

**EXECUTIVE DIRECTOR'S REPORT**

**BOARD OF DIRECTOR'S MEETING DATE: December 5, 2016**

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**ITEM NO:** 1

**SUBJECT:** Consideration and Necessary Action on Resolution closing continued December 5, 2016, public hearing for formation of the Community Facilities District No. 2016-1, issue bonds of the District to pay for the facilities and authorize the rate and method of a special tax to be levied within the Community Facilities District No. 2016-1 and directing changes to the facilities, and a redetermination of the cost thereof and the amounts of any bonds to be issued and special tax to be levied to fund those facilities.

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**DISCUSSION:** The Mello-Roos Act allows for the installation of infrastructure improvements, referred in the act as "Facilities" the issuance of bonds to fund the installation of that infrastructure and the levying of a special tax against property benefited by the infrastructure to pay the principal and interest on such bonds.

The Board previously initiated proceedings to form the Community Facilities District, issue bonds and levy a special tax, and in the process securing land owner consent to that process, the City was requested to make certain changes to the proposed facilities or infrastructure, essentially consisting of an extension of the sewer line planned to run from Golden State in and along Dinuba Avenue so that instead of terminating at McCall, the line terminates at Dockery.

Extension of the line as is being requested by the majority of the land owners involved, and obviously increases the costs of that improvement and will necessarily also increase the amount of any bond issuance needed to pay for that facility and the resulting special tax to be levied on the property benefited to pay for it. The Mello-Roos Act prohibits the making of changes to a project to be funded in this manner that will increase to amount of a bond issuance or the amount of a special tax and requires that any proceedings to establish facilities commenced prior to the making of any such change be abandoned.

Once the proceedings have been abandoned, the cost of the changed facilities determined, and the amounts of any bond issuance or special tax necessary to pay for facilities has been determined, the proceedings for the formation of the Community Facilities District, issuance of the bonds, and levying of the special tax may simply be recommenced by conducting a hearing on a Resolution which authorizes the formation of the Community Facilities District, issuance of bonds and levying of a special tax. The proposed Resolution abandons the proceedings previously

undertaken, and directs the determination of the amount of the bond issuance and special tax necessary to finance the changed facilities. Once that determination has been made, staff will reschedule a public hearing on a new Resolution for formation of the Community Facilities District and related actions necessary to achieve the goal of establishing this sewer line to serve northern sector of property that will be within the City of Selma.

<b>COST</b>		<b>BUDGET IMPACT</b>
None.		Not applicable.
<b>FUNDING</b>		<b>ON-GOING COST</b>
Not applicable.		Not applicable.

**RECOMMENDATION:** Adopt Resolution closing continued December 5, 2016 hearing and directing changes to the project or facilities and determination of the amounts of any bond issuance or special tax.

**ATTACHMENTS:**

Date: December 1, 2016      /S/ Neal Costanzo  
 Neal E. Costanzo  
 Authority Attorney

Date: December 1, 2016      /S/ Greg Garner  
 Greg Garner, Interim Executive Officer

**RESOLUTION NO. \_\_\_\_**

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**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NORTH SELMA SEWER FINANCING AUTHORITY CLOSING PUBLIC HEARING ON FORMATION OF COMMUNITY FACILITIES DISTRICT NO. 2016-1, TO ISSUE BONDS OF THE DISTRICT TO PAY FOR FACILITIES AND TO TAKE OTHER ACTIONS RELATED THERETO AND DIRECTING CHANGES TO THE PROPOSED PROJECT AND DETERMINATION OF THE AMOUNTS NEEDED FOR ANY BONDS OR SPECIAL TAX TO FUND THE PROJECT AND REFUND ANY BOND ISSUANCE.**

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**WHEREAS**, on May 2, 2016, this Board of Directors (the "Board") of the North Selma Sewer Financing Authority, California (the "Authority"), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code (the "Act"), adopted Resolution No. 2016-1 NSSFA entitled "A Resolution of the Board of Directors of the North Selma Sewer Financing Authority Declaring its Intent to Establish the City of Selma, Community Facilities District No. 2016-1 (North Selma Sewer Main Project) and To Authorize the Levy of a Special Tax Within Said District" (the "Resolution of Intention to Establish CFD No. 2016-1") stating its intention to form the "City of Selma, Community Facilities District No. 2016-1 (North Selma Sewer Main Project)" (the "Community Facilities District No. 2016-1" or the "District")

**WHEREAS**, on May 2, 2016, the Board of Directors also adopted its Resolution of Intention to Incur Indebtedness of CFD No. 2016-1 ("Resolution of Intention to Incur Indebtedness" and, together with the Resolution of Intention to Establish CFD No. 2016-1, the "Resolution of Intention") stating its intention to incur bonded indebtedness within proposed Community Facilities District No. 2016-1 in an amount not to exceed \$9,000,000, to finance the purchase, construction, modification, expansion, improvement or rehabilitation of the facilities identified in Attachment "B" to Resolution of Intention to Establish CFD No. 2016-1, including the incidental expenses related thereto, and incorporated herein by this reference (collectively, the "Facilities"); and

**WHEREAS**, notice was published as required by law relative to the intention of the Board of Directors to form proposed Community Facilities District No. 2016-1, to

incur bonded indebtedness within Community Facilities District No. 2016-1, and of the time and place of the public hearing; and

**WHEREAS**, on June 6, 2016, the Board of Directors conducted and then continued to July 5, 2016, the public hearing to determine whether it should proceed with the formation of the Community Facilities District No. 2016-1, issue bonds of the District to pay for the Facilities and authorize the rate and method of apportionment (the "Rate and Method") of a special tax to be levied within the Community Facilities District No. 2016-1 for the purposes described in the Resolution of Intention; and

**WHEREAS**, on July 5, 2016 the Board of Directors again continued the public hearing to August 1, 2016 because of complexities that have arisen relative to procuring from 100% of the property owners the executed petitions to create the Community Facilities District; and

**WHEREAS**, on August 1, 2016, because of complexities that have arisen relative to procuring from 100% of the property owners the executed petitions to create a Community Facilities District, the Board again continued the public hearing to September 6, 2016; and

**WHEREAS**, on September 6, 2016, because of complexities that have arisen relative to procuring from 100% of the property owners the executed petitions to create a Community Facilities District the Board again continued the public hearing to October 3, 2016 and on October 3, 2016 the Board took the same action continuing the Public Hearing to December 5, 2016; and

**WHEREAS**, property owners within the proposed District have requested certain changes to the proposed project or facilities that will increase the rate and method and amount of the bond issuance and to make those changes it is necessary to calculate those amounts in the manner prescribed by law and to reinstate the proceedings for formation of Community Facilities District No. 2016-1.

**NOW, THEREFORE**, be it resolved as follows:

1. The foregoing recitals are true and correct.

2. Pursuant to the provisions of Government Code §53325, the Board of Directors finds and determines that there is a need for changes to proposed facilities that will increase the costs of the facilities and of any bond issuance and special tax assessment and, in that situation, the same Government Code provision requires that the proceedings previously commenced be abandoned, closed or discontinued and reinitiated once the amount of the necessary bond issuance and resulting special tax assessment have been determined.

3. The Board of Directors closes the public hearing continued to December 5, 2016 and abandons those proceedings.

4. Staff is directed to determine the costs of the changes to the proposed facilities, the amount of a bond issuance as necessary to fund the facilities and the amount of the special tax to be assessed to pay the principal and interest on the bonds and to reinitiate the proceedings for formation of the Communities Facilities District as appropriate.

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The foregoing Resolution was duly approved by the Board of Directors of the North Selma Sewer Financing Authority at a regular meeting held on the 5th day of December, 2016 by the following vote, to wit:

- AYES: BOARD MEMBERS
- NOES: BOARD MEMBERS
- ABSTAIN: BOARD MEMBERS
- ABSENT: BOARD MEMBERS

\_\_\_\_\_  
Scott Robertson, Chairman

ATTEST:

By: \_\_\_\_\_  
Reyna Rivera, Secretary

**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

December 5, 2016

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**ITEM NO:** 2

**SUBJECT:** City Council Reorganization- Confirmation of Mayor and Mayor Pro Tempore per Ordinance 2016-6

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**DISCUSSION:** Ordinance 2016-6 established a procedure for the selection of the Mayor and Mayor Pro Tempore. The Ordinance was adopted by the Council on October 17, 2016, and became effective November 16, 2016. The Ordinance simply provides for a rotational system in which, at the beginning of the first meeting of December, the most senior Councilperson, and next most senior Councilperson shall occupy the offices of Mayor and Mayor Pro Tempore, respectively.

The process will continue in that fashion, each and every year, except that if new members are elected, they are treated as having less seniority than every other Councilperson having more seniority and if there is more than one Councilperson having the same amount of seniority, the person who received the most votes at the most recent municipal election shall be treated as the more senior member for these purposes.

Anyone can opt out or pass on occupying the position of either Mayor Pro Tempore or Mayor, but if they do, they are relegated to be the least most senior member, for purposes of the selection of Mayor and Mayor Pro Tempore.

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**RECOMMENDATION:** No formal vote of the Council is required for this item. The nominee for Mayor, Michael Derr, must confirm whether he will accept the role as Mayor, and the nominee for Mayor Pro Tempore, Jim Avalos, must be confirmed whether he will accept the role as Mayor Pro Tempore.

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\_\_\_\_\_  
Greg Garner, Interim City Manager

12/1/16

\_\_\_\_\_  
Date

**ORDINANCE NO. 2016 – 6**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SELMA  
AMENDING SECTION 1, OF CHAPTER 7 OF TITLE I OF THE  
SELMA MUNICIPAL CODE ENTITLED MAYOR SELECTION**

**WHEREAS**, existing ordinances of the City of Selma relating to the selection of Mayor and Mayor Pro Tempore are in Title I, Chapter 7 of the Selma Municipal Code; and

**WHEREAS**, the City Council of the City of Selma desires to amend Section 1, Chapter 7 of Title I to provide for a rotational system of selecting a Mayor and mayor Pro Tempore, and for the rotation of members occupying that portion on an annual basis; and

**WHEREAS**, Title I, Chapter 1, Section 3 of the Selma Municipal Code provides that an ordinance amending the Selma Municipal Code that sets forth the title, chapter or section number or the sections to be amended is sufficient compliance with any requirement pertaining to the amendment or revision by ordinance of any part of the Selma Municipal Code.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELMA DOES HEREBY ORDAIN** as follows:

**SECTION 1:** Section 1 of Chapter 7 of Title I of the Selma Municipal Code is hereby amended to read as follows:

**“SECTION 1-7-1: MAYOR; SELECTION:**

The offices' of Mayor and Mayor Pro Tempore shall be rotated among members of the City Council each year. At the first meeting of the City Council, in the month of December each year, one member of the City Council shall assume the office of Mayor, and another shall assume the office of Mayor Pro Tempore. At the first meeting of the City Council in the month of December each year, the most senior member of the City Council, in terms of length of continuous service on the City Council shall assume the office of Mayor and the member having the next longest term of service as a City Council Member shall assume the office of Mayor Pro Tempore. In the event members eligible to assume the office of Mayor and Mayor Pro Tempore are of equal seniority, the member who had received the most votes at the most recent Municipal election shall be treated as having more seniority than the other member. In the year following the year on which the most senior member of the City Council occupies the office of Mayor the Mayor Pro Tempore shall assume the office of Mayor and the Member occupying the office of Mayor following the effective date of this ordinance and during the prior year shall be treated as the least senior member of the City Council for purposes of applying this Ordinance only until such time as all remaining members have occupied that office. In that same year the next most senior member shall assume the position of Mayor Pro Tempore.

Newly elected members shall be treated as having less seniority than those who remain on the City Council beyond their initial four year term. Any member may decline to serve in either the position of Mayor or Mayor Pro Tempore, in which case, such member shall be treated as having served one year as Mayor or Mayor Pro Tempore, as the case may be. It is the intent of this provision that the office of Mayor and Mayor Pro Tempore shall only be occupied by a member of the City Council for one year and that no member shall occupy the office of Mayor or Mayor Pro Tempore for more than one year during any five year period”.

In the event the member occupying the position of Mayor or Mayor Tempore resigns, dies, becomes incapacitated or is otherwise unable or unwilling to remain as a member of the City Council, then the member having the highest seniority, or who received the most votes in the most recent election, in the event there are two members having equal seniority, shall assume the position of Mayor or Mayor Pro Tempore, as the case may be, for the remainder of the term of the member who has ceased to remain as a member of the City Council. The assumption of that member of the position of Mayor or Mayor Pro Tempore shall not affect that person’s seniority with respect to occupying either office following the completion of the term, as Mayor or Mayor Pro Tempore, as the case may be, of the person who has ceased to be a member of the City Council.

**SECTION 2:** California Environmental Quality Act: The City Council having considered the Staff Report and all public comments, has determined that the amendment is not a project under the California Environmental Quality Act because the amendment has no potential for resulting in a physical change in the environment. Since the amendment is not a project, no environmental documentation is required.

**SECTION 3:** Severability: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases have been declared invalid or unconstitutional.

**SECTION 4:** Effective Date and Posting of Ordinance: This Ordinance shall take effect and be in force thirty (30) days from and after the date of final passage. The city Clerk of the City of Selma shall cause this Ordinance to be published at least once within fifteen (15) days after its passage in The Selma News with the names of those City Council Members voting for or against the Ordinance.



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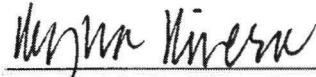
I, Reyna Rivera, Chief Deputy City Clerk of the City of Selma, do hereby certify that the foregoing Ordinance was introduced at the October 3, 2016, regular City Council meeting and passed at a regular meeting of the City Council of the City of Selma on the 17<sup>th</sup> day of October 2016, by the following vote, to wit:

AYES: 3 COUNCIL MEMBERS: Rodriguez, Montijo, Derr  
NOES: 2 COUNCIL MEMBERS: Avalos, Robertson  
ABSENT: 0 COUNCIL MEMBERS: None  
ABSTAIN: 0 COUNCIL MEMBERS: None



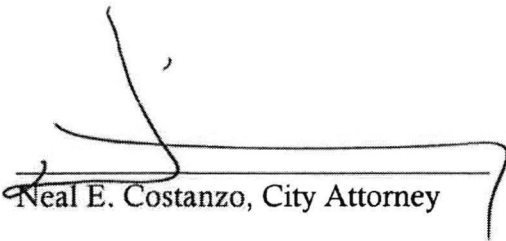
Scott Robertson, Mayor of the City of Selma

ATTEST:



Reyna Rivera, City Clerk

APPROVED AS TO FORM:



Neal E. Costanzo, City Attorney

**CITY OF SELMA  
SPECIAL MEETING  
November 21, 2016**

The Special Council meeting of the Selma City Council was called to order at 4:33 p.m., in the Council Chambers. Council members answering roll call were: Derr, Montijo (4:34 p.m.), Rodriguez (4:43 p.m.), Mayor Pro Tem Avalos and Mayor Robertson.

Also present were Interim City Manager Garner, City Attorney Costanzo, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

**EXECUTIVE SESSION:** At 4:35 p.m., Mayor Robertson recessed the meeting into Executive Session to discuss the following: One case of Public Employee Discipline/Dismissal/ Release, and Public Employment pursuant to Government Code Section 54957 Title City Manager.

The meeting reconvened at 6:00 p.m., with no reportable action.

**ADJOURNMENT:** There being no further business, the meeting was adjourned at 6:01 p.m.

Respectfully submitted,

Reyna Rivera  
City Clerk

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Scott Robertson  
Mayor of the City of Selma

**CITY OF SELMA  
REGULAR COUNCIL MEETING  
November 21, 2016**

The regular meeting of the Selma City Council was called to order at 6:02 p.m. in the Council Chambers. Council members answering roll call were: Derr, Montijo, Rodriguez, Mayor Pro Tem Avalos, and Mayor Robertson.

Also present were Interim City Manager Garner, City Attorney Costanzo, Community Services Director Kirchner, Finance Manager Moreno, Fire Chief Kain, Public Works Director Shiplee, the press, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

**INVOCATION:** Pastor Joe Alvarez of Iglesia Anitoqua/Valley Life Community Church led the invocation.

**RECOGNITION OF SELMA YOUTH SOCCER LEAGUE:** Council member Rodriguez and Council member Derr presented certificates of recognition to the Selma Youth Soccer League, Girls Under 19 Team for being awarded the CYSA Founders State Cup State Championship trophy. Coach Diego Haro thanked Council for the recognition and requested that the trophy be temporarily placed at City Hall.

**ORAL COMMUNICATIONS:** Mr. Ken Maxey, District Manager for Waste Management stepped forward to discuss the recent community clean up and upcoming holiday events.

**CONSENT CALENDAR:** Council member Rodriguez requested that agenda item 1.c. be pulled for separate consideration. Council member Derr requested that agenda item 1.e. also be pulled for separate consideration. Council member Rodriguez then motioned to approve the remainder of the Consent Calendar as read. The motion was seconded by Mayor Pro Tem Avalos, and carried with the following vote:

AYES: Rodriguez, Avalos, Derr, Montijo, Robertson  
NOES: None  
ABSTAIN: None  
ABSENT: None

- a. Minutes of the November 7, 2016 Workshop/pre-Council meeting approved as read.
- b. Minutes of the November 7, 2016 regular meeting approved as read.
- c. Pulled for separate consideration.
- d. Authorization for City Manager to Execute the Arrants Street Storm Drain Repair Project Notice of Completion, approved by standard motion.
- e. Pulled for separate consideration.

**AGENDA ITEM 1.C. CONSIDERATION AND NECESSARY ACTION ON RESOLUTION AWARDING CONTRACT FOR CAL TRANS DIVISION OF LOCAL ASSISTANCE PROJECT ATPLNI-5096-034 TO FEHR & PEERS TO DEVELOP A PEDESTRIAN/BIKE PLAN:** After discussion, motion to approve RESOLUTION NO. 2016-72R, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA AWARDING CONTRACT FOR CALTRANS DIVISION OF LOCAL ASSISTANCE PROJECT ATPLNI-5096(034) TO FEHR & PEERS was made by Council member Rodriguez and seconded by Council member Derr. Motion carried with the following vote:

AYES: Rodriguez, Derr, Montijo, Avalos, Robertson  
NOES: None  
ABSTAIN: None  
ABSENT: None

**AGENDA ITEM 1.E. CONSIDERATION AND NECESSARY ACTION ON CHECK REGISTER DATED NOVEMBER 17, 2016:** After discussion, motion to approve Check Register dated November 17, 2016 was made by Council member Derr and seconded by Mayor Robertson. Motion carried with the following vote:

AYES: Derr, Robertson, Montijo, Rodriguez, Avalos  
NOES: None  
ABSTAIN: None  
ABSENT: None

**CONSIDERATION AND NECESSARY ACTION ON RESOLUTION RECOGNIZING THE NOVEMBER 1984 ANTI SIKH VIOLENCE IN INDIA AS GENOCIDE:** Mayor Robertson introduced Mr. Raj Singh, who stepped forward to discuss the Resolution.

After much discussion, motion was made to approve RESOLUTION NO. 2016 – 73R, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA RECOGNIZING THE NOVEMBER 1984 ANTI SIKH VIOLENCE IN INDIA AS "GENOCIDE" by Council member Montijo, and seconded by Council member Derr. Motion carried with the following vote:

AYES: Montijo, Derr, Rodriguez Avalos, Robertson  
NOES: None  
ABSTAIN: None  
ABSENT: None

**CONSIDERATION AND NECESSARY ACTION ON ORDINANCE REPEALING, ADOPTING AND REENACTING VARIOUS CHAPTERS OF THE SELMA CITY CODE RELATING TO THE 2016 CALIFORNIA BUILDING STANDARDS CODE – introduction and first reading:** City Attorney Costanzo explained the proposed Ordinance for Council.

Motion to introduce and waive first reading of AN ORDINANCE REPEALING, ADOPTING AND REENACTING VARIOUS CHAPTER OF THE SELMA CITY CODE RELATING TO THE 2016 CALIFORNIA BUILDING STANDARDS CODE was made by Council member Rodriguez, and seconded by Council member Montijo. Motion carried with the following vote:

AYES: Rodriguez, Montijo, Derr, Avalos, Robertson  
NOES: None  
ABSTAIN: None  
ABSENT: None

**CONSIDERATION AND NECESSARY ACTION ON ORDINANCE REPEALING, ADOPTING AND REENACTING CHAPTERS 32 AND 33 OF TITLE 11 AND REPEALING AND REENACTING CHAPTER 27 OF TITLE 26 OF THE SELMA MUNICIPAL CODE RELATED TO MARIJUANA AND PUBLIC CONSUMPTION OF MARIJUANA** *introduction and first reading:*

City Attorney Costanzo discussed the proposed Ordinance for Council. He explained that with the passage of Proposition 64, recreational cultivation and use of marijuana is immediately legal, under specified conditions, and the sale, distribution and related activities for non-medical marijuana will be legal as soon as the state enacts a licensing program for such operations. He further discussed that the City's current ordinances regulating cultivation, use or sale of marijuana relate specifically to medical marijuana, to continue to regulate cultivation, use and sale of marijuana in substantially the same way as was done previously, alterations of those ordinances are necessary.

Mr. Kyle Hansen, Green Mojave Farm Laboratory, stepped forward to discuss his research based company. He discussed the proposed Ordinance, and asked Council to keep an open mind.

After much discussion, motion to introduce and waive first reading of AN ORDINANCE REPEALING, ADOPTING AND REENACTING CHAPTERS 32 AND 33 OF TITLE 11 AND REPEALING AND REENACTING CHAPTER 27 OF TITLE 26 OF THE SELMA MUNICIPAL CODE RELATED TO MARIJUANA AND PUBLIC CONSUMPTION OF MARIJUANA was made by Council member Derr and seconded by Council member Rodriguez. Motion carried with the following vote:

AYES: Derr, Rodriguez, Montijo, Avalos, Robertson  
NOES: None  
ABSTAIN: None  
ABSENT: None

**DEPARTMENT REPORTS:** Interim City Manager Garner discussed the recent drop in violent crime.

Public Works Director Shiplee reported that his staff has been working on the downtown Christmas decorations.

Fire Chief Kain reported on the Selma Healthcare Foundation donation.

Community Services Director Kirchner reported on the completion of the pickle ball courts.

**COUNCIL REPORTS:** Council member Derr reported on attending the mural ribbon cutting, Starbucks ribbon cutting, Team Selma meeting, Chamber mixer, recent Arts Center play, and the Fresno Veterans Day Parade.

Council member Montijo discussed the Selma Kingsburg Fowler County Sanitation District solar project and McCall Avenue project. She reported on attending the Chamber mixer and a recent food drive. She also invited everyone to an upcoming church event.

Mayor Pro Tem Avalos reported on attending the Starbucks ribbon cutting, and the recent mural tour. He also thanked all city staff.

Mayor Robertson reported on attending the following: mural tour, Starbucks ribbon cutting, TEAM Selma meeting, COG meeting, and Transportation Commission meeting. He discussed an upcoming fundraiser for Second Chance Animal Shelter and the recent election.

**ORAL COMMUNICATIONS:** Mr. Robert Allen, Executive Director of the Selma Chamber of Commerce stepped forward to thank the Public Works staff, and to invite Council to the first annual Christmas parade and the annual Selma Cares event.

**ADJOURNMENT:** There being no further business, the meeting was adjourned at 7:29 p.m.

Respectfully submitted,

Reyna Rivera  
City Clerk

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Scott Robertson  
Mayor of the City of Selma

**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

December 5, 2016

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**ITEM NO:** 3.c.

**SUBJECT:** Consideration and necessary action on Resolution adopting the amended Section 125 Plan ("Cafeteria Plan") year ending December 31, 2017.

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**DISCUSSION:** The City of Selma has a Section 125 Plan ("Cafeteria Plan"). The "Cafeteria Plan" is designed to allow eligible employees to pay for his or her share of contributions under one or more insurance plans on a pre-tax salary reduction basis.

Ameriflex acts as the Third Party Administrator (TPA) providing compliance services for the City of Selma Cafeteria Plan. The City of Selma Section 125 Plan has been amended by Ameriflex to reflect the January 1, 2017 through December 31, 2017 plan year in compliance with Section 125 of the Internal Revenue Code regulations.

<b>COST:</b> <i>(Enter cost of item to be purchased)</i>		<b>BUDGET IMPACT:</b> <i>(Enter amount this non-budgeted item will impact this years' budget – if budgeted, enter NONE).</i>
<b>FUNDING:</b> <i>(Enter the funding source for this item – if fund exists, enter the balance in the fund).</i>		<b>ON-GOING COST:</b> <i>(Enter the amount that will need to be budgeted each year – if one-time cost, enter NONE).</i>
Funding Source:		
Fund Balance:		

**RECOMMENDATION:** Approve Resolution adopting the amended Section 125 Plan (“Cafeteria Plan”) for 2017 in compliance with Section 125 of the Internal Revenue Code regulations.

Tesla Nason 12/1/16  
Tesla Nason, Human Resources Analyst Date

Greg Garner 12/1/16  
Greg Garner, Interim City Manager Date

We \_\_\_\_\_ and \_\_\_\_\_  
Greg Garner, Interim City Manager Isaac Moreno, Interim Financial Director

do hereby agree that the funding for the above is correct and that enough funds exist to cover the expenditure.



**RESOLUTION NO. 2016- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA  
ADOPTING THE AMENDED CAFETERIA PLAN  
YEAR ENDING DECEMBER 31, 2017**

**WHEREAS**, Ameriflex acts as the Third Party Administrator (TPA) providing compliance services for the City of Selma Cafeteria Plan; and

**WHEREAS**, the City of Selma Cafeteria Plan has been amended by Ameriflex to reflect the January 1, 2017 through December 31, 2017 plan year in compliance with Section 125 of the Internal Revenue Code requirements; and

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. That the City of Selma hereby adopts the Cafeteria Plan effective January 1, 2017 through December 31, 2017. Attached hereto as Exhibit A are the Plan Documents and Summary Plan Description.
2. The City Council of the City of Selma authorizes the City Manager to execute and deliver to the Plan Administrator all required plan documents.
3. The City Council of the City of Selma directs Plan Administrator to take such actions that are deemed necessary and proper in order to implement the amended Plan, and to set up adequate accounting and administrative procedures to provide benefits under the Plan.

The foregoing resolution was duly approved at a regular meeting held on the 5<sup>th</sup> day of December, 2016 by the following vote, to wit:

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

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Mayor

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Reyna Rivera  
City Clerk

# **THE CITY OF SELMA CAFETERIA PLAN SUMMARY PLAN DESCRIPTION**

# Introduction

City of Selma sponsors the City of Selma Cafeteria Plan (the "Cafeteria Plan") that allows eligible Employees to choose from a menu of different benefits paid for with pre-tax dollars. (Such plans are also commonly known as "salary reduction plans" or "Section 125 plans").

This Summary Plan Description ("SPD") describes the basic features of the Cafeteria Plan, how it generally operates and how Employees can gain the maximum advantage from it.

PLEASE NOTE: This SPD is for general informational purposes only. It does not describe every detail of the Cafeteria Plan. If there is a conflict between the Cafeteria Plan documents and this SPD, then the Cafeteria Plan documents will control.

## Cafeteria Plan

### **CAF Q-1. How do I pay for City of Selma benefits on a pre-tax basis?**

You may elect to pay for benefits on a pre-tax basis by entering an election with the Employer. At the Employer's option, this may be done with a traditional "paper" salary reduction agreement or it may be done in electronic form. Whatever medium is used, it shall be referred to as a Salary Reduction Agreement for purposes of this SPD.

If you elect to pay for benefits on a pre-tax basis, you agree to a salary reduction to pay for your share of the cost of coverage with pretax funds instead of receiving a corresponding amount of your regular pay that would otherwise be subject to taxes.

Example CAF Q-1(a): Sally is paid an annual salary of \$30,000. Sally elects to pay for \$2,000 worth of benefits for the Plan Year on a pre-tax basis. By doing so, she is electing to reduce her salary, and therefore also her taxable income, by \$2,000 for the year to \$28,000.

From then on, you must pay contributions for such coverage by having that portion deducted from each paycheck on a pre-tax basis (generally an equal portion from each paycheck, or an amount otherwise agreed to or as deemed appropriate by the Plan Administrator).

Example CAF Q-1(b): Using the same facts from Example Q-1(a), suppose Sally is paid 26 times a year (bi-weekly). Because she has elected \$2,000 in benefits, she will have \$76.92 deducted from each paycheck for the year (\$2,000 divided by 26 paychecks equals \$76.92).

### **CAF Q-2. What benefits may be elected under the Cafeteria Plan?**

The Cafeteria Plan includes the following benefit plans:

The Premium Payment Component permits an Employee to pay for his or her share of contributions for insurance plans with pretax dollars. Under the City of Selma Cafeteria Plan, these benefits may include:

- \* Accident
- \* Dental
- \* Hospital Indemnity
- \* Medical

- \* Vision
- \* Other - Colonial Life Supplemental Plans

If you select any or all of these benefits, you will likely pay all or some of the contributions; the Employer may contribute some or no portion of them. The applicable amounts will be described in documents furnished separately to you as necessary from time to time.

The Employer may at its own discretion offer cash in lieu of benefits for participants who do not choose benefits. If the Employer does choose this option, participants will be informed through other communications.

**CAF Q-3. Who can participate in the Cafeteria Plan?**

Employees who are working 20 hours per week or more are eligible to participate in the Cafeteria Plan following 30 days of employment with the Employer, provided that the election procedures in CAF Q-5 are followed.

An "Employee" is any individual who the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll.

Please note: "Employee" does not include the following:

- (a) any leased employee (including but not limited to those individuals defined as leased employees in Code § 414(n)) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee for the period during which such individual is so classified, whether or not any such individual is on the Employer's W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer;
- (b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer;
- (c) \*\*\*RESERVED\*\*\*;
- (d) any individual considered "self-employed" by the IRS because of an ownership interest in City of Selma;
- or (e) a "seasonal employee."

**CAF Q-4. What tax savings are possible under the Cafeteria Plan?**

You may save both federal income tax and FICA (Social Security/Medicare) taxes by participating in the City of Selma Cafeteria Plan.

Example CAF Q4(a): Suppose Sally pays 15% in federal income taxes for the year. With an annual salary of \$30,000, that could mean as much as \$4,500 in federal income taxes, plus \$2,295 in FICA taxes (calculated at 7.65% of income). But by electing \$2,000 of cafeteria plan benefits for the year, Sally lowers her income by \$2,000, meaning she is only taxed on \$28,000. This comes out to \$4,200 in income tax plus \$2,142 in FICA tax. That's a \$453 tax savings for the year.

**(Caution:** This example is intended to illustrate the general effect of "pre-taxing" benefits through a cafeteria plan. It does not take into account the effects of filing status, tax exemptions, tax deductions and other factors affecting tax liability. Furthermore, the amount of the contributions used in this example is not meant to reflect your actual contributions. It is also not intended to reflect specifically upon your particular tax situation. You are encouraged to consult with your accountant or other professional tax advisor with regard to your particular tax situation, especially with regard to state and local taxes.)

**CAF Q-5. When does participation begin and end in the Cafeteria Plan?**

After you satisfy the eligibility requirements, you can become a Participant on the first day of the next calendar month by electing benefits in a manner such as described in CAF Q-1. An eligible Employee who does not elect benefits will not be able to elect any benefits under the Cafeteria Plan until the next Open Enrollment Period (unless a "Change in Election Event" occurs, as explained in CAF Q-7).

An Employee continues to participate in the Cafeteria Plan until (a) termination of the Cafeteria Plan; or (b) the date on which the Participant ceases to be an eligible Employee (because of retirement, termination of employment, layoff, reduction of hours, or any other reason). However, for purposes of pre-taxing COBRA coverage for Health Insurance Benefits, certain Employees may be able to continue eligibility in the Cafeteria Plan for certain periods. See CAF Q-8 and CAF Q-12 for more information about this as information about how termination of participation affects your Benefits.

**CAF Q-6. What is meant by "Open Enrollment Period" and "Plan Year"?**

The "Open Enrollment Period" is the period during which you have an opportunity to participate under the Cafeteria Plan by electing to do so. (See Q-5.) You will be notified of the timing and duration of the Open Enrollment Period, which for any new Plan Year generally will occur during the quarter preceding the new Plan Year.

The Plan Year for the City of Selma Cafeteria Plan is the period beginning on January 01 2017 and ending on December 31 2017.

**CAF Q-7. Can I change my elections under the Cafeteria Plan during the Plan Year?**

Except in the case of HSA elections, you generally cannot change your election to participate in the Cafeteria Plan or vary the salary reduction amounts that you have selected during the Plan Year (this is known as the "irrevocability rule"). Of course, you can change your elections for benefits and salary reductions during the Open Enrollment Period, but those election changes will apply only for the following Plan Year.

However, there are several important exceptions to the irrevocability rule, many of which have to do with events in your personal or professional life that may occur during the Plan Year.

Here are the exceptions to the irrevocability rule:

**1. Leaves of Absence**

You may change an election under the Cafeteria Plan upon FMLA and non-FMLA leave only as described in CAF Q-14.

**2. Change in Status.**

If one or more of the following Changes in Status occur, you may revoke your old election and make a new election, provided that both the revocation and new election are on account of and correspond with the Change in Status (as described in item 3 below). Those occurrences that qualify as a Change in Status include the events described below, as well as any other events that the Plan Administrator, in its sole discretion and on a uniform and consistent basis, determines are permitted under IRS regulations:

- \* a change in your legal marital status (such as marriage, death of a Spouse, divorce, legal separation, or annulment);
- \* a change in the number of your Dependents (such as the birth of a child, adoption or placement for adoption of a Dependent, or death of a Dependent);
- \* any of the following events that change the employment status of you, your Spouse, or your Dependent and that affect benefits eligibility under a cafeteria plan (including this Cafeteria Plan) or other employee benefit plan of you, your

Spouse, or your Dependents. Such events include any of the following changes in employment status: termination or commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; a change in worksite; switching from salaried to hourly-paid, union to non-union, or full-time to part-time (or vice versa); incurring a reduction or increase in hours of employment; or any other similar change that makes the individual become (or cease to be) eligible for a particular employee benefit;

\* an event that causes your Dependent to satisfy or cease to satisfy an eligibility requirement for a particular benefit (such as an employee's child covered as a dependent by an accident or health plan who turns 27 during the taxable year); or

\* a change in your, your Spouse's, or your Dependent's place of residence.

### **3. Change in Status - Other Requirements.**

If you wish to change your election based on a Change in Status, you must establish that the revocation is on account of and corresponds with the Change in Status. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, shall determine whether a requested change is on account of and corresponds with a Change in Status. As a general rule, a desired election change will be found to be consistent with a Change in Status event if the event affects coverage eligibility.

In addition, you must satisfy the following specific requirements in order to alter your election based on that Change in Status:

\* *Loss of Spouse or Dependent Eligibility; Special COBRA Rules.* For Health Insurance Benefits, a special rule governs which type of election changes are consistent with the Change in Status. For a Change in Status involving your divorce, annulment, or legal separation from your Spouse, the death of your Spouse or your Dependent, or your Dependent's ceasing to satisfy the eligibility requirements for coverage, you may elect only to cancel the accident or health benefits for the affected Spouse or Dependent. A change in election for any individual other than your Spouse involved in the divorce, annulment, or legal separation, your deceased Spouse or Dependent, or your Dependent that ceased to satisfy the eligibility requirements would fail to correspond with that Change in Status.

However, if you, your Spouse, or your Dependent elects COBRA continuation coverage under the Employer's plan because you ceased to be eligible because of a reduction of hours or because your Dependent ceases to satisfy eligibility requirements for coverage, and if you remain a Participant under the terms of this Cafeteria Plan, then you may in certain circumstances be able to increase your contributions to pay for such coverage. See CAF Q-12.

\* *Gain of Coverage Eligibility Under Another Employer's Plan.* For a Change in Status in which you, your Spouse, or your Dependent gains eligibility for coverage under another Employer's cafeteria plan (or qualified benefit plan) as a result of a change in your marital status or a change in your, your Spouse's, or your Dependent's employment status, your election to cease or decrease coverage for that individual under the Cafeteria Plan would correspond with that Change in Status only if coverage for that individual becomes effective or is increased under the other Employer's plan.

**4. Special Enrollment Rights.** In certain circumstances, enrollment for Health Insurance Benefits may occur outside the Open Enrollment Period, as explained in materials provided to you separately describing the Health Insurance Benefits. When a special enrollment right explained in those separate documents applies to your Medical Insurance Benefits, you may change your election under the Cafeteria Plan to correspond with the special enrollment right. Special enrollments may also be available as a result of a loss of eligibility for Medicaid or for coverage under a state children's health insurance program (SCHIP) or as a result of eligibility for a state premium assistance subsidy under the plan from Medicaid or SCHIP.

**5. Certain Judgments, Decrees, and Orders.** If a judgment, decree, or order from a divorce, separation, annulment, or custody change requires your child (including a foster child who is your Dependent) to be covered under the Health Insurance Benefits, you may change your election to provide coverage for the child. If the order requires that another individual (such as your former Spouse) cover the child, then you may change your election to revoke coverage for the child, provided that such coverage is, in fact, provided for the child.

**6. Medicare or Medicaid.** If you, your Spouse, or your Dependent becomes entitled to (i.e., becomes enrolled in) Medicare or Medicaid, then you may reduce or cancel that person's accident or health coverage under the Medical Insurance Plan. Similarly, if you, your Spouse, or your Dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, then you may elect to commence or increase that person's accident or health coverage.

**7. Change in Cost.** If the cost charged to you for your Health Insurance Benefits significantly increases during the Plan Year, then you may choose to do any of the following: (a) make a corresponding increase in your contributions; (b) revoke your election and receive coverage under another benefit package option (if any) that provides similar coverage, or elect similar coverage under the plan of your Spouse's employer; or (c) drop your coverage, but only if no other benefit package option provides similar coverage. Coverage under another employer plan, such as the plan of a Spouse's or Dependent's employer, may be treated as similar coverage if it otherwise meets the requirements of similar coverage.) If the cost of Health Insurance significantly decreases during the Plan Year, then the Plan Administrator may permit the following election changes: (a) if you are enrolled in the benefit package option that has decreased in cost, you may make a corresponding decrease in your contributions; (b) if you are enrolled in another benefit package option (such as the HMO option under the Medical Insurance Plan), you may change your election on a prospective basis to elect the benefit package option that has decreased in cost (such as the PPO option under the Medical Insurance Plan); or (c) if you are otherwise eligible, you may elect the benefit package option that has decreased in cost on a prospective basis, subject to the terms and limitations of the benefit package option.

For insignificant increases or decreases in the cost of benefits, however, the Plan Administrator will automatically adjust your election contributions to reflect the minor change in cost.

The Plan Administrator generally will notify you of increases or decreases in the cost of Health Insurance benefits.

**8. Change in Coverage.** You may also change your election if one of the following events occurs:

\* *Significant Curtailment of Coverage.* If your Health Insurance Benefits coverage is significantly curtailed without a loss of coverage (for example, when there is an increase in the deductible under the Medical Insurance Benefits), then you may revoke your election for that coverage and elect coverage under another benefit package option that provides similar coverage. (Coverage under a plan is significantly curtailed only if there is an overall reduction of coverage under the plan generally loss of one particular physician in a network does not constitute significant curtailment.) If your Health Insurance Benefits coverage is significantly curtailed with a loss of coverage (for example, if you lose all coverage under the option by reason of an overall lifetime or annual limitation), then you may either revoke your election and elect coverage under another benefit package option that provides similar coverage, elect similar coverage under the plan of your Spouse's employer, or drop coverage, but only if there is no option available under the plan that provides similar coverage. (The Plan Administrator generally will notify you of significant curtailments in Medical Insurance Benefits coverage.)

\* *Addition or Significant Improvement of Cafeteria Plan Option.* If the Cafeteria Plan adds a new option or significantly improves an existing option, then the Plan Administrator may permit Participants who are enrolled in an option other than the new or improved option to elect the new or improved option. Also, the Plan Administrator may permit eligible Employees to elect the new or improved option on a prospective basis, subject to limitations imposed by the applicable option.

\* *Loss of Other Group Health Coverage.* You may change your election to add group health coverage for you, your Spouse, or your Dependent, if any of you loses coverage under any group health coverage sponsored by a governmental or educational institution (for example, a state children's health insurance program or certain Indian tribal programs).

\* *Change in Election Under Another Employer Plan.* You may make an election change that is on account of and corresponds with a change made under another employer plan (including a plan of the Employer or a plan of your Spouse's or Dependent's employer), so long as (a) the other cafeteria plan or qualified benefits plan permits its participants to make an election change permitted under the IRS regulations; or (b) the Cafeteria Plan permits you to make an election for a period of coverage (for example, the Plan Year) that is different from the period of coverage under the other cafeteria plan or qualified benefits plan, which it does.

For example, if an election to drop coverage is made by your Spouse during his or her Employer's open enrollment, you may add coverage under the Cafeteria Plan to replace the dropped coverage.

**9. Intention or Need to Obtain Coverage through a Marketplace Established under the Affordable Care Act.**

You may revoke your Health Insurance Benefits coverage mid-Plan Year if either one of the following applies:

- \* You are seeking to enroll yourself and any other related individuals in coverage to be obtained through a Marketplace.
- \* You have experienced a reduction of hours and reasonably expect to be working less than 30 hours for the foreseeable future and will seek coverage to be obtained through a Marketplace.

**CAF Q-8. What happens if my employment ends during the Plan Year or I lose eligibility for other reasons?**

If your employment with the Employer is terminated during the Plan Year, then your active participation in the Cafeteria Plan will cease and you will not be able to make any more contributions to the Cafeteria Plan for Insurance Benefits.

See CAF Q-12 for information on your right to continued or converted group health coverage after termination of your employment.

For purposes of pre-taxing COBRA coverage for Health Insurance Benefits, certain Employees may be able to continue eligibility in the Cafeteria Plan for certain periods. See CAF Q-12.

If you are rehired within the same Plan Year and are eligible for the Cafeteria Plan, then you may make new elections, provided that you are rehired more than 30 days after you terminated employment. If you are rehired within 30 days or less during the same Plan Year, then your prior elections will be reinstated.

If you cease to be an eligible Employee for reasons other than termination of employment, such as a reduction of hours, then you must complete the waiting period described in CAF Q-3 before again becoming eligible to participate in the Plan.

**CAF Q-9. \*\*\*RESERVED\*\*\***

**CAF Q-10. How long will the Cafeteria Plan remain in effect?**

Although the Employer expects to maintain the Cafeteria Plan indefinitely, it has the right to amend or terminate all or any part of the Cafeteria Plan at any time for any reason. It is also possible that future changes in state or federal tax laws may require that the Cafeteria Plan be amended accordingly.

**CAF Q-11. What happens if my claim for benefits is denied?**

*Insurance Benefits*

The applicable insurance company will decide your claim in accordance with its claims procedures. If your claim is denied, you may appeal to the insurance company for a review of the denied claim. If you don't appeal on time, you will lose your right to file suit in a state or federal court, as you will not have exhausted your internal administrative appeal rights (which generally is a prerequisite to bringing a suit in state or federal court). For more information about how to file a claim and for details regarding the medical insurance company's claims procedures, consult the claims procedure applicable under that plan or policy, as described in the plan document or summary plan description for the Insurance Plan.



## *Appeals.*

If your claim is denied in whole or part, then you (or your authorized representative) may request review upon written application to the "Committee" (the Benefits Committee that acts on behalf of the Plan Administrator with respect to appeals). Your appeal must be made in writing within 180 days after your receipt of the notice that the claim was denied. If you do not appeal on time, you will lose the right to appeal the denial and the right to file suit in court. Your written appeal should state the reasons that you feel your claim should not have been denied. It should include any additional facts and/or documents that you feel support your claim. You will have the opportunity to ask additional questions and make written comments, and you may review (upon request and at no charge) documents and other information relevant to your appeal.

## *Decision on Review.*

Your appeal will be reviewed and decided by the Committee or other entity designated in the Plan in a reasonable time not later than 60 days after the Committee receives your request for review. The Committee may, in its discretion, hold a hearing on the denied claim. Any medical expert consulted in connection with your appeal will be different from and not subordinate to any expert consulted in connection with the initial claim denial. The identity of a medical expert consulted in connection with your appeal will be provided. If the decision on review affirms the initial denial of your claim, you will be furnished with a notice of adverse benefit determination on review setting forth:

- \* the specific reason(s) for the decision on review;
- \* the specific Plan provision(s) on which the decision is based;
- \* a statement of your right to review (upon request and at no charge) relevant documents and other information;
- \* if an internal rule, guideline, protocol, or other similar criterion is relied on in making the decision on review, then a description of the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied on and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to you upon request; and
- \* a statement of your right to bring suit under ERISA § 502(a) (where applicable).

## **CAF Q-12. What is "Continuation Coverage" and how does it work?**

### *COBRA*

If you have elect Health Insurance Benefits under this Plan, you may have certain rights to the continuation of such benefits after a "Qualifying Event" (e.g., a termination of employment). See Appendix B of this SPD for a detailed description of your rights to "continuation coverage" under COBRA.

### *USERRA*

Continuation and reinstatement rights may also be available if you are absent from employment due to service in the uniformed services pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). More information about coverage under USERRA is available from the Plan Administrator.

## **CAF Q-13. How will participating in the Cafeteria Plan affect my Social Security and other benefits?**

Participating in the Cafeteria Plan will reduce the amount of your taxable income, which may result in a decrease in your Social Security benefits and/or other benefits which are based on taxable income. However, the tax savings that you realize through Cafeteria Plan participation will often more than offset any reduction in other benefits. If you are still unsure, you are encouraged to consult with your accountant or other tax advisor.

## **CAF Q-14. How do leaves of absence (such as under FMLA) affect my benefits?**

### *FMLA Leaves of Absence.*

If the Employer is subject to the federal Family and Medical Leave Act of 1993 and you go on a qualifying leave under the FMLA, then to the extent required by the FMLA your Employer will continue to maintain your Health Insurance Benefits on the same terms and conditions as if you were still active (that is, your Employer will continue to pay its share of the contributions to the extent that you opt to continue coverage). Your Employer may require you to continue all Medical Insurance Benefits coverage while you are on paid leave (so long as Participants on non-FMLA paid leave are required to continue coverage). If so, you will pay your share of the contributions by the method normally used during any paid leave (for example, on a pre-tax salary-reduction basis).

If you are going on unpaid FMLA leave (or paid FMLA leave where coverage is not required to be continued) and you opt to continue your Insurance Benefits, then you may pay your share of the contributions in one of three ways: (a) with after-tax dollars while on leave; (b) with pretax dollars to the extent that you receive compensation during the leave, or by pre-paying all or a portion of your share of the contributions for the expected duration of the leave on a pre-tax salary reduction basis out of your pre-leave compensation, including unused sick days and vacation days (to pre-pay in advance, you must make a special election before such compensation normally would be available to you (but note that prepayments with pre-tax dollars may not be used to pay for coverage during the next Plan Year); or (c) by other arrangements agreed upon by you and the Plan Administrator (for example, the Plan Administrator may pay for coverage during the leave and withhold amounts from your compensation upon your return from leave).

If your Employer requires all Participants to continue Insurance Benefits during the unpaid FMLA leave, then you may discontinue paying your share of the required contributions until you return from leave. Upon returning from leave, you must pay your share of any required contributions that you did not pay during the leave. Payment for your share will be withheld from your compensation either on a pre-tax or after-tax basis, depending on what you and the Plan Administrator agree to.

If your Health Insurance coverage ceases while you are on FMLA leave (e.g., for non-payment of required contributions), you will be permitted to re-enter such Benefits, as applicable, upon return from such leave on the same basis as when you were participating in the Plan before the leave or as otherwise required by the FMLA. You may be required to have coverage for such Benefits reinstated so long as coverage for Employees on non-FMLA leave is required to be reinstated upon return from leave.

If you are commencing or returning from FMLA leave, then your election for non-health benefits provided under this Plan, if any, will be treated in the same way as under your Employer's policy for providing such Benefits for Participants on a non-FMLA leave (see below). If that policy permits you to discontinue contributions while on leave, then upon returning from leave you will be required to repay the contributions not paid by you during leave. Payment will be withheld from your compensation either on a pre-tax or after-tax basis, as agreed to by the Plan Administrator and you or as the Plan Administrator otherwise deems appropriate.

#### *Non-FMLA Leaves of Absence.*

If you go on an unpaid leave of absence that does not affect eligibility, then you will continue to participate and the contribution due from you (if not otherwise paid by your regular salary reductions) will be paid by pre-payment before going on leave, with after-tax contributions while on leave, or with catch-up contributions after the leave ends, as determined by the Plan Administrator. If you go on an unpaid leave that does affect eligibility, then the Change in Status rules will apply.

## **Premium Payment Benefits**

**PREM Q-1. What are "Premium Payment Benefits"?**

As described in CAF Q-1, if you elect Premium Payment Benefits you will be able to pay for your share of contributions for Insurance Benefits with pre-tax dollars by electing to do so. Because the share of the contributions that you pay will be with pre-tax funds, you may save both federal income taxes and FICA (Social Security) taxes. See Q-4.

#### **PREM Q-2. How are my Premium Payment Benefits paid?**

As described in CAF Q-1 and in PREM Q-1, if you select an Insurance Plan described in CAF Q-2, then you may be required to pay a portion of the contributions. When you complete the Election Form/Salary Reduction Agreement, if you elect to pay for benefits on a pre-tax basis you agree to a salary reduction to pay for your share of the cost of coverage (also known as contributions) with pre-tax funds instead of receiving a corresponding amount of your regular pay that would otherwise be subject to taxes. From then on, you must pay a contribution for such coverage by having that portion deducted from each paycheck on a pre-tax basis (generally an equal portion from each paycheck, or an amount otherwise agreed to or as deemed appropriate by the Plan Administrator).

The Employer may contribute all, some, or no portion of the Premium Payment Benefits that you have selected, as described in documents furnished separately to you from time to time.

## **Miscellaneous**

#### **MISC Q-1**

##### **What are my ERISA Rights?**

The Cafeteria Plan is not an ERISA welfare benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA). The SPDs of the various benefits components of the Plan will describe your rights under ERISA, if applicable, under that component.

Regardless, a participant in the Cafeteria Plan, you are entitled to certain rights and protections under ERISA. ERISA provides that all participants shall be entitled to:

- \* Examine, without charge, at the Plan Administrator's office and at other specified locations (such as worksites) all documents governing the Plan, including insurance contracts, and a copy of the latest annual report (Form 5500 Series), if any, filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration;
- \* Obtain, upon written request to the Administrator, copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The Plan Administrator may make a reasonable charge for the copies); and
- \* Receive a summary of the Plan's annual financial report, if any. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

**COBRA and HIPAA Rights.** You have a right to continue your Health Insurance Plan coverage for yourself if there is a loss of coverage under the plan as a result of a qualifying event. You or your dependents may have to pay for such coverage. Review this SPD and the documents governing the plan on the rules governing your COBRA continuation coverage rights.

**HIPAA Privacy Rights.** Under another provision of HIPAA, group health plans are required to take steps to ensure that certain "protected health information" (PHI) is kept confidential. You may receive a separate notice from the Employer (or medical insurers) that outlines its health privacy policies.

**Fiduciary Obligations.** In addition to creating rights for participants, ERISA imposes duties upon the people who are

responsible for the operation of the employee benefits plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other participants.

**No Discrimination.** No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a plan benefit or exercising your rights under ERISA.

**Right to Review.** If your claim for a benefit is denied or ignored in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

**Enforcing Your Rights.** Under ERISA, there are steps that you can take to enforce these rights. For instance, if you request a copy of plan documents or the latest annual report (if any) from the plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive them, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If you have a claim for benefits that is denied or ignored in whole or in part, then you may file suit in a state or federal court (but only if you have first filed your claim under the Plan's claims procedures and, if applicable, filed a timely appeal of any denial of your claim).

If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

**Assistance With Your Questions.** If you have any questions about your plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA or HIPAA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration

#### **MISC Q-2. What other general information should I know?**

This MISC Q-2 contains certain general information that you may need to know about the Plan.

#### **Plan Information**

Official Name of the Plan: City of Selma Cafeteria Plan

Plan Number: 501

Effective Date: January 01 2017.

Plan Year: January 01 2017 to December 31 2017. Your Plan's records are maintained on this period of time

Type of Plan: Welfare plan providing various insurance benefits

#### **Employer/Plan Sponsor Information**

Name and Address:

City of Selma

1710 Tucker Street  
Selma, CA 93662

Federal employee tax identification number (EIN): 946000431

**Plan Administrator Information**

Name, Address, and business telephone number:

City of Selma  
1710 Tucker Street  
Selma, CA 93662  
Attention: Human Resources Manager  
Telephone: 5598912200

**Agent for Service of Legal Process**

The name and address of the Plan's agent for service of legal process is:

City of Selma  
1710 Tucker Street  
Selma, CA 93662  
Attention: Benefits Committee

**Qualified Medical Child Support Order**

The Health Insurance Plans will provide benefits as required by any qualified medical child support order (QMCSO), as defined in ERISA § 609(a). The Plan has detailed procedures for determining whether an order qualifies as a QMCSO. Participants and beneficiaries can obtain, without charge, a copy of such procedures from the Plan Administrator.

**Newborns' and Mothers' Health Protection Act of 1996**

Group health plans and health insurance issuers generally may not, under federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery or to less than 96 hours following a cesarean section. However, federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours, as applicable). In any case, plans and issuers may not, under federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

## Appendix A

**\*\*\*Affiliated Employers\*\*\***

## Appendix B

### **COBRA CONTINUATION COVERAGE RIGHTS under the City of Selma Cafeteria Plan (the "Plan")**

The following paragraphs generally explain COBRA coverage, when it may become available to you and your family, and what you need to do to protect the right to receive it. PLEASE READ THE FOLLOWING CAREFULLY.

The City of Selma Cafeteria Plan has group health insurance components and you may be enrolled in one or more of these components. COBRA (and the description of COBRA coverage contained in this SPD) applies only to the group health plan benefits offered under the Plan and not to any other benefits offered under the Plan or by City of Selma. The Plan provides no greater COBRA rights than what COBRA requires - nothing in this SPD is intended to expand your rights beyond COBRA's requirements.

#### **What Is COBRA Coverage?**

COBRA coverage is a continuation of Plan coverage when coverage would otherwise end because of a life event known as a "qualifying event." Specific qualifying events are listed below in the section entitled "Who Is Entitled to Elect COBRA?"

*COBRA coverage may become available to "qualified beneficiaries"*

After a qualifying event occurs and any required notice of that event is properly provided to City of Selma, COBRA coverage must be offered to each person losing Plan coverage who is a "qualified beneficiary." You, your spouse, and your dependent children could become qualified beneficiaries and would be entitled to elect COBRA if coverage under the Plan is lost because of the qualifying event. (Certain newborns, newly adopted children, and alternate recipients under QMCSOs may also be qualified beneficiaries. This is discussed in more detail in separate paragraphs below.)

#### **Who Is Entitled to Elect COBRA?**

We use the pronoun "you" in the following paragraphs regarding COBRA to refer to each person covered under the Plan who is or may become a qualified beneficiary.

##### *Qualifying events for the covered employee*

If you are an employee, you will be entitled to elect COBRA if you lose your group health coverage under the Plan because either one of the following qualifying events happens:

- \* your hours of employment are reduced; or
- \* your employment ends for any reason other than your gross misconduct.

##### *Qualifying events for the covered spouse*

If you are the spouse of an employee, you will be entitled to elect COBRA if you lose your group health coverage under the Plan because any of the following qualifying events happens:

- \* your spouse dies;
- \* your spouse's hours of employment are reduced;
- \* your spouse's employment ends for any reason other than his or her gross misconduct;
- \* you become divorced or legally separated from your spouse. Also, if your spouse (the employee) reduces or eliminates your group health coverage in anticipation of a divorce or legal separation, and a divorce or legal separation later occurs, then the divorce or legal separation may be considered a qualifying event for you even though your coverage was reduced or eliminated before the divorce or separation.

### *Qualifying events for dependent children*

If you are the dependent child of an employee, you will be entitled to elect COBRA if you lose your group health coverage under the Plan because any of the following qualifying events happens:

- \* your parent-employee dies;
- \* your parent-employee's hours of employment are reduced;
- \* your parent-employee's employment ends for any reason other than his or her gross misconduct;
- \* you stop being eligible for coverage under the Plan as a "dependent child."

### *Electing COBRA after leave under the Family and Medical Leave Act (FMLA)*

Under special rules that apply if an employee does not return to work at the end of an FMLA leave, some individuals may be entitled to elect COBRA even if they were not covered under the Plan during the leave. Contact City of Selma for more information about these special rules.

### *Special second election period for certain eligible employees who did not elect COBRA*

Certain employees and former employees who are eligible for federal trade adjustment assistance (TAA) or alternative trade adjustment assistance (ATAA) are entitled to a second opportunity to elect COBRA for themselves and certain family members (if they did not already elect COBRA) during a special second election period of 60 days or less (but only if the election is made within six months after Plan coverage is lost).

### **When Is COBRA Coverage Available?**

When the qualifying event is the end of employment, reduction of hours of employment, or death of the employee, the Plan will offer COBRA coverage to qualified beneficiaries. You need not notify City of Selma of any of these qualifying events.

#### **Caution:**

You stop being eligible for coverage as dependent child whenever you fail to satisfy any part of the plan's definition of dependent child.

### *You must notify the plan administrator of certain qualifying events by this deadline*

For the other qualifying events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), a COBRA election will be available to you only if you notify City of Selma in writing within 60 days after the later of (1) the date of the qualifying event; or (2) the date on which the qualified beneficiary loses (or would lose) coverage under the terms of the Plan as a result of the qualifying event.

### *No COBRA election will be available unless you follow the Plan's notice procedures and meet the notice deadline*

In providing this notice, you must use the Plan's form entitled "Notice of Qualifying Event Form" and you must follow the notice procedures specified in the section below entitled "Notice Procedures." If these procedures are not followed or if the notice is not provided to City of Selma during the 60-day notice period, **YOU WILL LOSE YOUR RIGHT TO ELECT COBRA.**

### *How to elect COBRA*

To elect COBRA, you must complete the Election Form that is part of the Plan's COBRA election notice and mail or hand-deliver it to City of Selma. An election notice will be provided to qualified beneficiaries at the time of a qualifying



event. You may also obtain a copy of the Election Form from City of Selma.

#### *Deadline for COBRA election*

If mailed, your election must be postmarked (or if hand-delivered, your election must be received by the individual at the address specified on the Election Form) no later than 60 days after the date of the COBRA election notice provided to you at the time of your qualifying event (or, if later, 60 days after the date that Plan coverage is lost). **IF YOU DO NOT SUBMIT A COMPLETED ELECTION FORM BY THIS DUE DATE, YOU WILL LOSE YOUR RIGHT TO ELECT COBRA.**

#### *Independent election rights*

Each qualified beneficiary will have an independent right to elect COBRA.

Any qualified beneficiary for whom COBRA is not elected within the 60-day election period specified in the Plan's COBRA election notice **WILL LOSE HIS OR HER RIGHT TO ELECT COBRA COVERAGE.**

### **Special Considerations in Deciding Whether to Elect COBRA**

In considering whether to elect COBRA, you should take into account that a failure to elect COBRA will affect your future rights under federal law. You have the right to request special enrollment in another group health plan for which you are otherwise eligible (such as a plan sponsored by your spouse's employer) within 30 days after your group health coverage under the Plan ends because of one of the qualifying events listed above. You will also have the same special enrollment right at the end of COBRA coverage if you get COBRA coverage for the maximum time available to you.

### **Length of COBRA Coverage**

COBRA coverage is a temporary continuation of coverage. The COBRA coverage periods described below are maximum coverage periods.

COBRA coverage can end before the end of the maximum coverage period for several reasons, which are described in the section below entitled "Termination of COBRA Coverage Before the End of the Maximum Coverage Period."

#### *Death, divorce, legal separation, or child's loss of dependent status*

When Plan coverage is lost due to the death of the employee, the covered employee's divorce or legal separation, or a dependent child's losing eligibility as a dependent child, COBRA coverage under the Plan's Medical and Dental components can last for up to a total of 36 months.

*If the covered employee becomes entitled to Medicare within 18 months before his or her termination of employment or reduction of hours.*

When Plan coverage is lost due to the end of employment or reduction of the employee's hours of employment, and the employee became entitled to Medicare benefits less than 18 months before the qualifying event, COBRA coverage under the Plan's Medical and Dental components for qualified beneficiaries (other than the employee) who lose coverage as a result of the qualifying event can last until up to 36 months after the date of Medicare entitlement. For example, if a covered employee becomes entitled to Medicare eight months before the date on which his employment terminates, COBRA coverage for his spouse and children who lost coverage as a result of his termination can last up to 36 months after the date of Medicare entitlement, which is equal to 28 months after the date of the qualifying event (36 months minus eight months). This COBRA coverage period is available only if the covered employee becomes entitled to Medicare within 18 months **BEFORE** the termination or reduction of hours.

#### *Termination of employment or reduction of hours*

Otherwise, when Plan coverage is lost due to the end of employment or reduction of the employee's hours of employment, COBRA coverage under the Plan's Medical and Dental components generally can last for only up to a total of 18 months.

### **Extension of Maximum Coverage Period**

If the qualifying event that resulted in your COBRA election was the covered employee's termination of employment or reduction of hours, an extension of the maximum period of coverage may be available if a qualified beneficiary is disabled or a second qualifying event occurs. You must notify City of Selma of a disability or a second qualifying event in order to extend the period of COBRA coverage. Failure to provide notice of a disability or second qualifying event will eliminate the right to extend the period of COBRA coverage.

#### *Disability extension of COBRA coverage*

If a qualified beneficiary is determined by the Social Security Administration to be disabled and you notify City of Selma in a timely fashion, all of the qualified beneficiaries in your family may be entitled to receive up to an additional 11 months of COBRA coverage, for a total maximum of 29 months. This extension is available only for qualified beneficiaries who are receiving COBRA coverage because of a qualifying event that was the covered employee's termination of employment or reduction of hours. The disability must have started at some time before the 61st day after the covered employee's termination of employment or reduction of hours and must last at least until the end of the period of COBRA coverage that would be available without the disability extension (generally 18 months, as described above). Each qualified beneficiary will be entitled to the disability extension if one of them qualifies.

#### *You must notify City of Selma of a qualified beneficiary's disability by this deadline*

The disability extension is available only if you notify City of Selma in writing of the Social Security Administration's determination of disability within 60 days after the latest of:

- \* the date of the Social Security Administration's disability determination;
- \* the date of the covered employee's termination of employment or reduction of hours; and
  
- \* the date on which the qualified beneficiary loses (or would lose) coverage under the terms of the Plan as a result of the covered employee's termination of employment or reduction of hours.

You must also provide this notice within 18 months after the covered employee's termination of employment or reduction of hours in order to be entitled to a disability extension.

#### *No disability extension will be available unless you follow the Plan's notice procedures and meet the notice deadline*

In providing this notice, you must use the Plan's form entitled "Notice of Disability Form" and you must follow the notice procedures specified in the section below entitled "Notice Procedures."

If these procedures are not followed or if the notice is not provided to City of Selma during the 60-day notice period and within 18 months after the covered employee's termination of employment or reduction of hours, then there will be no disability extension of COBRA coverage.

#### *Second qualifying event extension of COBRA coverage*

An extension of coverage will be available to spouses and dependent children who are receiving COBRA coverage if a second qualifying event occurs during the 18 months (or, in the case of a disability extension, the 29 months) following the covered employee's termination of employment or reduction of hours. The maximum amount of COBRA coverage

available when a second qualifying event occurs is 36 months. Such second qualifying events may include the death of a covered employee, divorce or legal separation from the covered employee, or a dependent child's ceasing to be eligible for coverage as a dependent under the Plan. These events can be a second qualifying event only if they would have caused the qualified beneficiary to lose coverage under the Plan if the first qualifying event had not occurred. (This extension is not available under the Plan when a covered employee becomes entitled to Medicare after his or her termination of employment or reduction of hours.)

*You must notify City of Selma of a second qualifying event by this deadline*

This extension due to a second qualifying event is available only if you notify City of Selma in writing of the second qualifying event within 60 days after the date of the second qualifying event.

*No extension will be available unless you follow the Plan's notice procedures and meet the notice deadline*

In providing this notice, you must use the Plan's form entitled "Notice of Second Qualifying Event Form" (you may obtain a copy of this form from City of Selma at no charge), and you must follow the notice procedures specified in the section below entitled "Notice Procedures." If these procedures are not followed or if the notice is not provided to City of Selma during the 60-day notice period, then there will be no extension of COBRA coverage due to a second qualifying event.

### **Termination of COBRA Coverage Before the End of the Maximum Coverage Period**

COBRA coverage will automatically terminate before the end of the maximum period if:

- \* any required premium is not paid in full on time;
- \* a qualified beneficiary becomes entitled to Medicare benefits (under Part A, Part B, or both) after electing COBRA;
- \* the employer ceases to provide any group health plan for its employees; or
- \* during a disability extension period, the disabled qualified beneficiary is determined by the Social Security Administration to be no longer disabled (COBRA coverage for all qualified beneficiaries, not just the disabled qualified beneficiary, will terminate).

COBRA coverage may also be terminated for any reason the Plan would terminate coverage of a participant or beneficiary not receiving COBRA coverage (such as fraud).

*You must notify City of Selma if a qualified beneficiary becomes entitled to Medicare or obtains other group health plan coverage*

You must notify City of Selma in writing within 30 days if, after electing COBRA, a qualified beneficiary becomes entitled to Medicare (Part A, Part B, or both) or becomes covered under other group health plan coverage. In addition, if you were already entitled to Medicare before electing COBRA, notify Employer of the date of your Medicare entitlement at the address shown in the section below entitled "Notice Procedures."

*You must notify City of Selma if a qualified beneficiary ceases to be disabled*

If a disabled qualified beneficiary is determined by the Social Security Administration to no longer be disabled, you must notify City of Selma of that fact within 30 days after the Social Security Administration's determination.

### **Cost of COBRA Coverage**

Each qualified beneficiary is required to pay the entire cost of COBRA coverage. The amount a qualified beneficiary may be required to pay may not exceed 102% (or, in the case of an extension of COBRA coverage due to a disability, 150%) of the cost to the group health plan (including both employer and employee contributions) for coverage of a similarly situated plan participant or beneficiary who is not receiving COBRA coverage. The amount of your COBRA premiums may change from time to time during your period of COBRA coverage and will most likely increase over time. You will be

notified of COBRA premium changes.

## **Payment for COBRA Coverage**

### *How premium payments must be made*

All COBRA premiums must be paid by check. Your first payment and all monthly payments for COBRA coverage must be mailed or hand-delivered to the individual at the payment address specified in the election notice provided to you at the time of your qualifying event. However, if the Plan notifies you of a new address for payment, you must mail or hand-deliver all payments for COBRA coverage to the individual at the address specified in that notice of a new address.

### *When premium payments are considered to be made*

If mailed, your payment is considered to have been made on the date that it is postmarked. If hand-delivered, your payment is considered to have been made when it is received by the individual at the address specified above. You will not be considered to have made any payment by mailing or hand-delivering a check if your check is returned due to insufficient funds or otherwise.

### *First payment for COBRA coverage*

If you elect COBRA, you do not have to send any payment with the Election Form. However, you must make your first payment for COBRA coverage not later than 45 days after the date of your election. (This is the date your Election Form is postmarked, if mailed, or the date your Election Form is received by the individual at the address specified for delivery of the Election Form, if hand-delivered.) See the section above entitled "Electing COBRA Coverage."

Your first payment must cover the cost of COBRA coverage from the time your coverage under the Plan would have otherwise terminated up through the end of the month before the month in which you make your first payment. (For example, Sue's employment terminates on September 30, and she loses coverage on September 30. Sue elects COBRA on November 15. Her initial premium payment equals the premiums for October and November and is due on or before December 30, the 45th day after the date of her COBRA election.)

You are responsible for making sure that the amount of your first payment is correct. You may contact City of Selma using the contact information provided below to confirm the correct amount of your first payment. Claims for reimbursement will not be processed and paid until you have elected COBRA and made the first payment for it.

If you do not make your first payment for COBRA coverage in full within 45 days after the date of your election, you will lose all COBRA rights under the Plan.

### *Monthly payments for COBRA coverage*

After you make your first payment for COBRA coverage, you will be required to make monthly payments for each subsequent month of COBRA coverage. The amount due for each month for each qualified beneficiary will be disclosed in the election notice provided to you at the time of your qualifying event. Under the Plan, each of these monthly payments for COBRA coverage is due on the first day of the month for that month's COBRA coverage. If you make a monthly payment on or before the first day of the month to which it applies, your COBRA coverage under the Plan will continue for that month without any break. City of Selma will not send periodic notices of payments due for these coverage periods (that is, we will not send a bill to you for your COBRA coverage - it is your responsibility to pay your COBRA premiums on time).

### *Grace periods for monthly COBRA premium payments*

Although monthly payments are due on the first day of each month of COBRA coverage, you will be given a grace

period of 30 days after the first day of the month to make each monthly payment. Your COBRA coverage will be provided for each month as long as payment for that month is made before the end of the grace period for that payment. However, if you pay a monthly payment later than the first day of the month to which it applies, but before the end of the grace period for the month, your coverage under the Plan will be suspended as of the first day of the month and then retroactively reinstated (going back to the first day of the month) when the monthly payment is received. This means that any claim you submit for benefits while your coverage is suspended may be denied and may have to be resubmitted once your coverage is reinstated.

If you fail to make a monthly payment before the end of the grace period for that month, you will lose all rights to COBRA coverage under the Plan.

### **More Information About Individuals Who May Be Qualified Beneficiaries**

#### *Children born to or placed for adoption with the covered employee during a period of COBRA coverage*

A child born to, adopted by, or placed for adoption with a covered employee during a period of COBRA coverage is considered to be a qualified beneficiary provided that, if the covered employee is a qualified beneficiary, the covered employee has elected COBRA coverage for himself or herself. The child's COBRA coverage begins when the child is enrolled in the Plan, whether through special enrollment or open enrollment, and it lasts for as long as COBRA coverage lasts for other family members of the employee. To be enrolled in the Plan, the child must satisfy the otherwise applicable Plan eligibility requirements (for example, regarding age).

#### *Alternate recipients under QMCSOs*

A child of the covered employee who is receiving benefits under the Plan pursuant to a qualified medical child support order (QMCSO) received by City of Selma during the covered employee's period of employment with City of Selma is entitled to the same rights to elect COBRA as an eligible dependent child of the covered employee.

### **NOTICE PROCEDURES City of Selma Welfare Benefits Plan (the Plan)**

WARNING: If your notice is late or if you do not follow these notice procedures, you and all related qualified beneficiaries will lose the right to elect COBRA (or will lose the right to an extension of COBRA coverage, as applicable).

### **Notices Must Be Written and Submitted on Plan Forms**

Any notice that you provide must be in writing and must be submitted on the Plan's required form (the Plan's required forms are described above in this SPD, and you may obtain copies from City of Selma without charge). Oral notice, including notice by telephone, is not acceptable. Electronic (including e-mailed or faxed) notices are not acceptable.

### **How, When, and Where to Send Notices**

You must mail or hand-deliver your notice to:

Human Resources Manager  
City of Selma  
1710 Tucker Street  
Selma, CA 93662

However, if a different address for notices to the Plan appears in the Plan's most recent summary plan description, you must mail or hand-deliver your notice to that address (if you do not have a copy of the Plan's most recent summary plan description, you may request one from City of Selma).

If mailed, your notice must be postmarked no later than the last day of the applicable notice period. If hand-delivered, your notice must be received by the individual at the address specified above no later than the last day of the applicable notice period. (The applicable notice periods are described in the paragraphs above entitled "You must notify the plan administrator of certain qualifying events by this deadline," "You must notify City of Selma of a qualified beneficiary's disability by this deadline", and "You must notify City of Selma of a second qualifying event by this deadline.")

### **Information Required for All Notices**

Any notice you provide must include (1) the name of the Plan (City of Selma Welfare Benefits Plan); (2) the name and address of the employee who is (or was) covered under the Plan; (3) the name(s) and address(es) of all qualified beneficiary(ies) who lost coverage as a result of the qualifying event; (4) the qualifying event and the date it happened; and (5) the certification, signature, name, address, and telephone number of the person providing the notice.

### **Additional Information Required for Notice of Qualifying Event**

If the qualifying event is a divorce or legal separation, your notice must include a copy of the decree of divorce or legal separation. If your coverage is reduced or eliminated and later a divorce or legal separation occurs, and if you are notifying City of Selma that your Plan coverage was reduced or eliminated in anticipation of the divorce or legal separation, your notice must include evidence satisfactory to City of Selma that your coverage was reduced or eliminated in anticipation of the divorce or legal separation.

### **Additional Information Required for Notice of Disability**

Any notice of disability that you provide must include (1) the name and address of the disabled qualified beneficiary; (2) the date that the qualified beneficiary became disabled; (3) the names and addresses of all qualified beneficiaries who are still receiving COBRA coverage; (4) the date that the Social Security Administration made its determination; (5) a copy of the Social Security Administration's determination; and (6) a statement whether the Social Security Administration has subsequently determined that the disabled qualified beneficiary is no longer disabled.

### **Additional Information Required for Notice of Second Qualifying Event**

Any notice of a second qualifying event that you provide must include (1) the names and addresses of all qualified beneficiaries who are still receiving COBRA coverage; (2) the second qualifying event and the date that it happened; and (3) if the second qualifying event is a divorce or legal separation, a copy of the decree of divorce or legal separation.

### **Who May Provide Notices**

The covered employee, a qualified beneficiary who lost coverage due to the qualifying event described in the notice, or a representative acting on behalf of either may provide notices. A notice provided by any of these individuals will satisfy any responsibility to provide notice on behalf of all qualified beneficiaries who lost coverage due to the qualifying event described in the notice.

**THIS CONCLUDES THE SUMMARY OF YOUR CONTINUATION COVERAGE RIGHTS UNDER COBRA. PLEASE CONTACT THE HUMAN RESOURCES OFFICE (OR THE EQUIVALENT THEREOF) OF CITY OF SELMA IF YOU HAVE ANY QUESTIONS OR NEED MORE INFORMATION.**

# **THE CITY OF SELMA CAFETERIA PLAN**

## ARTICLE I. Introductory Provisions

City of Selma (“the Employer”) hereby establishes the City of Selma Cafeteria Plan (“the Plan”) effective January 01 2017 (“the Effective Date”). Capitalized terms used in this Plan that are not otherwise defined shall have the meanings set forth in Article II.

This Plan is designed to allow an Eligible Employee to pay for his or her share of Contributions under one or more Insurance Plans on a pre-tax Salary Reduction basis.

This Plan is intended to qualify as a “cafeteria plan” under Code § 125 and the regulations issued thereunder. The terms of this document shall be interpreted to accomplish that objective.

Although reprinted within this document, the different components of this Plan shall be deemed separate plans for purposes of administration and all reporting and nondiscrimination requirements imposed on such components by the Code.

## ARTICLE II. Definitions

“**Benefits**” means the Premium Payment Benefits.

“**Benefit Package Option**” means a qualified benefit under Code § 125(f) that is offered under a cafeteria plan, or an option for coverage under an underlying accident or health plan (such as an indemnity option, an HMO option, or a PPO option under an accident or health plan).

“**Change in Status**” has the meaning described in Section 4.6.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Contributions**” means the amount contributed to pay for the cost of Benefits (including self-funded Benefits as well as those that are insured), as calculated under Section 6.2 for Premium Payment Benefits.

“**Committee**” means the Benefits Committee (or the equivalent thereof) of City of Selma

“**Compensation**” means the wages or salary paid to an Employee by the Employer, determined prior to (a) any Salary Reduction election under this Plan; (b) any salary reduction election under any other cafeteria plan; and (c) any compensation reduction under any Code § 132(f)(4) plan; but determined after (d) any salary deferral elections under any Code § 401(k), 403(b), 408(k), or 457(b) plan or arrangement. Thus, “Compensation” generally means wages or salary paid to an Employee by the Employer, as reported in Box 1 of Form W-2, but adding back any wages or salary forgone by virtue of any election described in (a), (b), or (c) of the preceding sentence.

“**Dental Insurance Benefits**” means the Employee’s Dental Insurance Plan coverage for purposes of this Plan.

“**Dental Insurance Plan(s)**” means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan(s)) providing dental benefits through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans



and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

**“Dependent”** means any individual who is a tax dependent of the Participant as defined in Code § 152, with the following exceptions: (a) for purposes of accident or health coverage (to the extent funded under the Premium Payment Component, and for purposes of the Health FSA Component), (1) a dependent is defined as in Code § 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof; and (2) any child to whom IRS Rev. Proc. 2-008-48 applies. Furthermore, notwithstanding anything in the foregoing that may be to the contrary, a “Dependent” shall also include for purposes of any accident or health coverage provided under this plan a child of a Participant who has not attained age 27 by the end of any given taxable year.

**“Earned Income”** means all income derived from wages, salaries, tips, self-employment, and other Compensation (such as disability or wage continuation benefits), but only if such amounts are includible in gross income for the taxable year. Earned income does not include any other amounts excluded from earned income under Code § 32(c)(2), such as amounts received under a pension or annuity or pursuant to workers’ compensation.

**“Effective Date”** of this Plan has the meaning described in Article 1.

**“Election Form/Salary Reduction Agreement”** means the form provided by the Administrator for the purpose of allowing an Eligible Employee to participate in this Plan by electing Salary Reductions to pay for Premium Payment Benefits. This form may be in either paper or electronic form at the Employer’s discretion in accordance with the procedures detailed in Article IV.

**“Eligible Employee”** means an Employee eligible to participate in this Plan, as provided in Section 3.1.

**“Employee”** means an individual that the Employer classifies as a common-law employee and who is on the Employer’s W-2 payroll, but does not include the following: (a) any leased employee (including but not limited to those individuals defined as leased employees in Code § 414(n)) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee for the period during which such individual is so classified, whether or not any such individual is on the Employer’s W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer; (b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer; (c) **\*\*reserved;\*\*** (d) any self-employed individual; (e) any partner in a partnership; (f) any more-than-2% shareholder in a Subchapter S corporation; or (g) a **“seasonal employee”** The term “Employee” does include “former Employees” for the limited purpose of allowing continued eligibility for benefits under the Plan for the remainder of the Plan Year in which an Employee ceases to be employed by the Employer, but only to the extent specifically provided elsewhere under this Plan.

**“Employer”** means City of Selma, and any Related Employer that adopts this Plan with the approval of City of Selma. Related Employers that have adopted this Plan, if any, are listed in Appendix A of this Plan. However, for purposes of Articles XI and XIV and Section 15.3, “Employer” means only City of Selma.

**“Employment Commencement Date”** means the first regularly scheduled working day on which the Employee first performs an hour of service for the Employer for Compensation.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“FMLA”** means the Family and Medical Leave Act of 1993, as amended.

**“Health Insurance Benefits”** means any insurance benefits providing medical or other health insurance coverage through a group insurance policy or policies.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“**HMO**” means the health maintenance organization Benefit Package Option under the Medical Insurance Plan.

“**Hospital Indemnity Benefits**” means the Employee’s Hospital Indemnity Plan coverage for purposes of this Plan.

“**Hospital Indemnity Plan(s)**” means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan(s)) providing certain indemnity benefits in the event of hospitalization or other similar medical event through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

“**HRA**” means a health reimbursement arrangement as defined in IRS Notice 2002-45.

“**Insurance Benefits**” means benefits offered through the Insurance Plans.

“**Insurance Plan(s)**” means a plan or plans offering benefits through a group insurance policy or policies.

“**Medical Insurance Benefits**” means the Employee’s Medical Insurance Plan coverage for purposes of this Plan.

“**Medical Insurance Plan(s)**” means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan), providing major medical type benefits through a group insurance policy or policies (with HMO and PPO options). The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

“**Open Enrollment Period**” with respect to a Plan Year means any period before the beginning of the Plan Year that may be prescribed by the Administrator as the period of time in which Employees who will be Eligible Employees at the beginning of the Plan Year may elect benefits.

“**Participant**” means a person who is an Eligible Employee and who is participating in this Plan in accordance with the provisions of Article III. Participants include (a) those who elect one or more of the Medical Insurance Benefits and (b) those who elect instead to receive their full salary in cash and to pay for their share of their Contributions under the Medical Insurance Plan.

“**Period of Coverage**” means the Plan Year, with the following exceptions: (a) for Employees who first become eligible to participate, it shall mean the portion of the Plan Year following the date on which participation commences, as described in Section 3.1; and (b) for Employees who terminate participation, it shall mean the portion of the Plan Year prior to the date on which participation terminates, as described in Section 3.2.

“**Plan**” means the City of Selma Cafeteria Plan as set forth herein and as amended from time to time.

“**Plan Administrator**” means the City of Selma Human Resources Manager or the equivalent thereof for City of Selma, who has the full authority to act on behalf of the Plan Administrator, except with respect to appeals, for which the Committee has the full authority to act on behalf of the Plan Administrator, as described in Section 13.1.

“**Plan Year**” means the 12-month period commencing January 01 2017 and ending on December 31 2017, except in the case of a short plan year representing the initial Plan Year or where the Plan Year is being changed, in which case the Plan Year shall be the entire short plan year.

“**PPO**” means the preferred provider organization Benefit Package Option under the Medical Insurance Plan.

“**Premium Payment Benefits**” means the Premium Payment Benefits that are paid for on a pre-tax Salary Reduction basis as described in Section 6.1.

“**Premium Payment Component**” means the Component of this Plan described in Article VI.

“**QMCSO**” means a qualified medical child support order, as defined in ERISA § 609(a).

“**Related Employer**” means any employer affiliated with City of Selma that, under Code § 414(b), § 414(c), or § 414(m), is treated as a single employer with City of Selma for purposes of Code § 125(g)(4).

“**Salary Reduction**” means the amount by which the Participant’s Compensation is reduced and applied by the Employer under this Plan to pay for one or more of the Benefits, as permitted for the applicable Component, before any applicable state and/or federal taxes have been deducted from the Participant’s Compensation (i.e., on a pre-tax basis).

“**Spouse**” means an individual who is treated as a spouse for federal tax purposes.

“**Vision Insurance Benefits**” means the Employee’s Vision Insurance Plan coverage for purposes of this Plan.

“**Vision Insurance Plan(s)**” means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan(s)) providing vision benefits through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

## **ARTICLE III. Eligibility and Participation**

### **3.1 Eligibility to Participate**

An individual is eligible to participate in this Plan if the individual: (a) is an Employee; (b) is working 20 hours or more per week; and (c) has been employed by the Employer for a consecutive period of 30 days, counting his or her Employment Commencement Date as the first such day. Eligibility for Premium Payment Benefits may also be subject to the additional requirements, if any, specified in the Medical Insurance Plan. Once an Employee has met the Plan’s eligibility requirements, the Employee may elect coverage effective the first day of the next calendar month, in accordance with the procedures described in Article IV.

### **3.2 Termination of Participation**

A Participant will cease to be a Participant in this Plan upon the earlier of:

- the termination of this Plan; or
- the date on which the Employee ceases (because of retirement, termination of employment, layoff, reduction of hours, or any other reason) to be an Eligible Employee. Notwithstanding the foregoing, for purposes of pre-taxing COBRA coverage certain Employees may continue eligibility for certain periods on the terms and subject to the restrictions described in Section 6.4 for Insurance Benefits.

Termination of participation in this Plan will automatically revoke the Participant’s elections. The Medical Insurance Benefits will terminate as of the date specified in the Medical Insurance Plan.

### **3.3 Participation Following Termination of Employment or Loss of Eligibility**

If a Participant terminates his or her employment for any reason, including (but not limited to) disability, retirement, layoff, or voluntary resignation, and then is rehired within 30 days or less after the date of a termination of employment, then the Employee will be reinstated with the same elections that such individual had before termination. If a former Participant is rehired more than 30 days following termination of employment and is otherwise eligible to participate in the Plan, then the individual may make new elections as a new hire as described in Section 3.1. Notwithstanding the above, an election to participate in the Premium Payment Component will be reinstated only to the extent that coverage under the Medical Insurance Plan (here, major medical insurance) is reinstated. If an Employee (whether or not a Participant) ceases to be an Eligible Employee for any reason (other than for termination of employment), including (but not limited to) a reduction of hours, and then becomes an Eligible Employee again, the Employee must complete the waiting period described in Section 3.1 before again becoming eligible to participate in the Plan.

### **3.4 FMLA Leaves of Absence**

*(a) Health Benefits.* Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the FMLA, then to the extent required by the FMLA, the Employer will continue to maintain the Participant's Health Insurance Benefits on the same terms and conditions as if the Participant were still an active Employee. That is, if the Participant elects to continue his or her coverage while on leave, the Employer will continue to pay its share of the Contributions.

An Employer may require participants to continue all Health Insurance Benefits coverage for Participants while they are on paid leave (provided that Participants on non-FMLA paid leave are required to continue coverage). If so, the Participant's share of the Contributions shall be paid by the method normally used during any paid leave (for instance, on a pre-tax Salary Reduction basis).

In the event of unpaid FMLA leave (or paid FMLA leave where coverage is not required to be continued), a Participant may elect to continue his or her Health Insurance Benefits during the leave. If the Participant elects to continue coverage while on FMLA leave, then the Participant may pay his or her share of the Contributions in one of the following ways:

- with after-tax dollars, by sending monthly payments to the Employer by the due date established by the Employer;
- with pre-tax dollars, by having such amounts withheld from the Participant's ongoing Compensation (if any), including unused sick days and vacation days, or pre-paying all or a portion of the Contributions for the expected duration of the leave on a pre-tax Salary Reduction basis out of pre-leave Compensation. To pre-pay the Contributions, the Participant must make a special election to that effect prior to the date that such Compensation would normally be made available (pre-tax dollars may not be used to fund coverage during the next Plan Year); or
- under another arrangement agreed upon between the Participant and the Plan Administrator (e.g., the Plan Administrator may fund coverage during the leave and withhold "catch-up" amounts from the Participant's Compensation on a pre-tax or after-tax basis) upon the Participant's return.

If the Employer requires all Participants to continue Health Insurance Benefits during an unpaid FMLA leave, then the Participant may elect to discontinue payment of the Participant's required Contributions until the Participant returns from leave. Upon returning from leave, the Participant will be required to repay the Contributions not paid by the Participant during the leave. Payment shall be withheld from the Participant's Compensation either on a pre-tax or after-tax basis, as agreed to by the Plan Administrator and the Participant.

If a Participant's Health Insurance Benefits coverage ceases while on FMLA leave (e.g., for non-payment of required contributions), then the Participant is permitted to re-enter the Medical Insurance Benefits upon return from such leave on the same basis as when the Participant was participating in the Plan prior to the leave, or as otherwise required by the FMLA. In addition, the Plan may require Participants whose Health Insurance Benefits coverage terminated during the leave to be reinstated in such coverage upon return from a period of unpaid leave, provided that Participants who return from a period of unpaid, non-FMLA leave are required to be reinstated in such coverage.

*(b) Non-Health Benefits.* If a Participant goes on a qualifying leave under the FMLA, then entitlement to non-health

benefits is to be determined by the Employer's policy for providing such Benefits when the Participant is on non-FMLA leave, as described in Section 3.5. If such policy permits a Participant to discontinue contributions while on leave, then the Participant will, upon returning from leave, be required to repay the Contributions not paid by the Participant during the leave. Payment shall be withheld from the Participant's Compensation either on a pre-tax or after-tax basis, as may be agreed upon by the Plan Administrator and the Participant or as the Plan Administrator otherwise deems appropriate.

**3.5 Non-FMLA Leaves of Absence** If a Participant goes on an unpaid leave of absence that does not affect eligibility, then the Participant will continue to participate and the Contributions due for the Participant will be paid by pre-payment before going on leave, by after-tax contributions while on leave, or with catch-up contributions after the leave ends, as may be determined by the Plan Administrator. If a Participant goes on an unpaid leave that affects eligibility, then the election change rules detailed in Article IV will apply.

## **ARTICLE IV. Method and Timing of Elections; Irrevocability of Elections**

### **4.1 Elections When First Eligible**

An Employee who first becomes eligible to participate in the Plan mid-year may elect to commence participation in one or more Benefits on the first day of the month after the eligibility requirements have been satisfied, provided that an Election Form/Salary Reduction Agreement is submitted to the Plan Administrator before the first day of the month in which participation will commence. An Employee who does not elect benefits when first eligible may not enroll until the next Open Enrollment Period, unless an event occurs that would justify a mid-year election change, as described in Article IV.

The Employer reserves the right, within its discretion, to allow or require any or all of the election procedures detailed in this Article 4.1 to be performed electronically.

Benefits shall be subject to the additional requirements, if any, specified in the Medical Insurance Plan. The provisions of this Plan are not intended to override any exclusions, eligibility requirements, or waiting periods specified in any Insurance Plans.

### **4.2 Elections During Open Enrollment Period**

During each Open Enrollment Period with respect to a Plan Year, the Plan Administrator shall provide an Election Form/Salary Reduction Agreement to each Employee who is eligible to participate in this Plan. The Election Form/Salary Reduction Agreement shall enable the Employee to elect to participate in the various Components of this Plan for the next Plan Year and to authorize the necessary Salary Reductions to pay for the Benefits elected. The Election Form/Salary Reduction Agreement must be returned to the Plan Administrator on or before the last day of the Open Enrollment Period, and it shall become effective on the first day of the next Plan Year. If an Eligible Employee fails to return the Election Form/Salary Reduction Agreement during the Open Enrollment Period, then the Employee may not elect any Benefits under this Plan until the next Open Enrollment Period, unless an event occurs that would justify a mid-year election change, as described in Article IV.

The Employer reserves the right, within its discretion, to allow or require any or all of the election procedures detailed in this Article 4.2 to be performed electronically.

### **4.3 Failure of Eligible Employee to File an Election Form/Salary Reduction Agreement**

If an Eligible Employee fails to file an Election Form/Salary Reduction Agreement within the time period described in

Sections 4.1 and 4.2, then the Employee may not elect any Benefits under the Plan (a) until the next Open Enrollment Period; or (b) until an event occurs that would justify a mid-year election change, as described in Article IV. If an Employee who fails to file an Election Form/Salary Reduction Agreement is eligible for Medical Insurance Benefits and has made an effective election for such Benefits, then the Employee's share of the Contributions for such Benefits will be paid with after-tax dollars outside of this Plan until such time as the Employee files, during a subsequent Open Enrollment Period (or after an event occurs that would justify a mid-year election change as described in Article IV), a timely Election Form/Salary Reduction Agreement to elect Premium Payment Benefits. Until the Employee files such an election, the Employer's portion of the Contribution will also be paid outside of this Plan.

#### **4.4 Irrevocability of Elections**

Unless an exception applies (as described in this Article IV), a Participant's election under the Plan is irrevocable for the duration of the Period of Coverage to which it relates.

Unless otherwise noted in this section, a Participant's election under the Plan is irrevocable for the duration of the Period of Coverage to which it relates. In other words, unless an exception applies, the Participant may not change any elections for the duration of the Period of Coverage regarding:

- Participation in this Plan;
- Salary Reduction amounts; or
- election of particular Benefit Package Options.

#### **4.5 Procedure for Making New Election If Exception to Irrevocability Applies**

*(a) Timeframe for Making New Election.* A Participant (or an Eligible Employee who, when first eligible under Section 3.1 or during the Open Enrollment Period, declined to be a Participant) may make a new election within 30 days of the occurrence of an event described in Section 4.6 or 4.7, as applicable, but only if the election under the new Election Form/Salary Reduction Agreement is made on account of and is consistent with the event and if the election is made within any specified time period (e.g., for Sections 4.7(d) through 4.7(j), within 30 days after the events described in such Sections unless otherwise required by law). Notwithstanding the foregoing, a Change in Status (e.g., a divorce or a dependent's losing dependent status) that results in a beneficiary becoming ineligible for coverage under the Medical Insurance Plan shall automatically result in a corresponding election change, whether or not requested by the Participant within the normal 30-day period.

*(b) Effective Date of New Election.* Elections made pursuant to this Section 4.5 shall be effective for the balance of the Period of Coverage following the change of election unless a subsequent event allows for a further election change. Except as provided in Section 4.7(e) for HIPAA special enrollment rights in the event of birth, adoption, or placement for adoption, all election changes shall be effective on a prospective basis only (i.e., election changes will become effective no earlier than the first day of the next calendar month following the date that the election change was filed, but, as determined by the Plan Administrator, election changes may become effective later to the extent that the coverage in the applicable Benefit Package Option commences later).

#### **4.6 Change in Status Defined**

Participant may make a new election upon the occurrence of certain events as described in Section 4.7, including a Change in Status, for the applicable Component. "Change in Status" means any of the events described below, as well as any other events included under subsequent changes to Code § 125 or regulations issued thereunder, which the Plan Administrator, in its sole discretion and on a uniform and consistent basis, determines are permitted under IRS regulations and under this Plan:

*(a) Legal Marital Status.* A change in a Participant's legal marital status, including marriage, death of a Spouse, divorce, legal separation, or annulment;

(b) *Number of Dependents.* Events that change a Participant's number of Dependents, including birth, death, adoption, and placement for adoption;

(c) *Employment Status.* Any of the following events that change the employment status of the Participant or his or her Spouse or Dependents: (1) a termination or commencement of employment; (2) a strike or lockout; (3) a commencement of or return from an unpaid leave of absence; (4) a change in worksite; and (5) if the eligibility conditions of this Plan or other employee benefits plan of the Participant or his or her Spouse or Dependents depend on the employment status of that individual and there is a change in that individual's status with the consequence that the individual becomes (or ceases to be) eligible under this Plan or other employee benefits plan, such as if a plan only applies to salaried employees and an employee switches from salaried to hourly-paid, union to non-union, or full-time to part-time (or vice versa), with the consequence that the employee ceases to be eligible for the Plan;

(d) *Dependent Eligibility Requirements.* An event that causes a Dependent to satisfy or cease to satisfy the Dependent eligibility requirements for a particular benefit, such as attaining a specified age, or any similar circumstance; and

(e) *Change in Residence.* A change in the place of residence of the Participant or his or her Spouse or Dependents.

#### **4.7 Events Permitting Exception to Irrevocability Rule**

A Participant may change an election as described below upon the occurrence of the stated events for the applicable Component of this Plan:

(a) *Open Enrollment Period.* A Participant may change an election during the Open Enrollment Period.

(b) *Termination of Employment.* A Participant's election will terminate under the Plan upon termination of employment in accordance with Sections 3.2 and 3.3, as applicable.

(c) *Leaves of Absence.* A Participant may change an election under the Plan upon FMLA leave in accordance with Section 3.4 and upon non-FMLA leave in accordance with Section 3.5.

(d) *Change in Status.* A Participant may change his or her actual or deemed election under the Plan upon the occurrence of a Change in Status (as defined in Section 4.6), but only if such election change is made on account of and corresponds with a Change in Status that affects eligibility for coverage under a plan of the Employer or a plan of the Spouse's or Dependent's employer (referred to as the general consistency requirement). A Change in Status that affects eligibility for coverage under a plan of the Employer or a plan of the Spouse's or Dependent's employer includes a Change in Status that results in an increase or decrease in the number of an Employee's family members (i.e., a Spouse and/or Dependents) who may benefit from the coverage.

(1) *Loss of Spouse or Dependent Eligibility; Special COBRA Rules.* For a Change in Status involving a Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or a Dependent, or a Dependent's ceasing to satisfy the eligibility requirements for coverage, a Participant may only elect to cancel accident or health insurance coverage for (a) the Spouse involved in the divorce, annulment, or legal separation; (b) the deceased Spouse or Dependent; or (c) the Dependent that ceased to satisfy the eligibility requirements. Canceling coverage for any other individual under these circumstances would fail to correspond with that Change in Status. Notwithstanding the foregoing, if the Participant or his or her Spouse or Dependent becomes eligible for COBRA (or similar health plan continuation coverage under state law) under the Employer's plan (and the Participant remains a Participant under this Plan in accordance with Section 3.2), then the Participant may increase his or her election to pay for such coverage (this rule does not apply to a Participant's Spouse who becomes eligible for COBRA or similar coverage as a result of divorce, annulment, or legal separation).

(2) *Gain of Coverage Eligibility Under Another Employer's Plan.* For a Change in Status in which a Participant or his or her Spouse or Dependent gains eligibility for coverage under a cafeteria plan or qualified benefit plan of the employer of

the Participant's Spouse or Dependent as a result of a change in marital status or a change in employment status, a Participant may elect to cease or decrease coverage for that individual only if coverage for that individual becomes effective or is increased under the Spouse's or Dependent's employer's plan. The Plan Administrator may rely on a Participant's certification that the Participant has obtained or will obtain coverage under the Spouse's or Dependent's employer's plan, unless the Plan Administrator has reason to believe that the Participant's certification is incorrect.

*(e) HIPAA Special Enrollment Rights.* If a Participant or his or her Spouse or Dependent is entitled to special enrollment rights under a group health plan (other than an excepted benefit), as required by HIPAA under Code § 9801(f), then a Participant may revoke a prior election for group health plan coverage and make a new election (including, when required by HIPAA, an election to enroll in another benefit package under a group health plan), provided that the election change corresponds with such HIPAA special enrollment right. As required by HIPAA, a special enrollment right will arise in the following circumstances:

- a Participant or his or her Spouse or Dependent declined to enroll in group health plan coverage because he or she had coverage, and eligibility for such coverage is subsequently lost because: (1) the coverage was provided under COBRA and the COBRA coverage was exhausted; or (2) the coverage was non-COBRA coverage and the coverage terminated due to loss of eligibility for coverage or the employer contributions for the coverage were terminated; or
- a new Dependent is acquired as a result of marriage, birth, adoption, or placement for adoption.

An election to add previously eligible Dependents as a result of the acquisition of a new Spouse or Dependent child shall be considered to be consistent with the special enrollment right. An election change on account of a HIPAA special enrollment attributable to the birth, adoption, or placement for adoption of a new Dependent child may, subject to the provisions of the underlying group health plan, be effective retroactively (up to 30 days).

For purposes of this Section 4.7(e), the term "loss of eligibility" includes (but is not limited to) loss of eligibility due to legal separation, divorce, cessation of dependent status, death of an employee, termination of employment, reduction of hours, or any loss of eligibility for coverage that is measured with reference to any of the foregoing; loss of coverage offered through an HMO that does not provide benefits to individuals who do not reside, live, or work in the service area because an individual no longer resides, lives, or works in the service area (whether or not within the choice of the individual), and in the case of HMO coverage in the group market, no other benefit package is available to the individual; a situation in which an individual incurs a claim that would meet or exceed a lifetime limit on all benefits; and a situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual.

*(f) Certain Judgments, Decrees and Orders.* If a judgment, decree, or order (collectively, an "Order") resulting from a divorce, legal separation, annulment, or change in legal custody (including a QMCSO) requires accident or health coverage (including an election for Health FSA Benefits) for a Participant's child (including a foster child who is a Dependent of the Participant), then a Participant may (1) change his or her election to provide coverage for the child (provided that the Order requires the Participant to provide coverage); or (2) change his or her election to revoke coverage for the child if the Order requires that another individual (including the Participant's Spouse or former Spouse) provide coverage under that individual's plan and such coverage is actually provided.

*(g) Medicare and Medicaid.* If a Participant or his or her Spouse or Dependent who is enrolled in a health or accident plan under this Plan becomes entitled to (i.e., becomes enrolled in) Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), then the Participant may prospectively reduce or cancel the health or accident coverage of the person becoming entitled to Medicare or Medicaid. Furthermore, if a Participant or his or her Spouse or Dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, then the Participant may prospectively elect to commence or increase the accident or health coverage of the individual who loses Medicare or Medicaid eligibility.

*(h) Change in Cost.* For purposes of this Section 4.7(h), "similar coverage" means coverage for the same category of benefits for the same individuals (e.g., family to family or single to single). For example, two plans that provide major medical coverage are considered to be similar coverage.



(1) *Increase or Decrease for Insignificant Cost Changes.* Participants are required to increase their elective contributions (by increasing Salary Reductions) to reflect insignificant increases in their required contribution for their Benefit Package Option(s), and to decrease their elective contributions to reflect insignificant decreases in their required contribution. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will determine whether an increase or decrease is insignificant based upon all the surrounding facts and circumstances, including but not limited to the dollar amount or percentage of the cost change. The Plan Administrator, on a reasonable and consistent basis, will automatically effectuate this increase or decrease in affected employees' elective contributions on a prospective basis.

(2) *Significant Cost Increases.* If the Plan Administrator determines that the cost charged to an Employee of a Participant's Benefit Package Option(s) significantly increases during a Period of Coverage, then the Participant may (a) make a corresponding prospective increase in his or her elective contributions (by increasing Salary Reductions); (b) revoke his or her election for that coverage, and in lieu thereof, receive on a prospective basis coverage under another Benefit Package Option that provides similar coverage; or (c) drop coverage prospectively if there is no other Benefit Package Option available that provides similar coverage. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a cost increase is significant in accordance with prevailing IRS guidance.

(3) *Significant Cost Decreases.* If the Plan Administrator determines that the cost of any Benefit Package Option significantly decreases during a Period of Coverage, then the Plan Administrator may permit the following election changes: (a) Participants enrolled in that Benefit Package Option may make a corresponding prospective decrease in their elective contributions (by decreasing Salary Reductions); (b) Participants who are enrolled in another Benefit Package Option may change their election on a prospective basis to elect the Benefit Package Option that has decreased in cost (Medical Insurance Plan); or (c) Employees who are otherwise eligible under Section 3.1 may elect the Benefit Package Option that has decreased in cost on a prospective basis, subject to the terms and limitations of the Benefit Package Option. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a cost decrease is significant in accordance with prevailing IRS guidance.

(i) *Change in Coverage.* The definition of "similar coverage" under Section 12.4(h) applies also to this Section 12.4(i).

(1) *Significant Curtailment.* If coverage is "significantly curtailed" (as defined below), Participants may elect coverage under another Benefit Package Option that provides similar coverage. In addition, as set forth below, if the coverage curtailment results in a "Loss of Coverage" (as defined below), then Participants may drop coverage if no similar coverage is offered by the Employer. The Plan Administrator in its sole discretion, on a uniform and consistent basis, will decide, in accordance with prevailing IRS guidance, whether a curtailment is "significant," and whether a Loss of Coverage has occurred.

(a) *Significant Curtailment Without Loss of Coverage.* If the Plan Administrator determines that a Participant's coverage under a Benefit Package Option under this Plan (or the Participant's Spouse's or Dependent's coverage under his or her employer's plan) is significantly curtailed without a Loss of Coverage (for example, when there is a significant increase in the deductible, the co-pay, or the out-of-pocket cost-sharing limit under an accident or health plan during a Period of Coverage, the Participant may revoke his or her election for the affected coverage, and in lieu thereof, prospectively elect coverage under another Benefit Package Option that provides similar coverage. Coverage under a plan is deemed to be "significantly curtailed" only if there is an overall reduction in coverage provided under the plan so as to constitute reduced coverage generally.

(b) *Significant Curtailment With a Loss of Coverage.* If the Plan Administrator determines that a Participant's Benefit Package Option coverage under this Plan (or the Participant's Spouse's or Dependent's coverage under his or her employer's plan) is significantly curtailed, and if such curtailment results in a Loss of Coverage during a Period of Coverage, then the Participant may revoke his or her election for the affected coverage and may either prospectively elect coverage under another Benefit Package Option that provides similar coverage or drop coverage if no other Benefit Package Option providing similar coverage is offered by the Employer.

(c) *Definition of Loss of Coverage.* For purposes of this Section 4.7(i)(1), a "Loss of Coverage" means a complete loss of

coverage (including the elimination of a Benefit Package Option, an HMO ceasing to be available where the Participant or his or her Spouse or Dependent resides, or a Participant or his or her Spouse or Dependent losing all coverage under the Benefit Package Option by reason of an overall lifetime or annual limitation). In addition, the Plan Administrator, in its sole discretion, on a uniform and consistent basis, may treat the following as a Loss of Coverage:

- a substantial decrease in the medical care providers available under the Benefit Package Option (such as a major hospital ceasing to be a member of a preferred provider network or a substantial decrease in the number of physicians participating in the PPO for the Medical Insurance Plan or in an HMO);
- a reduction in benefits for a specific type of medical condition or treatment with respect to which the Participant or his or her Spouse or Dependent is currently in a course of treatment; or
- any other similar fundamental loss of coverage.

*(2) Addition or Significant Improvement of a Benefit Package Option.* If during a Period of Coverage the Plan adds a new Benefit Package Option or significantly improves an existing Benefit Package Option, the Plan Administrator may permit the following election changes: (a) Participants who are enrolled in a Benefit Package Option other than the newly added or significantly improved Benefit Package Option may change their elections on a prospective basis to elect the newly added or significantly improved Benefit Package Option; and (b) Employees who are otherwise eligible under Section 3.1 may elect the newly added or significantly improved Benefit Package Option on a prospective basis, subject to the terms and limitations of the Benefit Package Option. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether there has been an addition of, or a significant improvement in, a Benefit Package Option in accordance with prevailing IRS guidance.

*(3) Loss of Coverage Under Other Group Health Coverage.* A Participant may prospectively change his or her election to add group health coverage for the Participant or his or her Spouse or Dependent, if such individual(s) loses coverage under any group health coverage sponsored by a governmental or educational institution, including (but not limited to) the following: a state children's health insurance program (SCHIP) under Title XXI of the Social Security Act; a medical care program of an Indian Tribal government (as defined in Code § 7701(a)(40)), the Indian Health Service, or a tribal organization; a state health benefits risk pool; or a foreign government group health plan, subject to the terms and limitations of the applicable Benefit Package Option(s).

*(4) Change in Coverage Under Another Employer Plan.* A Participant may make a prospective election change that is on account of and corresponds with a change made under an employer plan (including a plan of the Employer or a plan of the Spouse's or Dependent's employer), so long as (a) the other cafeteria plan or qualified benefits plan permits its participants to make an election change that would be permitted under applicable IRS regulations; or (b) the Plan permits Participants to make an election for a Period of Coverage that is different from the plan year under the other cafeteria plan or qualified benefits plan. For example, if an election is made by the Participant's Spouse during his or her employer's open enrollment to drop coverage, the Participant may add coverage to replace the dropped coverage. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a requested change is on account of and corresponds with a change made under the other employer plan, in accordance with prevailing IRS guidance. A Participant entitled to change an election as described in this Section 4.7 must do so in accordance with the procedures described in Section 4.5.

*(j) Revocation Due to Reduction in Hours*

A Participant may revoke his or her Major Medical coverage, along with that of any related individuals, if the Participant experiences a reduction of hours such that he or she will be reasonably expected to work fewer than 30 hours a week on a regular basis and the Participant intends to enroll, along with any such related individuals, in another plan no later than the first day of the second full month following the revocation.

*(k) Revocation of Coverage for Purposes of Enrolling in Marketplace Coverage*

A Participant may revoke his or her Major Medical coverage if he or she is seeking to enroll, along with any related individuals who cease coverage due to such revocation, in Marketplace coverage (either during the Marketplace's annual open enrollment period or during a special enrollment period) immediately after the revoked coverage ends.

*(l) CHIP Special Enrollment Rights*

Notwithstanding anything else in this document to the contrary, special enrollment rights shall be made available as a result of a loss of eligibility for Medicaid or for coverage under a state children's health insurance program (SCHIP) or as a result of eligibility for a state premium assistance subsidy under the plan from Medicaid or SCHIP.

**4.8 \*\*\*Reserved\*\*\***

**4.9 Election Modifications Required by Plan Administrator**

The Plan Administrator may, at any time, require any Participant or class of Participants to amend the amount of their Salary Reductions for a Period of Coverage if the Plan Administrator determines that such action is necessary or advisable in order to (a) satisfy any of the Code's nondiscrimination requirements applicable to this Plan or other cafeteria plan; (b) prevent any Employee or class of Employees from having to recognize more income for federal income tax purposes from the receipt of benefits hereunder than would otherwise be recognized; (c) maintain the qualified status of benefits received under this Plan; or (d) satisfy Code nondiscrimination requirements or other limitations applicable to the Employer's qualified plans. In the event that contributions need to be reduced for a class of Participants, the Plan Administrator will reduce the Salary Reduction amounts for each affected Participant, beginning with the Participant in the class who had elected the highest Salary Reduction amount and continuing with the Participant in the class who had elected the next-highest Salary Reduction amount, and so forth, until the defect is corrected.

**ARTICLE V. Benefits Offered and Method of Funding**

**5.1 Benefits Offered**

When first eligible or during the Open Enrollment Period as described under Article IV, Participants will be given the opportunity to elect Premium Payment Benefits, as described in Article VI.

**5.2 Employer and Participant Contributions**

*(a) Employer Contributions.* For Participants who elect Insurance Benefits described in Article VI, the Employer may contribute a portion of the Contributions as provided in the open enrollment materials furnished to Employees and/or on the Election Form/Salary Reduction Agreement.

*(b) Participant Contributions.* Participants who elect any of the Medical Insurance Benefits described in Article VI may pay for the cost of that coverage on a pre-tax Salary Reduction basis, or with after-tax deductions, by completing an Election Form/Salary Reduction Agreement.

**5.3 Using Salary Reductions to Make Contributions**

*(a) Salary Reductions per Pay Period.* The Salary Reduction for a pay period for a Participant is, for the Benefits elected, (1) an amount equal to the annual Contributions for such Benefits (as described in Section 6.2 for Premium Payment Benefits; (2) an amount otherwise agreed upon between the Employer and the Participant; or (3) an amount deemed appropriate by the Plan Administrator (i.e., in the event of shortage in reducible Compensation, amounts withheld and the Benefits to which Salary Reductions are applied may fluctuate).

*(b) Considered Employer Contributions for Certain Purposes.* Salary Reductions are applied by the Employer to pay for the Participant's share of the Contributions for the Premium Payment Benefits are considered to be Employer contributions.

*(c) Salary Reduction Balance Upon Termination of Coverage.* If, as of the date that any elected coverage under this Plan terminates, a Participant's year-to-date Salary Reductions exceed or are less than the Participant's required Contributions for the coverage, then the Employer will, as applicable, either return the excess to the Participant as additional taxable wages or recoup the due Salary Reduction amounts from any remaining Compensation.

*(d) After-Tax Contributions for Premium Payment Benefits.* For those Participants who elect to pay their share of the Contributions for any of the Medical Insurance Benefits with after-tax deductions, both the Employee and Employer portions of such Contributions will be paid outside of this Plan.

## **5.4 Funding This Plan**

All of the amounts payable under this Plan shall be paid from the general assets of the Employer, but Premium Payment Benefits are paid as provided in the applicable insurance policy. Nothing herein will be construed to require the Employer or the Plan Administrator to maintain any fund or to segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in any fund, account, or asset of the Employer from which any payment under this Plan may be made. There is no trust or other fund from which Benefits are paid. While the Employer has complete responsibility for the payment of Benefits out of its general assets (except for Premium Payment Benefits paid as provided in the applicable insurance policy), it may hire an unrelated third-party paying agent to make Benefit payments on its behalf. The maximum contribution that may be made under this Plan for a Participant is the total of the maximums that may be elected as Employer and Participant Contributions for Premium Payment Benefits, as described in Section 6.2.

## **ARTICLE VI. Premium Payment Component**

### **6.1 Benefits**

The only Insurance Benefits that are offered under the Premium Payment Component are benefits under the Medical, Dental, Vision, Accident, Hospital Indemnity, Other - Colonial Life Supplemental Plans Insurance Plan(s). Notwithstanding any other provision in these Plan(s), these benefits are subject to the terms and conditions of the Insurance Plan(s), and no changes can be made with respect to such Insurance Benefits under this Plan (such as mid-year changes in election) if such changes are not permitted under the applicable Insurance Plan. An Eligible Employee can (a) elect benefits under the Premium Payment Component by electing to pay for his or her share of the Contributions for Medical Insurance Benefits on a pretax Salary Reduction basis (Premium Payment Benefits); or (b) elect no benefits under the Premium Payment Component and to pay for his or her share of the Contributions, if any, for Medical Insurance Benefits with after-tax deductions outside of this Plan. Unless an exception applies (as described in Article IV), such election is irrevocable for the duration of the Period of Coverage to which it relates.

The Employer may at its discretion offer cash in lieu of benefits for Participants who do not choose Insurance Benefits.

### **6.2 Contributions for Cost of Coverage**

The annual Contribution for a Participant's Premium Payment Benefits is equal to the amount as set by the Employer, which may or may not be the same amount charged by the insurance carrier.

### **6.3 Insurance Benefits Provided Under Insurance Plans**

Insurance Benefits will be provided by the Insurance Plans, not this Plan. The types and amounts of Insurance Benefits, the requirements for participating in the Insurance Plans, and the other terms and conditions of coverage and benefits of the Insurance Plans are set forth in the Insurance Plans. All claims to receive benefits under the Insurance Plans shall be subject to and governed by the terms and conditions of the Insurance Plans and the rules, regulations, policies, and procedures adopted in accordance therewith, as may be amended from time to time.

#### **6.4 Health Insurance Benefits; COBRA**

Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, a Participant and his or her Spouse and Dependents, as applicable, whose coverage terminates under the Health Insurance Benefits because of a COBRA qualifying event (and who is a qualified beneficiary as defined under COBRA), shall be given the opportunity to continue on a self-pay basis the same coverage that he or she had under the Health Insurance Plan(s) the day before the qualifying event for the periods prescribed by COBRA.

Such continuation coverage shall be subject to all conditions and limitations under COBRA. Contributions for COBRA coverage for Health Insurance Benefits may be paid on a pre-tax basis for current Employees receiving taxable compensation (as may be permitted by the Plan Administrator on a uniform and consistent basis, but may not be prepaid from contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year) where COBRA coverage arises either (a) because the Employee ceases to be eligible because of a reduction in hours; or (b) because the Employee's Dependent ceases to satisfy the eligibility requirements for coverage. For all other individuals (e.g., Employees who cease to be eligible because of retirement, termination of employment, or layoff), Contributions for COBRA coverage for Health Insurance Benefits shall be paid on an after-tax basis (unless may be otherwise permitted by the Plan Administrator on a uniform and consistent basis, but may not be prepaid from contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year).

#### **ARTICLES VII. – XII. \*\*\*RESERVED\*\*\***

#### **ARTICLE XIII. Appeals Procedure**

##### **13.1 Procedure If Benefits Are Denied Under This Plan**

If a claim for reimbursement under this Plan is wholly or partially denied, then claims shall be administered in accordance with the claims procedure set forth in the summary plan description for this Plan. The Committee acts on behalf of the Plan Administrator with respect to appeals.

##### **13.2 Claims Procedures for Insurance Benefits**

Claims and reimbursement for Insurance Benefits shall be administered in accordance with the claims procedures for the Insurance Benefits, as set forth in the plan documents and/or summary plan description(s) for the Insurance Plan(s).

#### **ARTICLE XIV. Recordkeeping and Administration**

##### **14.1 Plan Administrator**

The administration of this Plan shall be under the supervision of the Plan Administrator. It is the principal duty of the Plan Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons

entitled to participate in this Plan without discrimination among them.

#### **14.2 Powers of the Plan Administrator**

The Plan Administrator shall have such duties and powers as it considers necessary or appropriate to discharge its duties. It shall have the exclusive right to interpret the Plan and to decide all matters thereunder, and all determinations of the Plan Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Plan Administrator shall have the following discretionary authority:

- (a) to construe and interpret this Plan, including all possible ambiguities, inconsistencies, and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of benefits under this Plan (provided that, notwithstanding the first paragraph in this Section 14.2, the Committee shall exercise such exclusive power with respect to an appeal of a claim under Section 13.1);
- (b) to prescribe procedures to be followed and the forms to be used by Employees and Participants to make elections pursuant to this Plan;
- (c) to prepare and distribute information explaining this Plan and the benefits under this Plan in such manner as the Plan Administrator determines to be appropriate;
- (d) to request and receive from all Employees and Participants such information as the Plan Administrator shall from time to time determine to be necessary for the proper administration of this Plan;
- (e) to furnish each Employee and Participant with such reports with respect to the administration of this Plan as the Plan Administrator determines to be reasonable and appropriate, including appropriate statements setting forth the amounts by which a Participant's Compensation has been reduced in order to provide benefits under this Plan;
- (f) to receive, review, and keep on file such reports and information regarding the benefits covered by this Plan as the Plan Administrator determines from time to time to be necessary and proper;
- (g) to appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and benefit consultants;
- (h) to sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan;
- (i) to secure independent medical or other advice and require such evidence as it deems necessary to decide any claim or appeal; and
- (j) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

#### **14.3 Reliance on Participant, Tables, etc.**

The Plan Administrator may rely upon the direction, information, or election of a Participant as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Plan Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions, and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Plan Administrator.

#### **14.4 \*\*\*Reserved\*\*\***

#### **14.5 Fiduciary Liability**

To the extent permitted by law, the Plan Administrator shall not incur any liability for any acts or for failure to act except for their own willful misconduct or willful breach of this Plan.

#### **14.6 Compensation of Plan Administrator**

Unless otherwise determined by the Employer and permitted by law, any Plan Administrator that is also an Employee of the Employer shall serve without compensation for services rendered in such capacity, but all reasonable expenses incurred in the performance of their duties shall be paid by the Employer.

#### **14.7 Bonding**

The Plan Administrator shall be bonded to the extent required by ERISA.

#### **14.8 Insurance Contracts**

The Employer shall have the right (a) to enter into a contract with one or more insurance companies for the purposes of providing any benefits under the Plan; and (b) to replace any of such insurance companies or contracts at its discretion. Any dividends, retroactive rate adjustments, or other refunds of any type that may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of and be retained by the Employer, to the extent that such amounts are less than aggregate Employer contributions toward such insurance.

#### **14.9 Inability to Locate Payee**

If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date any such payment first became due.

#### **14.10 Effect of Mistake**

In the event of a mistake as to the eligibility or participation of an Employee, the allocations made to the account of any Participant, or the amount of benefits paid or to be paid to a Participant or other person, the Plan Administrator shall, to the extent that it deems administratively possible and otherwise permissible under Code § 125 or the regulations issued thereunder, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as it will in its judgment accord to such Participant or other person the credits to the account or distributions to which he or she is properly entitled under the Plan. Such action by the Plan Administrator may include withholding of any amounts due to the Plan or the Employer from Compensation paid by the Employer.

### **ARTICLE XV. General Provisions**

#### **15.1 \*\*\*Reserved\*\*\***

#### **15.2 No Contract of Employment**

Nothing herein contained is intended to be or shall be construed as constituting a contract or other arrangement between any Employee and the Employer to the effect that such Employee will be employed for any specific period of

time. All Employees are considered to be employed at the will of the Employer.

### **15.3 Amendment and Termination**

This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Employer may amend or terminate all or any part of this Plan at any time for any reason and any such amendment or termination will automatically apply to the Related Employers that are participating in this Plan.

### **15.4 Governing Law**

This Plan shall be construed, administered, and enforced according to the laws of the State of California, to the extent not superseded by the Code, ERISA, or any other federal law.

### **15.5 Code and ERISA Compliance**

It is intended that this Plan meet all applicable requirements of the Code , ERISA (if ERISA is applicable) and of all regulations issued thereunder. This Plan shall be construed, operated, and administered accordingly, and in the event of any conflict between any part, clause, or provision of this Plan and the Code and/or ERISA (if ERISA is applicable), the provisions of the Code and ERISA (if ERISA is applicable) shall be deemed controlling, and any conflicting part, clause, or provision of this Plan shall be deemed superseded to the extent of the conflict.

### **15.6 No Guarantee of Tax Consequences**

Neither the Plan Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participant's gross income for federal, state, or local income tax purposes. It shall be the obligation of each Participant to determine whether each payment under this Plan is excludable from the Participant's gross income for federal, state, and local income tax purposes and to notify the Plan Administrator if the Participant has any reason to believe that such payment is not so excludable.

### **15.7 Indemnification of Employer**

If any Participant receives one or more payments or reimbursements under this Plan on a tax-free basis and if such payments do not qualify for such treatment under the Code, then such Participant shall indemnify and reimburse the Employer for any liability that it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

### **15.8 Non-Assignability of Rights**

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the Participant by assignment or any other method and shall not be subject to claims by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to the extent required by law.

### **15.9 Headings**

The headings of the various Articles and Sections are inserted for convenience of reference and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.

### **15.10 Plan Provisions Controlling**

In the event that the terms or provisions of any summary or description of this Plan are in any construction interpreted as being in conflict with the provisions of this Plan as set forth in this document, the provisions of this Plan shall be controlling.



**15.11 Severability**

Should any part of this Plan subsequently be invalidated by a court of competent jurisdiction, the remainder of the Plan shall be given effect to the maximum extent possible.

IN WITNESS WHEREOF, and as conclusive evidence of the adoption of the foregoing instrument comprising the City of Selma Salary Reduction Plan, City of Selma has caused this Plan to be executed in its name and on its behalf, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Its: \_\_\_\_\_

Check Register Report  
agenda item 3.d.

Date: 12/01/2016

Time: 8:47 am

Page: 1

City of Selma

BANK: UNION BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
<b>UNION BANK Checks</b>							
67974	11/22/2016	Printed		10174.295	AIRGAS USA LLC	CYLINDER RENTAL	165.29
67975	11/22/2016	Printed		10190.063	AMERICAN AMBULANCE	CPR CARD	10.00
67976	11/22/2016	Printed		10100.515	AT&T	TELEPHONE SERVICE	357.32
67977	11/22/2016	Printed		10340.385	AT&T MOBILITY	TELEPHONE-MDT'S	2,095.96
67978	11/22/2016	Printed		10210.255	BANNER PEST CONTROL INC	PV SQUIRREL CONTROL	60.00
67979	11/22/2016	Printed		10210.260	RONALD BARNES	LINCOLN PARK ELECTRIC BOX	700.00
67980	11/22/2016	Printed		10240.129	BILL NELSON GENERAL	ARRANTS ST REPAIRS	531,806.19
67981	11/22/2016	Printed		10300.334	CDCE INCORPORATED	MDT MONTHLY LEASE-FD	840.00
67982	11/22/2016	Printed		10330.900	ISABEL OROZCO CERVANTES	PD Safetykeeping Money	1,100.00
67983	11/22/2016	Printed		11910.806	CITY OF SANGER FIRE DEPARTMENT	CONSULTING FOR IGT	168.75
67984	11/22/2016	Printed		10370.243	KENDRA COLLINS	BIG FISH CHORIOGRAPHY	300.00
67985	11/22/2016	Printed		10370.400	COMPLIANCE SOLUTIONS	Selma Sports Park	24,740.00
67986	11/22/2016	Printed		10670.255	COUNTY OF FRESNO TREASURER	GIS TELECOMMUNICATION CHARGES	69.97
67987	11/22/2016	Printed		10430.071	DEPARTMENT OF JUSTICE	BLOOD ALCOHOL ANALYSIS	35.00
67988	11/22/2016	Printed		10560.250	EMPLOYMENT DEVELOPMENT DEPT.	SUI QTRLY PMT 7/1-9/30/16	4,594.00
67989	11/22/2016	Printed		10610.500	CASSY FAIN	ICI HOMICIDE COURSE PER DIEM	550.00
67990	11/22/2016	Printed		10620.190	FEDERAL LICENSING, INC	FFC RULES FOR RADIO LICENSING	119.00
67991	11/22/2016	Printed		10670.280	FRESNO COUNTY TAX COLLECTOR	PROPERTY TAX/SEWER 1ST INSTALL	2,375.24
67992	11/22/2016	Printed		10670.520	FRESNO-MADERA AAA	SENIOR MEALS	85.75
67993	11/22/2016	Void	11/22/2016			Void Check	0.00
67994	11/22/2016	Void	11/22/2016			Void Check	0.00
67995	11/22/2016	Printed		10700.080	G&K SERVICES	LINEN/UNIFORM SERVICE	604.62
67996	11/22/2016	Printed		10710.695	RENE GARZA	FTO POST PLAN II PER DIEM	225.00
67997	11/22/2016	Printed		10710.699	RUBY M GARZA	TRANSCRIPT 16-4624	458.00
67998	11/22/2016	Printed		10720.010	GATEWAY ENGINEERING, INC.	CITY ENGINEERING SERVICES	15,235.00
67999	11/22/2016	Printed		10820.020	HEALTHEDGE ADMINISTRATORS INC.	ADMINSTRATIVE FEES	647.85
68000	11/22/2016	Printed		10820.702	HEWLETT-PACKARD FINANCIAL	LEASE FOR LEXMARK PRINTERS	581.84
68001	11/22/2016	Printed		11000.150	J'S COMMUNICATION INC.	RADIO TEST	103.58
68002	11/22/2016	Printed		11040.619	JERRY DEWAYNE JONES	INSTRUCTOR 1B	2,000.00
68003	11/22/2016	Printed		11230.210	LIFE-ASSIST	MEDICAL SUPPLIES	239.46
68004	11/22/2016	Printed		11420.318	NELSON PROPERTIES	TAX SHARING AGREEMENT	386,771.60
68005	11/22/2016	Printed		11400.032	NGLIC CO SUPERIOR VISION	VISION INSURANCE PREMIUM	1,604.46
68006	11/22/2016	Printed		11530.100	OFFICE DEPOT, INC.	OFFICE SUPPLIES	102.69
68007	11/22/2016	Printed		11556.120	ORANGE CO SHERIFF'S DEPT	FTO POST PLAN II PER DIEM	55.00
68008	11/22/2016	Printed		11610.155	PG&E	WHITSON & THOMPSON INTERSECTIN	5,000.00
68009	11/22/2016	Printed		11810.215	MINDY RAMOS	MUSIC DIRECTION & SOUND DESIGN	700.00
68010	11/22/2016	Printed		11820.500	GERALD REESER	REIMBURSE PARAMEDIC	250.00
68011	11/22/2016	Printed		11840.010	ROBINA WRIGHT ARCHITECT &	INSPECTION 10273 GOLDEN STATE	1,775.00
68012	11/22/2016	Printed		11910.433	SAMPSON,SAMPSON, AND PATTERSON	ACCOUNTING SERVICES	9,130.00
68013	11/22/2016	Printed		11945.430	SELMA ELECTRIC MOTOR SHOP	REAPIR WOMEN'S RR EXHAUST-CH	397.90
68014	11/22/2016	Printed		11945.910	SELMA YOUTH BASKETBALL	HS RUNS PROGRAM	90.00
68015	11/22/2016	Printed		11985.138	SUN LIFE	EMPLOYEE INSURANCE	1,109.83
68016	11/22/2016	Printed		12010.108	TAG-AMS, INC.	EMPLOYEE DRUG TESTING	261.00
68017	11/22/2016	Printed		12220.210	VALLEY NETWORK SOLUTIONS INC.	ACRONIS TRUE IMAGE SOFTWARE	21,199.88
68018	11/22/2016	Printed		12310.249	WASTE MANAGEMENT	GARBAGE	111,394.12
68019	11/22/2016	Printed		12350.455	WILLEMS COMMERCIAL PRINTING	BIG FISH PROGRAMS	405.84

**Total Checks: 46**

**Checks Total (excluding void checks):**

**1,130,515.14**

Check Register Report  
agenda item 2.d.

Date: 12/01/2016

Time: 8:47 am

Page: 2

City of Selma

BANK: UNION BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
				<b>Total Payments: 46</b>		<b>Bank Total (excluding void checks):</b>	<b>1,130,515.14</b>
				<b>Total Payments: 46</b>		<b>Grand Total (excluding void checks):</b>	<b>1,130,515.14</b>

**CITY MANAGER'S/STAFF'S REPORT**  
**CITY COUNCIL MEETING DATE:**

December 5, 2016

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**ITEM NO:** 4.

**SUBJECT:** Consideration and Necessary Action on an Ordinance repealing and reenacting updates to Building and Fire Codes, public hearing and adoption

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**DISCUSSION:** This Ordinance essentially incorporates by reference the new 2016 version of the California Standard Building Codes. In adopting these Standard Codes, the City of Selma may add to, delete, or amend the various parts of the Standard Codes which are not construction standards. Generally, those provisions relating to permits and fees are deleted and provided for separately by resolution. The proposed Ordinance would adopt the Standard Codes as follows:

Part 1 – California Building Standards Administrative Code (Chapter 2 of Title IV of the SMC) with amendments deleting sections related to fees and providing that fees are to be determined by resolution of the City Council. Also added to the Standard Code is a penalty provision for violation of any of the provisions of the Building Standards Administrative Code.

Part 2 – California Building Code (Chapter 3 of Title IV of the SMC). this part would also be adopted and amended deleting sections related to fees and adding fees as provided by City Council resolution. This section also adds a penalty provision and a provision for plan review fees for tract homes.

Part 2.5 – California Residential Building Code (Chapter 15 of Title IV of the SMC), this part would be adopted without amendment by adding Chapter 15 to Title IV of the SMC. There is nothing in this Code that relates to fees or permits.

Part 3 – California Electrical Code (Chapter 4 of Title IV of the SMC) would be adopted with provisions for permit fees and penalties for violation.

Part 4 – California Mechanical Code (Chapter 5 of Title IV of the SMC) would be adopted with amendments for fees as determined by the City Council and adding a penalty provision.

Part 5 – California Plumbing Code (Chapter 11 of Title IV of the SMC) would be adopted with amendment for permit fees to be determined by the City Council and adding a penalty provision for violation of the Code.

Part 8 – California Historical Building Code (Chapter 12 of Title IV of the SMC) would be adopted without amendment.

Part 9 – California Fire Code (Chapters 1 and 2 of Title VII of the SMC) would be adopted with amendments related to permits, permit fees, violation penalty, and additional requirements for automatic fire sprinkler systems.

Part 10 – California Existing Building Code (Chapter 16 of Title IV of the SMC) would be adopted without amendment.

Part 11 – California Green Building Standards Code (Chapter 17 of Title IV of the SMC), this part would be adopted without amendment.

Part 12 – California Reference Standards Code (Chapter 14 of Title IV of the SMC), this part would be adopted without amendment.

<b><u>COST:</u></b> (Enter cost of item to be purchased in box below)		<b><u>BUDGET IMPACT:</u></b> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
None		None
<b><u>FUNDING:</u></b> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<b><u>ON-GOING COST:</u></b> (Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).
Funding Source: None Fund Balance: None		None


**RECOMMENDATION:** Hold public hearing and consider adoption of an Ordinance repealing and reenacting Chapters 1, 2, 3, 4, 5, 11, 12, 14, 15, 16, and 17 of Title IV and Chapters 1 and 2 of Title VII of the Selma Municipal Code to adopt by reference the California Code of Regulations Title 24, 2016 Edition of the California Building Standards Code.

/s/ Neal E. Costanzo

12/1/2016

Neal E. Costanzo, City Attorney

Date



Greg Garner, Interim City Manager

12/1/16  
Date

**ORDINANCE NO. 2016-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SELMA REPEALING AND REENACTING CHAPTERS 1, 2, 3, 4, 5, 11, 12, 14, 15, 16 AND 17 OF TITLE IV AND CHAPTERS 1 AND 2 OF TITLE VII OF THE SELMA MUNICIPAL CODE, TO ADOPT BY REFERENCE THE CALIFORNIA CODE OF REGULATIONS TITLE 24, 2016 EDITION OF THE CALIFORNIA BUILDING STANDARDS CODE INCLUDING THE FOLLOWING PARTS:**

- PART 1 - CALIFORNIA BUILDING STANDARDS ADMINISTRATIVE CODE;**
- PART 2 - CALIFORNIA BUILDING CODE;**
- PART 2.5 - CALIFORNIA RESIDENTIAL BUILDING CODE;**
- PART 3 - CALIFORNIA ELECTRICAL CODE;**
- PART 4 - CALIFORNIA MECHANICAL CODE;**
- PART 5 - CALIFORNIA PLUMBING CODE;**
- PART 8 - CALIFORNIA HISTORICAL BUILDING CODE;**
- PART 9 - CALIFORNIA FIRE CODE;**
- PART 10 - CALIFORNIA EXISTING BUILDING CODE;**
- PART 11 - CALIFORNIA GREEN BUILDING STANDARDS CODE;**
- PART 12 - CALIFORNIA REFERENCE STANDARDS CODE,**

**INCLUDING APPENDIX CHAPTERS, AND AMENDING THOSE PORTIONS OF THE CALIFORNIA CODE OF REGULATIONS TITLE 24 AS IDENTIFIED HEREIN**

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WHEREAS, pursuant to §§17922, 17958, 17958.5, 17958.7 and/or 18941.5 of the California Health and Safety Code and §50022.2 of the Government Code, the City of Selma may adopt the provisions of the California Building Standards Administrative Code, California Building Code, California Residential Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Energy Code, California Historical Building Code, California Fire Code, California Existing Building Code, California Green Building Standards Code, and California Reference Standards Code, with certain amendments to those provisions which are reasonably necessary to protect the health, welfare and safety of the citizens of Selma because of local climatic, geological and topographical conditions; and

WHEREAS, the California Building Standards Commission has amended, updated and revised the California Building Standards Codes included in Title 24 of the California Code of Regulations; and

WHEREAS, the purpose of this Ordinance is to adopt by reference the 2016 Edition of the California Building and Standards Code, Title 24 of the California Code of Regulations, subject to definitions, clarifications and amendments as set forth in this Ordinance. The City Council of the City of Selma hereby finds that the purpose of this Ordinance is to provide minimum requirements and standards to protect the public safety, health, property and welfare of the City of Selma and that any such amendments, additions or deletions made to Title 24 of the California Code of Regulations as set forth herein are reasonably necessary because of the local climatic, geological, or topographical conditions

in the City of Selma including, but not limited to, those amendments and additions to the Fire Code; and

WHEREAS, the City Council of the City of Selma desires to amend those Chapters of Title IV and Title VII of the Selma Municipal Code that incorporate, modify, amend or delete all or parts of the California Building Standards Code, Title 24 of the California Code of Regulations, and to add those Chapters to Title IV of the Selma Municipal Code as set forth herein to incorporate the current version of Title 24 of the California Code of Regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELMA DOES HEREBY ORDAIN as follows:

**SECTION 1.** Chapters 1 through 5, inclusive, of Title IV of the Selma Municipal Code are hereby repealed and reenacted to read as follows:

**"Chapter 1: BUILDING STANDARDS CODE**

**4-1-1: ADOPTION OF CALIFORNIA BUILDING STANDARDS CODE AND CALIFORNIA CODE OF REGULATIONS:**

Pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the California Building Standards Code, 2010 Edition, California Code of Regulations, Title 24 and California Code of Regulations, Title 25, Division 1, Chapter 1, subchapter 1 (State Housing Law) as the foundation of the City of Selma building requirements and made part of this Title as though set forth in full except as amended herein. These Codes shall be designated as Title IV, Chapter 1, California Building Standards and California Code of Regulations of the City of Selma.

**4-1-2: BUILDING OFFICIAL:**

Except as otherwise provided in the Selma Municipal Code, all references to the "Building Official" in the Selma Municipal Code or any adopted Code therein shall mean and refer to the Community Development Director of the City, or his or her designee.

**4-1-3: APPEALS BOARD AND HOUSING APPEALS BOARD:**

Except as otherwise provided in the Selma Municipal Code, all references to the "Appeals Board" and "Housing Appeals Board" shall mean and refer to the City Planning Commission with respect to those matters as to which the Planning

Commission has jurisdiction under the Selma Municipal Code, or to the City Council.

**4-1-4: PERMITS REQUIRED:**

Except as specified in the Selma Municipal Code, no building, structure, or building service equipment regulated by this Code shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished unless a separate, appropriate permit for each building, structure, or building service equipment has first been obtained from the Building Official.

**4-1-5: FEES:**

Except as otherwise provided in the Selma Municipal Code, all fees and charges including permit fees, inspection fees or other fees related to this Title or Chapter 1 of Title VII, shall be set forth in the latest resolution of the City Council of the City of Selma establishing a schedule of fees and charges.

**Chapter 2: ADMINISTRATIVE CODE**

**4-2-1: ADOPTION OF THE CALIFORNIA BUILDING STANDARDS ADMINISTRATIVE CODE:**

Pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the 2016 Edition of the California Building Standards Administrative Code, California Code of Regulations, Title 24, Part 1, copies of which are on file with the City of Selma for public record and inspection. These are hereby adopted by said Council by reference as the Administrative Code of the City of Selma and made a part of this Chapter as though set forth in full, subject, however, to the amendments, additions, deletions and fee exceptions as set forth in this Chapter. This Code shall be designated as Title IV, Chapter 2, titled "the Administrative Code of the City of Selma."

**4-2-2: AMENDMENTS, ADDITIONS, DELETIONS AND FEE EXCEPTIONS:**

(A) DELETE: Sections 4-231 through 4-234; 4-320 through 4-326; 5-104 through 5-108; 7-133 and 7-134; and 16-401 and 16-402 (relating to fees).

ADD: PERMIT FEES: The provisions for permit fees and all matters relating to permits and fees shall be as set forth in the latest resolution adopted by the City Council establishing a schedule of fees and charges.



ADD: VIOLATION; PENALTY: It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, use, occupy or maintain any building or structure in the City or cause or permit the same to be done contrary to or in violation of any of the provisions of the California Building Standards Administrative Code. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. Violations of any provision of this Chapter are subject to administrative, criminal, civil or other penalties and enforcement pursuant to Chapter 4 of Title I of this Code.

### **Chapter 3: BUILDING CODE**

#### **4-3-1: ADOPTION OF THE CALIFORNIA BUILDING CODE:**

For the purpose of regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings and/or structures in the City that certain Code designated as the California Building Code, 2016 Edition, based on the 2015 International Building Code as published by the International Code Council (ICC) as adopted and amended by the California Building Standards Commission in the California Building Standards Code, Title 24, Part 2 of the California Code of Regulations, together with all appendices, copies of which are on file in the City of Selma, for public record and inspection, are hereby adopted by reference pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California as the Building Code of the City of Selma, and made a part of this Chapter as though set forth in full, subject, however, to the amendments, additions, deletions and fee exceptions set forth in this Chapter. This Code, Appendices and Standards shall be designated as Title IV, Chapter 3 of the Building Code of the City of Selma.

#### **4-3-2: AMENDMENTS, ADDITIONS, DELETIONS AND FEE EXCEPTIONS:**

- (A) DELETE: Section 1.8.4 of Division 1 of Chapter 1 (Permits, Fees, Applications and Inspections); Section 109 of Division 2 of Chapter 1 (Fees); Section 113 of Division 2 of Chapter 1 (Board of Appeals); Appendix A (Employee Qualifications); Appendix B (Board of Appeals); and Appendix C through J, inclusive.

ADD: PERMIT FEES: The provision for building permit fee schedule and all matters relating to permits shall be as set forth in the latest Resolution establishing a schedule of fees and charges.

- (B) ADD: Plan Review Fees For Tract Homes: In lieu of the above, for tract home construction, two (2) sets of plans may be submitted for each model.

Said plan, when approved, shall be good for a period of one year from the date of approval. This approval is granted pursuant to codes in effect at the time the plan is approved. If the codes are amended, a new plan approval will be required prior to any new building permit being issued. Once a plan has been approved, and a structural change is to be made, said change must be submitted with a wet stamp, date and signature of a structural engineer. A separate set of plans shall be submitted for each building site that corresponds with the plans on file in the Building Department. Fees for tract home construction as discussed above shall be as set forth in the latest Resolution establishing a schedule of fees and charges.

- (C) AMEND: All references to the "Building Official" in Appendix Chapter 1, or in this Ordinance, shall mean and refer to the Community Development Director of the City, or his designee, and all references to "Board of Appeals" in Appendix Chapter 1 shall mean and refer to the City Planning Commission with respect to those matters as to which the Planning Commission has jurisdiction under the Code; or to the City Council.
  
- (D) ADD: VIOLATION; PENALTY: It shall be unlawful for any person, firm or corporation, to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, use, occupy or maintain any building or structure in the City, or cause or permit the same to be done, contrary to or in violation of any of the provisions of the California Building Code. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. Violations of any provision of this Chapter are subject to administrative, criminal, civil or other penalties and enforcement pursuant to Chapter 4 of Title I of this Code.

#### **Chapter 4: ELECTRICAL CODE**

##### **4-4-1: ADOPTION OF THE CALIFORNIA ELECTRICAL CODE:**

Pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the California Electrical Code, 2016 Edition, included in the California Building Standards Code, Title 24, Part 3, of the California Code of Regulations, copies of which are on file in the Community Development Department, for public record and inspection. These are hereby adopted by said Council by reference as the Electrical Code of the City of Selma and made a part of this Chapter as though set forth in full, subject, however, to the amendments, additions, deletions and fee exceptions set forth in this Chapter. This Code shall be designated as Title IV, Chapter 4, and the Electrical Code of the City of Selma.

**4-4-2: AMENDMENTS, ADDITIONS, DELETIONS AND FEE EXCEPTIONS:**

(A) ADD: PERMIT FEES: The provision for electrical permit fees and all matters relating to permits shall be as set forth in the latest Resolution adopted by the City Council establishing a schedule of fees and charges.

(B) ADD: VIOLATION; PENALTY: It shall be unlawful for any person, firm or corporation, to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, use, occupy or maintain any building or structure in the City, or cause or permit the same to be done, contrary to or in violation of any of the provisions of the California Electrical Code. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. Violations of any provision of this Chapter are subject to administrative, criminal, civil or other penalties and enforcement pursuant to Chapter 4 of Title I of this Code.

**Chapter 5: MECHANICAL CODE**

**4-5-1: ADOPTION OF THE CALIFORNIA MECHANICAL CODE:**

Pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the California Mechanical Code, 2016 Edition, included in the California Building Standards Code, California Code of Regulations, Title 24, Part 4, copies of which are on file in the Community Development Department, for public record and inspection. These are hereby adopted by said Council by reference as the Mechanical Code of the City of Selma and made a part of this Chapter as though set forth in full, subject, however, to the amendments, additions, deletions and fee exceptions as set forth in this Chapter. This Code shall be designated as Title IV, Chapter 5, and the Mechanical Code of the City of Selma.

**4-5-2: AMENDMENTS, ADDITIONS, DELETIONS, AND FEE EXCEPTIONS:**

(A) DELETE: Section 110.0 of Chapter 1 of Division II (Board of Appeals), Sections 115.1, 115.2 and 115.3 (Fees) of Chapter 1 of Division II.

ADD: PERMIT FEES: The provision for mechanical permit fees and all matters relating to permits shall be as set forth in the latest Resolution approved by the City Council establishing a schedule of fees and charges.

(B) DELETE: Section 111 of Chapter 1, Division II, Violations.

ADD: VIOLATION; PENALTY: It shall be unlawful for any person, firm or corporation, to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, use, occupy or maintain any building or structure in the City, or cause or permit the same to be done, contrary to or in violation of any of the provisions of the California Mechanical Code. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. Violations of any provision of this Chapter are subject to administrative, criminal, civil or other penalties and enforcement pursuant to Chapter 4 of Title I of this Code.

**SECTION 2.** Chapters 11, 12, 14, 15, 16 and 17 of Title IV of the Selma Municipal Code are hereby repealed and reenacted as follows:

**"Chapter 11: PLUMBING CODE**

**4-11-1: ADOPTION OF THE CALIFORNIA PLUMBING CODE:**

Pursuant to the provisions of Section 50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the 2016 Edition of the California Plumbing Code with Appendices, Title 24, Part 5 of the California Code of Regulations, copies of which are on file with the Community Development Department, for public record and inspection. These are hereby adopted by said Council by reference as the Plumbing Code of the City of Selma and made a part of this Chapter as though set forth in full, subject, however, to the amendments, additions, deletions and fee exceptions as set forth in this Chapter. This Code shall be designated as Title IV, Chapter 11, and the Plumbing Code of the City of Selma.

**4-11-2: AMENDMENTS, ADDITIONS, DELETIONS, AND FEE EXCEPTIONS:**

(A) DELETE: Chapter 1, Division II, Section 103.4 (Fees).

ADD: PERMIT FEES: The provision for plumbing permit fees and all matters relating to permits shall be as set forth in the latest Resolution approved by the City Council establishing a schedule of fees and charges.

(B) ADD: VIOLATION; PENALTY: It shall be unlawful for any person, firm or corporation, to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, use, occupy or maintain any building or structure in the City, or cause or permit the same to be done, contrary to or in violation of any

of the provisions of the California Plumbing Code. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. Violations of any provision of this Chapter are subject to administrative, criminal, civil or other penalties and enforcement pursuant to Chapter 4 of Title I of this Code.

**Chapter 12: HISTORICAL BUILDING CODE:**

Pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the California Historical Building Code, 2016 Edition, included in the California Building Standards Code, Part 8 of Title 24 of the California Code of Regulations, copies of which are on file in the Community Development Department, for public record and inspection. These are hereby adopted by said Council by reference as the Historical Building Code of the City of Selma and made a part of this Chapter as though set forth in full, subject, however, to amendments, additions, deletions and fee exceptions as set forth in this Chapter. This Code shall be designated as Title IV, Chapter 12, and the Historical Building Code of the City of Selma.

**Chapter 14: REFERENCED STANDARDS CODE:**

Pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the California Referenced Standards Code, 2016 Edition, included in the California Referenced Standards Code, Part 12 of Title 24 of the California Code of Regulations, copies of which are on file in the Community Development Department, for public record and inspection. These are hereby adopted by said Council by reference as the Referenced Standards Code of the City of Selma and made a part of this Chapter as though set forth in full, subject, however, to amendments, additions, deletions and fee exceptions as set forth in this Chapter. This Code shall be designated as Title IV, Chapter 14, and the Referenced Standards Code of the City of Selma."

**Chapter 15: RESIDENTIAL BUILDING CODE:**

Pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the California Residential Building Code, 2016 Edition, included in the California Residential Building Code, Part 2.5 of

Title 24 of the California Code of Regulations, copies of which are on file in the Community Development Department, for public record and inspection. These are hereby adopted by said Council by reference as the Residential Building Code of the City of Selma and made a part of this Chapter as though set forth in full, subject, however, to amendments, additions, deletions and fee exceptions as set forth in this Chapter. This Code shall be designated as Title IV, Chapter 15, and the Residential Building Code of the City of Selma.

**Chapter 16: EXISTING BUILDING CODE:**

Pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the California Existing Building Code, 2016 Edition, included in the California Referenced Standards Code, Part 10 of Title 24 of the California Code of Regulations, copies of which are on file in the Community Development Department, for public record and inspection. These are hereby adopted by said Council by reference as the Existing Building Code of the City of Selma and made a part of this Chapter as though set forth in full, subject, however, to amendments, additions, deletions and fee exceptions as set forth in this Chapter. This Code shall be designated as Title IV, Chapter 16, and the Existing Building Code of the City of Selma.

**Chapter 17: GREEN BUILDING STANDARDS CODE:**

Pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the California Green Building Standards Code, 2016 Edition, included in the California Green Building Standards Code, Part 11 of Title 24 of the California Code of Regulations, copies of which are on file in the Community Development Department, for public record and inspection. These are hereby adopted by said Council by reference as the Green Building Standards Code of the City of Selma and made a part of this Chapter as though set forth in full, subject, however, to amendments, additions, deletions and fee exceptions as set forth in this Chapter. This Code shall be designated as Title IV, Chapter 17, and the Green Building Standards Code of the City of Selma.

**SECTION 3.** Chapters 1 and 2 of Title VII of the Selma Municipal Code is hereby repealed and reenacted to read as follows:

## **Chapter 1: FIRE CODE**

### **7-1-1: ADOPTION OF CALIFORNIA FIRE CODE:**

Pursuant to the provisions of §50022.2 of the Government Code and §§17922, 17958.5, 17958.7 and/or 18941.5 of the Health and Safety Code of the State of California, the City Council of the City of Selma does hereby adopt by specific reference thereto and incorporation herein by said reference, the provisions, rules and regulations specified and set forth in the 2016 Edition of the California Fire Code with Appendices, copies of which are on file with the City of Selma, for public record and inspection. These are hereby adopted by said Council by reference as the Fire Code of the City of Selma and made a part of this Chapter as though set forth in full, subject, however, to the amendments, additions, deletions and fee exceptions as set forth in this Chapter. This Code shall be designated as Title VII, Chapter 1, the Fire Code of the City of Selma.

### **7-1-2: AMENDMENTS, ADDITIONS, DELETIONS, AND FEE EXCEPTIONS:**

The California Fire Code as adopted by this Chapter is amended to include the following provisions:

- (A) **ADD TO APPENDIX CHAPTER 1, SECTION 105: PERMITS:** The provisions for fire permit fees and all matters relating to permits shall be as set forth in the latest Resolution approved by the City Council establishing a schedule of fees and charges, or as otherwise provided for by this Title of the Municipal Code.
  
- (B) **ADD: VIOLATION; PENALTY:** Any person operating or maintaining an occupancy, premises or vehicle subject to the California Fire Code, who allows a hazard to exist or fails to take immediate action to abate the hazard on such occupancy, premises or vehicle when ordered or notified to do so. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. Violations of any provision of this Chapter are subject to administrative, criminal, civil or other penalties and enforcement pursuant to Chapter 4 of Title I of this Code.

## **Chapter 2: AUTOMATIC FIRE SPRINKLER SYSTEMS**

### **7-2-1: GENERAL REQUIREMENTS:**

All buildings, hereafter erected, constructed, or moved in, of five thousand (5,000) square feet or more in floor area, and all additions to existing buildings hereafter erected, constructed, or moved in, when the addition to the existing building results in a total combined floor area of five thousand (5,000) square feet or more, shall be

equipped with an approved automatic fire sprinkler system in all occupancies as defined in the 2016 Edition of the California Building Code and amendments thereto, except occupancies defined in Chapter 3 of the California Building Code, 2016 Edition, as R-3 and U, all of which shall conform to the regulations of the California Building Code, 2016 Edition. The square footage shall be determined by measurement of the exterior wall dimensions. When an addition results in a building with total combined square footage of five thousand (5,000) square feet or more in floor area, the entire building, existing and addition, shall be equipped with an approved automatic fire sprinkler system. Other construction specifications shall be required as deemed necessary for fire protection by the Building Official and/or Fire Chief in all buildings, regardless of size and group occupancies. An approved automatic fire sprinkler system shall be as defined and outlined in Chapter 9 of the 2016 Edition of the California Building Code and all amendments thereto.

**7-2-2: EXCEPTIONS:**

Where an approved automatic fire sprinkler system is provided in buildings, the following substitutions may be approved by the building official; provided that these exceptions shall not apply to buildings covered by Title 19 of the California Administrative Code:

- (A) Occupancy separations may be reduced by one hour.
- (B) Exterior wall protection due to the proximity of property lines may be reduced by fifty percent (50%).
- (C) Party walls for adjacent property may be approved by the building official subject to the following conditions:
  - 1. Both buildings are equipped with approved automatic fire extinguishing systems.
  - 2. The party wall is a minimum of a two (2) hour fire rated wall.
  - 3. The area of the combined buildings is within the allowable area for a single building.
  - 4. An approved party wall agreement signed by both property owners is recorded in the county recorder's office.
- (D) Vertical shaft enclosures may be reduced by one hour but in no case less than one hour in buildings three (3) or more stories in height.
- (E) Corridor protection may be reduced to thirty (30) minute wood frame construction with twenty (20) minute labeled assemblies on all openings.



- (F) Fire protection for exit enclosures and exterior smoke proof enclosures may be reduced by fifty percent (50%) but in no case to less than one hour.
- (G) Exit courts and passageways may be constructed with thirty (30) minute fire protection with twenty (20) minute labeled assemblies in all openings.
- (H) Fire protection for exterior walls, floors, ceilings may be reduced by fifty percent (50%).
- (I) Plumbing schedule 40 ABS and PVC-DWV piping installations may be used in those structures where combustible construction is allowed."

**SECTION 4.** California Environmental Quality Act: The City Council having considered the Staff Report and all public comments, has determined that the aforementioned repeal, reenactment and additions to the Municipal Code of the City of Selma is not a project under the California Environmental Quality Act because the amendment has no potential for resulting in a physical change in the environment. Since the aforementioned repeal, reenactment and additions to the Selma Municipal Code is not a project, no environmental documentation is required.

**SECTION 5.** Severability: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases have been declared invalid or unconstitutional.

**SECTION 6.** Effective Date and Posting of Ordinance: This Ordinance shall take effect and be in force thirty (30) days from and after the date of final passage. The City Clerk of the City of Selma shall cause this Ordinance to be published at least once within fifteen (15) days after its passage in the Selma Enterprise with the names of those City Council Members voting for or against the Ordinance.

\* \* \* \* \*

I, REYNA RIVERA, City Clerk of the City of Selma, do hereby certify that the foregoing Ordinance was introduced at a regular City Council meeting held on the 21<sup>st</sup> day of November 2016 and duly adopted at a regular meeting held on the 5<sup>th</sup> day of December, 2016 by the following vote, to wit:

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

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Michael Derr  
Mayor of the City of Selma

ATTEST:

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Reyna Rivera, City Clerk

APPROVED AS TO FORM:

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Neal E. Costanzo  
City Attorney

**CITY MANAGERS'S STAFF'S REPORT**  
**CITY COUNCIL MEETING DATE:**

December 5, 2016

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**ITEM NO:** 5.

**SUBJECT:** Consideration and Necessary Action on an Ordinance Repealing and Reenacting Chapters 32 and 33 of Title 11 and Repealing and Reenacting Chapter 27 of Title 26 of the Selma Municipal Code Related to Marijuana and Public Consumption of Marijuana, public hearing and adoption.

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**DISCUSSION:** In Chapter 27 of Title 6 and Chapters 32 and 33 of Title 11 of the Selma Municipal Code (SMC), there are several provisions that essentially prohibit, or extensively regulate the cultivation, use and/or sale of marijuana. They were enacted under then existing law, the Marijuana Medical Regulation and Safety Act (MMRSA) which is a statute that implements the Compassionate Use Act approved by the voters in 1996 and making medical marijuana and related activities legal with specific qualifications.

With the passage of Proposition 64, recreational cultivation and use of marijuana is immediately legal, under specified conditions, and the sale, distribution and related activities for non-medical marijuana will be legal as soon as the state enacts a licensing program for such operations. Because the City's current ordinances regulating cultivation, use or sale of marijuana relate specifically to medical marijuana, to continue to regulate cultivation, use and sale of marijuana in substantially the same way as was done previously, alterations of those ordinances is necessary.

By passing Proposition 64, the voters enacted a series of statutory provisions, most of which are found in the Health & Safety Code or Business & Professions Code. Those statutes expressly allow a city to enact and enforce regulations on cultivation of marijuana and in doing so, it may completely prohibit cultivation of marijuana out of doors. With respect to marijuana being grown in a residence, the City cannot completely prohibit that activity so long as it is occurring completely inside a private residence or inside an accessory building to a private residence that is fully enclosed and secure. Use or consumption or ingestion of marijuana or marijuana products cannot be prohibited if it occurs within a private residence or other privately owned structure that is fully enclosed and secure. Accordingly, the proposed alterations to the three chapters of the SMC that deal with marijuana are as follows:

1. Chapter 27 of Title 6:

Chapter 27 of Title 6 formerly prohibited the use of marijuana even if permitted by the former medical marijuana law in any location within the City. The new version of Chapter 27 only prohibits use of marijuana that occurs, essentially, in public or outside of a completely enclosed structure and specifically allows use of medical marijuana in places like hospice care facilities where it is expressly allowed by the medical marijuana law and by Proposition 64. The proposed prohibition on use contained in the proposed new Chapter 27

of Title 26 is as restrictive as it possibly can be consistent with the requirements of Proposition 64.

2. Chapter 32 of Title 11:

The former Chapter 32 of Title 11 contained a variety of definitions relating specifically to medical marijuana and prohibited medical marijuana dispensaries and sales.

Under Proposition 64, sales of marijuana are not immediately legal and will not be legal until the state establishes a licensing system. Cities are free to prohibit the sale of marijuana within city limits even after the state does adopt a licensing system. Chapter 32 of Title 11, therefore, has been changed so that it refers to non-medical marijuana in addition to medical marijuana dispensaries, sales or other commercial activity and prohibits all such activity from occurring within the City limits.

3. Chapter 33 of Title 11:

Former Chapter 33 of Title 11 allowed under specified circumstances the cultivation of medical marijuana. The new, proposed version of Chapter 33 of Title 11 now allows the cultivation of all marijuana, but places on that cultivation essentially the same restrictions that were previously placed on medical marijuana cultivation. Outside cultivation is prohibited. Cultivation indoors is restricted and regulated by requiring one to obtain a permit and prescribing the precise dimensions and standards, including ventilation required to be included in any structure where marijuana is grown, which under this Ordinance is limited to the residence itself and may not occur in any of the common areas of a residence (a kitchen or living room) but must occur in a separate locked room with separate ventilation of specified dimensions. The regulation of this activity is extensive and is as restrictive as it can be consistent with Proposition 64. The City is not allowed to completely prohibit cultivation inside of a private residence or private accessory building that is fully enclosed and secure under new Health & Safety Code §11362.2(b)(3), but placing restrictions on the cultivation and dictating the nature of the structure within which it must occur is not a complete prohibition on cultivation and is, for that reason, a lawful restriction on the right to grow up to six plants in a residence or accessory building that is fully enclosed and secure now allowed by Proposition 64.

The Ordinance changes have been drafted in a manner that restricts and regulates activities relating to marijuana, whether that be use, possession, sale or cultivation as far as is allowed by the express terms of Proposition 64. Proposition 64, and the extent to which it allows restrictions to be placed upon the activities made legal by that proposition has yet to be interpreted by the courts. Restrictions in the proposed ordinance on activity made legal by Proposition 64 are similar to restrictions placed upon activities related to medical marijuana that were made legal by the prior medical marijuana law and, for that reason, are believed to be consistent with Proposition 64.

<u><b>COST</b></u>		<u><b>BUDGET IMPACT:</b></u>
<b>None</b>		<b>None</b>
<u><b>FUNDING:</b></u>		<u><b>ON-GOING COST:</b></u>
Funding Source: <b>Not applicable.</b>  Fund Balance:		<b>Not applicable</b>

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**RECOMMENDATION:** Hold public hearing and consider adopting an Ordinance Repealing and Reenacting Chapters 32 and 33 of Title 11 and Repealing and Reenacting Chapter 27 of Title 26 of the Selma Municipal Code Related to Marijuana and Public Consumption of Marijuana.

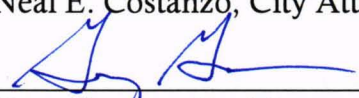
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*/s/ Neal E. Costanzo*

*12/1/2016*

\_\_\_\_\_  
Neal E. Costanzo, City Attorney

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Greg Garner, City Manager

*12/1/16*

\_\_\_\_\_  
Date

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ORDINANCE NO. 2016 \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
SELMA REPEALING AND REENACTING CHAPTERS 32 AND 33  
OF TITLE 11 AND REPEALING AND REENACTING CHAPTER 27 OF  
TITLE 6 OF THE SELMA MUNICIPAL CODE RELATED TO  
MARIJUANA AND PUBLIC CONSUMPTION OF MARIJUANA**

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WHEREAS, the Federal Controlled Substances Act ("CSA") prohibits, except for certain research purposes, the possession, distribution and manufacture of marijuana; and

WHEREAS, the California Uniform Substances Control Act ("CUSCA") similarly prohibit the unauthorized possession, cultivation, harvesting, processing, possession for sale, and transportation, administration, or furnishing of marijuana; and

WHEREAS, in 1996, voters in California enacted the Compassionate Use Act ("CUA") and the California Legislature, in 2004, adopted the Medical Marijuana Program ("MMP") which provide limited exemptions to the CUSCA for "patient and care givers" for "medical marijuana" and

WHEREAS, in 2015, the Marijuana Medial Regulation and Safety Act (MMRSA) which amended provisions of the Medical Marijuana Program Act related to the cultivation of medical marijuana and was enacted as Business and Professions Code §19300 et seq related to the cultivation of medical marijuana and establishing a comprehensive regulatory framework for medical cannabis in California including the production, transportation and sale of medical cannabis; and

WHEREAS, on November 8, 2016, the voters passed Proposition 64 enacting the "Control, Regulate and Tax Adult Use of Marijuana Act (also known as the Adult Use Marijuana Act establishing a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of non-medical marijuana including marijuana products for use by adults 21 years and older and to tax the commercial growth and retail sale of marijuana.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELMA DOES HEREBY ORDAIN as follows:

**SECTION 1:** Recitals. The foregoing Recitals are true and correct and incorporated herein by this reference.

{00014879.DOCX;1}

**SECTION 2:** Chapter 32 of Title 11 of the Selma Municipal Code is hereby repealed and reenacted to read as follows:

**"Chapter 32 MARIJUANA DISPENSARIES OR SALES PROHIBITED**

**11-32-1: PURPOSE:**

The purpose of this Ordinance is to protect the health, safety, and general welfare of the City of Selma by prohibiting the establishment of marijuana dispensaries or sales in any area within the jurisdiction of the City of Selma.

**11-32-2: DEFINITIONS:**

As used in this Chapter, the following words have the meanings ascribed to them in this section as follows:

"Cannabis" or "Marijuana" shall have the same meaning given to the term "Marijuana" by §11018 of the Health & Safety Code. The terms "Cannabis" and "Marijuana" are interchangeable and shall have the same meaning.

"Commercial Marijuana Activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of Marijuana and Marijuana Products.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Marijuana.

"Identification Card" shall have the same meaning given to that term by Health and Safety Code §11362.7 or as it may be amended. Marijuana shall have the same meaning as Health and Safety Code §11018 as it is now or may be amended.

"Marijuana Products" and "Marijuana Accessories" shall have the same meaning given to those terms by Health & Safety Codes §§11018.1 and 11018.2, respectively.

"Medical Marijuana" means Marijuana authorized for medical use as set forth in and in strict compliance with California Health and Safety Code §11362.5, et seq, as it is now or as amended. "Non-Medical Marijuana" shall mean Marijuana used for any other purpose authorized by law.

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“Medical Marijuana Cooperative” or “Collective or Medical Cannabis Dispensary” shall, for the purposes of this Chapter, have the same meaning as "Medical Marijuana Dispensary."

“Medical Marijuana Dispensary” or “Collective” means any facility or location where Medical Marijuana is made available to or distributed by or to the following: a Primary Care Giver, a Qualified Patient, or a Person With an Identification Card in strict compliance with Health and Safety Code §11362.5, et seq. A "Medical Marijuana Dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic license pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness license pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a resident care facility for the elderly licensed pursuant to Chapter 3.02 of Division 2 of the Health and Safety Code; a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the Health and Safety Code, as long as any such use strictly complies with applicable law including, but not limited to, Health and Safety Code §11362.5, et seq.

“Person With an Identification Card” shall have the same meaning given to that term by Health and Safety Code §11362.7 or as it may be amended.

“Primary Care Giver” shall have the same meaning given to that term by Health and Safety Code §11362.7 or as it may be amended.

“Qualified Patient” shall have the same meaning given to that term by Health and Safety Code §11362.7 or as it may be amended.

“Sell”, “Sale”, and “To Sell” includes any transaction whereby for any consideration, title to Marijuana is transferred from one person to another and includes the delivery of Marijuana or Marijuana Products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same.

**11-32-3: COMMERCIAL MARIJUANA ACTIVITY, DISPENSARIES AND SALES PROHIBITED:**

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Medical Marijuana and Non-medical Marijuana Dispensaries or Commercial Marijuana Activity of every type and/or sale of Marijuana and Marijuana Products are prohibited and it shall be unlawful for any person to engage in any such activity in or upon any premises located in any zone or anywhere else within the boundaries or jurisdiction of the City of Selma.

**11-32-4: PENALTY:**

Any violation of any of the provisions of this Chapter shall be a misdemeanor and constitute a public nuisance and shall be enforced and/or abated in accordance with Chapter 4 of Title 1 or other applicable section of the Selma Municipal Code."

**SECTION 3:** Chapter 27 of Title 6 of the Selma Municipal Code is hereby added to read as follows:

**"Chapter 27 REGULATION OF CONSUMPTION OF MARIJUANA**

**6-27-1: PURPOSE:**

The purpose of this Ordinance is to protect the health, safety and general welfare of the public within the jurisdiction of the City of Selma. The City Council of the City of Selma finds that the use of Marijuana may be injurious to members of the public, including minors, who are not permitted to consume Marijuana.

**6-27-2: REGULATION OF CONSUMPTION OF MARIJUANA:**

No person shall smoke, ingest, or otherwise consume Marijuana or Marijuana Products, whether recreational or medical, in the City of Selma, unless such smoking, ingesting or consumption occurs entirely within a private residence. "Within a private residence" shall mean inside habitable areas and shall not include garages, whether attached or detached, and other accessory buildings, unless those buildings are at all times fully enclosed during the consumption. Medical Marijuana may also be consumed within a clinic, healthcare facility, residential care facility, or residential hospice licensed pursuant to applicable provisions of the California Health & Safety Code. All consumption shall be done in a manner so as not to cause a nuisance to nearby residents with noxious odors or other adverse health and safety impacts.

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**6-27-3: COST RECOVERY FOR RESPONSE REQUIRED FOR MARIJUANA RELATED ACTIVITY**

In the event it is determined by the appropriate Department Head of the City, that a call for service or response to any event or disturbance, including but not limited to any fire, provision of medical assistance, or response by law enforcement is the result of use or consumption, of Medical or Non-Medical Marijuana, or is caused by any activity related to Non-Medical or Medical Marijuana including sale, transport, distribution, cultivation or processing of Marijuana or Marijuana Products, the Department Head may issue an invoice or bill in the form of a citation to the person responsible for creating or causing the event or disturbance in the amount of the actual cost incurred by the department as a result. The invoice or bill so issued shall conform to the extent practicable to the provisions of Title I, Chapter 20 of this Code and shall be subject to an appeal as provided by Section 9 of Chapter 20 of Title I of this Code. Following the conclusion of any such appeal, in the event the validity of the invoice or bill is affirmed on appeal, or if the bill or invoice is not timely appealed, the bill or invoice may be collected in the manner provided by Section 11 of Chapter 20 of Title I of this Code, or by action in the courts on the debt thereby created. Chapter 20 of Title I shall govern the time and manner by which an appeal of any invoice or bill is taken.

**6-27-4 PENALTY:**

Violations of this Chapter shall be a misdemeanor and constitute a public nuisance and shall be enforced in accordance with the procedures set forth in Chapter 4 of Title 1 or other applicable section of the Selma Municipal Code."

**SECTION 4:** Chapter 33 of Title 11 of the Selma Municipal Code is hereby added to read as follows:

**"Chapter 33 - MARIJUANA CULTIVATION**

**11-33-1: PURPOSE:**

The purpose of this Chapter is to restrict the Cultivation of Medical Marijuana and Non-Medical Marijuana to only appropriately located, secured, enclosed, and ventilated structures, so as not to be visible to the general public, to prevent odor created by Marijuana plants from impacting surrounding properties, to ensure that Marijuana is grown for only lawful purposes and remains secure, and to protect the health, safety and welfare of the public.

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Nothing in this Chapter is intended to authorize the use, possession, sale, distribution or Cultivation of Marijuana in violation of state or federal law.

**11-33-2: DEFINITIONS:**

As used in this Chapter, capitalized terms and words shall have the meanings associated to those words and terms of section 2 of Chapter 32 of this Title and the following words shall mean the following:

Child Care Center means any licensed child care or day care center, child care home, or preschool.

Detached Structure means a building fully detached from a residence or other building that complies with the building regulations of the City of Selma and approved by the Community Development Director or his or her designee, as set forth in this Chapter.

Fence shall mean a fence constructed of a substantial material that prevents viewing the contents of one side from the other.

Residential Structure shall mean a building used for human habitation.

School shall mean an institution of learning whether public or private, offering regular courses of instruction, including, without limitation to, elementary schools, middle or junior high schools, senior high schools, community colleges, or vocational colleges or institutions.

**11-33-3: CULTIVATION REGULATED:**

Cultivation of Medical Marijuana and Non-Medical Marijuana is prohibited in the City of Selma as follows:

- A. Outdoor Cultivation. Outdoor Cultivation is unlawful and declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any parcel or premises within any zone in the City of Selma to cause or suffer such parcel or premises to be used for the outdoor Cultivation of Marijuana plants.
  
- B. Non-residential Zones. It is unlawful and a public nuisance to cultivate Medical Marijuana or Non-Medical Marijuana in any non-residential zone in the City of Selma.

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- C. Cultivation Within a Residence. It is unlawful and a public nuisance for any person to Cultivate or allow the cultivation of Medical or Non-Medical Marijuana inside any Residential Structure or building suitable for human habitation in any zone of the City, except as permitted by this Chapter.
- D. Proximity to Child Care Centers, Parks and Schools. It is unlawful and declared a public nuisance to Cultivate or allow the cultivation of Non-Medical Marijuana or Medical Marijuana on any parcel or premises within five hundred (500) feet from any Child Care Center, public park or School. The 500 foot distance shall be measured from the closest property line of the Child Care Center, Public Park, or School to the closest property line of the parcel upon which the Cultivation is present.

**11-33-4: CULTIVATION PERMIT REQUIRED:**

- A. Cultivation Permit. No person may engage in the Cultivation of Marijuana without first obtaining a Marijuana Cultivation Permit from the Community Development Director or his or her designee.
- B. Permit Application. Any person seeking a permit to Cultivate Marijuana shall complete an application for a Cultivation Permit on a form provided by the City of Selma which shall contain, but is not limited to, the following:
  - 1. The physical site address of the premises where the Marijuana will be Cultivated.
  - 2. The name of each person owning, leasing, occupying, or having charge of the premises where the Marijuana will be Cultivated and, in the event that the person owning said parcel is not the person applying for a Cultivation Permit, then a signed, notarized, consent to the Cultivation of Marijuana at the premises on a form provided by the City of Selma.
  - 3. A signed consent form from the applicant(s) and/or property owner authorizing City Staff, including the Selma Fire Department and the Selma Police Department, to conduct an inspection of the area used for the Cultivation of Marijuana upon request.
- C. Building Standards-Approval Required. Prior to the issuance of a Cultivation Permit pursuant to this chapter, the structure wherein the

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Marijuana will be cultivated must be reviewed, inspected and approved by the Community Development Director or his or her designee pursuant to sections 11.33.5 and 11.33.6.

- D. Term of Permit. A Marijuana Cultivation Permit shall be valid for no more than one (1) year.
- E. Permit Renewal. A Marijuana Cultivation Permit may only be renewed upon an application for renewal to the Community Development Director or his or her designee on a form provided by the City of Selma.
- F. Fees. The City Council may establish or amend, by resolution, a fee or fees required to be paid upon the filing of an application for a permit, or renewal thereof, as provided for in this Chapter, which shall not exceed the reasonable cost of administering this Chapter.
- G. Denial of Permit.
  - 1. The Community Development Director, or his or her designee, may deny any application for a Marijuana Cultivation Permit, or extension thereof, if he or she finds, in his or her discretion, based on the facts available that the issuance of such permit, or extension thereof, does not meet the requirements of this Chapter and would be detrimental to the public health, safety or welfare.

**11-33-5: CULTIVATION-RESIDENTIAL STRUCTURE:**

- A. Indoor Cultivation. The indoor Cultivation of Marijuana in a residential zone within a Residential Structure shall not to exceed an area of fifty (50) square feet, unless a larger area is required to cultivate a greater quantity as allowed either by the Marijuana Medical Regulation and Safety Act for Medical Marijuana or by the Control, Regulate and Tax Use of Marijuana Act for Non-Medical Marijuana.
- B. Approval Required. Any person applying for a Cultivation Permit for Marijuana pursuant to this Chapter in a Residential Structure shall first obtain approval of the Residential Structure and a Cultivation Permit from the Community Development Director or his or her designee. The Community Development Director may establish any procedures or forms necessary for the processing of the approval/Cultivation Permit described in this chapter.

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- C. Standards. The Residential Structure to be used for Marijuana Cultivation shall conform to the City Code, building standards of the City of Selma including all adopted Codes, and any requirements deemed necessary by the Community Development Director or his or her designee including, but not limited to, the following minimum standards:
1. Indoor grow lights in a Residential Structure shall not exceed one thousand (1,000) watts or other limit as determined by the City and shall comply with the building regulations of the City of Selma and all adopted Codes including, but not limited to, the California Building and Electrical Codes and shall be inspected and approved by the Fire Chief and/or Building Inspector.
  2. Indoor Cultivation within a Residential Structure shall not take place in a kitchen, bathroom, bedroom, or common area of the residence and shall be secured by one or more lockable doors.
  3. Any Cultivation within a Residential Structure shall have a ventilation system separate from the remaining area of the residential structure with a filtration system that shall prevent marijuana plant odors from exiting the interior of the cultivation area or the Residential Structure. Said ventilation system shall comply with the building regulations of the City of Selma and adopted Codes including, but not limited to, the applicable sections of the California Building Code related to mechanical ventilation.
  4. The use of generators or any other internal combustion engine or use of any combustible products including, without limitation to, gasoline, diesel fuel, butane, propane, or natural gas within the residential structure shall be prohibited.

**11-33-6: CULTIVATION-DETACHED STRUCTURE:**

- A. Approval Required. Any person seeking a Cultivation Permit for Marijuana pursuant to this Chapter in a Detached Structure shall first obtain approval of the Detached Structure and a Cultivation Permit from the Community Development Director or his or her designee. The Community Development Director may establish any procedures or forms necessary for the processing of the approval/Cultivation Permit described in this chapter.

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- B. Standards. The Detached Structure shall conform to the City Code, building standards of the City of Selma including all adopted Codes, and any requirements deemed necessary by the Community Development Director or his or her designee including, but not limited to, the following minimum standards:
1. The Detached Structure shall be attached to a slab foundation or equivalent base by bolts or similar attachments.
  2. The walls and roofs of the Detached Structure must be constructed of two inch by four inch (2x4) or larger material. The frame of the structure must be overlaid with at least five-eighths inch (5/8") exterior plywood or other suitable material and shall be covered with materials similar to or conforming with the materials used on surrounding structures.
  3. The Detached Structure shall be accessible by one or more lockable exterior-grade doors.
  4. The total area of the Detached Structure shall not exceed one hundred (100) square feet unless a larger area is required to cultivate a greater quality of Marijuana set forth in the Marijuana Medical Regulation and Safety Act for Medical Marijuana or by the Control, Regulate and Tax Use of Marijuana Act for Non-Medical Marijuana.
  5. Indoor grow lights shall not exceed a maximum wattage to be determined by the Community Development Director or his or her designee. Electricity to the building must be provided by suitable connection as determined by the Community Development Director. Use of portable generators, portable heaters, or combustible products including, but not limited to, gasoline, diesel fuel, propane, butane, or natural gas, unless expressly permitted by the Community Development Director or his or her designee, are strictly prohibited. The detached secure structure shall have a ventilation and filtration system installed to prevent odors from marijuana plants from exiting the interior of the building and shall comply with the building regulations of the City of Selma and all adopted Codes, including, but not limited to, applicable California Building Code sections related to mechanical ventilation.

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6. The secured structure shall be located within the rear yard of any premises and must be set back at least ten feet (10') from any building, pool, or property line. If any greater set back is required by any other provision of the Selma Municipal Code or any other Code, the greater set back distance shall apply.
7. The area surrounding the secured structure must be enclosed by a solid fence at least six feet (6') in height and an adequate mechanical or electronic security system approved by the Community Development Director or his or her designee or the Chief of Police must be installed in and around the detached structure.
8. The Detached Structure shall be inspected and approved by the Fire Chief and/or Building inspector.

**11-33-7: VIOLATION OF PERMIT:**

If any requirement relating to cultivation, or terms of any permit issued for cultivation in accordance with this Chapter is determined by any city officer or official to have been violated, that officer or official may immediately revoke the permit and, if deemed necessary to correct or prevent any such or any further violation of either this Chapter or the terms of any permit issued thereunder, such officer or official of the City may immediately confiscate or destroy any growing Marijuana, harvested or processed Marijuana or any Marijuana Products. The City officer or official shall issue a written order revoking the permit as soon as practicable upon detecting the violation of this Chapter or of any permit leading to the revocation. Any confiscation or destruction of any Marijuana or Marijuana Products shall be final and conclusive, and not subject to an appeal insofar as the confiscation or destruction of Marijuana or Marijuana Products occurs in connection with the action taken by the officer or official in revoking the permit. The revocation of the Permit shall, however, be subject to an appeal as provided in this Chapter.

**11-33-8: APPEAL:**

Any applicant for or holder of a permit issued pursuant to the provisions of this Chapter, which application or permit has been denied, revoked, or suspended by order of the Chief of Police, Community Development Director, or other officer or official of the City shall have the right to appeal such order or denial, revocation or suspension to the City Council within twenty (20) days after the date on which

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such order is hand delivered to the applicant or permittee, or deposited in the United States mail, postage prepaid, addressed to the applicant or permittee.

An appeal shall be made by filing a Notice of Appeal with the City Clerk of the City of Selma within the twenty (20) day period set forth in this section. The filing of such appeal shall not suspend the order of denial, revocation or suspension of said permit. The City Council shall hear the appeal within a reasonable time, not exceeding ninety (90) days, from and after the date of receipt of the Notice of Appeal by the City Clerk. The City Council shall conduct a public hearing, written notice of the time and place thereof being mailed to the applicant or permittee not less than ten (10) days prior to said hearing, unless timely notice be waived by the applicant or permittee. The rules of evidence shall not apply to the hearing and the applicant or permittee shall have the right to the assistance of counsel and the reasonable presentation of witnesses and evidence. The council shall make an order affirming, overruling or modifying the denial, revocation or suspension of such permit within sixty (60) days from and after the date the hearing on said appeal is concluded. The City's Council appeal and decision shall be limited to addressing whether a permit that has been revoked, denied or suspended shall or shall not be reinstated or issued. Any action taken by the Chief of Police, Community Development Director or other officer or official of the City in connection with the denial, revocation of or suspension of any permit other than the order revoking, denying or suspending the permit, shall be final, conclusive, and unreviewable. The decision of the City Council shall be the final decision of the City. Any person who has a Permit issued under this Chapter revoked shall be precluded from holding or being issued any such permit for a period of one year from the date of the order revoking the permit or the City Council's decision upholding the revocation, whichever is later.

**11-33-9: PENALTY:**

Any violation of any of the provisions of this Chapter shall be a misdemeanor and constitutes a public nuisance and shall be enforced and/or abated in accordance with Chapter 4 of Title 1 or other applicable section of the Selma Municipal Code.

**11-33-10: NON-EXCLUSIVE:**

Nothing in this Chapter is intended to be an exclusive penalty or remedy. Nothing in this Chapter is intended to authorize the use, possession, sale, distribution or Cultivation of Marijuana in violation of state or federal law."

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**SECTION 5.** California Environmental Quality Act: The City Council having considered the Staff Report and all public comments, has determined that this ordinance is not a project under the California Environmental Quality Act because the ordinance has no potential for resulting in a physical change in the environment. Since the ordinance is not a project, no environmental documentation is required.

**SECTION 6:** Severability: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases have been declared invalid or unconstitutional.

**SECTION 7:** Effective Date and Posting of Ordinance: This Ordinance shall take effect and be in force thirty (30) days from and after the date of final passage. The City Clerk of the City of Selma shall cause this Ordinance to be published at least once within fifteen (15) days after its passage in The Selma Enterprise with the names of those City Council Members voting for or against the Ordinance.

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I, REYNA RIVERA, City Clerk of the City of Selma, do hereby certify that the foregoing Ordinance was introduced at the November 21, 2016, regular City Council meeting and adopted at the December 5 2016, regular City Council meeting of the City of Selma by the following vote, to wit:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

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Michael Derr, Mayor

ATTEST:

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Reyna Rivera  
City Clerk of the City of Selma

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