obtain an ABC License Type-86. This type of license has very specific regulations prescribing the manner in which the tastings are to take place in order to prevent any conflicts such as underage drinking and over intoxication.

Some of the rules include designating a space where the tastings will take place and cordoning the area off to prohibit minors from entering. Other restrictions require the serving sizes be consistent with "tasting" rather than full-sized drinks and that the number of samples per customer is limited. The tasting is only hosted, not directly provided by the Applicant. It is the vendors themselves who are permitted to bring their own product into the store and provide it at no cost to customers during a specified time period. Only one vendor at a time can participate and they cannot sell their product during the designated tasting period. In order to more effectively and efficiently regulate this activity, relevant special conditions of operation are included in the resolution.

Lastly, there are a number of sensitive uses in the area that could possibly be impacted by adding another alcohol outlet. There are multiple Ventura County Public Health offices throughout the shopping center including a wellness center, clinic, women's center and others. There is also a parochial school approximately 500 feet west of the store and a private high school 1000 feet to the north.

Numerous studies have shown that youth exposure to alcohol significantly impacts underage consumption. Increased access and exposure to alcoholic beverages are directly related to incidences of youth consumption and should be carefully considered when determining appropriate locations for new outlets.⁵⁻⁶ There are now many preventative conditions that can help to minimize exposure to young people and to also reduce the access to alcohol. Prohibiting alcohol advertisements, limiting the types and sizes of alcoholic beverages and positioning the alcohol displays to be separate from other, non-alcoholic products and placed where they can be easily monitored by employees should minimize the likelihood for conflicts.

After initially being opposed to allowing alcohol at this site for the reasons outlined above, the Police Department ultimately concluded that the addition of comprehensive operating conditions can effectively mitigate our concerns related to crime and public safety. We have had numerous conversations with the applicant and we have worked together to address the risks and come up with solutions. One of those innovative conditions is to prohibit the sale or availability of cold alcohol. This essentially eliminates the likelihood that any alcohol purchased at the site will be consumed on the nearby properties. While cautious, we are not opposed the granting of this permit.

Community Input:

The Police Department visited numerous businesses around the site to advise them of the proposal and solicit feedback. We specifically talked with several of the nearby uses generally considered to be sensitive including Public Health, the Women's Center, Wellness Center, Santa Clara High School and St. Anthony's private school. Most of the responses were generally without concern that the availability of alcohol would negatively impact their facilities, customers or operations.

The only exception was at St Anthony's private school where the administrator was a little concerned that criminal activity may increase at the store and affect his school. He mentioned one incident specifically when a theft suspect from Wal-Mart fled from the business and ran through the school grounds with police arriving soon after in foot pursuit. The school had to go on lock-down which can be traumatic for students. He was worried that adding alcohol may increase the frequency of such incidents.

Conclusion:

The statistical analysis shows the area to have a crime rate that is 63% higher than the citywide average which would generally be considered significant but is consistent with other large shopping centers in Oxnard. The site's close proximity to schools and other sensitive issues is a concern but should be effectively mitigated with the addition of preventative operating conditions on the resolution.

There is one similar alcohol outlet within 350 feet of the site so there is a local presumption of undue concentration. The presumption of undue concentration can be rebutted by a

⁵ G. Hastings, S. Anderson, E. Cooke, and R. Gordon, "Alcohol advertising and marketing and young people's drinking: a review of the research," *Journal of Public Health Policy* 26 (2005):296-311.

⁶ L.B. Snyder, F.F. Milici, M. Slater, H. Sun, and Y. Strizhakova, "Effects of alcohol advertising exposure on drinking among youth," *Archives of Pediatrics and Adolescent Medicine* 160 (2006):18-24.

preponderance of evidence that determines the use will not aggravate policing issues and may be appropriate for the area. The site's close proximity to Santa Clara High School is of some concern but can be effectively mitigated by including preventative operating conditions with the resolution.

While initially skeptical of this proposal, the dramatic improvement enjoyed at another Wal-Mart in Oxnard, after alcohol was permitted, weighed heavily on our decision not to oppose the granting of this permit. The Police Department's experience is that the proposed license (Type 21- Grocery/Market), when properly regulated through conditions imposed by the Planning Commission, does not normally aggravate policing issues, as long as the establishment complies with these regulations and operates responsibly. Listed below are the Police Department's recommended operating conditions for the Resolution.

Police Standard Conditions

(Off-Sale Alcohol Establishments)

- 1) All managers or supervisors who are responsible for the daily coordination, supervision or managing of employees, shall complete an approved course in Responsible Beverage Service (RBS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)
- 2) There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. (PL/PD)
- 3) The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been significant violations of the use permit conditions and/or ABC permit, or there is a single serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines, after due process that shall include communication with the owner, is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the Manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)
- 4) Any signs, advertisements or decorations placed upon the windows shall not exceed 20% of the overall window area. Additionally, there shall be no other obstructions placed near the windows that exceed 20% of the overall viewing area including display racks, stored products, shades or blinds. (PD)
- 5) Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined by Oxnard City Code, the Police Department may initiate Planning Commission review of the existing SUP and the Planning Commission may apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)
- 6) Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
- 7) Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control. This includes the rear of the business. (PL/PD)
- 8) Any rear door of the premises shall be equipped on the inside with an automatic locking device, shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies or disposal of trash does not constitute a violation. (PD)

- 9) Employees involved in the sale or service of alcoholic beverages shall not be allowed to consume alcoholic beverages at any time during their shift. Employees shall not report to work with evidence of having consumed any intoxicants such as alcohol, illegal drugs or controlled substances. (PD)
- 10) The parking lot and adjacent areas of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the area. This includes the rear of the business. (PL/PD)
- 11) There shall be no pay phones installed inside the premises nor shall there be any pay phones installed outside within 100 feet of the premises. (PL/PD)
- 12) Permittee shall regularly police the area under Permittee's reasonable control (including the rear of the business) and shall not permit the loitering of persons about the premises. (PL/PD)
- 13) In the areas surrounding the business the Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
- 14) Coolers or displays containing alcoholic beverages shall be positioned so as to allow maximum visibility to cashiers, clerks, associates or employees. Alcohol displays shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy and unobstructed path to any entry or exit. It is recommended that the alcohol displays or coolers be positioned where employees have a clear view from their normal work stations of the activity of persons in the alcohol isle. (PD)
- 15) There shall be no amusement machines or video devices maintained on the premises at any time. (PD)
- 16) Other than specialty beers and micro brews, beer, malt beverages and wine coolers, in containers of 40oz in volume or less, cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. The sale of mass-produced, low priced beer or malt liquor in single servings is prohibited (PD)
- 17) No wine shall be sold with an alcoholic content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more and maintained in corked bottles (Port, Sherry, Saki, Marsala, Madiera, Muscat and Vermouth are permitted). (PD)
- 18) Prominent signs shall be posted stating, in effect, "No persons under 21 will be served alcoholic beverages" and "Valid ID is required to purchase alcoholic beverages". These signs shall, at a minimum, be posted at each point of sale and near any alcohol display or areas. (PD)

- 19) No open floor displays of alcoholic beverages are allowed, including but not limited to "beer mountains" and portable coolers. (PD)
- 20) No temporary or permanent open displays of alcoholic beverages are permitted near customer entry/exits. This includes stacked boxes or cases containing alcoholic beverages, portable coolers, promotional displays or any other alcohol displays where there is a clear, easy or unobstructed path to any entry or exits. (PD)
- 21) Alcoholic beverages shall not be sold between the hours from 11:00 P.M. and 6:00 AM. (PD)
- 22) There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco. (PD)
- 23) Security cameras shall be installed to monitor the premises and be positioned to monitor at minimum the entry/exit, all points of sale, alcohol displays and the areas immediately surrounding the exterior of the business. The camera system shall comply with the following minimum standards: (PD)
 - a. The cameras shall be color cameras, made by a reputable manufacturer and maintained to current industry standards. They shall have low light capability and be capable of identifying persons conducting transactions at the stores' registers or entering/exiting the business.
 - b. The system shall utilize a Digital Video Recorder (DVR). The use of videocassette recorders (VHS and other formats) is prohibited. The DVR shall allow recording, live viewing and playback of recorded video for a period of least 30 days. DVR shall perform all recording, viewing (local and remote), playback (local and remote), queries and backup functions simultaneously, with no interruption of any other function.
- 24) Permittee shall establish responsible cash handling procedures to reduce the likelihood of robberies and thefts. (PD)
- 25) Permittee shall bolt down or otherwise secure all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. (PD)
- 26) Permittee shall have drop-safes installed or establish other responsible cash handling procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50-200). (PD)
- 27) When used, Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register. (PD)
- 28) Permittee shall install height gauges at all exit doors. (PD)

- 29) During hours the business is closed, there shall be an electronic intrusion detection system (burglary alarm) activated that detects portal openings, glass break, and interior motion. (PD)
- 30) Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601 or develop and implement critical incident protocols that provide an efficient method for alerting police and others to a potential threat without unnecessarily putting the employees at risk. (PD)
- 31) A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

Police Special Conditions

1. Permittee shall install a video feedback monitor which displays the live feed from security cameras positioned nearby. The monitor shall, at a minimum, be displayed at each customer entrance. Permittee shall install an additional feedback monitor in the alcoholic beverage display area. (PD)
2. If open for business, displays containing alcoholic beverages shall be maintained in such a way as to allow for them to be locked or inaccessible during hours of prohibited sale and shall, in fact, be secured during the hours from 11:00 P.M. to 6:00 AM. (PD)
3. The sale of flavored malt beverages (commonly referred to as alcopops) or energy drinks containing alcohol is prohibited. Such products are generally sweetened, carbonated alcoholic beverages made with malt or spirits-based alcohol. Examples of such products include Smirnoff Ice, Mike's Hard Lemonade, Bacardi Silver and Jack Daniel's Lynchburg Lemonade. (PD)
4. The use of self-checkout for alcoholic beverages is prohibited. (PD)
5. Any display of distilled spirits shall be maintained either in locked cabinets at all times or under the direct control of employees. No distilled spirits shall be accessible to customers at any time without assistance from an employee. (PD)
6. The sale of refrigerated or cold alcoholic beverages is prohibited. All alcoholic beverages shall be stored and displayed at room temperature. (PD)
7. Permittee shall develop a security plan that is approved by the Chief of Police or designee and that includes comprehensive anti-theft strategies to minimize the risk of thefts related to the availability of alcohol. Such strategies may include but are not limited to anti-theft tags or sensors, product checks by staff at the exits, cart stopping devices and CCTV.

Strategies that minimize the likelihood for sales of alcohol to underage customers shall be part of this plan. (PD)

8. At all times during an instructional tasting event, the instructional tasting event area shall be separated from the remainder of the off-sale licensed premises by a wall, rope, cable, cord, chain, fence, or other permanent or temporary barrier. The Applicant shall prominently display signage prohibiting persons under 21 years of age from entering the instructional tasting event area and shall, in fact, not permit minors in this area. (PD)
9. No person shall leave the instructional tasting area with an open container of alcohol. (PD)
10. Instructional tasting shall be limited to three (3) tastings per person per day. A single tasting of distilled spirits shall not exceed one quarter of one ounce and a single tasting of wine shall not exceed one ounce. Tastings of beer shall not exceed eight (8) ounces per person per day. (PD)
11. All products tested shall be limited to the products that are authorized to be sold by the licensee (vendor) and the Applicant under the Type-21 license. (PD)
12. No persons under age 21 shall serve or be served alcoholic beverages during an instructional tasting event. (PD)
13. Tastings shall be limited to one type of alcoholic beverage per event (beer, wine or distilled spirits). (PD)
14. Instructional tasting events shall only take place between 10:00 a.m. and 9:00 p.m. (PD)

ATTACHMENT D

REDUCED NOTICE OF EXEMPTION

NOTICE OF EXEMPTION

Project Description:

Planning and Zoning Permit No. 14-510-03 (Special Use Permit), a request for a special use permit to allow an existing 76,639 square foot Wal-Mart to sell beer, wine, and distilled spirits for off-site consumption (ABC Type 21) and allow authorized alcoholic beverage manufacturers, winegrowers and wholesalers ("Tasting Coordinator") to conduct "Instructional Tasting Event(s)" within the store (ABC Type 86). The store is located at 2701 Saviers Road within the Centerpoint Mall. No change is proposed to the existing hours of operations (6 am to 11 pm, seven days a week). The project is exempt from environmental review under Section No. 15301 of the State CEQA Guidelines. Filed by Brent McManigal on behalf of Walmart Stores, Inc and the property owner, 550 East Hospitality Lane, Suite 300, San Bernardino, California 92408.

Finding:

The Planning Division of the Development Services Department of the City of Oxnard has reviewed the above proposed project and found it to be exempt from the provisions of the California Environmental Quality Act (CEQA).

- ☐ Ministerial Project
- ☒ Categorical Exemption
- ☐ Statutory Exemption
- ☐ Emergency Project
- ☐ Quick Disapproval [CEQA Guidelines, 14 Cal. Code of Regs. 15270]
- ☐ No Possibility of Significant Effect [CEQA Guidelines, 14 Cal. Code of Regs. 15061(b)(3)]

Supporting Reasons: In accordance with the California Environmental Quality Act Guidelines and Section 15301 of the California Code of Regulations, projects involving existing facilities where there is negligible or no expansion of an existing use may be found to be exempt from the requirements of the California Environmental Quality Act (CEQA). Therefore, staff has determined that there is no substantial evidence that the project may have a significant effect on the environment.

(Date)

Ashley Golden,
Development Services Director

ATTACHMENT E

WAL-MART'S ALCOHOL POLICY

Wal-Mart Stores, Inc. – Responsible Vendor of Alcohol

Because Wal-Mart takes its responsibilities as a good corporate citizen seriously, Wal-Mart trains its associates and managers on responsible policies and procedures for selling alcohol to the public. The policy focuses on preventing sales to minors, to already intoxicated customers, and during prohibited times and days.

Summary of Alcohol Policy

Our policies prohibit underage sales and are reinforced with technology, training, monitoring, and discipline.

In order to prevent such sales, Wal-Mart has instituted the following procedures:

- Instruct store associates on Wal-Mart's Identification Policy, which outlines the following:
 - Approved forms of ID – all of which are government-issued
 - Pointers for spotting fake IDs and intoxicated customers.
 - "ACE" steps for complying with law:
 - Assess – Assess whether the customer appears under 27 (40 – After May, 1, 2008)
 - Check – Check for ID and birth date
 - Enter – Enter date of birth into register to determine age

Technology:

- Registers perform an integral role in our alcohol sales compliance program by helping to prevent sales to minors and sales during restricted hours.
- Register Prompts in Place to Prevent Sales to Minors:
 - When an alcoholic beverage is scanned:
 - The register stops the transaction and asks if the customer appears to be under 27 years old (under 40 in some markets).
 - The associate must then enter the customers' Date of Birth before the transaction can proceed.
 - Cashiers must require ID from any customer who appears to be under the age of 27. In some markets, the age to request ID is anyone under 40. The ID 40 Program will be in place nationwide by May 1, 2008.
- Restricted Hours:
 - Registers are programmed with applicable alcohol sales days and hours by the home office.
 - If an associate attempts to sell alcohol during a prohibited time, the register will stop the transaction.
 - Generally, these prompts are set according to state law.
 - If the locality in which a particular store has more restrictive hours of alcohol sales than the state, hours of sale are set based on the local rule.

Training:

- New employee orientation for store managers includes alcohol compliance training.
- When a store obtains an alcohol license, all associates who act, or might act, as cashiers must take an alcohol compliance computer-based training (CBL) program and score 100%.
- Associates are required to score 100% on the alcohol CBL within 15 days of the stores' license issuance or hire date.
- All associates who are coded as cashiers must retake the alcohol CBL yearly upon the anniversary of their date of hire. This ensures that associates are trained annually.
- *Training includes information on how to turn down alcohol sales.*

Monitoring:

- Where required by law, customer service managers (CSMs) must complete transactions for employees under 21.

Discipline:

Associates who violate this policy will be terminated and not eligible for rehire.

**ATTACHMENT
F
RESOLUTION
(PZ 14-510-03 -SUP)**

RESOLUTION NO. 2015-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD APPROVING PLANNING AND ZONING PERMIT NO. 14-510-03 (SPECIAL USE PERMIT-ALCOHOL) TO ALLOW AN EXISTING 76,639 SQUARE FOOT WAL-MART, LOCATED AT 2701 SAVIERS ROAD TO SELL BEER, WINE, AND LIQUOR FOR OFF-SITE CONSUMPTION (ABC TYPE 21) AND ALLOW AUTHORIZED ALCOHOLIC BEVERAGE MANUFACTURERS, WINEGROWERS AND WHOLESALERS ("TASTING COORDINATOR") TO CONDUCT "INSTRUCTIONAL TASTING EVENT(S)" WITHIN THE STORE (ABC TYPE 86), SUBJECT TO CERTAIN FINDINGS AND CONDITIONS. FILED BY BRENT MCMANIGAL ON BEHALF OF WAL-MART STORES, INC AND THE PROPERTY OWNER, 550 EAST HOSPITALITY LANE, SUITE 300, SAN BERNARDINO, CALIFORNIA 92408.

WHEREAS, on January 15, 2014, Brent McManigal on behalf of Wal-Mart Stores, Inc. and the property owner (the "Applicant" and/or "Permittee") submitted a request to allow an existing Wal-Mart located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC-Type 21) and allow authorized alcoholic beverage manufacturers, winegrowers and wholesalers ("Tasting Coordinator") to conduct "Instructional Tasting Event(s)" within the store (ABC Type 86) - APN 203-0-320-435; and

WHEREAS, on October 1, 2015, the Planning Commission of the City of Oxnard ("Planning Commission") conducted a duly noticed public hearing to consider Applicant's request to approve Planning and Zoning Permit No. 14-510-03 (Special Use Permit) to allow an existing Wal-Mart located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC-Type 21), (the "Project") in accordance with Section 16-530 through 16-553 of Oxnard City Code; and

WHEREAS, the Planning and Environmental Services Division has completed a preliminary environmental assessment of the Project in accordance with the California Environmental Quality Act (CEQA) and determined that the Project is subject to a categorical exemption; and

WHEREAS, the Project was referred to various public utility companies, City departments and the Development Advisory Committee for recommendations.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF OXNARD:

SECTION 1. Based on the entire record before the Planning Commission and all written and oral evidence presented, including the Planning Commission Staff Report and all attachments thereto, the Planning Commission finds:

- (1) **The proposed use is in conformance with the City of Oxnard 2030 General Plan and the elements thereof and other adopted standards.**

The proposed use is consistent with the 2030 General Plan since the use is consistent with the site's land use designation of Commercial Planned Development (CPD) zone and development policies of the 2030 General Plan.

- (2) **The proposed use will not adversely affect or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.**

The proposed use is consistent with uses considered and permitted by the Commercial Planned Development (CPD) zone. The anticipated use will take place within an already established retail area of the store. Therefore, the proposed use and improvements are not expected to have adverse effects or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.

- (3) **The site for the proposed use is adequate in size and shape to accommodate the setbacks, parking, landscaping, and other City standards except as may be specifically excepted by the special findings and conditions of this Resolution.**

The site is already developed and no site improvements are proposed. Existing site improvements are subject to the development standards of the Commercial Planned Development (CPD) zone when compared to parking and landscape design standards.

As such, the subject site is adequate in terms of size and as developed the development meets or exceeds City's design standards and parking will be met via a shared parking agreement between the three proposed parcels.

- (4) **The site for the proposed use will be served by streets and highways adequate in width and structure to carry the kind and quantity of traffic such use will generate.**

The Wal-Mart store is located within an established shopping center that is surrounded by two major street thoroughfares and two secondary streets. No site improvements are necessary and added use may increase delivery by specialty product distributor; however, the facility has adequate access for ingress and egress with designated loading docks for delivery. As a result, the site has sufficient access to streets and highways that are adequate in size to accommodate proposed use.

- (5) **The site for the proposed use will be provided with adequate sewerage, water, fire protection and storm drainage facilities.**

The Project only proposes to introduce a new retail product and addition is not expected to have an impact on existing sewer, water, fire protection and storm drainage facilities.

- (6) **The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet of the location for which the special use permit is applied.**

The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet because the Police Department has recommended strict operating conditions in order to address policing concerns and minimize any potential impacts to the surrounding area.

- (7) **The proposed use will not result in or add to an undue concentration of establishments selling alcoholic beverages at retail within 1,000 feet of the location for which the special use permit is applied.**

While there is the presumption that the proposed use will result in or add to an undue concentration due to the fact that there are currently three existing alcohol (Off-Sale General) establishments, this presumption may be rebutted by a preponderance of the evidence. The Police Department has recommended strict operating conditions and has determined that the use will not aggravate policing issues and may be appropriate for the area. The Project is near various shopping centers that offer a wide variety of service and retail opportunities that may include ancillary retail sales of alcohol.

SECTION 2. The Planning Commission, in accordance with the California Environmental Quality Act (CEQA), determines that the Project will not have a significant impact on the environment and is categorically exempt from CEQA pursuant to Article 19, Section 15301 (Existing Facilities), Class 1 of the State CEQA Guidelines. This section pertains to Projects involving existing facilities where there is negligible or no expansion of an existing use. The Planning Manager is hereby authorized and directed to file a Notice of Exemption with the Ventura County Clerk pursuant to Section 15602 of the State CEQA Guidelines within five (5) working days of passage, approval and adoption of this Resolution.

SECTION 3. Based on the findings set forth herein, the Planning Commission hereby approves Planning and Zoning Permit 14-510-03 (Special Use Permit), subject to the attached conditions of approval.

SECTION 4. The decision of the Planning Commission shall be final unless an appeal of the action is filed in accordance with the provisions of Section 16-545 of the Oxnard City Code.

SECTION 5. The Secretary shall certify the adoption of this Resolution.

CONDITIONS OF APPROVAL

Note:

The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second

during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the Project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition: Some are standard permit conditions (e.g. *G-1*) while some are taken from environmental documents (e.g. *MND-S2*).

DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning Division
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic Division
PD	Police Department	B	Building Plan Checker
SC	Source Control	FD	Fire Department
PK	Landscape Design	CE	Code Compliance

GENERAL PROJECT CONDITIONS

1. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, G-1).
2. This permit is granted for the plans dated October 1, 2015, ("the plans") on file with the Planning Division. The Project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning and Environmental Services Manager ("Planning Manager") or a major modification to the plans is approved by the Planning Commission. A minor modification may be granted for minimal changes or increases in the extent of use or size of structures or of the design, materials or colors of structures or masonry walls. A major modification shall be required for substantial changes or increases in such items. (PL, G-2)
3. By commencing any activity related to the Project or using any structure authorized by this permit, Permittee accepts all of the conditions and obligations imposed by this permit and waives any challenge to the validity of the conditions and obligations stated therein. (CA, G-5)
4. Any covenants, conditions, and restrictions (CC&Rs) applicable to the Project property shall be consistent with the terms of this permit and the City Code. If there is a conflict between the CC&Rs and the City Code or this permit, the City Code or this permit shall prevail. (CA, G-7)
5. Permittee shall complete the "Notice of Land Use Restrictions and Conditions" form, using the form provided by the City, for recording with the Ventura County Recorder. Before the City issues building permits, Permittee shall submit the original completed, signed and notarized document, together with the required fees to the Planning Manager. (PL, G-8)
6. Before placing or constructing any signs on the Project property, Permittee shall obtain a sign permit from the City. Except as provided in the sign permit, Permittee may not change any signs on the Project property. (PL/B, G-10)

7. Permittee shall obtain a building permit for any new construction or modifications to structures, including interior modifications, authorized by this permit. (B, G-11)
8. Permittee shall not permit any combustible refuse or other flammable materials to be burned on the Project property. (FD, G-12)
9. Permittee shall not permit any materials classified as flammable, combustible, radioactive, carcinogenic or otherwise potentially hazardous to human health to be handled, stored or used on the Project property, except as provided in a permit issued by the Fire Chief. (FD, G-13)
10. If Permittee, owner or tenant fails to comply with any of the conditions of this permit, the Permittee, owner or tenant shall be subject to a civil fine pursuant to the City Code. (CA, G-14)
11. Prior to issuance of building permits, Permittee shall correct all violations of the City Code existing on the Project property for which the Code Compliance Division has open cases. (PL, G-15)

PLANNING DIVISION STANDARD CONDITIONS

12. Permittee may not modify any use approved by this permit unless the Planning Division Manager determines that Permittee has provided the parking required by the City Code for the modified use. (PL, PL-7)

PLANNING DIVISION SPECIAL CONDITIONS

13. This permit shall automatically be null and void 12 months from the date of issuance, unless Permittee has received from the State Department of Alcoholic Beverage Control a license to sell alcoholic beverages on the Project property. (PL)

POLICE DEPARTMENT STANDARD CONDITIONS

14. All managers or supervisors who are responsible for the daily coordination, supervision or managing of employees, shall complete an approved course in Responsible Beverage Service (RBS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)
15. There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. (PL/PD)
16. The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been

significant violations of the use permit conditions and/or ABC permit, or there is a single serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines, after due process that shall include communication with the owner, is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the Manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)

17. Any signs, advertisements or decorations placed upon the windows shall not exceed 20% of the overall window area. Additionally, there shall be no other obstructions placed near the windows that exceed 20% of the overall viewing area including display racks, stored products, shades or blinds. (PD)
18. Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined by Oxnard City Code, the Police Department may initiate Planning Commission review of the existing SUP and the Planning Commission may apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)
19. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
20. Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control. This includes the rear of the business. (PL/PD)
21. Any rear door of the premises shall be equipped on the inside with an automatic locking device, shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies or disposal of trash does not constitute a violation. (PD)
22. Employees involved in the sale or service of alcoholic beverages shall not be allowed to consume alcoholic beverages at any time during their shift. Employees shall not report to work with evidence of having consumed any intoxicants such as alcohol, illegal drugs or controlled substances. (PD)
23. The parking lot and adjacent areas of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the area. This includes the rear of the business. (PL/PD)
24. There shall be no pay phones installed inside the premises nor shall there be any pay phones installed outside within 100 feet of the premises. (PL/PD)

25. Permittee shall regularly police the area under Permittee's reasonable control (including the rear of the business) and shall not permit the loitering of persons about the premises. (PL/PD)
26. In the areas surrounding the business the Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
27. Coolers or displays containing alcoholic beverages shall be positioned so as to allow maximum visibility to cashiers, clerks, associates or employees. Alcohol displays shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy and unobstructed path to any entry or exit. It is recommended that the alcohol displays or coolers be positioned where employees have a clear view from their normal work stations of the activity of persons in the alcohol isle. (PD)
28. There shall be no amusement machines or video devices maintained on the premises at any time. (PD)
29. Other than specialty beers and micro brews, beer, malt beverages and wine coolers, in containers of 40oz in volume or less, cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. The sale of mass-produced, low priced beer or malt liquor in single servings is prohibited (PD)
30. No wine shall be sold with an alcoholic content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more and maintained in corked bottles (Port, Sherry, Saki, Marsala, Madiera, Muscat and Vermouth are permitted). (PD)
31. Prominent signs shall be posted stating, in effect, "No persons under 21 will be served alcoholic beverages" and "Valid ID is required to purchase alcoholic beverages". These signs shall, at a minimum, be posted at each point of sale and near any alcohol display or areas. (PD)
32. No open floor displays of alcoholic beverages are allowed, including but not limited to "beer mountains" and portable coolers. (PD)
33. No temporary or permanent open displays of alcoholic beverages are permitted near customer entry/exits. This includes stacked boxes or cases containing alcoholic beverages, portable coolers, promotional displays or any other alcohol displays where there is a clear, easy or unobstructed path to any entry or exits. (PD)
34. Alcoholic beverages shall not be sold between the hours from 11:00 P.M. and 6:00 AM. (PD)
35. There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco. (PD)

36. Security cameras shall be installed to monitor the premises and be positioned to monitor at minimum the entry/exit, all points of sale, alcohol displays and the areas immediately surrounding the exterior of the business. The camera system shall comply with the following minimum standards: (PD)
 - a. The cameras shall be color cameras, made by a reputable manufacturer and maintained to current industry standards. They shall have low light capability and be capable of identifying persons conducting transactions at the stores' registers or entering/exiting the business. (PD)
 - b. The system shall utilize a Digital Video Recorder (DVR). The use of videocassette recorders (VHS and other formats) is prohibited. The DVR shall allow recording, live viewing and playback of recorded video for a period of least 30 days. DVR shall perform all recording, viewing (local and remote), playback (local and remote), queries and backup functions simultaneously, with no interruption of any other function. (PD)
37. Permittee shall establish responsible cash handling procedures to reduce the likelihood of robberies and thefts. (PD)
38. Permittee shall bolt down or otherwise secure all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. (PD)
39. Permittee shall have drop-safes installed or establish other responsible cash handling procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50-200). (PD)
40. When used, Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register. (PD)
41. Permittee shall install height gauges at all exit doors. (PD)
42. During hours the business is closed, there shall be an electronic intrusion detection system (burglary alarm) activated that detects portal openings, glass break, and interior motion. (PD)
43. Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601 or develop and implement critical incident protocols that provide an efficient method for alerting police and others to a potential threat without unnecessarily putting the employees at risk. (PD)
44. A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

POLICE DEPARTMENT SPECIAL CONDITIONS

45. Permittee shall install a video feedback monitor which displays the live feed from security cameras positioned nearby. The monitor shall, at a minimum, be displayed at each customer entrance. Permittee shall install an additional feedback monitor in the alcoholic beverage display area. (PD)
46. If open for business, displays containing alcoholic beverages shall be maintained in such a way as to allow for them to be locked or inaccessible during hours of prohibited sale and shall, in fact, be secured during the hours from 11:00 P.M. to 6:00 AM. (PD)
47. The sale of flavored malt beverages (commonly referred to as alcopops) or energy drinks containing alcohol is prohibited. Such products are generally sweetened, carbonated alcoholic beverages made with malt or spirits-based alcohol. Examples of such products include Smirnoff Ice, Mike's Hard Lemonade, Bacardi Silver and Jack Daniel's Lynchburg Lemonade. (PD)
48. The use of self-checkout for alcoholic beverages is prohibited. (PD)
49. Any display of distilled spirits shall be maintained either in locked cabinets at all times or under the direct control of employees. No distilled spirits shall be accessible to customers at any time without assistance from an employee. (PD)
50. The sale of refrigerated or cold alcoholic beverages is prohibited. All alcoholic beverages shall be stored and displayed at room temperature. (PD)
51. Permittee shall develop a security plan that is approved by the Chief of Police or designee and that includes comprehensive anti-theft strategies to minimize the risk of thefts related to the availability of alcohol. Such strategies may include but are not limited to anti-theft tags or sensors, product checks by staff at the exits, cart stopping devices and CCTV. Strategies that minimize the likelihood for sales of alcohol to underage customers shall be part of this plan. (PD)
52. At all times during an instructional tasting event, the instructional tasting event area shall be separated from the remainder of the off-sale licensed premises by a wall, rope, cable, cord, chain, fence, or other permanent or temporary barrier. The Applicant shall prominently display signage prohibiting persons under 21 years of age from entering the instructional tasting event area and no minors shall be permitted in this area. (PD)
53. No person shall leave the instructional tasting area with an open container of alcohol. (PD)
54. Instructional tasting shall be limited to three (3) tastings per person per day. A single tasting of distilled spirits shall not exceed one quarter of one ounce and a single tasting of wine shall not exceed one ounce. Tastings of beer shall not exceed eight (8) ounces per person per day. (PD)

55. All products tested shall be limited to the products that are authorized to be sold by the licensee (vendor) and the Applicant under the Type-21 license. (PD)
56. No persons under age 21 shall serve or be served alcoholic beverages during an instructional tasting event. (PD)
57. Tastings shall be limited to one type of alcoholic beverage per event (beer, wine or distilled spirits). (PD)
58. Instructional tasting events shall only take place between 10:00 a.m. and 9:00 p.m. (PD)

PASSED, APPROVED, AND ADOPTED by the Planning Commission of the City of Oxnard on this 1st day of October, 2015.

Diedre Frank, Chair

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Planning Commission of the City of Oxnard at a meeting held on 1st day of October, 2015, and carried by the following vote:

AYES: Commissioner(s):

NOES: Commissioner(s):

ABSENT: Commissioner(s):

ABSTAIN: Commissioner(s):

Ashley Golden, Secretary

11/5/2015

Wal-Mart at CenterPoint Mall

2701 Saviers Road
Kamala Park Neighborhood

Brent McManigal on behalf of
Wal-Mart Stores, Inc

October 1, 2015



PZ 14-510-03 (SPECIAL USE PERMIT)

Per City Code Section: 16-136(19).

Use request to permit an existing 76,639 sf Wal-Mart to
sell beer, wine, and distilled spirits (ABC-Type 21) for off-
site consumption, and

Allow authorized alcoholic beverage manufacturers,
winegrowers and wholesalers ("Tasting Coordinator") to
conduct "Instructional Tasting Event(s)" within the store
(ABC-Type 86).

2



Site Information

- CenterPoint Mall entitlements dating back to mid 60's
- Numerous modifications with recent additions, remodels, and new tenant accommodations
- 2012 - Tenant Improvements to accommodate Wal-Mart
- No site changes proposed

Surrounding Uses

- Santa Clara High School
- Island Plaza Shopping Center
- Residential/Commercial
- Mortuary, Residential, Office, Nursing Home, St. Anthony's Church / Elementary School

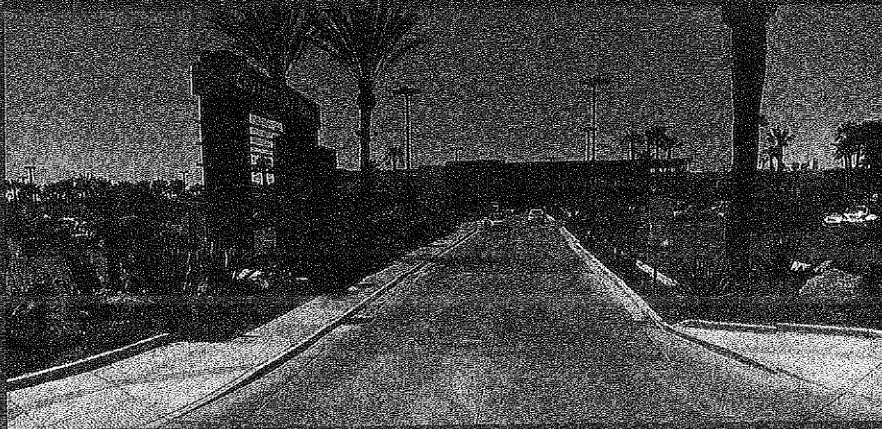


3



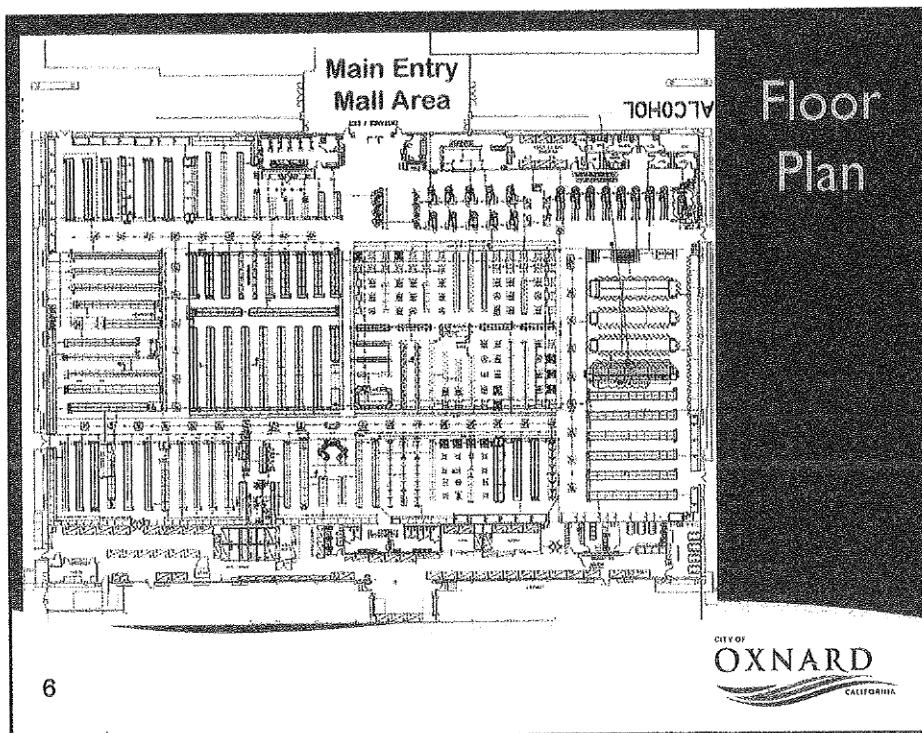
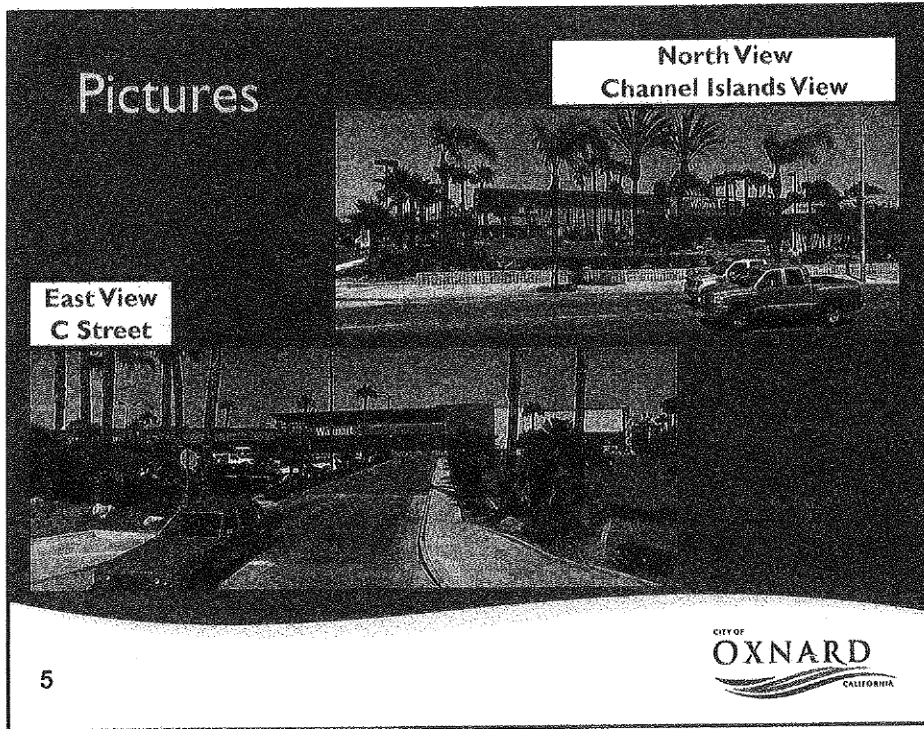
Pictures

West View
Saviers Road



4





Police Report

CC Resolution No. 11,896: Police Report...

- I. Analyzes and provides information regarding the presumption of undue concentration of establishments selling alcoholic beverages
 - A. One establishment within 350-feet
 - B. Five other sites within 1000-feet
 - C. Local presumption of undue concentration exists
- II. Analyzes and provides information on the number of police response incidents & whether the SUP approval is likely to significantly aggravate policing problems in the area.
 - A. The project site is within an area that is 63-percent higher than citywide crime rate
 - B. Police Department has determined that the use will not aggravate policing issues and may be appropriate for the area

7



Surrounding ABC Licenses

350 Feet

- | | |
|-------------|----|
| 1. Rite Aid | 21 |
|-------------|----|

1000 Feet

- | | |
|--------------------------|----|
| 1. Superior Grocery | 21 |
| 2. El Super | 21 |
| 3. Liquor Cellar | 21 |
| 4. Puerto Vallarta | 48 |
| 5. Mariscos Las Adelitas | 48 |



8



Wal-Mart

- I. No Structural alterations, additions, or exterior alterations proposed.
- II. Existing hours of operation: 6am to 11pm and no change is proposed
- III. Wal-Mart proposes to include ancillary sales of beer, wine, and liquor to the already offered wide range of products and services. (ABC-Type 21)
 - I. Standard and Special Police Conditions
 - II. Server Responsible Beverage Service (RBS) training
 - III. Storage/display, handling, no sale times, product restrictions, security and safe measure practices.
 - IV. No refrigerated/cold alcoholic beverages (Cond 50)
- IV. Alcohol policies and employee training for product handling, sales, City and State restrictions and dealing with already intoxicated customers.

9



Wal-Mart (continue)

- V. Instructional Tasting Events (ABC-Type 86)
 - I. Per Assembly Bill 605, effective in Jan of 2011 and is further regulated by Cal Bus & Prof Code (§ 23396.6 and §25503.56)
 - II. Wal-Mart (ABC-Type 86) will host tastings, but not a participant.
 - III. Only non-retail, authorized licensees can conduct the tastings such as manufacturers of beer, wine, brandy, and distilleries (ABC Types 1-4)
 - IV. Intended to promote product history, nature, values, and beverage characteristics for featured products they produce, import, or sell.
 - V. Limited to one vendor showcase of one product.
 - VI. Conducted in Tasting Area (Separated w/ serving, setup, & product handling restrictions)
 - VII. 2 - 3 tasting events per month

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Community Input

- Community Workshop: Monday, April 21, 2014
- Notice posted and mailed to Blackstock North Neighborhood; Cal-Gisler Neighborhood; Kamala Park Neighborhood; and Bryce Canyon Neighborhood
- Eight persons from the community attended the Community Workshop and the following feedback/questions were received:
 - Compatibility concerns with close proximity and compatibility with schools, sensitive uses and concentration of alcohol establishments in the vicinity.

11

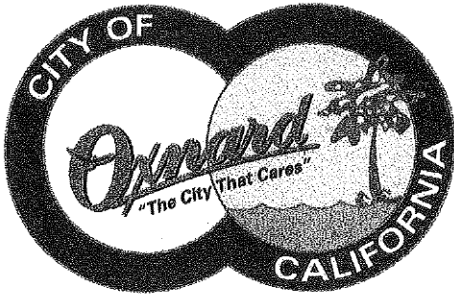


Staff Recommendation

That the Planning Commission adopt a resolution approving PZ 14-510-03 (Special Use Permit), subject to certain findings and conditions

12





CITY OF OXNARD
CITY CLERK

15 OCT 19 P 5:29

NOTICE REQUESTING REVIEW

I, Bert E. Perello, request that the City Council review the 10-⁰¹~~15~~^{BP}
(name of City Councilmember or staff member) date of

decision of the Planning Commission regarding G-1
Planning Commission meeting) (number and

PZ 14-510-03 SUP Walmart on the following grounds:
description of matter)

- () To provide efficient and coordinated review of a multiple permit project.
(x) For council review and consideration

Bert E. Perello 10-19-15
(Signature and date)

cc: City Attorney
Project Planner
Development Services Department
Applicant

RESOLUTION NO. 2015-27

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD APPROVING PLANNING AND ZONING PERMIT NO. 14-510-03 (SPECIAL USE PERMIT-ALCOHOL) TO ALLOW AN EXISTING 76,639 SQUARE FOOT WAL-MART, LOCATED AT 2701 SAVIERS ROAD TO SELL BEER, WINE, AND LIQUOR FOR OFF-SITE CONSUMPTION (ABC TYPE 21) WITHIN THE STORE, SUBJECT TO CERTAIN FINDINGS AND CONDITIONS. FILED BY BRENT MCMANIGAL ON BEHALF OF WAL-MART STORES, INC AND THE PROPERTY OWNER, 550 EAST HOSPITALITY LANE, SUITE 300, SAN BERNARDINO, CALIFORNIA 92408.

WHEREAS, on January 15, 2014, Brent McManigal on behalf of Wal-Mart Stores, Inc. and the property owner (the "Applicant" and/or "Permittee") submitted a request to allow an existing Wal-Mart located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC-Type 21) and allow authorized alcoholic beverage manufacturers, winegrowers and wholesalers ("Tasting Coordinator") to conduct "Instructional Tasting Event(s)" within the store (ABC Type 86) - APN 203-0-320-435; and

WHEREAS, on October 1, 2015, the Planning Commission of the City of Oxnard ("Planning Commission") conducted a duly noticed public hearing to consider Applicant's request to approve Planning and Zoning Permit No. 14-510-03 (Special Use Permit) to allow an existing Wal-Mart located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC-Type 21) and allow a Tasting Coordinator to conduct "Instructional Tasting Event(s)" within the store (ABC Type 86) (the "Project") in accordance with Section 16-530 through 16-553 of Oxnard City Code; and

WHEREAS, after review of the entire record before the Planning Commission and all written and oral evidence presented on October 1, 2015, the Planning Commission voted to revise the Project and Planning and Zoning Permit No. 14-510-03 (Special Use Permit) to only allow the sale of beer, wine, and liquor for off-site consumption (ABC-Type 21); and

WHEREAS, the Planning and Environmental Services Division has completed a preliminary environmental assessment of the Project in accordance with the California Environmental Quality Act (CEQA) and determined that the Project is subject to a categorical exemption; and

WHEREAS, the Project was referred to various public utility companies, City departments and the Development Advisory Committee for recommendations.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF OXNARD:

SECTION 1. Based on the entire record before the Planning Commission and all written and oral evidence presented, including the Planning Commission Staff Report and all attachments thereto, the Planning Commission finds:

- (1) **The proposed use is in conformance with the City of Oxnard 2030 General Plan and the elements thereof and other adopted standards.**

The proposed use is consistent with the 2030 General Plan since the use is consistent with the site's land use designation of Commercial Planned Development (CPD) zone and development policies of the 2030 General Plan.

- (2) **The proposed use will not adversely affect or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.**

The proposed use is consistent with uses considered and permitted by the Commercial Planned Development (CPD) zone. The anticipated use will take place within an already established retail area of the store. Therefore, the proposed use and improvements are not expected to have adverse effects or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.

- (3) **The site for the proposed use is adequate in size and shape to accommodate the setbacks, parking, landscaping, and other City standards except as may be specifically excepted by the special findings and conditions of this Resolution.**

The site is already developed and no site improvements are proposed. Existing site improvements are subject to the development standards of the Commercial Planned Development (CPD) zone when compared to parking and landscape design standards.

As such, the subject site is adequate in terms of size and as developed the development meets or exceeds City's design standards and parking will be met via a shared parking agreement between the three proposed parcels.

- (4) **The site for the proposed use will be served by streets and highways adequate in width and structure to carry the kind and quantity of traffic such use will generate.**

The Wal-Mart store is located within an established shopping center that is surrounded by two major street thoroughfares and two secondary streets. No site improvements are necessary and added use may increase delivery by specialty product distributor; however, the facility has adequate access for ingress and egress with designated loading docks for delivery. As a result, the site has sufficient access to streets and highways that are adequate in size to accommodate proposed use.

- (5) **The site for the proposed use will be provided with adequate sewerage, water, fire protection and storm drainage facilities.**

The Project only proposes to introduce a new retail product and addition is not expected to have an impact on existing sewer, water, fire protection and storm drainage facilities.

- (6) **The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet of the location for which the special use permit is applied.**

The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet because the Police Department has recommended strict operating conditions in order to address policing concerns and minimize any potential impacts to the surrounding area.

- (7) **The proposed use will not result in or add to an undue concentration of establishments selling alcoholic beverages at retail within 1,000 feet of the location for which the special use permit is applied.**

While there is the presumption that the proposed use will result in or add to an undue concentration due to the fact that there are currently three existing alcohol (Off-Sale General) establishments, this presumption may be rebutted by a preponderance of the evidence. The Police Department has recommended strict operating conditions and has determined that the use will not aggravate policing issues and may be appropriate for the area. The Project is near various shopping centers that offer a wide variety of service and retail opportunities that may include ancillary retail sales of alcohol.

SECTION 2. The Planning Commission, in accordance with the California Environmental Quality Act (CEQA), determines that the Project will not have a significant impact on the environment and is categorically exempt from CEQA pursuant to Article 19, Section 15301 (Exiting Facilities), Class 1 of the State CEQA Guidelines. This section pertains to Projects involving existing facilities where there is negligible or no expansion of an existing use. The Planning Manager is hereby authorized and directed to file a Notice of Exemption with the Ventura County Clerk pursuant to Section 15602 of the State CEQA Guidelines within five (5) working days of passage, approval and adoption of this Resolution.

SECTION 3. Based on the findings set forth herein, the Planning Commission hereby approves Planning and Zoning Permit 14-510-03 (Special Use Permit) to allow an existing Wal-Mart located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC-Type 21), subject to the attached conditions of approval.

SECTION 4. The decision of the Planning Commission shall be final unless an appeal of the action is filed in accordance with the provisions of Section 16-545 of the Oxnard City Code.

SECTION 5. The Secretary shall certify the adoption of this Resolution.

CONDITIONS OF APPROVAL

Note:

The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the Project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition: Some are standard permit conditions (e.g. G-1) while some are taken from environmental documents (e.g. MND-S2).

DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning Division
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic Division
PD	Police Department	B	Building Plan Checker
SC	Source Control	FD	Fire Department
PK	Landscape Design	CE	Code Compliance

GENERAL PROJECT CONDITIONS

1. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, G-1).
2. This permit is granted for the plans dated October 1, 2015, ("the plans") on file with the Planning Division. The Project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning and Environmental Services Manager ("Planning Manager") or a major modification to the plans is approved by the Planning Commission. A minor modification may be granted for minimal changes or increases in the extent of use or size of structures or of the design, materials or colors of structures or masonry walls. A major modification shall be required for substantial changes or increases in such items. (PL, G-2)
3. By commencing any activity related to the Project or using any structure authorized by this permit, Permittee accepts all of the conditions and obligations imposed by this permit and waives any challenge to the validity of the conditions and obligations stated therein. (CA, G-5)
4. Any covenants, conditions, and restrictions (CC&Rs) applicable to the Project property shall be consistent with the terms of this permit and the City Code. If there is a conflict between the CC&Rs and the City Code or this permit, the City Code or this permit shall prevail. (CA, G-7)
5. Permittee shall complete the "Notice of Land Use Restrictions and Conditions" form, using the form provided by the City, for recording with the Ventura County Recorder. Before the City issues building permits, Permittee shall submit the original completed, signed and notarized document, together with the required fees to the Planning Manager. (PL, G-8)

6. Before placing or constructing any signs on the Project property, Permittee shall obtain a sign permit from the City. Except as provided in the sign permit, Permittee may not change any signs on the Project property. (PL/B, G-10)
7. Permittee shall obtain a building permit for any new construction or modifications to structures, including interior modifications, authorized by this permit. (B, G-11)
8. Permittee shall not permit any combustible refuse or other flammable materials to be burned on the Project property. (FD, G-12)
9. Permittee shall not permit any materials classified as flammable, combustible, radioactive, carcinogenic or otherwise potentially hazardous to human health to be handled, stored or used on the Project property, except as provided in a permit issued by the Fire Chief. (FD, G-13)
10. If Permittee, owner or tenant fails to comply with any of the conditions of this permit, the Permittee, owner or tenant shall be subject to a civil fine pursuant to the City Code. (CA, G-14)
11. Prior to issuance of building permits, Permittee shall correct all violations of the City Code existing on the Project property for which the Code Compliance Division has open cases. (PL, G-15)

PLANNING DIVISION STANDARD CONDITIONS

12. Permittee may not modify any use approved by this permit unless the Planning Division Manager determines that Permittee has provided the parking required by the City Code for the modified use. (PL, PL-7)

PLANNING DIVISION SPECIAL CONDITIONS

13. This permit shall automatically be null and void 12 months from the date of issuance, unless Permittee has received from the State Department of Alcoholic Beverage Control a license to sell alcoholic beverages on the Project property. (PL)

POLICE DEPARTMENT STANDARD CONDITIONS

14. All managers or supervisors who are responsible for the daily coordination, supervision or managing of employees, shall complete an approved course in Responsible Beverage Service (RBS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)

15. There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. (PL/PD)
16. The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been significant violations of the use permit conditions and/or ABC permit, or there is a single serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines, after due process that shall include communication with the owner, is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the Manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)
17. Any signs, advertisements or decorations placed upon the windows shall not exceed 20% of the overall window area. Additionally, there shall be no other obstructions placed near the windows that exceed 20% of the overall viewing area including display racks, stored products, shades or blinds. (PD)
18. Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined by Oxnard City Code, the Police Department may initiate Planning Commission review of the existing SUP and the Planning Commission may apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)
19. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
20. Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control. This includes the rear of the business. (PL/PD)
21. Any rear door of the premises shall be equipped on the inside with an automatic locking device, shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies or disposal of trash does not constitute a violation. (PD)
22. Employees involved in the sale or service of alcoholic beverages shall not be allowed to consume alcoholic beverages at any time during their shift. Employees shall not report to work with evidence of having consumed any intoxicants such as alcohol, illegal drugs or controlled substances. (PD)

23. The parking lot and adjacent areas of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the area. This includes the rear of the business. (PL/PD)
24. There shall be no pay phones installed inside the premises nor shall there be any pay phones installed outside within 100 feet of the premises. (PL/PD)
25. Permittee shall regularly police the area under Permittee's reasonable control (including the rear of the business) and shall not permit the loitering of persons about the premises. (PL/PD)
26. In the areas surrounding the business the Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
27. Coolers or displays containing alcoholic beverages shall be positioned so as to allow maximum visibility to cashiers, clerks, associates or employees. Alcohol displays shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy and unobstructed path to any entry or exit. It is recommended that the alcohol displays or coolers be positioned where employees have a clear view from their normal work stations of the activity of persons in the alcohol isle. (PD)
28. There shall be no amusement machines or video devices maintained on the premises at any time. (PD)
29. Other than specialty beers and micro brews, beer, malt beverages and wine coolers, in containers of 40oz in volume or less, cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. The sale of mass-produced, low priced beer or malt liquor in single servings is prohibited (PD)
30. No wine shall be sold with an alcoholic content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more and maintained in corked bottles (Port, Sherry, Saki, Marsala, Madiera, Muscat and Vermouth are permitted). (PD)
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32. No open floor displays of alcoholic beverages are allowed, including but not limited to "beer mountains" and portable coolers. (PD)
33. No temporary or permanent open displays of alcoholic beverages are permitted near customer entry/exits. This includes stacked boxes or cases containing alcoholic beverages, portable

coolers, promotional displays or any other alcohol displays where there is a clear, easy or unobstructed path to any entry or exits. (PD)

34. Alcoholic beverages shall not be sold between the hours from 11:00 P.M. and 6:00 AM. (PD)
35. There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco. (PD)
36. Security cameras shall be installed to monitor the premises and be positioned to monitor at minimum the entry/exit, all points of sale, alcohol displays and the areas immediately surrounding the exterior of the business. The camera system shall comply with the following minimum standards: (PD)
 - a. The cameras shall be color cameras, made by a reputable manufacturer and maintained to current industry standards. They shall have low light capability and be capable of identifying persons conducting transactions at the stores' registers or entering/exiting the business. (PD)
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41. Permittee shall install height gauges at all exit doors. (PD)
42. During hours the business is closed, there shall be an electronic intrusion detection system (burglary alarm) activated that detects portal openings, glass break, and interior motion. (PD)

43. Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601 or develop and implement critical incident protocols that provide an efficient method for alerting police and others to a potential threat without unnecessarily putting the employees at risk. (PD)
44. A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

POLICE DEPARTMENT SPECIAL CONDITIONS

45. Permittee shall install a video feedback monitor which displays the live feed from security cameras positioned nearby. The monitor shall, at a minimum, be displayed at each customer entrance. Permittee shall install an additional feedback monitor in the alcoholic beverage display area. (PD)
46. If open for business, displays containing alcoholic beverages shall be maintained in such a way as to allow for them to be locked or inaccessible during hours of prohibited sale and shall, in fact, be secured during the hours from 11:00 P.M. to 6:00 AM. (PD)
47. The sale of flavored malt beverages (commonly referred to as alcopops) or energy drinks containing alcohol is prohibited. Such products are generally sweetened, carbonated alcoholic beverages made with malt or spirits-based alcohol. Examples of such products include Smirnoff Ice, Mike's Hard Lemonade, Bacardi Silver and Jack Daniel's Lynchburg Lemonade. (PD)
48. The use of self-checkout for alcoholic beverages is prohibited. (PD)
49. Any display of distilled spirits shall be maintained either in locked cabinets at all times or under the direct control of employees. No distilled spirits shall be accessible to customers at any time without assistance from an employee. (PD)
50. The sale of refrigerated or cold alcoholic beverages is prohibited. All alcoholic beverages shall be stored and displayed at room temperature. (PD)
51. Permittee shall develop a security plan that is approved by the Chief of Police or designee and that includes comprehensive anti-theft strategies to minimize the risk of thefts related to the availability of alcohol. Such strategies may include but are not limited to anti-theft tags or sensors, product checks by staff at the exits, cart stopping devices and CCTV. Strategies that minimize the likelihood for sales of alcohol to underage customers shall be part of this plan. (PD)

PASSED, APPROVED, AND ADOPTED by the Planning Commission of the City of Oxnard on
this 1st day of October, 2015.

Diedre Frank, Chair

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Planning
Commission of the City of Oxnard at a meeting held on 1st day of October, 2015, and carried by the
following vote:

AYES:	Commissioner(s):	Frank, Huber, Nash, Dozier, Mullin
NOES:	Commissioner(s):	Steward
ABSENT:	Commissioner(s):	Okada
ABSTAIN:	Commissioner(s):	None

Ashley Golden, Secretary

CITY COUNCIL OF THE CITY OF OXNARD
RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD APPROVING PLANNING AND ZONING PERMIT NO. 14-510-03 (SPECIAL USE PERMIT-ALCOHOL) TO ALLOW AN EXISTING 76,639 SQUARE FOOT WAL-MART, LOCATED AT 2701 SAVIERS ROAD TO SELL BEER, WINE, AND LIQUOR FOR OFF-SITE CONSUMPTION (ABC TYPE 21) WITHIN THE STORE, SUBJECT TO CERTAIN FINDINGS AND CONDITIONS. FILED BY BRENT MCMANIGAL ON BEHALF OF WAL-MART STORES, INC AND THE PROPERTY OWNER, 550 EAST HOSPITALITY LANE, SUITE 300, SAN BERNARDINO, CALIFORNIA 92408.

WHEREAS, on January 15, 2014, Brent McManigal on behalf of Wal-Mart Stores, Inc. and the property owner (the “**Applicant**” and/or “**Permittee**”) submitted a request to allow an existing Wal-Mart located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC-Type 21) and allow authorized alcoholic beverage manufacturers, winegrowers and wholesalers (“**Tasting Coordinator**”) to conduct “Instructional Tasting Event(s)” within the store (ABC Type 86) - APN 203-0-320-435; and

WHEREAS, on October 1, 2015, the Planning Commission of the City of Oxnard (“**Planning Commission**”) conducted a duly noticed public hearing to consider Applicant’s request to approve Planning and Zoning Permit No. 14-510-03 (Special Use Permit) to allow an existing Wal-Mart located at 2701 Saviers Road to sell beer, wine, and liquor for off-site consumption (ABC-Type 21) and allow a Tasting Coordinator to conduct “Instructional Tasting Event(s)” within the store (ABC Type 86) (the “**Project**”) in accordance with Sections 16-530 through 16-553 of the Oxnard City Code; and

WHEREAS, after review of the entire record before the Planning Commission and all written and oral evidence presented on October 1, 2015, the Planning Commission voted to revise the Project and Planning and Zoning Permit No. 14-510-03 (Special Use Permit) to only allow the sale of beer, wine, and liquor for off-site consumption (ABC-Type 21); and

WHEREAS, the City Council has considered a Notice of Requesting Review of the Planning Commission’s decision to approve the Project, filed on October 19, 2015, by Councilmember, Bert E. Perello and has carefully reviewed the decision of the Planning Commission; and

WHEREAS, the Planning Division has completed a preliminary environmental assessment of the Project in accordance with the California Environmental Quality Act (CEQA) and determined that the Project is subject to a categorical exemption.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OXNARD:

SECTION 1. Based on the entire record before the City Council and all written and oral evidence presented, including the Planning Commission Staff Report and all attachments thereto, the City Council finds:

- (1) **The proposed use is in conformance with the City of Oxnard 2030 General Plan and the elements thereof and other adopted standards.**

The proposed use is consistent with the 2030 General Plan since the use is consistent with the site's land use designation of Commercial Planned Development (CPD) zone and development policies of the 2030 General Plan.

- (2) **The proposed use will not adversely affect or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.**

The proposed use is consistent with uses considered and permitted by the Commercial Planned Development (CPD) zone. The anticipated use will take place within an already established retail area of the store. Therefore, the proposed use and improvements are not expected to have adverse effects or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.

- (3) **The site for the proposed use is adequate in size and shape to accommodate the setbacks, parking, landscaping, and other City standards except as may be specifically excepted by the special findings and conditions of this Resolution.**

The site is already developed and no site improvements are proposed. Existing site improvements are subject to the development standards of the Commercial Planned Development (CPD) zone when compared to parking and landscape design standards.

As such, the subject site is adequate in terms of size and as developed the development meets or exceeds City's design standards and parking will be met via a shared parking agreement between the three proposed parcels.

- (4) **The site for the proposed use will be served by streets and highways adequate in width and structure to carry the kind and quantity of traffic such use will generate.**

The Wal-Mart store is located within an established shopping center that is surrounded by two major street thoroughfares and two secondary streets. No site improvements are necessary and added use may increase delivery by specialty product distributor; however, the facility has adequate access for ingress and egress with designated loading docks for delivery. As a result, the site has sufficient access to streets and highways that are adequate in size to accommodate proposed use.

- (5) **The site for the proposed use will be provided with adequate sewerage, water, fire protection and storm drainage facilities.**

The Project only proposes to introduce a new retail product and in addition is not expected to have an impact on existing sewer, water, fire protection and storm drainage facilities.

- (6) **The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet of the location for which the special use permit is applied.**

The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet because the Police Department has recommended strict operating conditions in order to address policing concerns and minimize any potential impacts to the surrounding area.

- (7) **The proposed use will not result in or add to an undue concentration of establishments selling alcoholic beverages at retail within 1,000 feet of the location for which the special use permit is applied.**

While there is the presumption that the proposed use will result in or add to an undue concentration due to the fact that there are currently three existing alcohol (Off-Sale General) establishments, this presumption may be rebutted by a preponderance of the evidence. The Police Department has recommended strict operating conditions and has determined that the use will not aggravate policing issues and may be appropriate for the area. The Project is near various shopping centers that offer a wide variety of service and retail opportunities that may include ancillary retail sales of alcohol.

SECTION 2. The City Council, in accordance with the California Environmental Quality Act (CEQA), determines that the Project will not have a significant impact on the environment and is categorically exempt from CEQA pursuant to Article 19, Section 15301 (Existing Facilities), Class 1 of the State CEQA Guidelines. This section pertains to projects involving existing facilities where there is negligible or no expansion of an existing use. The Planning Manager is hereby authorized and directed to file a Notice of Exemption with the Ventura County Clerk pursuant to Section 15602 of the State CEQA Guidelines within five (5) working days of passage, approval and adoption of this Resolution.

SECTION 3. Based on the findings set forth herein, the City Council hereby upholds the decision of the Planning Commission and approves Planning and Zoning Permit 14-510-03 (Special Use Permit), subject to the attached conditions of approval.

CONDITIONS OF APPROVAL

Note:

The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the Project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition: Some are standard permit conditions (e.g. G-1) while some are taken from environmental documents (e.g. MND-S2).

DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning Division
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic Division
PD	Police Department	B	Building Plan Checker
SC	Source Control	FD	Fire Department
PK	Landscape Design	CE	Code Compliance

GENERAL PROJECT CONDITIONS

1. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, G-1).
2. This permit is granted for the plans dated December 1, 2015, ("the plans") on file with the Planning Division. The Project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning and Environmental Services Manager ("Planning Manager") or a major modification to the plans is approved by the Planning Commission. A minor modification may be granted for minimal changes or increases in the extent of use or size of structures or of the design, materials or colors of structures or masonry walls. A major modification shall be required for substantial changes or increases in such items. (PL, G-2)
3. By commencing any activity related to the Project or using any structure authorized by this permit, Permittee accepts all of the conditions and obligations imposed by this permit and waives any challenge to the validity of the conditions and obligations stated therein. (CA, G-5)
4. Any covenants, conditions, and restrictions (CC&Rs) applicable to the Project property shall be consistent with the terms of this permit and the City Code. If there is a conflict between the CC&Rs and the City Code or this permit, the City Code or this permit shall prevail. (CA, G-7)
5. Permittee shall complete the "Notice of Land Use Restrictions and Conditions" form, using the form provided by the City, for recording with the Ventura County Recorder. Before the City issues building permits, Permittee shall submit the original completed, signed and notarized document, together with the required fees to the Planning Manager. (PL, G-8)

6. Before placing or constructing any signs on the Project property, Permittee shall obtain a sign permit from the City. Except as provided in the sign permit, Permittee may not change any signs on the Project property. (PL/B, G-10)
7. Permittee shall obtain a building permit for any new construction or modifications to structures, including interior modifications, authorized by this permit. (B, G-11)
8. Permittee shall not permit any combustible refuse or other flammable materials to be burned on the Project property. (FD, G-12)
9. Permittee shall not permit any materials classified as flammable, combustible, radioactive, carcinogenic or otherwise potentially hazardous to human health to be handled, stored or used on the Project property, except as provided in a permit issued by the Fire Chief. (FD, G-13)
10. If Permittee, owner or tenant fails to comply with any of the conditions of this permit, the Permittee, owner or tenant shall be subject to a civil fine pursuant to the City Code. (CA, G-14)
11. Prior to issuance of building permits, Permittee shall correct all violations of the City Code existing on the Project property for which the Code Compliance Division has open cases. (PL, G-15)

PLANNING DIVISION STANDARD CONDITIONS

12. Permittee may not modify any use approved by this permit unless the Planning Division Manager determines that Permittee has provided the parking required by the City Code for the modified use. (PL, PL-7)

PLANNING DIVISION SPECIAL CONDITIONS

13. This permit shall automatically be null and void 12 months from the date of issuance, unless Permittee has received from the State Department of Alcoholic Beverage Control a license to sell alcoholic beverages on the Project property. (PL)

POLICE DEPARTMENT STANDARD CONDITIONS

14. All managers or supervisors who are responsible for the daily coordination, supervision or managing of employees, shall complete an approved course in Responsible Beverage Service (RBS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)

15. There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. (PL/PD)
16. The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been significant violations of the use permit conditions and/or ABC permit, or there is a single serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines, after due process that shall include communication with the owner, is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the Manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)
17. Any signs, advertisements or decorations placed upon the windows shall not exceed 20% of the overall window area. Additionally, there shall be no other obstructions placed near the windows that exceed 20% of the overall viewing area including display racks, stored products, shades or blinds. (PD)
18. Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined by Oxnard City Code, the Police Department may initiate Planning Commission review of the existing SUP and the Planning Commission may apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)
19. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
20. Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control. This includes the rear of the business. (PL/PD)
21. Any rear door of the premises shall be equipped on the inside with an automatic locking device, shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies or disposal of trash does not constitute a violation. (PD)
22. Employees involved in the sale or service of alcoholic beverages shall not be allowed to consume alcoholic beverages at any time during their shift. Employees shall not report to work with evidence of having consumed any intoxicants such as alcohol, illegal drugs or controlled substances. (PD)

23. The parking lot and adjacent areas of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the area. This includes the rear of the business. (PL/PD)
24. There shall be no pay phones installed inside the premises nor shall there be any pay phones installed outside within 100 feet of the premises. (PL/PD)
25. Permittee shall regularly police the area under Permittee's reasonable control (including the rear of the business) and shall not permit the loitering of persons about the premises. (PL/PD)
26. In the areas surrounding the business the Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
27. Coolers or displays containing alcoholic beverages shall be positioned so as to allow maximum visibility to cashiers, clerks, associates or employees. Alcohol displays shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy and unobstructed path to any entry or exit. It is recommended that the alcohol displays or coolers be positioned where employees have a clear view from their normal work stations of the activity of persons in the alcohol isle. (PD)
28. There shall be no amusement machines or video devices maintained on the premises at any time. (PD)
29. Other than specialty beers and micro brews, beer, malt beverages and wine coolers, in containers of 40oz in volume or less, cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. The sale of mass-produced, low priced beer or malt liquor in single servings is prohibited (PD)
30. No wine shall be sold with an alcoholic content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more and maintained in corked bottles (Port, Sherry, Saki, Marsala, Madiera, Muscat and Vermouth are permitted). (PD)
31. Prominent signs shall be posted stating, in effect, "No persons under 21 will be served alcoholic beverages" and "Valid ID is required to purchase alcoholic beverages". These signs shall, at a minimum, be posted at each point of sale and near any alcohol display or areas. (PD)
32. No open floor displays of alcoholic beverages are allowed, including but not limited to "beer mountains" and portable coolers. (PD)
33. No temporary or permanent open displays of alcoholic beverages are permitted near customer entry/exits. This includes stacked boxes or cases containing alcoholic beverages, portable

coolers, promotional displays or any other alcohol displays where there is a clear, easy or unobstructed path to any entry or exits. (PD)

34. Alcoholic beverages shall not be sold between the hours from 11:00 P.M. and 6:00 AM. (PD)
35. There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco. (PD)
36. Security cameras shall be installed to monitor the premises and be positioned to monitor at minimum the entry/exit, all points of sale, alcohol displays and the areas immediately surrounding the exterior of the business. The camera system shall comply with the following minimum standards: (PD)
 - a. The cameras shall be color cameras, made by a reputable manufacturer and maintained to current industry standards. They shall have low light capability and be capable of identifying persons conducting transactions at the stores' registers or entering/exiting the business. (PD)
 - b. The system shall utilize a Digital Video Recorder (DVR). The use of videocassette recorders (VHS and other formats) is prohibited. The DVR shall allow recording, live viewing and playback of recorded video for a period of least 30 days. DVR shall perform all recording, viewing (local and remote), playback (local and remote), queries and backup functions simultaneously, with no interruption of any other function. (PD)
37. Permittee shall establish responsible cash handling procedures to reduce the likelihood of robberies and thefts. (PD)
38. Permittee shall bolt down or otherwise secure all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. (PD)
39. Permittee shall have drop-safes installed or establish other responsible cash handling procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50-200). (PD)
40. When used, Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register. (PD)
41. Permittee shall install height gauges at all exit doors. (PD)
42. During hours the business is closed, there shall be an electronic intrusion detection system (burglary alarm) activated that detects portal openings, glass break, and interior motion. (PD)

43. Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601 or develop and implement critical incident protocols that provide an efficient method for alerting police and others to a potential threat without unnecessarily putting the employees at risk. (PD)
44. A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

POLICE DEPARTMENT SPECIAL CONDITIONS

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50. The sale of refrigerated or cold alcoholic beverages is prohibited. All alcoholic beverages shall be stored and displayed at room temperature. (PD)
51. Permittee shall develop a security plan that is approved by the Chief of Police or designee and that includes comprehensive anti-theft strategies to minimize the risk of thefts related to the availability of alcohol. Such strategies may include but are not limited to anti-theft tags or sensors, product checks by staff at the exits, cart stopping devices and CCTV. Strategies that minimize the likelihood for sales of alcohol to underage customers shall be part of this plan. (PD)

PASSED AND ADOPTED by the City Council of the City of Oxnard on the 1st day of December 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, Interim City Attorney



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Report

AGENDA ITEM NO.: K-1

DATE: December 1, 2015

TO: City Council

THROUGH: Greg Nyhoff, City Manager
Office of the City Manager

FROM: Daniel Rydberg, P.E., Interim Public Works Director
Public Works Department

SUBJECT: Appropriate Funds from Street Improvement Fund Balance in the amount of \$1,250,000 to the La Colonia Resurfacing, Phase I, Project 143116

CONTACT: Lou Balderrama, City Engineer
lou.balderrama@ci.oxnard.ca.us, 385-7839

RECOMMENDATION

That City Council approve a budget appropriation in the amount of \$1,250,000 from the Street Improvement Fund Balance to the La Colonia Resurfacing, Phase I, Project 143116.

DISCUSSION

La Colonia Resurfacing, Phase I, is part of the city's neighborhood street resurfacing program. In the fall of 2014, staff presented a report to City Council which prioritized the streets to be resurfaced. To date, eight street resurfacing projects have been awarded. La Colonia Resurfacing, Phase I, is the next project prioritized to go to bid. Currently, the La Colonia project has no funding. As part of the FY2015-16 Budget process, La Colonia was reprioritized and unappropriated from Measure O funds. In order to fund the project to remain consistent with the priorities in the Streets CIP Plan, staff proposes to fund the La Colonia Resurfacing, Phase I, project with Street Improvement Fund Balance which revenues derived from the Enterprise Fund Infrastructure Use Fees.

FINANCIAL IMPACT

Staff recommends funding in the amount of \$1,250,000 for work under this contract be appropriated from Street Improvement Fund 105 which is collected from Enterprise Fund Infrastructure Use Fees.

ATTACHMENT

#1 - Budget Appropriation

REQUEST FOR A BUDGET APPROPRIATION

Department: PUBLIC WORKS
Project/Program
Manager: EUBANKS

Date: December 1, 2015

Phone: 7835

Reason for Appropriation:

Appropriate funds in the amount of \$1,250,000 from fund balance of the Street Improvement Fund to La Colonia Resurfacing, Phase I Project 143116.

Accounts and Descriptions

AMOUNT

Fund: Street Improvement Fund 105

Expenditures/Transfers Out

La Colonia Resurfacing, Phase I (Project 143116)

105-3015-826.82-08 SERVICES - CONSTRUCTION 1,250,000

Sub-total Expenditures 1,250,000

Net Change to Fund Balance (1,250,000)

Net Appropriation Change (1,250,000)

Approvals

Department Director

Chief Financial Officer

City Manager

ATTACHMENT NO. /
PAGE 1 OF 1



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Report

AGENDA ITEM NO.: 6-1

DATE: December 1, 2015

TO: City Council

THROUGH: Greg Nyhoff, City Manager
Office of the City Manager

FROM: Keith Brooks, Interim IT Director

SUBJECT: Presentation of Information Technology Four-Year Master Plan from NexLevel Information Technology, Inc.

CONTACT: David Endelman, GIS Coordinator
David.Endelman@Oxnard.org, 385-8205

RECOMMENDATION: That City Council receive a presentation and report on the Information Technology Four-Year Master Plan from NexLevel Information Technology, Inc.

BACKGROUND

This Information Technology Master Plan (ITMP) for the City of Oxnard provides strategic direction for optimal benefits from the City's computer systems and enterprise solutions. The completion of an IT Master Plan is Recommendation Priority 1A #24 of the 128 recommendations outlined in the Organizational Assessment.

The previous ITMP was adopted by Council in 2009. A comprehensive RFP process was implemented and NexLevel Information Technology, Inc. was selected to be the vendor in 2014 for an Information Technology Four-Year Master Plan. Council approved an agreement with NexLevel that was entered into on January 27, 2015.

The focus of this master plan is on the City Manager's Central Information Technology Division (formerly known as Information Systems) with a secondary look at examining how all four of the City of Oxnard's Information Systems groups might better coordinate Information Technology (IT) efforts. The scope of this agreement was amended on March 23, 2015 to include a survey of the Police IT group and the inclusion of projects from Police, Library and Housing.

The resulting Information Technology Four-Year Master Plan contains a Central IT Assessment Summary and Project Listings for all IT groups (Central IT, Police IT, Library IT and Housing IT) with

appendices including the Detailed Project Descriptions and the Enterprise Resource Planning (ERP) Alternatives Analysis Report.

NexLevel met with representatives from all City departments to identify potential future technology projects. Input for this report was provided by:

- “Voice of the User” Surveys for Central IT and Police IT
- Interviews conducted with key user stakeholders and management of all City departments
- Interviews with City executive management
- Interviews conducted with the Central IT staff and IT management
- Tour of Central IT office area and interior of primary Data Center
- Review of City IT documentation provided
- IT Best Practices Assessment completed by Central IT and reviewed by NexLevel
- Community Meeting facilitated by NexLevel

ITMP Assessment Summary

With a focus on Central IT, this ITMP evaluates whether the City’s technology infrastructure, business technology software applications, security, service delivery, administration and support resources are prepared to meet the City’s current and future technology needs. From a high-level perspective, key findings include:

- The City currently lacks a common technology vision and direction due to lack of a single point of information technology leadership.
- The City has not had an Information Technology Director position since 1993.
- The City currently has four distinct IT support systems in place including Central IT, Police IT, Housing IT and Library IT. The individual IT support groups manage their specific department’s technology, resulting in multiple platforms, systems, direction, standards and periodically inhibiting staff’s ability to function seamlessly across these multiple City Departments.

- Central IT staffing resources have decreased and negative impacts to service delivery resulted.
- While technology users expressed satisfaction with the willingness of Central IT to provide support and services, they stated that service could be improved. Department expectations have lowered over the years and those interviewed shared that they are aware support resources are limited.
- The technology infrastructure and supporting technology equipment is not maintained or replaced on a formal and consistent refreshment cycle.
- While Central IT has been innovative and has accomplished much with limited resources (human and dollars), this has often been achieved at the expense of conformance to some IT best practices for items such as change management, standardization, application life cycle management, project management and governance.
- The City continues to invest in legacy systems that may not meet the department/enterprise needs and the continued investment in these systems should be assessed.

ITMP Recommendations Summary

NexLevel has developed a series of recommendations to remediate the key findings and to provide the City with an improved IT support service framework. NexLevel's recommendations include the following:

RECOMMENDATION 1 - Implement IT governance (Immediate)

1. Establish a Technology Steering Committee (TSC) with senior level department executives as members
2. Complete a formal TSC Charter that defines the committee scope, membership, chairman role, roles and objectives, duties, meeting frequency, decision process, etc.
3. The TSC will define technology sub-committees (permanent and temporary as needed)
4. The City Manager's Office should schedule and conduct regular (minimum quarterly) meetings of the TSC

RECOMMENDATION 2 - Complete an IT organization analysis (Immediate)

1. Create and fill an Information Technology Director position
2. Consolidate silo IT service groups
3. Conduct a citywide IT organizational assessment

4. Consider alternative methods for meeting service delivery
5. Develop and implement succession plans for IT staff
6. Implement a professional development plan for IT staff
7. Provide opportunities for staff and end-users to receive training

RECOMMENDATION 3 - Plan for IT operational improvements (Short-Term)

1. Consider opportunities for cloud computing
2. Central IT should work with City management/PIO to develop a strategy for eGovernment and Community Outreach and future web site design/management
3. Complete Disaster Recovery Plans and Business Continuity Plans for information technology
4. The City should consider leveraging its current fiber infrastructure and resources, including shared resources available through agreements with other public agencies, in order to position itself to become a "Fiber City"
5. Prepare a fiber strategy to address network speed issues at the remote locations
6. Prepare a Wi-Fi plan to address the remote locations, field operations staff and mobile office requirements
7. Include Public Wi-Fi considerations when looking at other City facilities and buildings
8. Identify and implement network monitoring and capacity planning tools to help manage and forecast future IT needs
9. Adopt enhanced backup and recovery processes, including periodic testing
10. Allocate the time to create the necessary tactical plans for technology operation, including a technical blueprint that documents the existing and planned information technology city-wide architecture

RECOMMENDATION 4 - Address infrastructure and hardware modernization (Immediate)

1. Adopt a formal refreshment policy for desktops and servers with confirmed recurring funding source
2. Continue to implement server virtualization technology when physical servers are due to be replaced
3. Consider utilizing the generator outside the Service Center as a power source for extended emergency operations in the Central IT data center
4. Complete the immediate replacement of end-of-life equipment and look at best practice replacements; including core applications servers, end-of-life switch equipment, older firewall equipment and non-supported WIN2003 servers
5. Complete the rollout of 300 replacement desktops and consider external assistance

RECOMMENDATION 5 - Adopt IT additional operational best practices (Immediate)

1. Identify and adopt citywide Technology Standards Plan

2. Create and manage an Application Portfolio
3. Establish Vendor Management procedures
4. Establish and manage SLA's (Service Level Agreements)
5. Implement more formal Help Desk procedures
6. Adopt a formal Project Management Methodology
7. Adopt and implement Change Management
8. Adopt and require departments to participate in formal Acceptance Testing Plans
9. Implement a Quality Management Plan
10. Review current policies and procedures and update where needed

RECOMMENDATION 6 - Deliver cybersecurity and mobile device management (Mid-Term)

1. Contract with an independent, certified, firm to conduct an external network vulnerability and penetration test to identify security gaps and identify areas for improvement
2. Develop a security plan to remediate the identified vulnerabilities and to provide a continuing approach to security management including periodic threat assessments and the development of plans to detect and respond to security breaches
3. Adopt a City-wide security policy which requires annual employee review and acknowledgement by all employees
4. Develop a plan for continuing vulnerability assessments on an every two-year basis
5. Implement data encryption on City hardware vulnerable to being lost or stolen, including laptop computers and other mobile devices
6. Educate users, especially those using mobile devices, regarding security risks, safe networking practices and their responsibility to protect City information and assets
7. Adopt rules for the use of mobile devices and ensure that all staff members using them receive periodic security training and adopt a proactive approach to mobile device management
8. Work with City departments to determine areas where mobile applications for staff and the public will provide efficiencies and save time

RECOMMENDATION 7 - Complete HTE functional assessment and implement subsequent recommendations, which may include system(s) replacement (Immediate)

1. NexLevel has provided to the City a separate document titled "ERP Alternatives Analysis Report" that provides detailed information regarding the current ERP system along with recommended alternatives

ITMP Schedule and Project List

The ITMP also contains a schedule of Projects by Fiscal Year. There are forty-eight projects in this schedule categorized as in-progress, enterprise or new. A detailed description of projects is also included in the ITMP appendix.

Enterprise Resource Planning (ERP) Alternatives Analysis Report

NexLevel conducted a series of focused interviews with City staff to evaluate the effectiveness of the City's current ERP (Enterprise Resource Planning) solution, to identify potential alternatives and make a recommendation. The City's current ERP system is from Sungard and the product name is HTE. The City first implemented the HTE financial applications (accounts receivable, accounts payable, payroll, purchasing, general ledger, cashiering and utility billing) in 1989. Limitations of the HTE system include lack of support for CIP projects or fixed assets and limited self-reporting abilities. Additionally, the current system is very cumbersome, inefficient and lacks effective financial reporting tools for our stakeholders.

The primary objective of an ERP system must be to provide the features and functionality to accurately report the City's financial and business transactions, streamline business processes, improve customer service, reduce costs and improve decision making. Because of the cost and organizational impact of implementing a new ERP system, a replacement should only be considered when significant value can be attained by a change of system.

This report recommends a new ERP solution should be considered as the best option because there are significant benefits that can be realized by moving to a more current and modern ERP system. Correspondingly, NexLevel recommends a project to do a comprehensive ERP system assessment.

FINANCIAL IMPACT

None at this time. A funding plan will be presented to Council on January 26, 2016. The funding plan will show IT Master Plan project funding requirements by fiscal year and project lists by fiscal year for new projects and in-process projects.

ATTACHMENTS

#1 - Information Technology Four-Year Master Plan

Note: Attachment #1 has been provided to City Council under separate cover. Copies for review are available at the Help Desk in the Library after 6:00 p.m. on Wednesday prior to the Council meeting and in the City Clerk's Office after 10:00 a.m. on Thursday prior to the Council meeting.



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Report

AGENDA ITEM NO.: L-2

DATE: December 1, 2015

TO: City Council

THROUGH: Greg Nyhoff, City Manager
Office of the City Manager

FROM: Daniel Rydberg, P.E., Interim Public Works Director
Public Works Department

SUBJECT: **Third Amendment to Purchase Order No. 4203 with Kemira Water Solutions for Supply and Delivery of Ferric Chloride to the Wastewater Treatment Plant**

CONTACT: Jeffrey Miller, Interim Wastewater Superintendent
jeffrey.miller@ci.oxnard.ca.us, 797-7604

RECOMMENDATION

That City Council approve and authorize the Mayor to execute a Third Amendment to Purchase Order No. 4203 with Kemira Water Solutions (Kemira) for the supply and delivery of Ferric Chloride to the Wastewater Treatment Plant, extending the expiration date from October 16, 2015 to June 30, 2016 and adding \$175,000 to the amount, increasing the total from \$1,354,790 to \$1,529,790.

BACKGROUND

On August 1, 2012, the City issued a Request for Bids (RFB) for treatment chemicals for the Wastewater Treatment Plant, the Advanced Water Purification Facility, the Water Campus, and the Water Blending Station No. 3. The City sent the RFB to eleven (11) known companies who provide these chemicals, and also advertised the RFB on the City's website and in the local newspapers. The closing date for the RFB was August 23, 2012. Since it was unlikely that any one company would be able to provide all the treatment chemicals needed, the City allowed bidders to submit bids for the chemicals that they were able to provide. Kemira Water Solutions and California Water submitted bids for ferric chloride with Kemira being the lowest responsible bidder. The City subsequently issued a one-year purchase order, with the option to extend the purchase order three additional one-year terms per the bid documents and subject to agreement of all parties.

Kemira is holding the unit price at \$1.33 per gallon. The Wastewater Division recommends the City exercise its option to renew the purchase order by executing a third and final one-year extension. Staff will request to go out to bid in the Spring in order to have a new purchase order in place by July 1, 2016.

Third Amendment to Purchase Order No. 4203 with Kemira Water Solutions for Supply and Delivery of Ferric Chloride to the Wastewater Treatment Plant
December 1, 2015
Page 2

FINANCIAL IMPACT

Funds are available in the Wastewater Treatment Operation Division budget, account 621-6202-843-81.04 in the amount of \$175,000 to complete FY2015-16.

ATTACHMENTS

- #1 - Third Amendment to Purchase Order No. 4203
- #2 - Chemical Deliveries Public Works Bid Results PW-13-1



PURCHASE ORDER
CITY OF OXNARD
300 WEST 3RD STREET
OXNARD, CA 93030

**PURCHASE
ORDER NO.
004203**

CCRC
11/3/12
REVIEWED

DATE: 11/10/2015

VENDOR PHONE: (863)533-5990
VENDOR FAX: (863)533-7077
VENDOR #: 14565

VENDOR ADDRESS: KEMIRA WATER SOLUTIONS, INC.
MAIL CODE 5581
P.O. BOX 105046
ATLANTA, GA 30348-5046

SHIP TO: WASTEWATER TREATMENT PLT
6001 S. PERKINS ROAD
OXNARD, CA 93033

Our P.O. # MUST Appear on ALL Invoices, Packages and Correspondence

DELIVER BY		REQUISITION #	REQUISITION DATE	CONFIRMED BY
10/16/2013		0000000888	10/05/2012	---
FOB		ACCOUNT NUMBER		AUTHORIZED BY
		62162028438104		Z BRUCE E. DANDY
ITEM #	QUANTITY/ UNIT	DESCRIPTION ARTICLE OR SERVICE		UNIT COST
				EXTENDED COST

CHANGE ORDER

1	FERRIC CHLORIDE-40%	1.0000 482,790.00
	482,790.00 / DL	
2	CHANGE ORDER NO. 1	1.0000 432,000.00
	432,000.00 / DL	
3	ENCUMBER CHANGE ORDER #2	1.0000 440,000.00
	440,000.00 / DL	
4	ENCUMBER FUNDS FOR TO COMPLETE FY 2015-	1.0000 175,000.00
	175,000.00 2016 / DL	

By acceptance of this purchase order, you agree to the attached terms and conditions of the City of Oxnard

PURCHASE ORDER
CITY OF OXNARD
300 WEST 3RD STREET
OXNARD, CA 93030

**PURCHASE
ORDER NO.
004203**

DATE: 11/10/2015

VENDOR PHONE: (863)533-5990
VENDOR FAX: (863)533-7077
VENDOR #: 14565
VENDOR ADDRESS: KEMIRA WATER SOLUTIONS, INC. SHIP TO: WASTEWATER TREATMENT PLT
MAIL CODE 5581 6001 S. PERKINS ROAD
P.O. BOX 105046 OXNARD, CA 93033
ATLANTA, GA 30348-5046

Our P.O. # MUST Appear on ALL Invoices, Packages and Correspondence

DELIVER BY		REQUISITION #	REQUISITION DATE	CONFIRMED BY	
10/16/2013		0000000888	10/05/2012	—	
FOB		ACCOUNT NUMBER		AUTHORIZED BY	
		62162028438104		Z BRUCE E. DANDY	
ITEM #	QUANTITY/ UNIT	DESCRIPTION ARTICLE OR SERVICE		UNIT COST	EXTENDED COST

RFB PW-13-1 FERRIC CHLORIDE-40% FOR THE WWTP
\$1.33 PER GAL, ESTIMATE-330,000 GALLONS ANNUALLY
TOTAL NOT TO EXCEED \$438,900 FOR THE FIRST ANNUAL
PERIOD. TAXES, FUEL CHARGES AND MILL TAX EXTRA.
10% HAS BEEN ADDED TO ACCOUNT FOR THESE CHARGES.
OPTION FOR THREE ADDITIONAL ONE-YEAR EXTENSIONS.
SEE ATTACHED SPECIAL PROVISIONS AND BY ACCEPTANCE
OF THIS PURCHASE ORDER YOU ACCEPT THE TERMS AND
CONDITIONS OF THE CITY OF OXNARD.
CHANGE ORDER NO. 1 FOR \$432K TO 621-6202-843-8104
10/15/14 ENCUMBERED CHANGE ORDER #2 FOR \$440,000
FROM 621-6202-843-8104.CCRC APPROVED 10/14/14.
EXTEND EXPIRATION DATE TO 10/16/15.MH
11/3/15 CCRC APPROVED REQUEST TO ENCUMBER F
\$175,000 TO COMPLETE FY 2015-2016 AND RENEW
PURCHASE ORDER BY EXECUTING THE THIRD OF THE THREE
ONE-YEAR EXTENSIONS.NEW EXPIRATION DATE 10/16/16.

TOTAL PURCHASE AMOUNT

\$1,529,790.00

By acceptance of this purchase order, you agree to the attached terms and conditions of the City of Oxnard

PURCHASE ORDER
CITY OF OXNARD
300 WEST 3RD STREET
OXNARD, CA 93030

**PURCHASE
ORDER NO.
004203**

DATE: 11/10/2015

VENDOR PHONE: (863)533-5990
VENDOR FAX: (863)533-7077
VENDOR #: 14565
VENDOR ADDRESS: KEMIRA WATER SOLUTIONS, INC. SHIP TO: WASTEWATER TREATMENT PLT
MAIL CODE 5581 6001 S. PERKINS ROAD
P.O. BOX 105046 OXNARD, CA 93033
ATLANTA, GA 30348-5046

Our P.O. # MUST Appear on ALL Invoices, Packages and Correspondence

DELIVER BY		REQUISITION #	REQUISITION DATE	CONFIRMED BY	
10/16/2013		0000000888	10/05/2012	—	
FOB		ACCOUNT NUMBER		AUTHORIZED BY	
		62162028438104		Z BRUCE E. DANDY	
ITEM #	QUANTITY/ UNIT	DESCRIPTION ARTICLE OR SERVICE		UNIT COST	EXTENDED COST

Send Original and One Copy of Invoice to:
PURCHASING
300 W. THIRD ST, #202
OXNARD, CA 93030

AUTHORIZED SIGNATURE. _____
Tim Flynn, Mayor

ATTEST: _____
Daniel Martinez, City Clerk

APPROVED AS TO AMOUNT: *gna* _____
Greg Nyhoff, City Manager

By acceptance of this purchase order, you agree to the attached terms and conditions of the City of Oxnard

PURCHASE ORDERS
TERMS AND CONDITIONS

The City Purchasing Officer and the Vendor agree as follows:

1. Vendor shall furnish to City the labor, materials, equipment, supplies and/or services described in the Purchase Order preceding this page.
2. City shall pay to Vendor the price, or prices, specified in the Purchase Order upon delivery of the labor, materials, equipment, supplies and/or services, and acceptance thereof by the City Purchasing Officer, or upon the completion of the services to be performed and acceptance thereof.
3. If the Purchase Order is continuing in nature, City shall pay to Vendor the amount due Vendor for labor, materials, equipment or supplies furnished, or services completed and accepted.
4. Vendor shall deliver the labor, materials, equipment or supplies, or cause the services to be performed, within the time and in the manner specified in the Purchase Order. Vendor shall be excused in performance for delays resulting from causes beyond the control of Vendor.
5. If services are performed or labor furnished to City under the Purchase Order, Vendor agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Vendor or its agents, employees, subcontractors, consultants and other persons acting on Vendor's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or acts for which Vendor or its agents, employees, subcontractors, consultants and other persons acting on Vendor's behalf would be held strictly liable. Vendor's obligation to defend shall arise when a claim, demand or action is made or filed, whether or not such claim, demand or action results in a determination of liability or damages as to which Vendor is obligated to indemnify and hold harmless.
6. Insurance
 - a) Vendor shall obtain and maintain during the performance of any services under this Agreement the following insurance coverage issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Vendor obtain and maintain such insurance coverage.
 - i. Commercial general liability insurance, including a contractual liability endorsement, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability coverage (Occurrence Form CG0001ED, November 1988);
 - ii. Business automobile liability insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Auto Liability Insurance Services Office coverage (Occurrence Form CA000TED, June 1992) covering Code No. 1, "any auto";
 - iii. Workers' compensation insurance in compliance with the laws of the State of California, including employer's liability insurance in an amount not less than \$1,000,000 per claimant.
7. Vendor, in the performance of any services or the furnishing of any labor under this Purchase Order, shall be considered an independent contractor, and Vendor and Vendor's agents and employees shall not be considered officers or employees of the City.
8. Vendor, without the written consent of the City Purchasing Officer, shall not:
 - a) Assign the Purchase Order, or any interest therein, or any money due thereunder; or
 - b) Make any changes, alterations or variations in the terms of the Purchase Order.
9. The cost of inspection on deliveries, or offers to make deliveries that do not meet specifications, will be paid by Vendor or deducted by City from amounts due Vendor.
10. Vendor shall indemnify and hold harmless City, its officers and employees, from liability, claims, loss or expense of any kind or nature on account of any copyrighted or uncopyrighted composition, patented or unpatented process or invention, article or appliance furnished or used under this Purchase Order.
11. Vendor shall comply with all applicable federal, state and local ordinance, laws and regulations and shall obtain and pay for all required licenses and permits, including a City of Oxnard business license.
12. Return or exchange of materials, equipment or supplies will not be permitted without written approval by the City Purchasing Officer.
13. All materials, supplies and equipment furnished under the Purchase Order shall, where applicable, be in full compliance with the Safety Orders and Regulations of the Division of Industrial Safety of the State of California and the Williams-Steiger Federal Occupational Health and Safety Act of 1970.
14. City may terminate this Purchase Order at any time by giving written notice of termination to Vendor. If termination is for cause, termination shall become effective on the date of the notice or at a later date, specified in the notice. If termination is without cause, termination shall become effective five days after the date of the notice or at a later date specified in the notice.
15. Vendor shall comply with all applicable equal employment opportunity requirements of the California Department of Fair Employment and Housing in performing or contracting for any services under this Purchase Order.
16. For public projects, Vendor shall pay prevailing wages in accordance with Labor Code Sections 1720 et seq.

ADDITIONAL REQUIREMENTS FOR GRANT-FUNDED PROJECTS

17. The following requirements apply to any Purchase Order funded in whole or in part by federal grant funds.
 - a) Upon expiration of the time specified on the reverse side, this Purchase Order shall terminate unless City and Vendor have mutually agreed in writing to an extension of time.
 - b) If legal action is brought by either party because the other has failed to comply with terms or conditions of this Purchase Order, the prevailing party shall be awarded its attorney's fees and costs in addition to its damages and/or equitable relief.
 - c) Vendor shall comply with all applicable requirements of Executive Order 11246 as amended by Executive Order 11375 and the regulations adopted pursuant thereto (41 CFR Chapter 60), which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin.
 - d) Vendor shall insure that the grantee (City), the Federal Grantor Agency, the Comptroller General of the United States, or any duly authorized representative, shall have access to any books, records, documents and papers, specifically relating to this Purchase Order, for the purpose of making audit, examination, excerpts and transcriptions for not less than three years after completion of the project and/or until the completion of the final project audit as required by the Federal Grants Agency.

RFP - Chemical Deliveries Public Works Bid PW-13-1

Vendors		Hill Brothers		Thatcher Company		Kemira		JCI Jones Chemicals		Olin Corporation		Sterling Water Tech		Airgas Specialty		King Lee Technologies		PWS Minibulk, Inc.		Univar		California Water		ChemTreat, Inc.	
Chemical		Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
Water																									
Aqueous Ammonia 16%		4.3300	127,725.00																						
Sodium Hydroxide 28%				0.9945	167,076.00			0.9500	159,600.00									0.9470	159,096.00			0.9550	160,440.00		
Sodium Hypochlorite 12.5% FL								0.7061	113,012.76	0.6940	110,762.40										0.6610	137,415.90			
Sulfuric Acid 93%										0.7990	127,520.40														
Antiscalant																									
Water																									
Ferric Chloride 40% - 45%																									
Sodium Bisulfite 25%																									
Sodium Hydroxide 25%				0.9945	17,901.00			0.9500	17,100.00	0.8940	159,620.00							0.9470	17,046.00			0.9550	160,440.00		
Sodium Hypochlorite 12.5% FL								0.7069	132,887.00	0.7990	123,770.00														
AWPF																									
Antiscalant																									
Chloric Acid 50%				6.0500	36,305.00																				
Hydrogen Peroxide 50%				27.3500	41,260.00																				
Sodium Bisulfite 28%								1.4400	5,760.00			3.4700	52,050.00							9.2300	59,995.00				
Sodium Hydroxide 25%				0.9945	7,956.00			1.2000	9,600.00									0.9470	7,576.00			0.9550	7,640.00		
Sodium Hypochlorite 12.5% FL								0.9500	13,300.00	0.6940	9,716.00											0.6610	12,054.30		
Sulfuric Acid 93%										0.7990	11,186.00														
Sulfuric Acid 98%				1.9200	76,800.00													1.4150	56,600.00			1.4143	56,572.00		
AWPF																									
Antiscalant																									
Chloric Acid 50%																									
Hydrogen Peroxide 50%																									
Sodium Bisulfite 28%																									
Sodium Hydroxide 25%																									
Sodium Hypochlorite 12.5% FL																									
Sulfuric Acid 93%																									
Sulfuric Acid 98%																									
AWPF																									
Antiscalant																									
Chloric Acid 50%																									
Hydrogen Peroxide 50%																									
Sodium Bisulfite 28%																									
Sodium Hydroxide 25%																									
Sodium Hypochlorite 12.5% FL																									
Sulfuric Acid 93%																									
Sulfuric Acid 98%																									
AWPF																									
Antiscalant																									
Chloric Acid 50%																									
Hydrogen Peroxide 50%																									
Sodium Bisulfite 28%																									
Sodium Hydroxide 25%																									
Sodium Hypochlorite 12.5% FL																									
Sulfuric Acid 93%																									
Sulfuric Acid 98%																									
AWPF																									
Antiscalant																									
Chloric Acid 50%																									
Hydrogen Peroxide 50%																									

Water - AWPF	Antiscalant - 19%	King Lee
Water	Aqueous Ammonia - 19%	Hill Brothers
AWPF	Chloric Acid - 50%	Thatcher Company
Wastewater	Ferric Chloride - 40% - 45%	Kemira
AWPF	Hydrogen Peroxide - 50%	Thatcher Company
Wastewater	Sodium Bisulfite - 25%	Univar
AWPF	Sodium Hypochlorite - 12.5% FL	JCI Jones
Wastewater	Sulfuric Acid 93%	Univar
AWPF	Sulfuric Acid 98%	Univar

ATTACHMENT NO. 2
PAGE 1 OF 1



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Study Session

AGENDA ITEM NO.: Q-1

DATE: December 1, 2015

TO: City Council

FROM: Stephen M. Fischer, Interim City Attorney
Office of the City Attorney

A handwritten signature in black ink, appearing to be "S. Fischer", written over the printed name of Stephen M. Fischer.

SUBJECT: Review and Discuss Whistleblower Policy Guidelines

CONTACT: Stephen M. Fischer, Interim City Attorney
stephen.fischer@ci.oxnard.ca.us, 385-7483

RECOMMENDATION

That City Council discuss a Whistleblower Policy and provide staff direction to return to Council with a recommended Whistleblower Policy for adoption.

BACKGROUND

Whistleblower policies are intended to provide a confidential and safe avenue for employees and the public to report potential misconduct by an organization's employees or representatives. The term "whistleblower" refers to calling attention to any type of misconduct occurring within an organization. For the public sector, it typically refers to misconduct regarding inappropriate use of public funds and resources, such as: theft of resources, records falsification (e.g. timesheet fraud), misuse of public equipment or property, misuse or waste of public resources including government funds and improper activity by officials and employees.

California Whistleblower Hotline Statute

California Government Code Section 53087.6 authorizes the City's Controller to establish a whistleblower hotline with the City Council's approval to provide a confidential way for the public to report "fraud, waste and abuse," which is defined as an activity undertaken by an employee or officer of a public agency that "is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct." The Controller may refer calls to appropriate

government authorities for review and possible investigation. During review, information received, including caller identities and parties identified, must be held in confidence. An investigative audit conducted as a result of a complaint of improper government activity must be kept confidential except to issue a report of a substantiated complaint, provided that the identity of the reporting party and the subject employee or employees remain confidential. The only specified exception to the confidentiality mandate is the provision of a complete substantiated audit report to the appointing authority for disciplinary purposes.

Whistleblower Policies and Programs:

Whistleblower policies and programs often include:

- Formal mechanisms for reporting violations, such as online forms, hotlines, and mailing addresses;
- Clear communication about reporting misconduct;
- Clear communication about bans on retaliation;
- Endorsement of the policy from top officials;
- Prompt investigation and follow-up;
- Reports of investigation outcomes to governing boards.

Examples of Public Agencies with Whistleblower Policies:

Based on a preliminary review, staff has identified several cities with functioning whistleblower policies and programs. The cities range in size and location as well as by length of time a policy has been in place, how the policy was enacted (e.g. voter approved vs. council directed) and the oversight agency addressing complaints. Cities identified include:

- Los Angeles
- Oakland
- Sacramento
- San Francisco
- San Jose
- Santa Clara County

Example 1: City of Los Angeles:

The City of Los Angeles' whistleblower policy is part of a voter approved measure (Measure H) that created the Ethics Commission in 1990. The Ethics Commission has the authority to investigate violations of state and City laws regarding campaign financing, lobbying, and governmental ethics. Whistleblowers can file anonymous complaints via the internet, a 24-hour hotline or in writing. The Commission reviews all complaints, determines if they are valid (and/or complete) and then investigates as necessary. If a violation occurred, the members of the Commission may assess penalties of \$5,000 per violation or three times the amount of money that was improperly given, received, or reported. The Commission investigates whistleblower retaliation claims as well.

Additionally, the Office of the Controller investigates fraud, waste and abuse of City resources. Violations can be anonymously and confidentially reported via a 24-hour hotline or online. The same whistleblower protections apply. Updates on the status of claims are not provided to the reporter by either program.

Example 2: City of Oakland

In 2008, the City Council passed the Whistleblower Protection Ordinance to protect City officers and employees from retribution when disclosing misconduct by other City representatives. The City Auditor's Office manages the "Fraud, Waste + Abuse Prevention Program" for the City which responds to filed reports. Reports are anonymous and can be filed via a 24-hour hotline or online. Both are administered by the outside vendor Ethics Point to further support anonymity. The outside vendor allows for follow-up communication between the City Auditor's Office and the person filing the claim. The City does not designate potential penalties for violations. The City Auditor's Office investigates whistleblower retaliation claims as well.

Example 3: City of Sacramento

In 2012, the City Council directed the Office of the City Auditor to implement a whistleblower hotline to investigate allegations of fraud and abuse. Reports can be made confidentially, however, it is not guaranteed. Reports can be filed online, via a 24-hour hotline, by mail or in-person. The report is then reviewed by staff and, if applicable, further action, including in-depth investigations and fines are administered. The City does not designate potential penalties for violations. Whistleblower retaliation information is provided to employees through CityNet, but not publicly available.

Example 4: City and County of San Francisco

The City and County of San Francisco's Charter directs the Office of the Controller to administer the Whistleblower Program. Reports can be made anonymously and filed online, via a 24-hour hotline, or by mail. The report is then reviewed by staff and, if applicable, further action, including in-depth investigations and potential fines are administered. Updates are not provided to the reporter and claims of retaliation must be handled through a separate ethics commission.

Example 5: City of San Jose

The City of San Jose created the Whistleblower Hotline to provide the public and employees with an opportunity to report misconduct by officials and employees. Reports can be made anonymously or confidentially and filed online, via a 24-hour hotline, by email, fax or mail. The report is reviewed by staff and, if applicable, further action is taken to address the concern. Reporters can receive periodic updates regarding their claim by calling the Whistleblower Hotline. Additionally, the hotline may contact the reporter should questions arise during the investigation.

Example 6: County of Santa Clara

The County of Santa Clara instituted a whistleblower program in 2010 for employees and the public to safely report government misconduct by County officers and employees. Board Resolution No. 2010-211 outlines procedures and policies for program implementation. The Office of the County Counsel receives reports, investigates, and refers violations to appropriate departments, including the Office of the County Auditor, for penalties and fines. Reports can be made anonymously or confidentially and filed online, via a 24-hour hotline, by email or mail. The report is then reviewed by staff and, if applicable, further action is taken. Reporters can receive updates and outcomes of the investigation if

they provide their contact information when reporting the misconduct. Retaliation is explicitly outlined as illegal and how the County addresses retaliation is stated in the Labor Code.

In addition, attached is the Fraud, Waste, and Abuse Policy adopted in May of this year by the City of Thousand Oaks (Attachment 7), which has just recently been implemented.

CONCLUSION

Whistleblower programs are not intended to replace or eliminate existing avenues for reporting employee misconduct and should supplement reporting methods already implemented by an agency. Many agencies recommend exhausting the traditional means of internal reporting mechanisms (e.g. chain of command reporting) prior to initiating a formal whistleblowing investigation. However, a whistleblower policy provides a confidential and safe avenue for employees and the public to report misconduct occurring within an organization.

Staff recommends that Council discuss a potential Whistleblower Policy and direct staff to:

1. Develop a Whistleblower Policy and Reporting Procedure;
2. Ensure Whistleblower Policy clearly delineates administrative authority and responsibilities between Controller, City Attorney's office and Human Resources; and
3. Includes periodic reports to the Council on statistical information, including quantity and types of calls received and status of findings.

FINANCIAL IMPACT

There is no fiscal impact from the discussion of the Whistleblower Policy. The fiscal impact will be determined once Council determines the type of policy it wishes to adopt.

ATTACHMENTS

- Attachment 1: City of Los Angeles Ordinance No. 179871
- Attachment 2: City of Oakland Ordinance No. 12890
- Attachment 3: City of Sacramento Whistleblower Hotline Procedures
- Attachment 4: City and County of San Francisco Appendix F Section F1.107
- Attachment 5: City of San Jose Whistleblower Hotline Website Information
- Attachment 6: County of Santa Clara Whistleblower Policy
- Attachment 7: City of Thousand Oaks Fraud, Waste, and Abuse Policy

ORDINANCE NO. 179871

An ordinance adding a new Article 2 to Chapter 4, Division 20 of the Los Angeles Administrative Code setting forth the powers and duties of the Fraud, Waste and Abuse Unit in the Controller's Office.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 2 is added to Chapter 4, Division 20 of the Los Angeles Administrative Code to read:

CHAPTER 4, ARTICLE 2

CONTROLLER'S FRAUD, WASTE AND ABUSE UNIT

Sec. 20.60. Purpose of the Controller's Fraud, Waste and Abuse Unit.

The purpose of the Fraud, Waste and Abuse Unit (Unit) in the Controller's Office is to identify and prevent losses of City funds and resources and to act as a deterrent to fraud, waste and abuse. The activities of the Unit are subject to budgetary constraints and the management discretion of the Controller.

Sec. 20.60.1. Receipt of Complaints and Allegations.

The Unit may receive complaints and allegations from any department, office or employee of the City, or from any member of the public. Any person providing a complaint or allegation to the Unit may do so anonymously. In addition, the Controller's Office may initiate an investigation into potential fraud, waste or abuse on its own initiative.

Sec. 20.60.2. Complaint Examination and Referrals.

The Unit will examine complaints and allegations received, or initiated by the Controller's Office, and classify them into four general categories, including: (1) no action required; (2) refer to the Controller's Audit Division or other appropriate division of the Controller's Office; (3) refer to another agency for investigation or other action; and (4) designate for further investigation by the Unit. The Unit will establish regular liaison meetings as necessary with other agencies and departments of the City, including meetings at least monthly or as otherwise agreed with the City Ethics Commission and the Police Department, to facilitate cooperation and referrals between the Unit and other agencies and departments, and to review complaints and allegations received or initiated by the Controller's Office after the previous meeting.

Sec. 20.60.3. Assistance to Law Enforcement.

The Unit has no independent law enforcement authority. However, after referral to an appropriate agency with law enforcement authority, the Unit may provide assistance, upon request, to the agency receiving the referral.

Sec. 20.60.4. Cooperation.

City departments and other entities are expected to report potential fraud, waste and abuse of City resources to the Unit, the Ethics Commission, the Police Department or other entity for investigation or appropriate action, as may be necessary. In addition, City departments and other entities are expected to cooperate with the Unit when requested to do so. This cooperation may take the form of responding to information requests or providing staff support to the Unit on a limited basis as the needs and legal restrictions of City departments and other entities allow. Staff providing support to the Unit shall treat all information concerning Unit investigations as confidential.

Sec. 20.60.5. Controller's Fraud, Waste and Abuse Hotline.

At the Controller's discretion, the Unit may operate a telephonic hotline to receive complaints and allegations of fraud, waste and abuse. Callers to the hotline shall be offered the option of reporting anonymously. The Unit may also provide email, web-based, or other electronic methods of reporting complaints and allegations, provided these include an option for remaining anonymous.

The fraud, waste and abuse hotline may not be promoted or operated in a manner that would interfere with or create confusion regarding the role of the City Ethics Commission's whistleblower hotline, which was established by Charter Section 702(g) to address complaints and allegations related to campaign finance, lobbying, governmental ethics and conflicts of interest. Complaints and allegations examined by the Unit that upon receipt or after investigation has begun appear to fall within the jurisdiction of the Ethics Commission shall be referred to the Ethics Commission without undue delay after discovery of that fact.

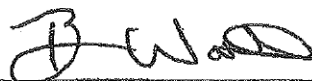
Sec. 20.60.6. Confidentiality.

Investigations conducted by the Unit shall be confidential. Information regarding Unit investigations may not be disclosed except as necessary to conduct investigations or as required by law. Notwithstanding the confidential nature of Unit investigations, the Unit shall release relevant information as necessary to carry out referrals to other agencies for appropriate action, and may release aggregated or summary information for reporting purposes.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of APR 29 2008 and was passed at its meeting of MAY 06 2008.

KAREN E. KALFAYAN, City Clerk

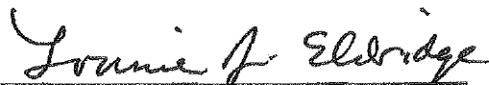
By 
Deputy

Approved MAY 15 2008


Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By 
LONNIE J. ELDRIDGE
Deputy City Attorney

Date 7/11/08

File No. 04-2415-51

M:\General Counsel (GC)\Eldridge, Lonnie\Ordinances\Controller\SuppFWAOrd.doc

DECLARATION OF POSTING ORDINANCE

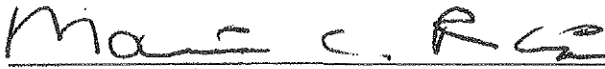
I, MARIA C. RICO, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

Ordinance No. 179871 - Adding a new Article 2 to Chapter 4, Division 20 of the Los Angeles Administrative Code setting forth the powers and duties of the Fraud, Waste and Abuse Unit in the Controller's Office - a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on May 6, 2008, and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on May 20, 2008 I posted a true copy of said ordinance at each of three public places located in the City of Los Angeles, California, as follows: 1) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; 2) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; 3) one copy on the bulletin board located at the Temple Street entrance to the Hall of Records of the County of Los Angeles.

Copies of said ordinance were posted conspicuously beginning on May 20, 2008 and will be continuously posted for ten or more days.

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

Signed this 20th day of May 2008 at Los Angeles, California.



Maria C. Rico, Deputy City Clerk

Ordinance Effective Date: June 29, 2008
Rev. (2/21/06)

Council File No. 04-2415-S1

ATTACHMENT NO. 1
PAGE 4 OF 4

OAKLAND CITY COUNCIL

ORDINANCE NO. 12890 E.M.S.

ORDINANCE PROHIBITING RETALIATION AGAINST EMPLOYEES WHO ACT AS WHISTLEBLOWERS

WHEREAS, the City of Oakland is committed to rooting out waste, fraud and abuse and to maintaining the highest standards of behavior by its officials and employees; and

WHEREAS, the City Auditor maintains a Whistleblower Program for the purpose of receiving individual complaints concerning the quality and delivery of government services, wasteful and inefficient City government practices, misuse of City funds, and improper activities by City officers and employees; and

WHEREAS, the City of Oakland has an interest in protecting the integrity of the City Auditor's Whistleblower Program and City government employees are encouraged to participate in the City Auditor's Whistleblower Program; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

- Section 1 Title and Purpose
- Section 2 Whistleblower Defined
- Section 3 Whistleblower Identity
- Section 4 Retaliation Prohibited
- Section 5 Administrative Complaint of Retaliation
- Section 6 Retaliation Defined
- Section 7 Adverse Employment Action Defined
- Section 8 City Defined
- Section 9 Burden of Establishing Retaliation
- Section 10 Discipline
- Section 11 Civil Penalties

SECTION 1. TITLE AND PURPOSE. This Chapter shall be known as the Whistleblower Ordinance. The purpose of this Ordinance is to protect all City government employees who act as Whistleblowers from retaliation.

SECTION 2: WHISTLEBLOWER DEFINED. Whistleblower is defined as an officer or employee who reports or otherwise brings to the attention of the City Auditor any information which, if true, would constitute one of the following: a work-related violation by a City officer or employee of

any law or regulation; fraud, waste or mismanagement of City assets or resources; gross abuse of authority; a specific and substantial danger to public health or safety due to an act or omission of a City official or employee; or use of a City office, position or resources for personal gain.

SECTION 3. WHISTLEBLOWER IDENTITY. To the extent permitted by law, the identity of anyone reporting information to the City Auditor about an improper governmental action shall be treated as confidential unless the employee waives his or her confidentiality in writing.

SECTION 4. RETALIATION PROHIBITED. No officer or employee of the City of Oakland shall use or threaten to use any official authority or influence to restrain or prevent any other person who is acting in good faith and upon reasonable belief as a Whistleblower.

No officer or employee of the City of Oakland shall use or threaten to use any official authority or influence to cause any adverse employment action as a reprisal against a City officer or employee who acts as a Whistleblower in good faith and with reasonable belief that improper conduct has occurred.

SECTION 5. ADMINISTRATIVE COMPLAINT OF RETALIATION. Any officer or employee who believes that he or she has been subject to an adverse employment action as a result of being a whistleblower may file a complaint of retaliation with the City Auditor within 180 days of the alleged misconduct. The City Auditor shall thereupon investigate the complaint. If the Office of the City Auditor is named in the complaint, the complaint shall be directed to the City Attorney for investigation. The investigation of a retaliation complaint should be completed in eight (8) weeks or less, absent extraordinary circumstances. Any reports regarding retaliation are confidential and not subject to disclosure.

SECTION 6. RETALIATION DEFINED. Retaliation is defined as any adverse employment action, including discharge, discipline or demotion.

SECTION 7. ADVERSE EMPLOYMENT ACTION DEFINED. An adverse employment action requires a showing that the retaliatory action had a detrimental and substantial effect on the terms, conditions, or privileges of a complainant's employment or required the complainant to work in a discriminatorily hostile or abusive work environment. A change that is merely contrary to a complainant's interests or liking is insufficient.

SECTION 8. CITY DEFINED. City is defined as the City of Oakland, its agencies, departments, boards and commissions.

SECTION 9. BURDEN OF ESTABLISHING RETALIATION. In order to establish retaliation, a complainant must demonstrate by a preponderance of the evidence that the complainant's engagement in activity protected in Section 2 was a substantial motivating factor for the adverse employment action. The supervisor or manager may rebut this claim if he or she demonstrates by a preponderance of the evidence that he or she would have taken the same employment action irrespective of the complainant's participation in protected activity.

SECTION 10. DISCIPLINE. Any manager, supervisor or employee of the City of Oakland who knowingly engages in conduct prohibited by this Ordinance shall be disciplined, up to and including discharge.

SECTION 11. CIVIL PENALTIES. Any manager, supervisor or employee of the City of Oakland who believes that he or she has been the subject of retaliation in violation of this Ordinance may bring a civil action against the City officer or employee who committed the violation. The civil penalty for such a violation shall not exceed five thousand dollars (\$5,000.00). Such action must be filed no later than one year after the date the manager, supervisor or employee files a complaint of retaliation with the City.

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 SEP 24 PM 4:22

IN COUNCIL, OAKLAND, CALIFORNIA, SEP 16 2008

PASSED BY THE FOLLOWING VOTE:

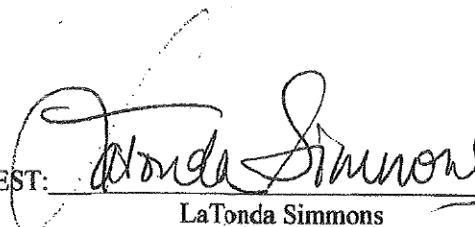
AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID and
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:



LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: 9/24/08

Sacramento City Auditor's Whistleblower Hotline Procedures

Policy Background

City Council directed the Office of the City Auditor in March 2012 to begin implementing a Whistleblower Hotline in order to receive and investigate allegations (also referred to as complaints) of possible City fraud, waste, and abuse.

The following office procedures and supplemental documents aim to create a consistent and logical method for receiving and tracking complaints that ensures accountability. These procedures describe how City Auditor's Office staff will handle complaints. Additionally, the procedures lay out a risk-based approach for using the Auditor's Office's limited resources to investigate the allegations that could place the City at the greatest risks.

Receiving Allegations

City staff or members of the public may submit allegations by either calling the Whistleblower Hotline's toll-free number 1-888-245-8859 or by completing the online form located at <https://www.reportlineweb.com/cityofsacramento>. In addition, individuals may also submit allegations directly to the City Auditor or any Auditor Office staff member. Any individual who files a complaint may elect to have their identity kept confidential. The individual's identity will be kept confidential to the extent permitted by law unless the individual waives confidentiality in writing. Information can be submitted in person, over the phone, by voicemail, by e-mail, or by mail. The following provides the general procedure for receiving allegations. The supplemental documents referenced provide more detailed information about receiving allegations.

In-person or phoned-in allegations

1. Ask about the subject of the allegation to ensure that the complainant is reporting to the correct entity. Determine if the allegation is about a City department, employee, vendor, or contractor or would fall under another jurisdiction.
 - a. If the allegation is not related to City government (for example, it is about a State or County employee), refer the complainant to other relevant reporting options.
See Reporting Options spreadsheet



- b. Enter the information in the Intake Log with a note about which entity the complainant was referred to.
2. If the allegation is about a City department, employee, vendor, or contractor, start a conversation with the complainant about the allegation.
3. After obtaining a basic understanding of the allegation, if the complainant had not already provided his/her name - ask for his/her name and contact information. Discuss the complainant's preference about remaining anonymous. Note this information on the Intake Form. Staff receiving allegations may enter notes on paper or directly into the electronic form.
4. After gathering this information, continue the conversation about the allegation. Ask the questions from the Intake Form if appropriate, but use your discretion to ask additional questions. The form's questions are meant to be used as a tool to aid the conversation and to solicit possible additional evidence.
5. After completing the conversation, enter/review Intake Form notes and save the file on the Investigations flash drive.
6. Log the allegation information on the Intake Log.
7. Discuss the allegation with the City Auditor or other appropriate audit staff. Depending on the severity of the allegations, this discussion might need to occur immediately. See Serious Allegation section below. For less serious allegations, discussions of many allegations may take place during periodic whistleblower hotline meetings.

Voicemail allegations

1. Listen to the voicemail.
2. Log the allegation information on the Intake Log.
3. Complete the Intake Form.
4. If necessary and the contact information are available, seek additional information by using any contact information that the complainant provided.
5. If contact is made, update the Intake Form to reflect additional information.
6. Discuss the allegation with the City Auditor or other appropriate audit staff. Depending on the severity of the allegations, this discussion might need to occur immediately. See Serious Allegation section below. For less serious allegations, discussions of many allegations may take place during periodic whistleblower hotline meetings.



E-mailed or Mailed-in allegations

1. Read the e-mail or letter.
2. Log the allegation information on the Intake Log.
3. Complete the Intake Form
4. If necessary and the contact information are available, seek additional information by using any contact information that the complainant provided.
5. If contact is made, update the Intake Form to reflect additional information.
6. Discuss the allegation with the City Auditor or other appropriate audit staff. Depending on the severity of the allegations, this discussion might need to occur immediately. See Serious Allegation section below. For less serious allegations, discussions of many allegations may take place during periodic whistleblower hotline meetings.

Serious Allegations

The Intake Log and Intake Form ask staff conducting intake to rate the priority of the allegation using "low," "medium," and "high." This method is to help the office prioritize its investigations by targeting overall risk to the City. Any allegations that are rated "medium" or "high" should be presented to the City Auditor or relevant audit staff as soon as practicable. Those rated "low" can be discussed during periodic hotline discussions. The following provides guidance about rating allegations:

High Priority

Some reasons why allegations may be considered high priority are that they could include a safety concern, loss to the City of more than \$75,000, criminal activity resulting in a loss of at least \$400, high-level involvement, collusion of multiple wrongdoers, major department-wide issue, or need for immediate action to stop a potential major issue. High-priority items should be discussed immediately, and addressing these items could take priority over other investigations and audits – at the City Auditor's discretion.

Medium Priority

Allegations in this category could include a loss to the City of more than \$25,000, abuse of authority, medium to low-level employee involvement, minor department-wide issues, or patterns of small problems that could become serious when summed.



Low Priority

Allegations in this category could include a loss to the City of less than \$25,000, isolated instances of time abuse, wasteful practices that would lead to limited gains in efficiencies if corrected, or allegations that lack credibility and evidence. The office would aim to investigate items in this list, but may not do so because of limited resources. However, if the same or similar issues were reported multiple times – low priority items may become more of a priority.

Allegations Covered By the Office of the City Auditor

The aim of the hotline is to promote good government by providing City employees and members of the public with a way to report allegations of fraud, waste, and abuse.

In 2009, State law went into effect that enabled local government auditors to establish whistleblower hotlines and to provide whistleblower protections. Local auditors are authorized under California Government Code Section 53087.6 to create whistleblower hotlines with the approval of their respective legislative bodies.

The California Government Code defines “fraud, waste, or abuse” in this context as an activity by a local government or employee “that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct.”

The following further defines fraud, waste, and abuse:

Fraud -- The Association of Certified Fraud Examiners defines occupational fraud as “the use of one’s occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization’s resources or assets.”

Some examples of possible fraud include theft of City funds or property, accepting or soliciting a bribe or kickback, falsifying payroll information, falsifying financial records to hide theft, submitting a false voucher, or using city property for non-City business.

Waste -- Waste can be intentional or unintentional and can involve unnecessary or extravagant City expenditures or misuse of City resources.

Abuse -- This is the use of an employee’s position in the City to obtain personal gain for that employee or for someone else like a family member or friend.



The above definitions are meant to provide guidance, and are not meant to cover all types of allegations that will be investigated.

Allegations Covered by Other City Offices

Some allegations are more appropriately investigated by other City Departments. The intent of establishing a whistleblower hotline is not to replace or limit other reporting options. Specifically, many Human Resources-related issues should still be reported to the appropriate Human Resources staff. For example, labor grievances, discrimination allegations, and workers' compensation claims should be reported under the City's current procedures. Also, some callers may want to report legal issues to the City Attorney's Office, or code enforcement issues to the Community Development Department. As appropriate, the Auditor's Office will refer reporters to other City divisions. However, it may also be appropriate for Audit staff to gather initial information in these areas to better understand the issues involved.

Internal Referrals:

Risk Management for workers' compensation information:

916-808-5741

<http://cityofsacramento.org/hr/risk/index.cfm>

Risk Management for environmental health and safety programs like OSHA and DOT compliance:

916-808-5278

<http://cityofsacramento.org/hr/risk/index.cfm>

Risk Management for insurance and liability claims:

Insurance: 916-808-5556

Liability Claims: 916-808-5502

<http://cityofsacramento.org/hr/risk/index.cfm>

Labor Relations for union grievance procedures:

<http://cityofsacramento.org/hr/laborRelations/index.cfm>

Office of Civil Rights for the grievance procedures alleging discrimination based on disability:

916-264-5011

<http://cityofsacramento.org/adaweb/grievance-procedure.html>

Other Human Resources related issues:

916-808-5726

<http://www.cityofsacramento.org/hr/>

Legal Issues by attorney assignment:

916-808-5346

http://www.cityofsacramento.org/cityattorney/department_assignments/Assignments.cfm

Whistleblower Hotline Procedures
As of 4/15/2013



Page 5

Code Compliance Division for neighborhood code, housing and dangerous buildings, business compliance, landscape requirements, rental house standards, and anti-graffiti:

311 or 916-264-5011 outside of City limits

<http://www.cityofsacramento.org/dsd/code-compliance/>

Police for non-emergencies:

916—264-5471

<http://www.sacpd.org/>



Allegations Covered by Non-City Agencies

Jurisdiction	Organization	Reporting	Methods
County of Sacramento	County Auditor-Controller	Audit Fraud Hotline	916-874-7822 TDD callers 800-735-2929 Audit Fraud Hotline/ County of Sacramento/ 700 H St, Room 3650/ Sacramento, CA 95814
State of California	Bureau of State Audits	Whistleblower Hotline	800-952-5665 Investigations/ Bureau of State Audits/ 555 Capitol Mall, Suite 300/ Sacramento, CA 95814 http://www.bsa.ca.gov/hotline/filecomp
Consumer Complaints Against a Business	California Office of the Attorney General	Comment/ Complaint Form	http://ag.ca.gov/contact/complaint_form.php?cmplt=CL
Consumer Complaints Against a Business	Better Business Bureau	Complaints	https://www.bbb.org/consumer-complaints/file-a-complaint/get-started
California Attorneys	State Bar of California	Complaints	800-843-9053 http://www.calbar.ca.gov/Attorneys/LawyerRegulation/FilingaComplaint.aspx
California Judges	Commission on Judicial Performance	Complaints	415-557-1200 http://cjp.ca.gov/file_a_complaint.htm



Special Circumstance

1. The Auditor's Office may receive complaints about elected officials. As the Auditor's Office does not generally have the authority to audit the Mayor and City Council without their request to be audited, allegations involving these officials shall be discussed with the City Auditor immediately. The City Auditor, audit staff and other City officials – if necessary – will discuss how to evaluate these types of complaints.
2. Additionally, complaints may be received about members of the Auditor's Office. If such complaints occur, those receiving the allegations should report them to the City Auditor immediately. The City Auditor and any other staff who become aware of the complaint will evaluate the allegation, possibly with the advice of other City staff and officials, to determine if an investigation shall be conducted within the office or by an entity outside of the office. Auditor's Office members are expected to keep the allegation confidential, and not inform the staff member for whom the allegation was about. If the complaint is about the City Auditor, the auditor receiving the allegation should discuss it with another staff member and possibly seek guidance from staff or officials outside of the office to determine how to proceed.

City Auditor Signature _____

Date _____

Sacramento Office of the City Auditor Contact Information:

Sacramento Office of the City Auditor
New City Hall
915 "I" Street, 3rd Floor, Room 3106,
Sacramento, CA 95814

Website: <http://www.cityofsacramento.org/auditor/>

Audit Staff

Jorge Oseguera (City Auditor)
Office: (916) 808-7270
joseguera@cityofsacramento.org

Nicholas Cline (Senior Auditor)
Office: (916) 808-7285
ncline@cityofsacramento.org



San Francisco Charter

APPENDIX F:

AUTHORITY AND DUTIES OF CITY SERVICES AUDITOR

F1.107. CITIZENS' COMPLAINTS; WHISTLEBLOWERS.

(a) The Controller shall have the authority to receive individual complaints concerning the quality and delivery of government services, wasteful and inefficient City government practices, misuse of City government funds, and improper activities by City government officers and employees. When appropriate, the Controller shall investigate and otherwise attempt to resolve such individual complaints except for those which:

- (1) another City agency is required by federal, state, or local law to adjudicate,
- (2) may be resolved through a grievance mechanism established by collective bargaining agreement or contract,
- (3) involve allegations of conduct which may constitute a violation of criminal law, or
- (4) are subject to an existing, ongoing investigation by the District Attorney, the City Attorney, or the Ethics Commission, where either official or the Commission states in writing that investigation by the Controller would substantially impede or delay his, her, or its own investigation of the matter.

If the Controller receives a complaint described in items (1), (2), (3), or (4) of this paragraph, the Controller shall advise the complainant of the appropriate procedure for the resolution of such complaint.

(b) If the Controller receives a complaint alleging conduct that may constitute a violation of criminal law or a governmental ethics law, he or she shall promptly refer the complaint regarding criminal conduct to the District Attorney or other appropriate law enforcement agency and shall refer complaints regarding violations of governmental ethics laws to the Ethics Commission and the City Attorney. Nothing in this Section shall preclude the Controller from investigating whether any alleged criminal conduct also violates any civil or administrative law, statute, ordinance, or regulation.

(c) Notwithstanding any provision of this Charter, including, but not limited to Section C3.699-11, or any ordinance or regulation of the City and County of San Francisco, the Controller shall administer a whistleblower and citizen complaint hotline telephone number and website and publicize the hotline and website through press releases, public advertising, and communications to City employees. The Controller shall receive and track calls and emails related to complaints about the quality and delivery of government services, wasteful and inefficient City government practices, misuse of government funds and improper activities by City government officials, employees and contractors and shall route these complaints to the appropriate agency subject to subsection (a) of this Section. The Board of Supervisors shall enact and maintain an ordinance protecting the confidentiality of whistleblowers, and protecting City officers and employees from retaliation for filing a complaint with, or providing information to, the Controller, Ethics Commission, District Attorney, City Attorney or a City department or commission about improper government activity by City officers and employees. The City may incorporate all whistleblower functions set forth in this Charter or by ordinances into a unified City call center, switchboard, or information number at a later time, provided the supervision of the whistleblower function remains with the Controller and its responsibilities and function continue unabridged.

(Added November 2003)

Whistleblower Hotline

Purpose

The City of San Jose takes pride in our employees and the high-quality services we provide to the community. In order to ensure that we maintain and improve upon the quality and integrity of our services, the City of San Jose created the Whistleblower Hotline to provide the public and employees with an opportunity to express concerns such as:

- Theft of City resources (e.g., cash, equipment, supplies, or materials)
- Record falsification, including timecards
- Misuse of City equipment or property
- Misuse or waste of City resources, including government funds
- Improper activities by City officials, employees, and contractors

Report a Concern

There are various ways to express concerns:

- Call the Whistleblower Hotline at (408) 535-8200. Callers may leave a voicemail after hours.
- Fax the Whistleblower Hotline at (408) 292-6436.
- Email the Whistleblower Hotline.
- Submit a concern through the Whistleblower Hotline - Online Complaint Form.
- Send a letter to: City of San Jose
Whistleblower Hotline 200 E. Santa Clara St. 3rd Floor Wing
San Jose, CA 95113-1905

Anonymity

You may choose to remain anonymous. Caller ID has been disabled for the Whistleblower Hotline. If you choose to submit a concern online or via email and want to remain anonymous, please use a non-City computer with an email address that does not contain your name.

POLICY RESOLUTION NO. 2010-211

RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA IMPLEMENTING
BOARD POLICY RELATING TO THE REPORTING OF
IMPROPER GOVERNMENT ACTIVITY
PURSUANT TO DIV. A-25, SECS. 750-753

WHEREAS, the Board of Supervisors wishes to give direction and set policy for such matters for which the responsibility of decisions is placed on it by virtue of State codes, County Charter or specific ordinances and resolutions or relates to its broad policy-making authority to matters regarding Santa Clara County; and

WHEREAS, the Board of Supervisors wishes to clearly state and compile policies and to provide for distribution of these policies to affected decision-makers; and

WHEREAS, the Policy Manual is not set by ordinance, is not legally binding, and can be changed by adoption of a resolution approved by a majority of the Board of Supervisors and is intended to give guidance to staff and future Board of Supervisors;

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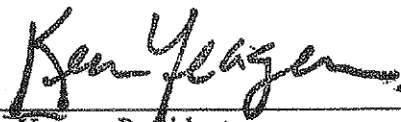
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Adopted

NOW THEREFORE BE IT RESOLVED, that the Board of Supervisors' Policy Manual is hereby amended by adoption of this resolution to add Section 3.50, Reporting of Improper Government Activity, attached hereto as Exhibit "A" and incorporated herein, and the Clerk of the Board is directed to incorporate the policy into the manual so that it is available to all County staff.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara on APR 13 2010 by the following vote:

AYES: CORTSE, GAGE, KNISS, SHIRAKAWA, YEAGER
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE
VACANT: NONE



Ken Yeager, President
Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest:



Maria Marinos, Clerk of the Board of Supervisors

Maria Marinos, Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



Nancy J. Clark, Deputy County Counsel

Exhibit A

Administration & General Government

3.50 Reporting of Improper Government Activity

It is the policy of the County of Santa Clara Board of Supervisors that an effective process be established for the receipt, acceptance, investigation, documentation and monitoring of reports of improper government activity in accordance with County of Santa Clara Ordinance Code, Division A25, Sections A25-750 to A25-753. This Ordinance encourages the reporting of possible violations of laws, regulations and rules governing the conduct of County officers and employees and lays out the procedures for reporting and investigating these complaints. The process created by this Board Policy for the reporting of improper government activity is entitled "24/7 Whistleblower Program".

The public purpose in the reporting and investigation of improper government activity is the protection of integrity in governmental institutions. In furtherance of this interest, the County of Santa Clara encourages individuals to report to the Board of Supervisors through the Office of the County Counsel possible violations of laws, regulations and rules governing the conduct of County officers and employees. Also, all complainants including but not limited to County officers and employees are protected from retaliation for filing a complaint with, or providing information about, improper government activity by County officers and employees.

This policy supplements and does not supplant any and all other processes and procedures available for reporting and investigating complaints of possible improper government activity.

3.50.1 Communication of Reporting Procedures

Complaints of possible improper activity may be made in writing via letter, e-mail, facsimile or any other written communication. Reports may also be made via telephone through a toll free number. For this purpose, a complaint telephone number, facsimile phone number and email address shall be established. Complaints may be made on an anonymous basis.

Information informing individuals about how to make reports of improper

government activity shall be provided to the public and County employees via the County's website.

3.50.2 Receipt of Complaints

The Office of the County Counsel is responsible for the receipt of individual complaints concerning the quality and delivery of government services, wasteful and inefficient County government practices, misuse of County government funds, and improper activities by County government officers and employees.

The Office of the County Counsel shall receive and track all complaints and take all necessary steps to protect the complainant's anonymity to the extent possible. Complaints received by the Board of Supervisor Management Audit Division shall be forwarded to the Office of the County Counsel.

3.50.3 Investigation of Complaints

The Office of the County Counsel is responsible for accepting, screening, documenting, analyzing, investigating and reporting complaints concerning possible improper government activities. The Office of the County Counsel may refer complaints of improper financial activity involving County funds to the Board of Supervisors' management auditors for investigation. Other complaints may be referred to other County agencies or departments for investigation, as appropriate.

The Office of the County Counsel shall at all times be available to advise and direct the conduct of the investigation.

3.50.4 Reporting of Complaints and Investigations

The Office of the County Counsel shall be responsible for reporting at least twice per year to the Board of Supervisors the number of complaints received, a synopsis of each complaint, investigative findings and disposition. The reports shall be published on the County of Santa Clara's website.

<u>Approved by:</u>	<u>Signature</u>	<u>Date</u>
City Manager	_____	_____
City Clerk	_____	_____
Dept. Head	_____	_____
Author	_____	_____

City of Thousand Oaks

Administrative Policies and Procedures

SUBJECT: Fraud, Waste, and Abuse Policy	APP NO.: Submission Date: Revision Dates:	AUTHORITY: City Manager Adoption/Approval Date:
DEPARTMENT: FIN		

PURPOSE:

To establish the City of Thousand Oaks' (City's) commitment to protecting its assets against fraud, waste and abuse.

POLICY

This policy is established to ensure elected officials, committee and commission members, volunteers, and employees are aware of the following:

1. Acts that are considered to be fraudulent, wasteful, or abusive;
2. Procedures for reporting suspected fraudulent, wasteful, or abusive acts;
3. Steps to be taken when fraud, waste, abuse, or other related activities are suspected; and that
4. City officials and employees are responsible for the detection, reporting, and prevention of fraud, waste, and abuse, as set forth in this Policy.

Further, it is the policy of the City to identify and promptly investigate any potential fraudulent, wasteful or abusive activities that impact the City's finances, personnel, or the public's assets and, when appropriate, to pursue legal remedies available under the law.

SCOPE OF POLICY

This policy applies to any irregularity, or suspected irregularity, involving employees, elected officials, volunteers, members of the City's committees and commissions, consultants, vendors, contractors, and/or any other parties with a business relationship with the City. Any investigative activity required will be conducted without regard to the suspected wrongdoer's length of service, position/title, or relationship to the City.

TERMS AND DEFINITIONS

California Government Code §53087.6(f)(2) defines the term "fraud, waste, or abuse" as:

Any activity by a local agency or employee that is undertaken in the performance of the employee's official duties, including activities deemed to be outside the scope of his or her employment, that:

- Is in **violation of any local, state, or federal law or regulation** relating to: fraud, corruption, malfeasance, bribery, theft of government property, fraudulent claims, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty,
- Is **economically wasteful**, or
- Involves **gross misconduct**.

Some of these improprieties may be defined as follows:

Violation	Definition	Description/Complaint Code
Fraud	A known misrepresentation of the truth or misstatement of fact to induce another to act to the City's detriment	Fraud, Accounting/Audit Irregularities
Corruption	The impairment of a public official's duties by bribery	Confidentiality and Misappropriation, Contractor/Vendor Relations
Malfeasance	Wrongdoing or misconduct by a public official	Conflict of Interest, Confidentiality and Misappropriation, Inappropriate Workplace Relationships, Theft, Time Abuse, Violation of Policy
Bribery	The corrupt payment, receipt, or solicitation of a private favor for official action	Improper Supplier or Contactor Activity, Improper Giving or Receiving of Gifts
Theft of government property	Unauthorized taking in to one's possession of property owned by the City.	Theft
Fraudulent claims	A misrepresentation of facts in a claim to receive compensation	Falsification of Contracts, Reports or Records
Coercion	Compulsion by physical force or threat of physical force; threat of taking or withholding official action or causing an official to take or withhold an action	Threat or Inappropriate Supervisor Directive
Conversion	The wrongful possession of or interference with the City's property as if it were one's own	Theft
Malicious prosecution	Intentionally (and maliciously) instituting and pursuing (or causing to be instituted or pursued) a legal action that is brought without probable cause and dismissed in favor of the victim that caused damages	Abuse
Misuse of government property	Misuse of the City's property	Waste
Willful omission to perform duty	Intentional neglect to take action required by law or contract	Abuse

REPORTING RESPONSIBILITY

Each City employee should be familiar with the types of improprieties that might occur within their area of responsibility and be alert for any indication of irregularity. Any irregularity that is detected or suspected should be reported immediately as specified below.

REPORTING PROCEDURES

City employees who have specific information of, or who reasonably suspect, fraud, waste, or abuse are encouraged to report such information to their immediate supervisor, or when appropriate, to Human Resources (HR), the City Attorney's Office (CAO), or the City Auditor. When a City employee believes it is necessary to remain anonymous, the Fraud, Waste, and Abuse Hotline ("Hotline") provides an anonymous method of reporting such incidents over the phone to a third-party interviewer or via an anonymous internet website. The City believes that anonymity is a last resort and should only be used after other reporting methods have been attempted, or when the employee has a reasonable good faith belief that it is necessary. For items believed to involve fraud, waste, or abuse, the supervisor or manager receiving the report should report the incident to the Hotline. All reports made regarding fraud, waste, or abuse should be made seriously and with due professional care.

The following information, when available, should be provided to begin processing a complaint/concern:

- A description of the alleged misconduct covered by the scope of this policy;
- The name of the individual(s) or business involved;
- Specific information regarding the alleged misconduct;
- Circumstances surrounding how the alleged misconduct occurred;
- Where or in what department the alleged misconduct occurred; and
- When the alleged misconduct occurred.

HOTLINE ADMINISTRATION

Structure

The Hotline is hosted by an independent, third-party provider (vendor) contracted by the City. The vendor provides the option for callers to provide information over the Hotline anonymously. The vendor issues an Incident Report for each call and submits the Incident Reports for review and referral. The vendor provides offsite hotline coverage 24/7/365 and live interviewers who obtain the information deemed necessary to verify and process the complaints. This information is then transcribed into an Incident Report, housed in a case management system.

Hotline Review Committee

The Hotline Review Committee ("Committee") is composed of the following members or their designees: the City Attorney, the Human Resources Director, the Finance Director, and the City Auditor. The Committee meets as needed to review all activity related to the Hotline.

The objectives of the Committee are to:

- Review all Incident Reports;
- Determine whether an Incident Report should be investigated;
- Assign Incident Reports to a Case Investigator for investigation;
- Ensure that Incident Reports that are assigned for investigation are adequately investigated; and
- Address any trends in activity or weaknesses in City policies requiring corrective action.

Duplicate reports or reports that do not suggest fraud, waste, or abuse may be closed by the Committee without further action or investigation.

Case Management

The online case management system allows for all Hotline reports to be recorded, updated and tracked in one centralized system to ensure that all reports are addressed appropriately and that the outcomes are consistent with City policy. Incident Reports are maintained in the case management system and are periodically updated with the status of the investigation by the case investigator and the City Auditor. Case management users include members of the Hotline Review Committee, who act as administrators of the case management system, and one or more members of management from each department who may be assigned to respond to incidents within their departments. User access is limited to cases assigned to them.

Case Dissemination

After a call has been entered as an Incident Report and logged into the case management system by the vendor, the report is sent electronically to City Auditor for preliminary review, generally within 24 hours. The City Auditor will determine if immediate action is required. If immediate action appears necessary, the City Auditor will contact the Hotline Review Committee who will decide whether to initiate an internal investigation and/or refer the matter to law enforcement. Incident Reports requiring immediate action include allegations of fraud, waste, or abuse by City executives, or other incidents which, in the judgment of the Committee, warrant immediate action. All other cases will be referred to the Hotline Review Committee in their scheduled meetings.

If an Incident Report involves one or more members of the Hotline Review Committee, those individuals will be excluded from any decisions or activities related to the review and/or investigation of that Incident Report. If this occurs, a Deputy Finance Director, Deputy Human Resources Director, and/or Assistant City Attorney, if needed, will act as members of the Hotline Review Committee to ensure there are a minimum of two officials providing oversight of the review and investigation of the Incident Report.

Due to the City Council's governance role over City employees, the Hotline will not accept incidents involving members of the City Council. Employees reporting these types of complaints will be referred to the California Fair Political Practices Commission, the District Attorney's Office, or other appropriate outside agency, depending upon the nature of the complaint.

Each department will have a dedicated contact who will receive the Incident Report from the Hotline Review Committee, disseminate it to the appropriate staff within their department, if necessary, and access the Report in the case management system to either make updates as to the case disposition themselves or assign it to another user in their department to manage the case. The dedicated department contact will complete the preliminary case closure before the Hotline Review Committee reviews and formally closes an Incident Report.

The Hotline Review Committee will select a Case Investigator in accordance with this Policy. The Investigator can be a member of the Hotline Review Committee. There might be times when the complexity and risk associated with some Hotline reports could require additional resources or experts currently not available within the City who may be utilized to assist in the investigation, oversee the investigation, or to conduct an independent review. These third-party experts may include, but are not limited to, an independent CPA, an independent auditor, specialized labor counsel, a Certified Fraud Examiner, or an independent legal expert. The investigation of a Hotline Report will be conducted without conflict or bias.

As the Hotline Case Administrator, the City Auditor will be responsible for:

- Monitoring all Incident Reports referred to other departments or units for investigation, and their outcomes;
- Conducting an independent investigation of reported incidents when appropriate;

- Monitoring the timeliness of department responses based on timeframes established by the Hotline Review Committee; and
- Closing Incident Reports after the final review of the Hotline Review Committee.

Reporting Allegations Other Than Fraud, Waste, and Abuse

Complaints received by the Hotline that allege certain Labor-Management issues, (e.g., discrimination, sexual harassment, substance abuse, workplace violence or threats), are not included within the definition of "fraud, waste, or abuse" and, as a result, are not within the purview of this policy. However, complaints made to the Hotline, which are related to Labor-Management issues, will be forwarded to the appropriate management function for review and action.

AUTHORIZATION FOR INVESTIGATING SUSPECTED FRAUD, WASTE, and ABUSE

The selected case investigator, or authorized representative, will have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency to the extent such access and examination is permitted by law. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the Case Investigator, or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with the Investigator and to make full disclosure of all pertinent information. The Investigator shall also be permitted access to any and all records, documents, systems and files of any City vendor or contractor as allowed by City agreements, contracts, and as permitted by law.

WHISTLEBLOWER PROTECTION

Employees, elected officials, consultants, contractors, vendors, and representatives/agents of the City of Thousand Oaks shall not engage in any adverse or retaliatory personnel action against a whistleblower for:

- Providing information (excluding the filing of malicious complaints discussed below);
- Disclosing or threatening to disclose any activity which that person believes to be wrongdoing; or
- Objecting to or refusing to participate in any wrongdoing.

CONFIDENTIALITY

All information received by the third-party administrator, the Hotline Committee, and/or case investigator shall be treated as confidential to the extent permitted by law. Any employee who suspects inappropriate activity shall report the incident immediately, and should not attempt to personally conduct investigations or interviews/interrogations related to any suspected act. The employee should not discuss the case, facts, suspicions, or allegations with anyone unless specifically asked to do so by the City Attorney.

Investigation results will not be disclosed or discussed with anyone other than those who have a legitimate need to know. This is important in order to protect the privacy of persons investigated and to encourage the candor of persons making complaints, and to minimize the City's potential civil liability. Public disclosure shall be made only in accordance with applicable law.

FILING OF MALICIOUS COMPLAINTS

The City will not tolerate malicious complaints. A "malicious complaint" is one that is made in bad faith, or with knowledge that the complaint is false, or lacks any factual support. Complaints/concerns will not be considered malicious merely because they are determined to be unsubstantiated. Malicious complaints may result in disciplinary action in accordance with applicable City policies and procedures, up to and including termination from employment.

DISCIPLINE

Following the review of the investigation results and findings, the City Manager, or designee, shall take appropriate action regarding misconduct. Disciplinary action may include: suspension, termination of employment and/or contract, and where appropriate, referral of the case to an appropriate law enforcement agency and District Attorney's Office for possible investigation and prosecution.