



OROVILLE CITY COUNCIL

Council Chambers
1735 Montgomery Street
Oroville, CA. 95965

May 03, 2022
REGULAR MEETING
CLOSED SESSION 4:00 PM
OPEN SESSION 4:30 PM
AGENDA

PUBLIC ACCESS AND PARTICIPATION

To view the meeting, attend the meeting or provide comment, please see the options below. All comments emailed will be provided to the Council Members for their consideration.

To View the Meeting:

1. Watch our live feed <https://www.youtube.com/channel/UCAoRW34swYI85UBfYqT7IbQ/>
2. Watch via Zoom
<https://zoom.us/j/96870319529?pwd=dW9kMGRZSFo5MFFNQk5wVDUzRkRrZz09>
Meeting ID: 968 7031 9529
Passcode: 67684553
3. Listen via Telephone
Telephone: 1-669-900-6833
Meeting ID: 968 7031 9529
Passcode: 67684553

To Provide Comment to the Council:

1. Email before the meeting by 2:00 PM your comments to publiccomment@cityoforoville.org
2. Attend the meeting in person.

If you would like to address the Council at this meeting, you are requested to complete the blue speaker request form (located on the wall by the agendas) and hand it to the City Clerk, who is seated on the right of the Council Chamber. The form assists the Clerk with minute taking and assists the Mayor or presiding chair in conducting an orderly meeting. Providing personal information on the form is voluntary. For scheduled agenda items, ***please submit the form prior to the conclusion of the staff presentation for that item.*** Council has established time limitations of three (3) minutes per speaker on all items and an overall time limit of thirty minutes for non-agenda items. If more than 10 speaker cards are submitted for an item, the time limitation would be reduced to one and a half minutes per speaker for that item. If more than 15 speaker cards are submitted for non-agenda items, the first 15 speakers will be randomly selected to speak at the beginning of the meeting, with the remaining speakers given an opportunity at the end. **(California Government Code §54954.3(b)).** Pursuant to Government Code Section 54954.2, the Council is prohibited from taking action except for a brief response from the Council or staff to statements or questions relating to a non-agenda item.

CALL TO ORDER / ROLL CALL

Council Members: David Pittman, Eric Smith, Krysi Riggs, Art Hatley, Janet Goodson, Vice Mayor Scott Thomson, Mayor Chuck Reynolds

CLOSED SESSION

The Council will hold a Closed Session on the following:

1. Pursuant to Government Code Section 54957(b), the Council will meet with City Administrator, Personnel Officer, and/or City Attorney to consider the public employment related to the following position: Police Chief, City Administrator, Assistant City Administrator Finance Director, Assistant Community Development Director, Code Enforcement Director, Business and Housing Director
2. Pursuant to Government Code section 54956.9(d)(2), the Council will meet with the City Administrator and City Attorney regarding potential exposure to litigation – three cases.

OPEN SESSION

1. Announcement from Closed Session
2. Pledge of Allegiance
3. Adoption of Agenda

PRESENTATIONS AND PROCLAMATIONS

1. Butte Fire Safe Council Presentation

PUBLIC COMMUNICATION – HEARING OF NON-AGENDA ITEMS

This is the time to address the Council about any item not listed on the agenda. If you wish to address the Council on an item listed on the agenda, please follow the directions listed above.

CONSENT CALENDAR

Consent calendar **items 1 - 5** are adopted in one action by the Council. Items that are removed will be discussed and voted on immediately after adoption of consent calendar items.

1. APPROVAL OF THE MINUTES

The Council may approve the minutes of April 19, 2022

RECOMMENDATION

Approve the minutes of April 19, 2022

2. GRANT FUND TRANSFER

The Council may consider approving a transfer to Grant Fund 152.

RECOMMENDATION

Approve the funds transfer of \$50,000 to Grant Fund 152

3. AGREEMENT FOR THE BUTTE LOCAL AGENCY FORMATION COMMISSION (LAFCO) TO UTILIZE COUNCIL CHAMBERS FOR MONTHLY MEETINGS

The Council will consider an agreement with LAFCo to allow the use of the City Council Chambers for LAFCo meetings. These meetings will occur the first Thursday each month unless a special meeting is necessary.

RECOMMENDATION

Authorize staff to sign agreement as requested by LAFCo

4. SECOND READING OF ZONING CODE AMENDMENT ZC22-02 RELATING TO BINGO GAMES AND AMENDING OROVILLE MUNICIPAL CODE SECTION 5.24.250 TO BE CONSISTENT WITH STATE REGULATIONS.

The City Council will consider approving the second reading of an amendment to Section 5.24.250 of the Oroville Municipal Code, making it consistent with State law relating to the operation of bingo games, to increase the amount of proceeds allowed for operating costs per month from \$1,000 to \$2,000.

RECOMMENDATION

Approve the second reading and introduce by title only, Ordinance No. 1864 - AN ORDINANCE OF THE OROVILLE CITY COUNCIL AMENDING SECTION 5.24.250 OF THE ZONING CODE OF THE CITY OF OROVILLE CONSISTENT WITH STATE LAW RELATING TO THE OPERATION OF BINGO GAMES TO INCREASE THE AMOUNT OF PROCEEDS ALLOWED PER MONTH FROM \$1,000 TO \$2,000 FOR OPERATING COSTS.

5. SECOND READING OF ZONING CODE AMENDMENT ZC22-01, PROPOSED REVISION OF OROVILLE MUNICIPAL CODE TO ADD CHAPTER 17.17 RELATING TO THE REGULATION OF MASSAGE ESTABLISHMENTS AND INDEPENDENT MASSAGE PROVIDERS.

The Council will review and consider the second reading of Ordinance No. 1863 adding OMC Chapter **17.17** relating to the City's regulation of massage and other therapeutic bodywork businesses. These regulations are intended to protect the health, safety, and welfare of clients, the public and individuals while respecting legitimate massage businesses, and complying with the Massage Therapy Act of 2008.

RECOMMENDATION

Approve the second reading and introduce by title only, Ordinance No. 1863 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE ADDING CHAPTER 17.17 OF THE ZONING CODE OF THE CITY OF OROVILLE RELATING TO THE REGULATION OF MASSAGE ESTABLISHMENTS AND INDEPENDENT MASSAGE PROVIDERS

PUBLIC HEARINGS – 5:15 PM

The Public Hearing Procedure is as follows:

- Mayor or Chairperson opens the public hearing.
- Staff presents and answers questions from Council
- The hearing is opened for public comment limited to three (3) minutes per speaker. In the event of more than ten (10) speakers, time will be limited to one and a half (1.5) minutes. Under Government Code 54954.3, the time for each presentation may be limited.
- Speakers are requested to provide a speaker card to the City Clerk
- Public comment session is closed
- Council debate and action
-

6. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE RELATED TO THE ADOPTION OF A MILITARY EQUIPMENT USE POLICY (SECOND READING), ADDING TO CHAPTER 9 SECTION 9.25

The Council will conduct a public hearing to receive public input on and provide direction regarding the adoption of Ordinance NO. 1865, an ordinance on Military equipment use policy for the Oroville Police Department

RECOMMENDATION

Conduct a public hearing to receive input on Ordinance 1865; and

Waive the second reading and adopt, Ordinance No. 1865 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE ESTABLISHING A MILITARY EQUIPMENT USE POLICY, AMENDING TITLE 9 TO INCLUDE CHAPTER 9.25 MILITARY EQUIPMENT USE POLICY, FOR THE CITY OF OROVILLE POLICE DEPARTMENT PURSUANT TO ASSEMBLY BILL 481

REGULAR BUSINESS

7. TRANSPARENCY SOFTWARE

The Council may consider approving the authorization of switching software for transparency software from OpenGov to ClearGov.

RECOMMENDATION

Approve the Mayor to sign a contract with ClearGov for annual transparency software.

8. RECONSIDERATION FOR AUTHORIZATION TO AWARD CONTRACT FOR TREE PRUNING SERVICE

The Council will reconsider the action taken at the April 19, 2022, meeting to reject all bids, and may award a contract for tree pruning services within the City's public right of way to P31 Enterprises, Inc. in an amount not to exceed \$1,595.00 per day or \$120,000.00 annually.

RECOMMENDATION

Authorize Staff to award the bid and sign a contract for tree pruning services within the City's public right of way to P31 Enterprises, Inc.

REPORTS / DISCUSSIONS / CORRESPONDENCE

1. Council Announcements and Reports
2. Future Agenda Items
3. Administration Reports
4. Correspondence

- i. FERC Correspondence
- ii. Code Enforcement Update

ADJOURN THE MEETING

The meeting will be adjourned. A regular meeting of the Oroville City Council will be held on May 17, 2022, at 4:00 p.m.

Accommodating Those Individuals with Special Needs – In compliance with the Americans with Disabilities Act, the City of Oroville encourages those with disabilities to participate fully in the public meeting process. If you have a special need in order to allow you to attend or participate in our public meetings, please contact the City Clerk at (530) 538-2535, well in advance of the regular meeting you wish to attend, so that we may make every reasonable effort to accommodate you. Documents distributed for public session items, less than 72 hours prior to meeting, are available for public inspection at City Hall, 1735 Montgomery Street, Oroville, California.

Recordings - All meetings are recorded and broadcast live on cityoforoville.org and YouTube.



Council Chambers
1735 Montgomery Street
Oroville, CA. 95965

**April 19, 2022
REGULAR MEETING
MINUTES**

This agenda was posted on April 14, 2022. This meeting was recorded and may be viewed at cityoforoville.org or on YouTube.

CALL TO ORDER / ROLL CALL

Mayor Reynolds called the meeting to order at 4pm

PRESENT: Council Members: David Pittman, Eric Smith, Krysi Riggs, Art Hatley, Janet Goodson, Vice Mayor Scott Thomson, Mayor Chuck Reynolds

STAFF: City Administrator Bill LaGrone, Director of Business Assistance and Housing Development Amy Bergstrand, IT Manager Tyson Pardee, Code Enforcement Director Ron Belser, City Attorney Scott Huber, Assistant City Clerk Jackie Glover, City Treasurer Karolyn Fairbanks, Assistant Community Development Director Dawn Nevers, Assistant City Administrator Ruth Wright, Sergeant Malinowski, Principal Planner Wes Ervin, Assistant Planner Conner Musler

CLOSED SESSION

The Council held a Closed Session on the following:

1. Pursuant to Government Code Section 54957(b), the Council met with City Administrator, Personnel Officer, and/or City Attorney to consider the public employment related to the following position: Police Chief.
2. Pursuant to Government Code section 54956.9(d)(2), the Council met with the City Administrator and City Attorney regarding potential exposure to litigation – Two cases.

OPEN SESSION

1. Announcement from Closed Session – Mayor Reynolds announced that direction was given; no action was taken.
2. Pledge of Allegiance – Led by Mayor Reynolds
3. Adoption of Agenda – Motion by Council Member Smith and seconded by Council Member Goodson to adopt the agenda. Motion passed.

AYES: Hatley, Smith, Goodson, Riggs, Pittman, Thomson, Reynolds
NOES: None
ABSTAIN: None
ABSENT: None

The following spoke on non-agenda items:

- Darlean Smith
- Dennis Smith
- Bill Speer
- The Cameraman
- Kay Castro
- Stephanie Eirish

The following individuals spoke on agenda items:

- Bill Speer – Item 6, 8
- The Cameraman – Item 9
- Kay Castro – Item 11, 12
- Stephanie Eirish – Item 12
- Michael Brown – Item 12
- Bobby O’Reiley – Item 11, 12
- Lorraine Christensen – Item 12
- Steve Christensen – Item 12
- Annie Terry – Item 12

CONSENT CALENDAR

Motion by Council Member Goodson and second by Vice Mayor Thomson to approve the consent calendar Items 1-5 and 7. Motion passed unanimously.

- AYES: Hatley, Smith, Goodson, Riggs, Pittman, Thomson, Reynolds
- NOES: None
- ABSTAIN: None
- ABSENT: None

1. AUTHORIZE THE RENTAL FOR STREET DEPARTMENT EQUIPMENT

Council considered and approved the rental of equipment for the City Street Department for a month-long timeframe and approved the Rental Quote from I-5 rentals.

2. CYBERSECURITY UPGRADES

The Council considered the purchase of new cybersecurity products in the amount of \$72,162.10 and approved the purchase of cybersecurity upgrades.

3. KIDDIE DAY PARADE FEE WAIVER REQUEST FROM THE OROVILLE KIWANIS CLUB

The Council approved a fee waiver request from the Kiwanis Club of Oroville for the Kiddie’s Day Parade.

4. AGREEMENT WITH BPR CONSULTING GROUP FOR BUILDING DEPARTMENT PLAN REVIEW SERVICES

The Council **adopted Resolution No.9044** – A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH BPR CONSULTING GROUP FOR CONTRACT PLAN REVIEW SERVICES (Agreement No. 3412).

5. PLAN REVIEW SOFTWARE SUBSCRIPTION AGREEMENT

The Council approved a subscription agreement with Bluebeam, a Nemetschek Company, for a one-year building plan review software subscription software and authorized the Mayor to sign the contract.

7. CONSIDER AND APPROVE A JOB DESCRIPTION FOR AN ENGINEERING INTERN AND AUTHORIZE HIRING FOR THE POSITION

The City Council adopted a job description for an Engineering Intern and authorize staff to hire for the position.

6. AUTHORIZATION TO AWARD CONTRACT FOR TREE PRUNING SERVICE

The Council considered awarding a contract for tree pruning services within the City’s public right of way to P31 Enterprises, Inc. in an amount not to exceed \$1,595.00 per day or \$120,000.00 annually.

Motion by Vice Mayor Thomson and second by Council Member Smith to reject all bids on the basis of needing to allow equal access for all potential bidders, requesting staff to reissue an RFP for services.

- AYES: Smith, Riggs, Thomson, Reynolds
- NOES: Hatley, Pittman, Goodson
- ABSTAIN: None
- ABSENT: None

REGULAR BUSINESS

9. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE RELATED TO THE ADOPTION OF A MILITARY EQUIPMENT USE POLICY (FIRST READING), ADDING TO CHAPTER 9 SECTION 9.25

The Council received public input on and provide direction regarding the adoption of Ordinance NO. 1865, an ordinance on Military equipment use policy for the Oroville Police Department

Motion by Council Member Smith and second by Council Member Goodson to waive the first reading and introduce by title only, Ordinance No. 1865 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE ESTABLISHING A MILITARY EQUIPMENT USE POLICY, AMENDING TITLE 9 TO INCLUDE CHAPTER 9.25 MILITARY EQUIPMENT USE POLICY, FOR THE CITY OF OROVILLE POLICE DEPARTMENT PURSUANT TO ASSEMBLY BILL 481; and return to council for second reading and conduct a public hearing. Motion passed.

- AYES: Hatley, Smith, Goodson, Riggs, Pittman, Thomson, Reynolds
- NOES: None
- ABSTAIN: None
- ABSENT: None

PUBLIC HEARINGS – 5:15 P.M.

Public Hearing Opened at 5:19pm by Mayor Reynolds

8. FIRST READING OF AN ORDINANCE RELATED TO ZONING CODE AMENDMENT ZC21-06, PROPOSED REVISION OF OROVILLE MUNICIPAL CODE SECTION 17.12.020 RELATING TO FENCE, WALLS AND SCREENING STANDARDS

The Council considered amending OMC Section 17.12.020 relating to the City’s regulations of fences, walls and screening pertaining to maximum allowed heights, placement, and other changes necessary to protect the general health, safety, and public welfare of the city.

There was consensus of the council to send this item back to the Planning Commission for further review.

REGULAR BUSINESS

10. NORTH STAR PROPOSAL FOR MARKETING SERVICES

The Council received a presentation from North Star, Place Branding and Marketing in response to the released Request for Proposal (RFP) for Marketing Services.

Motion by Council Member Riggs and second by Council Member Smith to approve the agreement with North Star, Place Branding and Marketing and that there be a greater emphasis on Economic Development throughout the process. Motion passed.

AYES: Hatley, Smith, Goodson, Riggs, Pittman, Thomson, Reynolds
NOES: None
ABSTAIN: None
ABSENT: None

11. SANK PARK PERIMETER FENCE OPTIONS FOR SELECTION TO PREPARE REQUEST FOR PROPOSAL

The City Council received recommendations from the Park Commission and Historic Advisory Commission to select a fencing an option to for staff to prepare a request for proposal to fabricate a fence to erect around the perimeter of Sank Park.

The consensus of the council was to approve option b with a small curb and that it be satin black; and that the project be sent out for RFP.

12. ADVISORY BALLOT MEASURE REGARDING THE CONTRACTING OUT OF FIRE PROTECTION SERVICE FOR THE CITY OF OROVILLE

The Council considered a potential advisory ballot measure regarding the contracting of Fire Protection Services to Cal Fire, if approved the potential start date of any contract with Cal Fire would be delayed until November 15, 2022.

Motion by Council Member Pitman and second by Council Member Hatley to approve item 12 as written in the agenda. Motion did not pass due to the passage of the 2nd motion.

Motion by Mayor Reynolds and second by Vice Mayor Thomson to not approve item 12 and continue the course as already approved. Motion passed.

AYES: Smith, Riggs, Thomson, Reynolds
NOES: Hatley, Goodson, Pittman
ABSTAIN: None
ABSENT: None

REPORTS / DISCUSSIONS / CORRESPONDENCE

1. Council Announcements and Reports
 - a. Smith – Gave a Feather Fiesta Days Update
2. Future Agenda Items
 - a. Pittman/Riggs/Reynolds – Security improvement level at parks, public or private
3. Administration Reports – No verbal reports were given.
 - i. Departmental Reports for March 2022 – Council received a written report.

- 4. Correspondence
 - i. PG&E Correspondence
 - ii. FERC Correspondence
 - iii. Letter from Golden Valley Bank
 - iv. TUESD Correspondence

ADJOURN THE MEETING

Mayor Reynolds adjourned the meeting at 8:08pm.

APPROVED:

ATTESTED:

Mayor Chuck Reynolds

Assistant City Clerk Jackie Glover



CITY OF OROVILLE STAFF REPORT

TO: MAYOR REYNOLDS AND CITY COUNCIL MEMBERS

**FROM: RUTH WRIGHT, ASSISTANT CITY ADMINISTRATOR,
ADMINISTRATIVE SERVICES**

RE: GRANT FUND TRANSFER

DATE: MAY 3, 2022

SUMMARY

The Council may consider approving a transfer to Grant Fund 152.

DISCUSSION

Currently the City has been fortunate in the number of grant awards it has recently been awarded. With multiple grants to track and administer it is best to utilize our Grant Fund to keep transactions out of the General Fund. The challenge is the majority of these grants are reimbursable grants. This means there are disbursements to made with a lag time between expenditure and reimbursement. This creates a situation where the General Fund is fronting the funds to work on a project and then gets reimbursed when the grant reimbursement is received.

Rather than have the Grant Fund go into the negative, staff is requesting a loan from the General Fund the Grant Fund so there are available funds to pay for expenditures. Once the grant is closed out the loan will be repaid, and the grant closed out.

Depending on the grant staff will be requesting funds to cover up front costs. Currently we have some expenses for our LEAP Grant and need a transfer of \$50,000.00 to cover expenses.

FISCAL IMPACT

\$50,000 temporary loan to Grant Fund 152.

RECOMMENDATION

Approve the funds transfer of \$50,000 to Grant Fund 152

ATTACHMENTS

None



CITY OF OROVILLE STAFF REPORT

TO: MAYOR REYNOLDS AND OROVILLE CITY COUNCIL MEMBERS

FROM: BILL LAGRONE, CITY ADMINISTRATOR

**RE: AGREEMENT FOR THE BUTTE LOCAL AGENCY FORMATION
COMMISSION (LAFCo) TO UTILIZE COUNCIL CHAMBERS FOR
MONTHLY MEETINGS.**

DATE: MAY 3, 2022

SUMMARY

The Council will consider an agreement with LAFCo to allow the use of the City Council Chambers for LAFCo meetings. These meetings will occur the first Thursday each month unless a special meeting is necessary.

DISCUSSION

During the pandemic it became necessary for LAFCo to utilize the City Council Chambers to conduct their monthly meetings. LAFCo had previously utilize the Board of Supervisors Chambers, however the Board of Supervisors Chambers are set up to accommodate a 5-person Board as opposed to the City Council Chambers being set up to accommodate a 7-person Council. Additionally, this will allow staff to work more closely and collaboratively with LAFCo Staff and LAFCo Board members. The authorization to use the Chambers does not conflict with any other City uses and minimally impacts staff. Staff does not see any increased fiscal impact from this requested use. LAFCo is requesting this agreement be at no cost to LAFCo and the term be for 10 years.

FISCAL IMPACT

None

RECOMMENDATION

Authorize staff to sign agreement as requested by LAFCo

ATTACHMENTS

- A. Request from LAFCo



BUTTE LOCAL AGENCY FORMATION COMMISSION

Item 3.

1453 Downer Street, Suite C • Oroville, California 95965-4950
(530)538-7784 • Fax (530)538-2847 • www.buttelafco.org

April 14, 2022

Bill LaGrone, City Administrator
City of Oroville
1735 Montgomery Street
Oroville, CA 95965

Submitted via email to: blagrone@oropd.org

RE: LETTER AGREEMENT: LAFCo Use of Oroville City Council Chamber

Dear Mr. LaGrone:

On behalf of the Butte Local Agency Formation Commission (LAFCo), I wish to thank the City of Oroville for the use of the City Council Chambers during the pandemic uncertainty we all faced.

As you know, the Commission had historically met in the Butte County Board of Supervisors Chambers, which is configured for a five member Board, whereas the Oroville City Council Chambers accommodates seven members, which is better suited for our Commission.

The Commission supports a permanent change to utilize the City of Oroville Council Chambers for its public meeting venue and graciously accepts the City's offer to continue its use.

AGREEMENT:

1. It is hereby agreed that the City of Oroville authorizes and prioritizes the Butte LAFCo to utilize the City of Oroville City Council Chambers on the first Thursday of every month for its regularly scheduled meetings and at other times as requested and approved by the City Administrator or designee. Such use shall include audio/visual/digital equipment as currently available.
2. The City offers the facilities at no cost to Butte LAFCo and Butte LAFCo agrees to cover any unexpected costs resulting from City staff assistance that may be required.
3. The Agreement will commence on May 1, 2022, and remain in effect for a period of ten (10) years.

 4.14.22
Stephen Lucas Date
LAFCo Executive Officer

Bill LaGrone Date
City Administrator



CITY OF OROVILLE STAFF REPORT

TO: MAYOR REYNOLDS AND CITY COUNCIL MEMBERS

**FROM: DAWN NEVERS, ASST. COMMUNITY DEVELOPMENT DIRECTOR
WES ERVIN, PRINCIPAL PLANNER**

**RE: SECOND READING OF ZONING CODE AMENDMENT ZC22-02
RELATING TO BINGO GAMES AND AMENDING OROVILLE MUNICIPAL
CODE SECTION 5.24.250 TO BE CONSISTENT WITH STATE
REGULATIONS.**

DATE: MAY 3, 2022

SUMMARY

The City Council will consider approving the second reading of an amendment to Section 5.24.250 of the Oroville Municipal Code, making it consistent with State law relating to the operation of bingo games, to increase the amount of proceeds allowed for operating costs per month from \$1,000 to \$2,000.

DISCUSSION

On April 5, 2022, the Council approved the first reading of Ordinance No. 9043, a proposed amendment to the Oroville Municipal Code Section 5.24.250 to revise the city municipal code to be consistent with State regulations relating to bingo charity fundraisers by charitable and nonprofit organizations and to allow more flexibility regarding the amount of proceeds used for operation expenses.

A comparison of the State and city regulations is provided below.

State Regulation:

State Penal Code, Section 326.5(k)(2), mandates that no more than 20% of bingo proceeds before the deduction of prizes or **\$2,000.00** a month, whichever is less, may be used for the rental of property, overhead costs, administrative expenses, security equipment, and security personnel.

City Regulation:

Current Oroville Municipal Code Section 5.24.250 has a “cap” of \$1,000.00 a month” and reads as follows:

“No individual, corporation, partnership, or other legal entity except the organization authorized to conduct a bingo game shall hold a financial interest in the conduct of such bingo game. The profits of the bingo game shall be used only for charitable purposes. A portion of the proceeds, not to exceed 20% of the proceeds after the deduction for

prizes, or **\$1,000.00** a month, whichever is less, may be used for rental of property, overhead, and administrative expenses”.

A letter from the Feather River Senior Citizen’s Association (FRSCA) to the city dated December 1, 2021, requests a change to Section 5.24.250 to be consistent with State law. The FRSCA letter indicates “We take pride in the games we provide to anyone over the age of 18 three days a week” and “We can do so much more if you authorize this change” (see letter, Attachment B).

The proposed zoning amendment would allow the FRSCA and other charitable and nonprofit organizations in the city to use more of their proceeds to operate bingo games and to have the same privileges as other similar organizations in the State.

FISCAL IMPACT

None

RECOMMENDATION

1. Approve the second reading and introduce by title only, Ordinance No. 1864 - AN ORDINANCE OF THE OROVILLE CITY COUNCIL AMENDING SECTION 5.24.250 OF THE ZONING CODE OF THE CITY OF OROVILLE CONSISTENT WITH STATE LAW RELATING TO THE OPERATION OF BINGO GAMES TO INCREASE THE AMOUNT OF PROCEEDS ALLOWED PER MONTH FROM \$1,000 TO \$2,000 FOR OPERATING COSTS.

ATTACHMENTS

- A. Ordinance No. 1864
- B. Letter from the Feather River Senior Citizens Association

ORDINANCE NO. 1864

AN ORDINANCE OF THE OROVILLE CITY COUNCIL AMENDING SECTION 5.24.250 OF THE ZONING CODE OF THE CITY OF OROVILLE CONSISTENT WITH STATE LAW RELATING TO THE OPERATION OF BINGO GAMES TO INCREASE THE AMOUNT OF PROCEEDS ALLOWED PER MONTH FROM \$1,000 TO \$2,000 FOR OPERATING COSTS

WHEREAS, the City Council of the City of Oroville finds and declares its commitment to promote and advance the economic vitality of businesses located in the City of Oroville; and

WHEREAS, the City received a request from the Feather River Senior Citizen's Association (FRSCA) operates a bingo game for eligible individuals and they requested a change to the Oroville Municipal Code to be consistent with State law; and

WHEREAS, the City Council finds and declares that the proposed amendment to the municipal code related to bingo charity fundraisers by charitable and nonprofit organizations and to allow more flexibility regarding the amount of proceeds used for operation expenses appropriate in the City; and

WHEREAS, the City has conducted a CEQA review of all proposed commercial cannabis projects and no further environmental analysis is required. This action has been determined to be exempt from the California Environmental Quality Act (CEQA) review pursuant to Title 14, California Code of Regulations, Section 15061(b).

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF OROVILLE DOES ORDAIN AS FOLLOWS:

SECTION 1: Findings.

The City Council of the City of Oroville adopts and finds as true and correct the aforementioned recitals and incorporate them herein as findings.

SECTION 2: Amend Section 5.24.250 of the Oroville Municipal Code to read as follows:

"Section 5.24.250 - Limitation on financial interest and use of profit.

No individual, corporation, partnership, or other legal entity except the organization authorized to conduct a bingo game shall hold a financial interest in the conduct of such bingo game. The profits of the bingo game shall be used only for charitable purposes. A portion of the proceeds, not to exceed 20% of the proceeds after the deduction for prizes, or \$2,000.00 per month, whichever is less, may be used for rental of property, overhead, and administrative expenses."

SECTION 3: Environmental Determination.

The Council finds that the adoption and implementation of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(3).

SECTION 4: Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5: Effective Date.

This ordinance shall take effect thirty (30) days after the date of its final adoption. The City Clerk shall certify to adoption thereof and cause its publication according to law.

The City Clerk shall attest to the adoption of this Ordinance and cause same to be published in the manner required by the City Charter.

This Ordinance shall take effect on the 30th day after its adoption.

PASSED AND APPROVED by the Oroville City Council at a regular meeting held on this 3rd day of May, 2022, by the following vote:

YES:

NOES:

ABSTAIN:

ABSENT:

CHUCK REYNOLDS, Mayor

ATTEST:

FORM APPROVED:

JACKIE GLOVER, Assistant City Clerk

SCOTT E. HUBER, City Attorney



F.R.S.C.A. Inc.

Feather River Senior Citizen's Association, Inc.

1335 Myers St. - Downtown Oroville, California 95965 - (530) 533-8370

December 1, 2021

Mayor Chuck Reynolds and
City Council Members
City of Oroville
Oroville CA 95965

RE: Request to Change Oroville Municipal Code, Title 5, Business Licenses and Regulations,
Chapter 5.24 BINGO GAMES – Specifically Section 5.24.250

We are the Feather River Senior Citizen's Association located at 1335 Myers Street, Oroville CA. We have been at this location since the mid-1990's and are the only senior center in this beautiful town. Our association will be celebrating 46 years in November 2021. We are a public benefit 501 (c) 3 nonprofit organization who has been licensed in the City of Oroville for many years to hold bingo games. We take pride in the games we provide to anyone over the age of 18 three days a week.

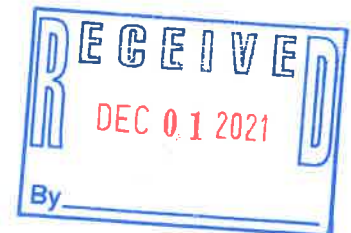
California Penal Code 326.5 (1999) gives clear direction on practices of organizations on the running of bingo games. Municipal Code 5.24.010 clearly states that the city licensing requirements are under the provisions of Section 326.5 of the Penal Code. However, the City's code 5.24.250 is in conflict with California Penal Code 326.5 whereby it states "A portion of the proceeds, not to exceed 20 percent before the deduction for prizes, or two thousand dollars (\$2,000), whichever is less." Our city code only allows for "20 percent or one thousand dollars (\$1,000) per month, whichever is less." We are requesting the city to change local law to coincide with state law.

FRSCA is a self-sustaining, non-profit, all volunteer association, which receives no federal, state, county, or city funds to operate. We work very hard to stay in the black and provide our community with services and activities. We can do so much more if you authorize this change.

Thank you in advance for your consideration in this matter.

Sincerely,

Mary E. Cimigliaro, Chair



PENAL CODE	Interpretation/Guide
CHAPTER 9. Lotteries	Scroll Down
Cal Pen Code @ 326.5 (1999)	
<p>@ 326.5. Bingo games</p>	
<p>(a) Neither this chapter nor Chapter 10 (commencing with Section 330) applies to any bingo game that is conducted in a city, county, or city and county pursuant to an ordinance enacted under Section 19 of Article IV of the State Constitution, if the ordinance allows games to be conducted only by organizations exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, and 23701h of the Revenue and Taxation Code and by mobilehome park associations and senior citizens organizations; and if the receipts of those games are used only for charitable purposes.</p>	<p>This means that the Penal Code which does not allow illegal lotteries does not apply to bingo. Bingo enjoys an exemption from the Penal Code restrictions, as long as the bingo is operated strictly for charitable purposes.</p> <p>This means that all of these organizations are authorized to operate bingo games for charitable purposes. But it doesn't mean that all of these organizations are charitable organizations. Some of them are merely non-profit organizations. They must give the bingo proceeds to charity.</p>
<p>(b) It is a misdemeanor for any person to receive or pay a profit, wage, or salary from any bingo game authorized by Section 19 of Article IV of the State Constitution. Security personnel employed by the organization conducting the bingo game may be paid from the revenues of bingo games, as provided in subdivisions (j) and (k).</p>	<p>This means that money earned from a bingo game may not be used to pay anyone to operate a bingo game.</p>
<p>(c) A violation of subdivision (b) shall be punishable by a fine not to exceed ten thousand dollars (\$ 10,000), which fine is deposited in the general fund of the city, county, or city and county that enacted the ordinance authorizing the bingo game. A violation of any provision of this section, other than subdivision (b), is a misdemeanor.</p>	
<p>(d) The city, county, or city and county that enacted the ordinance authorizing the bingo game may bring an action to enjoin a violation of this section.</p>	Scroll Down
<p>(e) No minors shall be allowed to participate in any bingo game.</p>	
<p>(f) An organization authorized to conduct bingo games pursuant to subdivision (a) shall conduct a bingo game only on property owned or leased by it, or property whose use is donated to the organization, and which property is</p>	<p>This means that minors (under 18 years of age) may not participate in a bingo game.</p>

used by that organization for an office or for performance of the purposes for which the organization is organized. Nothing in this subdivision shall be construed to require that the property owned or leased by, or whose use is donated to, the organization be used or leased exclusively by, or donated exclusively to, that organization.

(g) All bingo games shall be open to the public, not just to the members of the authorized organization.

(h) A bingo game shall be operated and staffed only by members of the authorized organization that organized it. Those members shall not receive a profit, wage, or salary from any bingo game. Only the organization authorized to conduct a bingo game shall operate such a game, or participate in the promotion, supervision, or any other phase of a bingo game. This subdivision does not preclude the employment of security personnel who are not members of the authorized organization at a bingo game by the organization conducting the game.

(i) No individual, corporation, partnership, or other legal entity, except the organization authorized to conduct a bingo game, shall hold a financial interest in the conduct of a bingo game.

(j) With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Those profits shall be used only for charitable purposes.

(k) With respect to other organizations authorized to conduct bingo games pursuant to this section, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Proceeds are the receipts of bingo games conducted by organizations not within subdivision (j). Those proceeds shall be used only for charitable purposes,

This means that an organization which is authorized to conduct bingo can own and maintain offices in the building in which they operate bingo, or they can have the property donated to them, or they can rent the property in which the bingo game is operated. They are not required to have exclusive use of the building. And, they do not have to rent it for their exclusive use.

(j) This refers to non-profit, tax exempt, charitable organizations. They are classified under Section 23701d of the California Revenue and Taxations Code, and under 501(c)3 or 501(9)a of the Internal Revenue code. They must maintain a separate bingo account for the purposes of operating their bingo game. They are allowed to transfer "profits" from the bingo account into their charitable operating accounts to be used for their charitable purposes as stated in their articles of incorporation.

(k) These other organizations which

except as follows:

(1) The proceeds may be used for prizes.

(2) A portion of the proceeds, not to exceed 20 percent of the proceeds before the deduction for prizes, or two thousand dollars (\$ 2,000) per month, whichever is less, may be used for the rental of property and for overhead, including the purchase of bingo equipment, administrative expenses, security equipment, and security personnel.

(3) The proceeds may be used to pay license fees.

(4) A city, county, or city and county that enacts an ordinance permitting bingo games may specify in the ordinance that if the monthly gross receipts from bingo games of an organization within this subdivision exceed five thousand dollars (\$ 5,000), a minimum percentage of the proceeds shall be used only for charitable purposes not relating to the conducting of bingo games and that the balance shall be used for prizes, rental of property, overhead, administrative expenses, and payment of license fees. The amount of proceeds used for rental of property, overhead, and administrative expenses is subject to the limitations specified in paragraph (2).

are allowed to operate bingo include fraternal organizations, such as Lions Clubs, Moose Lodges, Order of resters, Veterans organizations, American Legions, mobile home parks, senior citizen organizations etc. They are typically not charitable organizations, and therefore must give 100% of the net proceeds less a statutory exemption to charity. Other organizations must keep all bingo income in a special fund or account, and may not commingle it with any other fund or account.

Statutory exemption: These other organizations have a limit of spending no more than \$2,000 per month for the operation of any bingo game.

This section is for other organizations only!

(1) (1) A city, county, or city and county may impose a license fee on each organization that it authorizes to conduct bingo games. The fee, whether for the initial license or renewal, shall not exceed fifty dollars (\$ 50) annually, except as provided in paragraph (2). If an application for a license is denied, one-half of any license fee paid shall be refunded to the organization.

(2) In lieu of the license fee permitted under paragraph (1), a city, county, or city and county may impose a license fee of fifty dollars (\$ 50) paid upon application. If an application for a license is denied, one-half of the application fee shall be refunded to the organization. An additional fee for law enforcement and public safety costs incurred by the city, county, or city and county that are directly related to bingo activities may be imposed and shall be collected monthly by the city, county, or city and

This section is for all organizations licensed to conduct bingo.

OMC
5.24.250

Oroville Municipal Code

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[Title 5 BUSINESS LICENSES AND REGULATIONS](#)

CITY - SEE PAGE 4

Chapter 5.24 BINGO GAMES**5.24.010 Organizations eligible for city license to conduct bingo games.**

Corporations, community chests or trusts, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, exempted from the payment of the bank and corporation tax by Sections 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g) and 23701(l) of the [Revenue and Taxation Code](#) and a contribution or gift to which would be a charitable contribution under Section 170(c) (2) of the Internal Revenue Code of 1954, mobile home park associations and senior citizen groups, are eligible to apply to the city for a license to conduct bingo games in the city under the provisions of Section 326.5 of the [Penal Code](#) and the provisions of this chapter; provided, however, that the proceeds of all bingo games, the subject of this chapter, shall go to charity. (Ord. 1234 § 1)

5.24.020 Application for license.

Eligible organizations desiring to obtain such license to conduct bingo games in the city shall file an application in writing therefor in the office of the finance director on a form to be provided by the finance director. The issuing authority shall be the finance director. The license issued shall be for a term of one year from the date of issuance, subject to renewal and annual fee. (Ord. 1234 § 1)

5.24.030 Applicant must be qualified.

No license shall be issued to any organization unless such applicant is an eligible organization under Section 5.24.010 and its application conforms to the requirement, terms and conditions of this chapter. (Ord. 1234 § 1)

5.24.040 Contents of application.

Said application for a license shall contain the following:

- A. The name of the applicant organization and a statement that applicant is an eligible organization under Section 5.24.010;
- B. The name and signature of at least 2 officers, including the presiding officer, of the corporation or community chest and the trustee of any trust;
- C. The particular property within the city, including the street number, owned or leased by the applicant, used by such applicant for an office or for performance of the purposes for which the applicant is organized, on which property bingo games will be conducted, together with the occupancy capacity of such place;
- D. That the applicant agrees to conduct bingo games in strict accordance with the provisions of Section 326.5 of the [Penal Code](#) and this chapter, as they may be amended from time to time, and agrees that the license to conduct bingo games may be revoked by the chief of police upon violation of any of such provisions;
- E. Said application shall be signed by the applicant under penalty of perjury;
- F. The annual license fee fixed by the city council by resolution shall accompany the application;
- G. The applicant shall also submit, with its application, a Certificate or Determination of Exemption under Section 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g) and 23701(l) of the [Revenue and Taxation Code](#), or a letter of good standing from the Exemption Division of the Franchise Tax Board in Sacramento, showing exemption under Section 23701(d). (Ord. 1234 § 1)

5.24.050 Investigation of applicant.

Upon receipt of the completed application and the fee, the finance director shall refer the same to interested departments of the city, including, but not limited to, the city administrator, city attorney, police department, code enforcement office and the fire department, for investigation as to whether or not all the statements in the application are true and whether or not the property

the applicant qualifies and the extent to which it qualifies, as property on which bingo games may lawfully be conducted, fire, occupancy and other applicable restrictions. (Ord. 1234 § 1)

Item 4.

5.24.060 Contents of license.

Upon being satisfied that the applicant is fully qualified, under the law, to conduct bingo games in the city, the finance director shall issue a license to said applicant, which shall contain the following information:

- A. The name and nature of the organization to whom the license is issued;
- B. The occupancy capacity of the room in which bingo games are to be conducted;
- C. The address where bingo games are authorized to be conducted;
- D. The date of the expiration of such license;
- E. Such other information as may be necessary or desirable for the enforcement of the provisions of this chapter. (Ord. 1234 § 1)

5.24.070 Summary suspension of license pending opportunity for hearing—Misdemeanor to continue after suspension—Revocation.

- A. Whenever it appears to the chief of police that the licensee is conducting a bingo game in violation of any of the provisions of this chapter, the chief of police shall have the authority to summarily suspend the license and order the licensee to immediately cease and desist any further operation of any bingo game.
- B. Any person who continues to conduct a bingo game after any summary suspension thereof under subsection A of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not exceeding the amount outlined in the Master Fee Schedule or by imprisonment in the county jail for a period not exceeding 6 months, or by both such fine and imprisonment.
- C. The order issued under subsection A of this section shall also notify the licensee that it shall have 5 days from the date of such order to request a hearing to determine whether such license shall be revoked. Failure to request, in writing, such hearing before the chief of police within said 5-day period, shall result in a revocation of the license.
- D. Upon such request by the licensee, whose license has been suspended under subsection A of this section, for a hearing to determine whether such license shall be revoked, the chief of police shall provide such hearing within 10 days after receipt of such request at which hearing the suspended licensee may appear before the chief of police for the purpose of presenting evidence why the license should not be revoked. No license shall be revoked under this section unless notice of the time and place of such hearing shall have first been given at least 5 days before the hearing thereof by depositing in the United States mail a notice directed to said suspended licensee at the address given in the application. The notice shall set forth a summary of the ground advanced as the basis of the suspension and revocation.
- E. Any organization whose license is revoked under this section shall not conduct any bingo game in the city until such time as the city council, on appeal, determines to overrule the decision of the chief of police. (Ord. 1234 § 1)

5.24.080 Revocation of license—Alternative procedure.

- A. Whenever it appears to the chief of police that the licensee is conducting bingo games in violation of any of the provisions of this chapter, or that the license was obtained by fraudulent representation and no summary suspension is ordered, under Section 5.24.070, the license may be revoked; provided, however, the licensee may appear before the chief of police at the time fixed by the chief of police, for the purpose of presenting evidence why the license should not be revoked. No license shall be revoked under this section unless written notice shall have first been given at least 5 days before the hearing thereof by depositing in the United States mail, a notice directed to said licensee at the address given in the application. The notice shall set forth a summary of the ground advanced as the basis of the revocation.
- B. Any organization whose license is revoked under this section shall not conduct any bingo game in the city until such time as the city council, on appeal, determines to overrule the decision of the chief of police. (Ord. 1234 § 1)

5.24.090 Appeal of revocation to city council.

- A. Any holder of a license whose license is revoked under this chapter shall have the right, within 10 days after receiving notice in writing of the revocation, to file a written appeal to the city council. Such appeal shall set forth the

specific ground or grounds on which it is based. The city council shall hold a hearing on the appeal within 30 days receipt by the city, or at a time thereafter agreed upon and shall cause the appellant to be given at least 10 days' written notice of such hearing. At the hearing the appellant or its authorized representative shall have the right to present evidence and a written or oral argument, or both, in support of his or her appeal. The determination of the city council on the appeal shall be final.

B. Any organization whose license is finally revoked may not again apply for a license to conduct bingo games in the city for a period of one year from the date of such revocation; provided, however, if the ground for revocation is cancellation of the exemption granted under Section 23701(d) of the [Revenue and Taxation Code](#), such organization may again apply for a license upon proof of reinstatement of said exemption. (Ord. 1234 § 1)

5.24.100 Definition of bingo.

As used in this chapter, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random. (Ord. 1234 § 1)

5.24.110 Maximum amount of prizes.

The total value of prizes awarded during the conduct of any bingo games shall not exceed \$250.00 in cash or kind, or both, for each separate game which is held. (Ord. 1234 § 1)

5.24.120 Profits to be kept in separate fund or account.

All profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. The licensee shall keep full and accurate record of the income and expenses received and disbursed in connection with its operation, conduct, promotion, supervision and any other phase of bingo games which are authorized by this chapter. The city, by and through its authorized officers, shall have the right to examine and audit such record at any reasonable time and licensee shall fully cooperate with the city by making such record available. (Ord. 1234 § 1)

5.24.130 Financial interest in licensee only.

No individual, corporation, partnership, or other legal entity except the licensee shall hold a financial interest in the conduct of such bingo game. (Ord. 1234 § 1)

5.24.140 Exclusive operation by licensee.

A bingo game shall be operated and staffed only by members of the licensee organization. Such members shall not receive a profit, wage or salary from any bingo game. Only the licensee shall operate such game, or participate in the promotion, supervision or any other phase of such game. (Ord. 1234 § 1)

5.24.150 Bingo games open to public.

All bingo games shall be open to the public, not just to the members of the licensee organization. (Ord. 1234 § 1)

5.24.160 Attendance limited to occupancy capacity.

Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which such game is conducted as determined by the fire department and building department of the city in accordance with applicable laws and regulations. Licensee shall not reserve seats or space for any person. (Ord. 1234 § 1)

5.24.170 Bingo games conducted only on licensee's property.

A licensee shall conduct a bingo game only on property owned or leased by it, and which property is used by such organization for an office or for performance of the purposes for which the organization is organized. Nothing in this subdivision shall be construed to require that the property owned or leased by the organization be used or leased exclusively by such organization. A new license may be obtained by an eligible organization upon application under this chapter when it again owns or leases property used by it for an office or for performance of the purposes for which the organization is organized. (Ord. 1234 § 1)

5.24.180 Minors not to participate.

No person under the age of 18 years of age shall be allowed to participate in any bingo game. (Ord. 1234 § 1)

5.24.190 Intoxicated persons not to participate.

No person who is obviously intoxicated shall be allowed to participate in a bingo game. (Ord. 1234 § 1)

5.24.200 Hours of operation.

No licensee shall conduct any bingo game more than 6 hours out of any 24-hour period. No bingo game shall be conducted before 9:00 a.m. nor after 2:00 a.m. of any day. (Ord. 1234 § 1)

5.24.210 Participant must be present.

No person shall be allowed to participate in a bingo game, unless the person is physically present at the time and place in which the bingo game is being conducted. (Ord. 1234 § 1)

5.24.220 Receipt of profit by a person a misdemeanor under state law.

It is a misdemeanor under Section 326.5(b) of the [Penal Code](#) of the State of California for any person to pay or receive a profit, wage or salary from any bingo game authorized under this chapter. A violation of this section is punishable by a fine not to exceed the amount outlined in the Master Fee Schedule, which fine shall be deposited in the general fund of the city. (Ord. 1234 § 1)

5.24.230 City may enjoin violation.

The city may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the [Penal Code](#) or of this chapter. (Ord. 1234 § 1)

5.24.240 Severability.

If any section, subsection or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this chapter. The city council hereby declares that it would have adopted this chapter and each section, subsection or portion thereof, irrespective of the fact that any one or more sections, subsections or portion be declared invalid or unconstitutional. (Ord. 1234 § 1)

5.24.250 Limitation on financial interest and use of profit.

No individual, corporation, partnership, or other legal entity except the organization authorized to conduct a bingo game shall hold a financial interest in the conduct of such bingo game. The profits of the bingo game shall be used only for charitable purposes. A portion of the proceeds, not to exceed 20% of the proceeds after the deduction for prizes, or \$1,000.00 a month, whichever is less, may be used for rental of property, overhead, and administrative expenses. (Ord. 1234 § 1; Ord. 1497 § 1)

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CITY OF OROVILLE STAFF REPORT

TO: MAYOR REYNOLDS AND COUNCIL MEMBERS

**FROM: DAWN NEVERS, ASST. COMMUNITY DEVELOPMENT DIRECTOR
CONNIE SPADE, ASSOCIATE PLANNER**

**RE: SECOND READING OF ZONING CODE AMENDMENT ZC22-01,
PROPOSED REVISION OF OROVILLE MUNICIPAL CODE TO ADD
CHAPTER 17.17 RELATING TO THE REGULATION OF MASSAGE
ESTABLISHMENTS AND INDEPENDENT MASSAGE PROVIDERS.**

DATE: MAY 3, 2022

SUMMARY

The Council will review and consider the second reading of Ordinance No. 1863 adding OMC Chapter 17.17 relating to the City's regulation of massage and other therapeutic bodywork businesses. These regulations are intended to protect the health, safety and welfare of clients, the public and individuals while respecting legitimate massage businesses, and complying with the Massage Therapy Act of 2008.

DISCUSSION

On April 5, 2022, the Council approved the first reading of Ordinance No. 1863 with Zoning Code Amendment ZC 22-01. At present, the City of Oroville has not adopted regulations to adequately govern massage businesses. The proposed massage ordinance would provide direction, structure and minimum requirements for State massage certification, sanitation, safety, professional conduct, and operational standards.

The city recognizes massage therapy as a healing art and the many benefits it provides to residents and visitors in Oroville. However, the city must also address the widespread use of massage establishments as a front for sex trafficking and other criminal activity. Therefore, the proposed ordinance includes several features to prevent and curtail illegal activities to ensure the health, safety, and welfare of the community and possibly the victims of sex trafficking.

During the development of this ordinance the California Massage Therapy Council (CAMTC) provided vital information and support, the Development Review Committee provided input at two meetings, the Planning Commission heard the topic and recommends approval with the highlighted changes, and the Director of Code Enforcement has been involved throughout.

Key features of the proposed ordinance include:

1. Only massage therapists with a minimum of 500 hours of study from a school approved by the California Massage Therapy Council (CAMTC) can work at a massage establishment.
2. Existing sole providers must pass a live scan and provide proof of valid education to the city within 60 days of ordinance enactment.
3. Future sole providers must have a minimum of 350 hours of study and practice from a CAMTC approved school but do not have to be CAMTC certified
4. Existing massage establishment managers and massage therapists that are not CAMTC certified are allowed 16 months from the date of massage ordinance enactment to submit a copy of their CAMTC certificate and color copy of their CAMTC photo identification card. At 12 months each manager and massage therapist must provide proof to the city they completed 500 hours of study and CAMTC has accepted their complete application.
5. Within 60 days of enactment of this ordinance, all establishment owners and personnel (including support staff) are required to submit results of a live scan to the Chief of Police unless they are CAMTC certified.
6. Owners must provide their work history, work location(s), and job title(s) for the previous five years and provide documents regarding any suspension or revocation of a massage establishment permit in any jurisdiction over the last 10 years.
7. Operational requirements at massage establishments include no tinting of windows, indoor and outdoor lighting, window treatments, cleanliness, logging of daily treatments, creating a register of all persons associated with the massage establishment that is updated every 30 days. There are strict limits on advertising.

FISCAL IMPACT

None

RECOMMENDATION

1. **Approve the second reading and introduce by title only, Ordinance No. 1863 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE ADDING CHAPTER 17.17 OF THE ZONING CODE OF THE CITY OF OROVILLE RELATING TO THE REGULATION OF MASSAGE ESTABLISHMENTS AND INDEPENDENT MASSAGE PROVIDERS.**

ATTACHMENTS

1. Ordinance No. 1863

ORDINANCE NO. 1863

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE ADDING
CHAPTER 17.17 OF THE ZONING CODE OF THE CITY OF OROVILLE RELATING TO
THE REGULATION OF MASSAGE ESTABLISHMENTS AND INDEPENDENT
MASSAGE PROVIDERS**

WHEREAS, the City Council of the City of Oroville finds and declares its commitment to promote and advance the economic vitality of businesses located in the City of Oroville; and

WHEREAS, the Oroville Planning Commission has discussed a comprehensive ordinance for the regulation of massage establishments in the City of Oroville; and

WHEREAS, the City Council finds and declares that the proposed addition to the municipal code related to the regulation of massage establishments in the City of Oroville are important to protect the public and to appropriately advance the economic vitality of massage establishments in the City; and

WHEREAS, the City has conducted a CEQA review of all proposed commercial cannabis projects and no further environmental analysis is required. This action has been determined to be exempt from the California Environmental Quality Act (CEQA) review pursuant to Title 14, California Code of Regulations, Section 15061(b).

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF OROVILLE DOES ORDAIN AS FOLLOWS:

SECTION 1: Findings.

The City Council of the City of Oroville adopts and finds as true and correct the aforementioned recitals and incorporate them herein as findings.

SECTION 2: Add Chapter 17.17 of the Oroville Municipal Code.

Chapter 17.17 of the Oroville Municipal Code is added to read as outlined in Exhibit A, which is attached to this Ordinance and incorporated herein by reference.

SECTION 3: Environmental Determination.

The Council finds that the adoption and implementation of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(3).

SECTION 4: Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent

jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5: Effective Date.

This ordinance shall take effect thirty (30) days after the date of its final adoption. The City Clerk shall certify to adoption thereof and cause its publication according to law.

The City Clerk shall attest to the adoption of this Ordinance and cause same to be published in the manner required by the City Charter.

This Ordinance shall take effect on the 30th day after its adoption.

PASSED AND APPROVED by the Oroville City Council at a regular meeting held on this 3rd day of May, 2022, by the following vote:

YES:

NOES:

ABSTAIN:

ABSENT:

CHUCK REYNOLDS, Mayor

ATTEST:

FORM APPROVED:

JACKIE GLOVER, Assistant City Clerk

SCOTT E. HUBER, City Attorney

EXHIBIT A

**ORDINANCE FOR THE REGULATION OF MASSAGE ESTABLISHMENTS
IN THE CITY OF OROVILLE**

Adopted May 3, 2022

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17.17.xxx - Purpose and Intent.

The city recognizes that massage is a viable professional healing art offering the public valuable health and therapeutic services. The city also recognizes that unless properly regulated, the profession may be hijacked for use by the sex industry or human traffickers, posing a threat to the victims, customers, and the quality of life in the community.

It is the purpose and intent of this Chapter to protect the public health, safety, and welfare by providing for the orderly regulation of massage establishments and sole providers ensuring individuals providing massage or other therapeutic bodywork are qualified and properly trained to avoid injury to clients, and by providing minimum building, sanitation, and operation standards for such businesses, while relying on the uniform statewide regulation enacted by the State Legislature in 2008, as well as subsequent amendments, in Business and Professions Code Section 4600 et seq., known as the Massage Therapy Act.

Specifically, the regulations in this Chapter are intended to reduce or prevent blight, protect and preserve the quality of properties and the quality of life in the City of Oroville, deter criminal activity and prevent commercial sexual exploitation and human trafficking.

17.17.xxx - Definitions.

The following terms and phrases, whenever used in this Chapter, are defined as follows:

Accessory Massage Business. A massage business in a building, office or other fixed location that is secondary to the primary use including, but not limited to, a hotel, motel, beauty salon, spa, athletic club, nail salon, or yoga studio.

California Massage Therapy Council or “CAMTC”. The non-profit organization formed to oversee and certify individual massage therapist and massage schools pursuant to the California Business and Professions Code Chapter 10.5 of Division 2 of the Business and Professions Code (commencing with section 4600). The CAMTC does not regulate massage establishments.

CAMTC certification or state certification. These terms are used interchangeably and refer to a valid certificate properly issued by CAMTC pursuant to California Business and Professions Code Section 4600 et seq., as amended issued to individuals completing 500 hours of massage instruction from a CAMTC approved school, passed the State exam, and successfully passed a live scan background check. Certification is valid for two years.

Certified massage establishment. Any establishment where the manager(s) and massage therapist(s) have current and valid CAMTC certificates.

Certified massage therapist. Any individual to whom the CAMTC has issued a certificate and photo identification card per Business and Professions Code sections 4600-4620.

Chief of Police. The City Chief of Police, or his or her designee.

City business license. The city license required for all businesses in the city and issued per Municipal Code Section 5.08.030.

City Administrator. The City Administrator, or his or her designee.

Compensation. The payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

Exempt Individuals. Sole providers and massage establishment owners are exempt from CAMTC certification after successfully passing a live scan background check and other conditions, but not otherwise exempt from other requirements of this Chapter.

Franchise Massage Establishment. A franchise is a type of license that grants a franchisee access to a franchisor's proprietary trade name, products and services, and an entire system for operating the business.

Live scan. A criminal background check using inkless fingerprint imaging required by the State prior to CAMTC certification and for individuals exempt from CAMTC certification by this Chapter.

Massage. Massage means the therapeutic manipulation of the external soft tissues of the body for remedial health, or hygienic purposes for any form of compensation by means of pressure, friction, stroking, kneading, rubbing, tapping, vibrating, pounding, to produce increased awareness, relaxation, pain relief, injury rehabilitation, or neuromuscular reeducation with or without the aid of any mechanical or electrical apparatus or appliances; or with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, gels, lotions, ointments, or other similar preparations commonly used in this practice; or baths, showers or electric tub.

Massage therapist. An individual that provides massage therapy who has completed verifiable hours in a resident course of study from a recognized school.

Massage business. Any person, firm, association, partnership, corporation, joint venture, or a combination of individuals who engages in, conducts, carries on or permits to be engaged in, conducted or carried on for consideration, massages or health treatments in the city in which massages are given in return for compensation of any type whether at a fixed place of business or a location designated by the client.

Massage establishment. An office, site or premises, or portion thereof, where the owner(s) employ, contract with, or otherwise retain massage therapists to provide on-site massage, off-site massage on behalf of the establishment, or a combination of both.

Massage establishment manager. Any person who supervises, manages, directs, organizes, controls or in any other way is responsible for or in charge of the overall operation, conduct or activities of a massage establishment business. The manager may be the massage establishment owner or a CAMTC certified massage therapist.

Mobile and off-site massage. The engaging in or carrying on of massage therapy or other bodywork for compensation at a location requested by the client (e.g., client residence or office) or by the massage therapist (e.g., sports event, health fair or senior home). Mobile massage does mean administering massage/bodywork within a vehicle.

Other Bodywork. A therapeutic practice of the healing arts, other than massage (e.g., shiatsu, acupressure, bowen, manual lymph drainage) that include therapeutic touch or energy work.

Owner. For purposes of this Chapter "owner" refers to all owners of a massage establishment.

Owners. A partnership, corporation, or shareholder of a massage establishment and means any of the following:

- Any general partner of a partnership that owns and operates a massage establishment business; or
- Any person who has an ownership interest in a corporation that owns and operates a massage establishment; or
- All owners of a massage establishment including any of the following persons, a general partner, a limited partner, a shareholder, or any person who has a five percent or greater ownership interest in a massage business whether as an individual, corporate entity, limited partner, or shareholder.

Reception Area. An area immediately inside the main entry door of the massage establishment dedicated to the reception and waiting of clients.

Recognized school. Any school or institution of higher learning which has been approved pursuant to California Education Code Section 94300 et seq. or other applicable state law or regulations of California or another state school on the ethics, practice, methods, and contraindications of the profession of massage, including the study of anatomy, physiology and hygiene, and practice of massage techniques and that provides a diploma or certificate.

Sole provider. An individual that administers massage or other therapeutic bodywork, owns 100 percent of their business, and is the only person working for that business.

Visitor. Any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services including, but not limited to, a caretaker, child of a client, parent of child receiving massage, delivery person, and the public.

17.17.xxx - Regulation of Massage Establishments

This Chapter includes requirements for massage establishments and other types of massage businesses. Requirements are different for existing businesses and future businesses that wish to operate in the city.

A. State (CAMTC) Certification

1. No person shall establish, operate, or maintain a Massage Establishment within city limits without ensuring that each individual administering massage or other bodywork (whether an employee or independent contractor) and manager has a current and valid state certification through CAMTC.
2. CAMTC certificate holders shall renew their CAMTC certification every two (2) years as required by the Massage Therapy Act.

Business License

1. Any person or persons that currently operate or that wish to open a massage establishment within the city shall have a valid Business License as required in Section 5.08.030, renew the license every 12 months, and obtain all necessary city approvals.

2. The massage establishment business license shall be valid for one (1) year from the date of issuance, and, unless suspended or revoked, must be renewed by the massage establishment owner every 12 months.
 3. Applications for renewal must be submitted to the Police Chief or his or her designee by no later than sixty (60) calendar days before the expiration of such business license.
 4. Massage therapists that are non-employees of a massage establishment must also obtain a business license separate from the massage establishment.
- B. Personal Service - Medium Impact Zoning Removed. Any massage establishment that employs, contracts with, or otherwise retains massage therapists certified by the CAMTC shall be considered a personal service - low-impact as defined in OMC Section 17.04.060. The permitting process shall be as outlined in the zoning table for the zoning district in which the applicant proposes to operate a massage establishment. Personal Services - Medium Impact (allowed with use permit approval) will no longer apply to massage establishments regulated by this Chapter.
- C. Registry of Owners, Managers, Massage Therapists and Staff. The massage establishment owner(s) and manager(s) shall maintain on the premises a register of all current owners, managers, massage therapists, and support staff. The register shall be updated every 30 days. The register shall be legible, in English and maintained for a minimum of two years following the time that any individual ceases services or affiliation with the massage establishment. A massage establishment owner "employs or retains" a person to practice massage therapy for compensation when:
1. That person is a directly paid employee of the massage establishment; or
 2. That person's association with a massage establishment is that of an independent contractor who receives compensation for massage therapy provided to clients of the massage establishment; or
 3. That person receives a referral of clients from the massage establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the massage establishment owner (regardless of whether the parties involved acknowledge that compensation is flowing in exchange for the referral, or whether such parties record such compensation in their financial records).
 4. The owner, manager, or massage therapist or other staff shall make the register immediately available for inspection upon demand of a representative of the Police Department, any health officer, or any other city official charged with the monitoring and enforcement of this Chapter. The register shall include the following information:
 - a. Name, nicknames, and/or aliases;
 - b. Home address and relevant telephone number, including but not limited to home, cellular, and pager numbers and email;

- c. Age, date of birth, gender, height, weight, color of hair and eyes;
 - d. The date such person began employment or providing services, and the date such person ended employment or stopped providing services, if any;
 - e. The duties of each person; and
 - f. In a separate portion of the register, Social Security numbers, which shall only be available for review by the Police Department or other law enforcement personnel, but not health officers or other officials charged with the enforcement of this Chapter.
- D. Location Moratorium - Problem Massage Business. No person shall provide massage, operate a massage establishment, or provide property for operation of a massage establishment at a particular location if:
- 1. Another massage establishment is or was operating at that location within the prior thirty-six (36) months and that massage establishment has been deemed by the city attorney or a court of competent jurisdiction to have violated any provision of this Chapter.
 - 2. Another massage establishment is or was operating at that location within the prior thirty-six (36) months and that massage business has outstanding unpaid fines or penalties, whether criminal, administrative, or civil.
- E. Business Name and Operation. No person permitted to operate a massage establishment under this Chapter shall operate under any business name or conduct business under any designation not specified in the massage establishment business license.
- F. Certificate of Occupancy. An application for a certificate of occupancy shall be required per Section 17.48.030 with one or more of the following:
- 1. Change of lessee or owner, even when the change does not alter the use. A copy of the lease agreement shall be provided to the Chief of Police within 30 days that the lease takes effect.
 - 2. A remodel
 - 3. Change in business location.
 - 4. Change in the use of the business including, but not limited to, adding or eliminating secondary services (spa, tanning, cosmetology, etc.) and expanding or reducing floor space.
- G. Advertising Requires State Certificate Number. Each manager or individual who administers massage shall include in all advertising and business cards the name under which he or she is certified and his or her certificate number. Any and all advertising and business cards by massage establishment owner(s) shall include their city business license number.

- H. Nuisance Abatement. If the city attorney declares a massage establishment to be a public nuisance, the city attorney may commence an action or actions, proceeding or proceedings, for the abatement, removal, and enjoinder thereof, in the manner provided by law.

17.17.xxx - Exemption from CAMTC Certification

A. Sole Providers.

Existing and future sole providers practicing massage or other therapeutic bodywork (e.g., Bowen therapy, cranio-sacral, movement therapy, manual lymphatic drainage, and energy work) are exempt from CAMTC certification with the following conditions:

1. Existing Sole Providers - Non CAMTC Certified

Submit the following information to the Chief of Police or his or her designee within 60 days of enactment of this Chapter:

- Results of a live scan background check.
- A clear color photo of applicant's face taken in the last three months (minimum size 2" by 3") that is acceptable to the city.
- The city "General Application" and supplemental documents including:
 - Questionnaire and Agreement for Sole Providers.
 - Diploma, certificate or other valid proof of education acceptable to the city.

2. Existing Sole Providers - CAMTC Certified

Existing Sole Providers that have an active CAMTC certificate shall submit the following information to the Chief of Police or his or her designee within 60 days of enactment of this Chapter:

- A copy of an active CAMTC certificate and CAMTC photo identification card.
- The city "General" Application.
- Questionnaire and Agreement

3. Future Sole Providers

- Results of a live scan background check.
- A clear color photo of applicant's face taken in the last three months (minimum size 2" by 3") that is acceptable to the city.
- The city "General Application" and supplemental documents including:
 - Questionnaire and Agreement for Sole Providers.
 - Diploma, certificate or equivalent document from a CAMTC approved school.
 - Transcripts showing 350 hours of study

4. Future sole providers are required to have a minimum of 350 hours of study and practice from a CAMTC approved school but do not have to be CAMTC certified. The CAMTC websites list approved and non-approved schools.

- B. A student of massage therapy or bodywork working towards CAMTC certification under the supervision of a CAMTC certified massage therapist, a National Board-certified therapist, or equivalent.
- C. Licensed professionals such as physicians, nurses, chiropractors, osteopaths, naturopaths, podiatrists, acupuncturists, or physical therapists who are duly licensed to practice their respective professions in the State of California or persons working for, and under the direct supervision of a physician, nurse, chiropractor, osteopath, naturopath, podiatrist, acupuncturist, or physical therapist.
- D. Barbers, beauticians, estheticians, and cosmetologists who are duly licensed under the laws of the State of California, while practicing within the scope of their licenses.
- E. Trainers of any amateur, semi-professional, or professional athlete or athletic team while engaging in their training responsibilities.
- F. Individuals administering massages for a single-occurrence event, including but not limited to; a triathlon, festival, fair, and with approval of the event sponsors.
- G. Owner(s) of a Massage Establishment unless actively managing or administering massages.

17.17.xxx - Deadline for Compliance - Existing Massage Establishments

A. Managers and Massage Therapists - Non CAMTC Certified

- 1. Within 12 months from the date of ordinance enactment each manager and massage therapist must provide proof to the city they have completed 500 hours of study and CAMTC has accepted their complete application.
- 2. Within 16 months from the date of ordinance enactment a copy of the manager(s) and massage therapist(s) CAMTC certificate and photo identification card shall be submitted to the city Planning and Development Department. The 16-month grace period shall not apply to existing massage establishments operating in the city without a current business license or in violation of any local, state, or federal regulation within the last 10 years.

B. All Owners, Managers, Therapists, and Staff

- 1. Live Scan. Within 60 days from the date of ordinance enactment all non-CAMTC certified persons affiliated with any massage establishment shall submit proof of successful passage of a live scan background check to the Chief of Police.

C. Owner(s)

- 1. The owner or owners (all owners) shall provide a government issued photo identification to the city that can include; a valid and current driver's license and/or photo identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

17.17.xxx - Massage Establishment Operation

- A. The following operational requirements and owner and manager responsibilities shall be applicable to all massage establishments located within the city:
1. All clients, visitors, and any persons other than individuals employed or retained by the massage establishment shall be required to enter and exit through the main entry door.
 2. Clients and visitors as defined in this Chapter shall be permitted in the massage establishment only during the hours of operation. Massage shall be provided or given only between the hours of 7:00 a.m. and 9:30pm. A massage commenced prior to 9:30 p.m. must terminate at 9:30 p.m., and all clients and visitors shall exit the premises no later than 10:00pm through the front or main entry door.
 3. All Massage Establishments shall be closed for business by no later than 10:00 p.m. and shall open for business no earlier than 6:00 a.m. It shall be unlawful for any Massage Therapist or other employee of a Massage Establishment to give or practice massage during the hours when the Massage Establishment is closed.
 4. Clients shall only be permitted in a massage therapy cubicle, room, client restroom, reception and waiting area, dressing rooms, showers, and spa area, and only if at least one (1) duly authorized massage therapist is present on the premises of the massage establishment. Clients and visitors shall not be allowed in any employee break, employee restroom, laundry, or storage room on the premises.
 5. Visitors shall not be permitted in massage therapy room, cubicle, or other enclosed space used for massage unless that visitor is:
 - a. The conservator, aid, or other caretaker of a client who is elderly or disabled; or
 - b. The parents or guardian of a client who is a minor child may be present in the massage therapy room with that minor child; or
 - c. The minor child of a client when necessary for the supervision of the child.
 6. Establishment interior and exterior doors shall remain unlocked while the massage establishment is open. Exterior doors may remain locked if the massage establishment is a sole provider as allowed by AB 1147.
 7. No massage establishment shall be used for residential purposes. There shall be no beds, blow up mattresses, cots, wall beds, or futons in the establishment. No part of the establishment shall be altered for residential or sleeping purposes.
 8. No van, motorhome or other vehicle shall be parked in the parking lot of a massage establishment overnight.
 9. No person shall give, or assist in the giving of, any massage or other body treatment to any other person under the age of eighteen years, unless the parent or guardian of the minor person has consented thereto in writing.
 10. No person owning or managing a massage establishment may employ subcontract with or use any person under eighteen years of age.

11. No massage establishment may discriminate or exclude clients based on their race, sex, religion, age, disability, or any other classification protected under federal or state laws, rules, or regulations.
12. No person operating a massage establishment shall permit communication devices such as cameras or intercom systems used in any manner on the premises to interfere with or hinder inspections whether temporarily or permanently mounted to a fixed surface indoors or outdoors.
13. Each manager and massage therapist of a massage establishment shall wear or display their CAMTC photo identification card in the room, cubicle, or space where they administer massage and, in a manner, easily visible to the client.
14. Each manager and massage therapist shall provide his or her CAMTC photo identification card upon the request of a member of the public, the City Council, or a member of law enforcement, city staff or a local government agency charged with regulating massage or massage establishments, at the location where he or she is providing massage services for compensation.
15. All massage services shall be paid for in the reception area, and all tips, if any, shall be paid for in the reception area. Massage Establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.

17.17.xxx Responsibilities of Massage Establishment Owners and Managers

- A. All owners and managers shall be responsible for the conduct of all massage establishment employees, agents, independent contractors, or other representatives while such persons are on the premises of the massage establishment or providing off site massage on behalf of the massage establishment.
- B. The owner and/or manager shall be required to file copies of each CAMTC certificate and CAMTC photo identification card with the Chief of Police prior to or within seven days of a massage therapist beginning to work at the massage establishment.
- C. The owner or manager of the massage establishment shall maintain copies of each massage therapist's State certificate and a color copy of the CAMTC photo identification card on file on the premises of the massage establishment which shall be readily available to law enforcement, city code enforcement officer, or other city personnel that oversee compliance with this Chapter.
- D. A legible written daily log shall record the following:
 1. Each client's first and last name.
 2. The assigned room (or address of off-site massage service).
 3. The legal name and nick name if applicable of the individual administering such massage.
 4. A description of service(s) provided.

5. Date and time of the massage.

The daily log shall be completed by the close of business each day. Such records shall be made available upon request based on good cause, for inspection by the Chief of Police, or his/her authorized designee and the City Administrator and his/her designee. The information contained in such records shall be confidential. The daily log shall be retained on the premises of the massage establishment business office for period of not less than three (3) years.

- E. It is the responsibility of the owner or manager to notify the city authority of any change of personnel, ownership, number of owners, remodel, move to another location, change in the use such as addition or removing spa services, and use of space, Notification shall be in writing to the city authority within ten (10) days of change in ownership, number of owners, and change in personnel. The owner or manager shall provide prior notice to the city authority for a move, change in type of service(s), and revised use of space. A revised floor plan shall be submitted noting the revised use of all floor space.
- F. The owner or manager shall post the following in an open and conspicuous public place on the premises or as specified.
1. All original CAMTC certification documents and CAMTC photo identification cards in an open and conspicuous place inside the premises visible from the main entry door reception and waiting area of the massage establishment.
 2. A list of services available and the cost of such services. The services shall be described in English and in other language(s) as may be convenient. No massage establishment owner or operator shall permit, and no person employed or retained by the massage establishment shall offer to perform any services or request or demand fees other than those posted at the place of business. A list of services and the cost of such services shall also be provided to clients prior to conducting an off-site massage.
 3. The massage establishment business name and hours of operation shall be displayed in the reception area or other conspicuous public place within the massage establishment visible to clients.
 4. The required notices of human trafficking information and telephone hotline numbers in English, Spanish, Cantonese, Vietnamese, and other appropriate languages as determined by the city per the requirements of California Civil Code Section 52.6. The notices shall be posted in an area of the massage establishment that is readily accessible to massage therapists and all massage establishment personnel.
 5. All operating rules including hours of operation, inspections and health and sanitation requirements in English, Cantonese, Vietnamese, and other appropriate language accessible to all staff.

- G. It is the massage establishment owner's responsibility for ensuring that each individual administering massage complies with the Massage Therapy Act (B&P Code Section 4609(a)) provisions relating to sexual acts, including the prohibitions on: engaging in any form of sexual activity on the premises of a massage establishment.

17.17.xxx - Notification Requirements

- A. An owner or manager shall report to the Chief of Police or his or her designee within ten (10) days any change with respect to the information contained in the business owner's application.
- B. An owner or manager shall report any of the following within 96 hours of the occurrence:
1. Arrests of any employees or owners of the registrant's massage business for an offense other than a misdemeanor traffic offense.
 2. Resignations, terminations, or transfers of massage therapists employed or under contract with the owner.
 3. Any event involving the owner's massage business, or a massage therapist employed or under contract therein that constitutes a violation of this chapter or state or federal law.

This provision requires reporting to the Chief of Police even if the massage business believes that the Chief of Police has or will receive the information from another source.

17.17.xxx - Application for Massage Establishment Business License

- A. The owner(s) of a massage establishment or his/her duly authorized agent shall complete the city application on forms provided by the City and be responsible for the completeness and accuracy of all required information. For purposes of this section, the "applicant" for the massage establishment business licenses shall refer to and include all owners of the massage establishment.
- B. All applications for a massage establishment from any person looking to open a massage establishment shall include, at a minimum, the following information:
1. The massage establishment name, address, website, email, and telephone number.
 2. The applicant's full name, all other names the applicant uses or has used, the applicant's residential address, telephone number and email address.
 3. The name, residence address, email and telephone number of all owners or partners associated with the massage establishment business.
 4. A color copy of the current CAMTC certification and CAMTC photo identification card for each, manager and massage therapist.
 5. For all owners, a valid and current driver's license and/or identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

6. A live scan and government issued photo identification card for all individuals that will be working for the massage establishment and are not required to be CAMTC certified under this Chapter.
7. A list of all persons administering massage who are working or will work, be employed, or under contract to provide massage services at the massage establishment.
8. The name and position of the owner or manager principally in charge of the massage establishment.
9. The owner's signed statement that all the information contained in the application is true and correct, that all owners shall be responsible for the conduct of the business's employees or independent contractors providing massage services; and acknowledging that failure to comply with the California Business and Professions Code sections 4600 et seq., and local, state, or federal law, or the provisions of this Chapter may result in revocation of the city business license.
10. The names and addresses of any and all previous establishments owned or operated by the applicant (includes all owners) for the past five (5) years.
11. Site plan drawn to scale of building location and street names, floor plan showing office or similar space to be utilized by the massage business or establishment, square footage, waiting areas, massage rooms, cubicles, or other space to be utilized for massage treatments, chair massage location if applicable, restroom facilities for clients and staff if separate, employee break rooms, laundry room, storage areas, closets, and relevant facilities.
12. Applicant's business, occupation, and employment related to other massage establishments, including the name and address of any massage establishment or other like establishment owned or operated by any applicant.
13. History with any agency, board, city, county, territory, or state recognized certifying or permitting organization, and dates of issuance, denial, restriction, revocation, or suspension, and the reasons therefore, of any individual or establishment permit for the past 10 years.
14. The form of business under which the applicant will be conducting the massage establishment, i.e., corporation, general or limited partnership, limited liability Company, or other form. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (5%) of the stock of the corporation. If the applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or

corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate applicant shall apply, as applicable.

15. The name, address, and email of the owner of the real property upon, in, or from which the massage establishment is to be operated.
 16. In the event the applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in, or from the property owner's property.
 17. Application fee as established by the city's master fee schedule.
- C. Where the applicant is not the owner of record, as shown on the latest county assessment roll, of the property upon, in, or from which the massage establishment is to be operated, then upon issuance of a business license, the city authority may send a written notice to the property owner advising of the issuance of the massage establishment business license and of the regulations applicable to the massage establishment and the property pursuant to this Chapter.
- Any notices sent to the applicant pursuant to this Chapter at any time before or after issuance of the massage establishment business license may also be sent to the property owner.
- D. A business license shall be denied if any of the following are found to be true:
1. The application is incomplete and/or required supplementary materials are not submitted on a timely basis including CAMTC certificates and photo identification card for the manager(s) and massage therapist(s).
 2. The applicant, or any shareholder, partner, or member of the applicant, within ten (10) years immediately preceding the date of filing of the application, has had a certificate, permit or license to practice massage for compensation or to own and/or operate a massage establishment revoked or denied in any jurisdiction.
 3. The applicant, or any shareholder, partner, or member of the applicant, has knowingly made a false, misleading, or fraudulent statement or omission of fact in his or her application or other materials submitted with the application.
 4. The applicant, or any shareholder, partner, or member of the applicant, within ten (10) years immediately preceding the date of filing of the application, has been convicted in a court of competent jurisdiction of any offense that relates directly to the operation of a massage establishment whether as a massage establishment owner or manager, or as a person practicing massage for compensation, or as an employee of either; or has at any time been convicted in a court of competent jurisdiction of any felony the commission of which occurred on the premises of a massage establishment.

5. The results of a live scan indicate the owner, manager, supervisor, or a person administering massage has convictions in a court of law including registration as a sex offender under the provisions of Section 290 of the Penal Code and/or Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), [or] 653.22 of the California Penal Code 4 or equivalent offenses under the laws of another jurisdiction, including any other State or Country.
6. If the business license was issued in error.
7. The applicant, including applicant as a corporation or partnership, or former employer of the applicant while the applicant was so employed, has been successfully prosecuted in an abatement proceeding under the California Red Light Abatement Act (Penal Code sections 11225 through 11325) or any other similar laws in another jurisdiction.
8. The applicant has been convicted of:
 - a. a prior offense which involves the sale of controlled substances specified in California Health and Safety Code sections 11054, 11056, 11057 or 11058, or equivalent offenses under the laws of another jurisdiction, including any other state or county;
 - b. any offense involving dishonesty, fraud, deceit or the use of force or violence upon another person in the last 10 years; or
 - c. any offense involving sexual misconduct;
 - d. for purposes of this section, a plea of "nolo contendere" may also serve as the basis for the denial of a Massage Establishment business license because the above listed underlying offenses bear a substantial relationship to the qualifications, functions or duties of a Massage Therapist or Establishment.

If the owner/applicant or any other person is dissatisfied with the action regarding an application for a massage establishment, they may appeal to the proper decision body as provided in Section 17.56.100.

17.17.xxx - Inspection

- A. The Chief of Police or his/her designee shall have the right to enter any massage establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this Chapter.
- B. It shall be unlawful for any owner, manager, massage therapist, or other staff to fail to allow such inspection officer access to the premises or hinder or attempt to delay such officer in any manner.
- C. The massage establishment owner shall take immediate action to correct each violation noted by the inspector. A reinspection will be performed within thirty (30) days to ensure that each violation noted by the inspector has been corrected.

- D. All managers, supervisors, and massage therapists shall, during permissible hours of operation, have on their person or immediately available at the massage establishment a current CAMTC issued photo identification card. Other massage establishment staff not required to have a CAMATC certification shall have a valid driver's license or other valid government issued photo identification readily available.
- E. All managers and massage therapists shall provide his or her full name and certificate number upon the request of a member of the public, the council, or a member of law enforcement, or a local government agency charged with regulating massage or massage establishments, at the location where he or she is providing massage services for compensation.

17.17.xxx - Amendment Required for Personnel Changes

- A. Whenever the information provided in the application for massage establishment business license on file with the city changes, for example by a change in employees, or independent contractors, number of owners, new massage establishment ownership, the owner or manager shall, within ten (10) business days after such change, notify the city authority to amend the massage establishment application of the massage establishment business license to reflect such change.
- B. It shall be a violation of this Chapter for the operator to allow any person to perform massage therapy for compensation on the premises of a massage establishment unless and until an amended massage establishment business license has been issued by the city authority identifying that person as employed or retained by the massage establishment to practice massage therapy for compensation. A CAMTC certification document and CAMTC issued photo identification card of any new massage therapist shall be provided with the application to amend the massage establishment business license.

17.17.xxx - Amendment Required for Change of Business Name or Location

Upon a change of location of a massage establishment, an application for an amended business license shall be filed with the city authority, and such application shall be granted, provided all applicable provisions of this code are complied with as to the new location, and any due and unpaid citations issued to the owner(s) pursuant to this Chapter are paid in full.

17.17.xxx - Sale or Transfer of Massage Establishment or Ownership Interest Therein.

- A. Upon a sale or transfer of any massage establishment, or upon the sale or transfer of some or all the interest of any massage establishment owner to a person who is not already an owner of the massage establishment, a zoning clearance/certificate of occupancy application shall be required.
- B. A business license for a sole provider or a massage establishment if altered in name, sold, transferred, or assigned by the owner, or attempted sale, transfer or assignment shall be deemed to constitute a voluntary surrender of such business license and shall thereafter be deemed terminated and void.

17.17.xxx - Health and Safety Requirements

- A. The following health and safety requirements shall be applicable to all massage establishments located within the city:
1. The massage establishment shall always be equipped with an adequate supply of clean sanitary towels, coverings, and linens, and all massage tables shall be covered with a waterproof pad and clean sheet or other clean covering for client. After each towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized.
 2. All bathrobes, bathing suits, and/or other garments that are provided for the use of clients shall be either fully disposable and not used by more than one (1) client or shall be laundered after each use pursuant to subsection (D)(1) of this section.
 3. All massage therapy rooms or cubicles, wet and dry heat rooms, toilet rooms, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected at least once each business day or more often as needed, when the premises have been or will be open and such facilities in use. Bathtubs shall be thoroughly cleaned and disinfected after each use.
 4. All liquids, creams, or other preparations used on or made available to clients shall be kept in clean and closed containers. All containers shall be correctly labeled to disclose their contents. When only a portion of a liquid, cream, or other preparation is to be used on or made available to a client, it shall be removed from the container in such a way as not to contaminate the remaining portion.
 5. No invasive procedures shall be performed on any client. Invasive procedures include, but are not limited to:
 - a. Application of electricity that contracts the muscle;
 - b. Penetration of the skin by metal needles;
 - c. Abrasion of the skin below the nonliving, epidermal layers;
 - d. Removal of skin by means of any razor-edged instrument or other device or tool;
 - e. Use of any needle-like instrument for the purpose of extracting skin blemishes;
 - f. Colon cleansing; and
 - g. Other similar procedures.
 6. Massage shall only be provided to a client upon a table or chair standard to the massage profession. No other furniture or similar item shall be used.
 7. All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of clients shall be either fully disposable and not used by more than one (1) client or shall be fully disinfected after each use.

8. The premises shall have adequate equipment and disinfecting substances for disinfecting and sterilizing nondisposable instruments or other materials used in administering massages and be disinfected after each use on each patron.
9. Walls, ceilings, floor, pools, showers, bathtubs, water basins, toilets, wet and dry heat rooms, steam or vapor rooms and cabinets and all other facilities shall be maintained in good repair and in a clean and sanitary condition.
10. The cover pad used on massage tables shall consist of a durable, washable waterproof material.
11. All persons shall thoroughly wash their hands with soap and warm water or any equally effective cleansing agent immediately before providing massage therapy to a client.

B. Prohibited Conduct

1. No massage establishment owner, manager, employee, contractor, or support staff shall be under the influence of alcohol, recreational or illegal drugs at any time on the massage premises or when providing off premise massage.
2. No alcoholic beverages, recreational or illegal drugs shall be kept, possessed, consumed, sold, or distributed on the premises of a massage establishment and massage establishment personnel shall not allow a client or visitor to bring or consume an alcoholic beverage or controlled substance within or outside of a massage establishment.
3. A massage shall not be given, and no client shall be in the presence of any massage establishment staff unless the client's genitalia and, if a female client, the female client's breasts, are fully covered by an opaque, nontransparent covering.
4. No massage establishment owner, operator, employee, massage therapist or other staff shall, while on the premises of a massage establishment or while performing any onsite or mobile massage service, and while in the presence of any client, customer, employee, or visitor, expose his or her genitals, buttocks, or chest.
5. No storage or sale of condoms or spermicides shall be permitted within the massage establishment.
6. No person shall use or possess, nor shall there be, any storage of, any sexually oriented tool, equipment, or apparatus which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity.
7. No electrical, mechanical, or artificial device shall be used by any massage establishment owner, manager or staff for audio and/or video recording or for monitoring the performance of a massage, of the conversation or other sounds in the massage rooms, without the knowledge and written consent of the client.
8. The following attire requirements shall be applicable to all employees and any other persons who work permanently or temporarily on the premises, of a massage establishment within the city. No person shall dress in:

- a. Attire that is transparent, see-through, or substantially exposes the person's under garments;
 - b. Swim attire, if not providing a water-based massage modality approved by the CAMTC;
 - c. A manner that exposes the person's breasts, buttocks, or genitals;
 - d. A manner that constitutes a violation of Section 314 of the California Penal Code.
 - e. In a manner which has been deemed by CAMTC to constitute unprofessional attire.
9. Except for a client who is inside a massage therapy room for the purpose of receiving a massage, no clients or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.
 10. No Massage therapist, employee or other staff of a Massage Establishment shall place either his/her hand or hands upon, or touch with any part of his/her body, a sexual or genital part of any other person in the course of a massage or massage a sexual or genital part of any other person. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any person or the vulva or breast of a female. In the case of breast massage, female clients shall sign a written consent form, provided by the establishment and/or massage therapist prior to providing breast massage.
 11. No Massage Therapist, or other employee of a Massage Establishment shall uncover and expose the sexual or genital parts, of a client while giving a massage, or before or after a massage.

C. Prohibited Advertising

1. No owner, supervisor, manager, massage therapist or support staff of a massage establishment shall place, publish, or distribute or allow or cause to be placed, published, or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective clients or clients that any service is available other than those services described in this Chapter and posted on the premises.
2. No owner, massage therapist or other staff of a massage establishment shall employ language in the text of any sign or advertising material that would reasonably suggest to a prospective client that any service is available other than those services described in this Chapter and posted on the premises.
3. It shall be unlawful for any massage establishment or business or any independently employed certified massage practitioner or certified massage therapist to advertise through any media that is classified for "adults only" or other similar classification.
4. It shall be unlawful for any person who does not possess a valid and current CAMTC certificate to do any of the following within the city:

- a. Advertise or represent to the public in any manner that he or she is certified, registered, or licensed by a government agency a massage therapist; or
 - b. Hold himself or herself out as or use the title of “certified massage therapist” or any other term such as “licensed” or “registered” that implies or suggests that he or she possesses a current and valid CAMTC certificate.
5. All independently employed certified massage therapists shall include in any advertising for massage services the name under which he or she is certified and his or her CAMTC certificate number.

17.17.xxx - Physical Facility Requirements.

Except as otherwise specifically provided in this Chapter, the following physical facility and building code requirements shall be applicable to all massage establishments located within the city:

- A. One (1) main entry door shall be provided for client entry to the massage establishment, which shall open immediately to a well-lighted (without a dimmer switch) interior client reception and waiting area.
- B. Signage shall not cover or block more than 25% of any window area and the view into the interior reception and waiting area shall not be obstructed, blurred, or unreasonably darkened with window tint, posters, photos, graphics, tall plants, tall furniture or fixtures, closed blinds, shades, or curtains.
- C. Exterior sign. A noticeable and legible sign shall be posted at the main entrance that clearly identifies the establishment as a massage business and the businesses name visible to foot traffic and/or automobile traffic. An additional sign stating “Massage” or “Massage Establishment” need not be in addition to the primary business sign. The sign shall be in compliance with Title 17 of this Code.
- D. The name of the massage business and hours of operation shall be posted on the exterior of the main entry door or adjacent wall or in a window closest to the main entry door that is easily visible to persons outside the establishment,
- E. All interior doors, but excluding individual dressing rooms and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner massage therapy rooms or cubicles.
- F. Minimum lighting equivalent to at least one (1) 40-watt light shall be provided in each massage therapy room or cubicle.
- G. The massage establishment shall comply with all applicable state and local building standards as adopted in Title15 of this code.
- H. All walls, ceilings, floors, and other physical facilities for the business must be in good repair and maintained in a clean and sanitary condition.

- I. All locker facilities that are provided for the use of client shall be fully secured for the protection of the client' valuables, and each client shall be given control of the key or other means of access.

17.17.xxx - Suspension or Revocation

The Chief of Police shall suspend or revoke a massage establishment business license for any violation of this Chapter and/or Section 4609 of the Massage Therapy Act following findings by the city attorney in accordance with Title 5 and Title 9 of the Oroville Municipal Code.

The CAMTC works with local jurisdictions and will inform the City of any disciplinary action pertaining to a certificate holder, which includes enforcing probation, suspending or revoking a certificate as indicated in Section 4610 of the Massage Therapy Act.

17.17.xxx - Applicability of other Ordinances.

Nothing contained in this chapter shall be constructed to exempt any person from complying with the provisions of any other applicable ordinance, rule, or regulation, or to exempt a massage establishment or independently certified massage therapists from provisions of any zoning, licensing, taxing, or other building ordinance, rule, or regulation.

17.17- xxx - Severability.

If any part or provision of this ordinance, or the application thereof to any person or circumstance, is held to be invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.



CITY OF OROVILLE STAFF REPORT

TO: MAYOR REYNOLDS AND OROVILLE CITY COUNCIL MEMBERS

FROM: BILL LAGRONE, CITY ADMINISTRATOR

**RE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE
RELATED TO THE ADOPTION OF A MILITARY EQUIPMENT USE
POLICY (SECOND READING), ADDING TO CHAPTER 9 SECTION 9.25**

DATE: MAY 3, 2022

SUMMARY

The Council will conduct a public hearing to receive public input on and provide direction regarding the adoption of Ordinance NO. 1865, an ordinance on Military equipment use policy for the Oroville Police Department

DISCUSSION

Assembly Bill 481 (AB 481 or the Bill), codified at Government Code sections 7070 through 7075 requires a law enforcement agency (LEA) to obtain approval from its governing body, via adoption of a “military equipment” use policy (the Policy) by Ordinance prior to the LEA funding, acquiring, or using military equipment.

Items deemed to be “military equipment” by AB 481 are used as a component of overall best practices for LEAs throughout the country. These tools have been tested in the field, and are used by LEAs to enhance citizen safety, officer safety. Loss of these items would jeopardize the welfare of citizens and peace officers within the City of Oroville Police Department (OPD).

The term “military equipment”, as used in AB 481, in fact does not necessarily indicate equipment that has been used by the military. Pursuant to AB 481, items deemed to be “military equipment” include, but are not limited to, unmanned aerial or ground vehicles, armored vehicles, command and control vehicles, pepper balls, less lethal shotguns, less lethal 40mm projectile launchers, long range acoustic devices, and flashbangs.

OPD is committed to using the most up to date tools and equipment to safeguard the citizens of the City of Oroville. Some of the items deemed to be “military equipment” by AB 481 are utilized by OPD, and LEA’s across the country, in order to specifically reduce risk to community members. These items provide peace officers with the ability to safely resolve volatile situations which otherwise might rise to the level of a lethal

force encounter. The items listed in the Military Equipment Use Policy, also provide OPD's peace officers with vital tools that facilitate compliance with its stringent use of force policy.

Following a review of the items listed in AB 481 and comparing that to the inventory of equipment in use by OPD, it has been determined that OPD uses some, but certainly not all, of the allowed military equipment which can be used by LEAs.

RECOMMENDATION

Conduct a public hearing to receive input on Ordinance 1865.

Waive the second reading and adopt, Ordinance No. 1865 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE ESTABLISHING A MILITARY EQUIPMENT USE POLICY, AMENDING TITLE 9 TO INCLUDE CHAPTER 9.25 MILITARY EQUIPMENT USE POLICY, FOR THE CITY OF OROVILLE POLICE DEPARTMENT PURSUANT TO ASSEMBLY BILL 481

ATTACHMENTS

- A. Oroville Police Department Military Equipment Use Policy 706
- B. City of Oroville Ordinance adding section 9.25.010-080

**CITY OF OROVILLE
ORDINANCE NO. 1865**

**AN ORDINANCE ADDING SECTION 9.25 TO THE OROVILLE MUNICIPAL CODE
RELATING TO MILITARY EQUIPMENT USE**

SECTION 1. Findings. The City Council of the City of Oroville finds:

- A. On September 30, 2021, the Governor of the State of California signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies.
- B. Assembly Bill 481, codified at California Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance adopting a “military equipment” use policy, at a regular meeting held pursuant to open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment. The term “military equipment” is defined in California Government Code section 7070.
- C. Assembly Bill 481 allows the governing body of a City to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it makes specified determinations.
- D. The proposed military equipment use policy enacted by this Ordinance will be maintained by the Oroville Police Department.
- E. The proposed military equipment use policy enacted by this Ordinance will be published prior to enactment, and will be reviewed annually by the City Council.
- F. The proposed military equipment use policy enacted by this Ordinance meets the requirements of California Government Code section 7070, subdivision (d).

SECTION 2. Chapter 9.25 of the Oroville Municipal Code is added to read as follows:

Chapter 9.70
“MILITARY EQUIPMENT” USE ORDINANCE

Sections:

- 9.25.010 Name of Ordinance
- 9.25.020 Definitions
- 9.25.030 Military Equipment Use Policy Requirement
- 9.25.040 Use In Exigent Circumstances
- 9.25.050 Reports on the Use of Controlled Equipment
- 9.25.060 Enforcement
- 9.25.070 Whistleblower Protections
- 9.25.080 Severability

9.70.010 Name of Ordinance

- A. This Ordinance shall be known as the Military Equipment Use Ordinance.

9.70.020 Definitions

- A. "Military Equipment" includes all of the following (pursuant to California Government Code §7070):
1. Unmanned, remotely piloted, powered aerial or ground vehicles.
 2. Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.
 3. High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.
 4. Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
 5. Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
 6. Weaponized aircraft, vessels, or vehicles of any kind.
 7. Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.
 8. Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.
 9. Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.
 10. Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.
 11. Any firearm or firearm accessory that is designed to launch explosive projectiles.
 12. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.
 13. Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).
 14. The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.

15. Any other equipment as determined by a governing body or a state agency to require additional oversight.
 16. Notwithstanding paragraphs (1) through (15), "Military Equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.
- B. "City" means any department, agency, bureau, and/or subordinate division of the City of Oroville.
- C. "Police Department" means any division, section, bureau, employee, volunteer and/or contractor of the City of Oroville Police Department.
- D. "City Council" means the governing body that is the City of Oroville City Council.
- E. "Military Equipment Use Policy" means a publicly released, written document that includes, at a minimum, all of the following:
1. A description of each type of Military Equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the Military Equipment.
 2. The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of Military Equipment.
 3. The fiscal impact of each type of Military Equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.
 4. The legal and procedural rules that govern each authorized use.
 5. The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of Military Equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the Military Equipment use policy.
 6. The mechanisms to ensure compliance with the Military Equipment use policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.
 7. For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

- F. "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person is occurring, has occurred, is about to occur, or may reasonably occur in the near future.
- G. "State agency" means the law enforcement division of every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.
- H. "Type" means each item that shares the same manufacturer model number.

9.70.030 Military Equipment Use Policy Requirement

- A. The Oroville Police Department shall obtain approval of the City Council, by an ordinance adopting a Military Equipment Use Policy (MEUP) at a regular meeting of the City Council held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable, related to the use of the following:
 1. Requesting Military Equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
 2. Seeking funds for Military Equipment, including, but not limited to, applying for a grant, soliciting, or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
 3. Acquiring Military Equipment either permanently or temporarily, including by borrowing or leasing.
 4. Collaborating with another law enforcement agency in the deployment or other use of Military Equipment within the territorial jurisdiction of the City of Oroville.
 5. Using any new or existing Military Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.
 6. Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Military Equipment.
 7. Acquiring Military Equipment through any means not provided by this section.
- B. No later than May 1, 2022, if seeking to continue the use of any Military Equipment that was acquired prior to January 1, 2022, the Oroville Police Department shall commence a City Council approval process in accordance with this section. If the City Council does not approve the continuing use of Military Equipment, including by adoption pursuant to a Military Equipment Use Policy submitted pursuant to this code, within 180 days of submission of the proposed Military Equipment Use Policy to City Council, the Oroville

Police Department shall cease its use of the Military Equipment until it receives the approval of City Council in accordance with this code.

- C. In seeking the approval of City Council, the Oroville Police Department shall submit a proposed Military Equipment Use Policy to City Council and make those documents available on the Police Department's internet website at least 30 days prior to any public hearing concerning the Military Equipment at issue.
- D. The governing body shall consider a proposed Military Equipment Use policy as an agenda item for an open session of a regular meeting and provide for public comment in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.
- E. The governing body shall only approve a Military Equipment Use Policy pursuant to this chapter if it determines all of the following:
 - 1. The Military Equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
 - 2. The proposed Military Equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
 - 3. If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
 - 4. Prior Military Equipment use complied with the Military Equipment Use Policy that was in effect at the time, or if prior uses did not comply with the accompanying Military Equipment Use Policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.
- F. In order to facilitate public participation, any proposed or final Military Equipment Use Policy shall be made publicly available on the internet website of the Police Department for as long as the Military Equipment is available for use.
- G. The City Council shall review any ordinance that it has adopted pursuant to this Chapter approving the funding, acquisition, or use of Military Equipment at least annually and vote on whether to renew the ordinance at a regular meeting held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.

9.70.040 Use in Exigent Circumstances

- A. Notwithstanding the provisions of this Chapter, the Police Department may acquire, borrow and/or use Military Equipment in Exigent Circumstances without following the requirements of this code. Exigent Circumstances shall be determined by the Oroville Chief of Police in his or her absolute and sole discretion.
- B. If the Police Department acquires, borrows, and/or uses Military Equipment in Exigent Circumstances, in accordance with this section, it must take all of the following actions:
 - 1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state, or federal law.
 - 2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed amended Military Equipment Use Policy to the City Council within 90 days following the borrowing, acquisition and/or use, and receive approval, as applicable, from the City Council.
 - 3. Include the Military Equipment in the Police Department's next annual Military Equipment Report.

9.70.050 Reports on the Use of Military Equipment.

- A. The Police Department shall submit to City Council an annual Military Equipment Report for each type of Military Equipment approved by the City Council within one year of approval, and annually thereafter for as long as the Military Equipment is available for use.
- B. The Police Department shall also make each annual Military Equipment Report required by this section publicly available on its internet website for as long as the Military Equipment is available for use.
- C. The annual Military Equipment Report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of Military Equipment:
 - 1. A summary of how the Military Equipment was used and the purpose of its use.
 - 2. A summary of any complaints or concerns received concerning the Military Equipment.
 - 3. The results of any internal audits, any information about violations of the Military Equipment Use Policy, and any actions taken in response.
 - 4. The total annual cost for each type of Military Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the Military

Equipment in the calendar year following submission of the annual Military Equipment Report.

5. The quantity possessed for each type of Military Equipment.
 6. If the law enforcement agency intends to acquire additional Military Equipment in the next year, the quantity sought for each type of Military Equipment.
- D. Within 30 days of submitting and publicly releasing an annual Military Equipment Report pursuant to this section, the Police Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual Military Equipment report and the law enforcement agency's funding, acquisition, or use of Military Equipment.
- E. The City Council shall determine, based on the annual Military Equipment Report submitted pursuant to this section, whether each type of Military Equipment identified in that report has complied with the standards for approval set forth in this code and the Military Equipment Use Policy. If the City Council determines that a type of Military Equipment identified in that annual Military Equipment Report has not complied with the standards for approval, the City Council shall either disapprove a renewal of the authorization for that type of Military Equipment or require modifications to the Military Equipment Use Policy in a manner that will resolve the lack of compliance.

9.70.060 Enforcement.

A. Remedies for Violations of this Ordinance

1. This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter.
2. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction.
3. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation.
4. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$5,000 if they are personally obligated to pay such fees.

9.70.070 Whistleblower Protections.

All provisions of Oroville’s Protection of Whistleblowers Workplace Policy, and including any updates or replacements thereto, shall apply.

9.70.080 Severability

- A. If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter.

- B. The City Council hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 3. This ordinance shall take effect thirty (30) days after the date of its passage. Before the expiration of fifteen (15) days after its passage, this ordinance or a summary thereof shall be published in a newspaper of general circulation published and circulated within the City of Oroville along with the names of the members of the City Council of Oroville voting for and against same.

PASSED AND ADOPTED BY THE City Council of the City of Oroville, County of Butte, State of California, on this 19th day of April 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chuck Reynolds, Mayor

ATTEST:

Jackie Glover, Assistant City Clerk

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

Military Equipment

706.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

706.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the [DepartmentOffice].

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

Military Equipment

706.2 POLICY

It is the policy of the [agencyName] that members of this [departmentoffice] comply with the provisions of Government Code § 7071 with respect to military equipment.

706.3 MILITARY EQUIPMENT COORDINATOR

The [agencyHead] should designate a member of this [departmentoffice] to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying [departmentoffice] equipment that qualifies as military equipment in the current possession of the [DepartmentOffice], or the equipment the [DepartmentOffice] intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of [agencyName] (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 1. Publicizing the details of the meeting.
 2. Preparing for public questions regarding the [departmentoffice]'s funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the [agencyHead] and ensuring that the report is made available on the [departmentoffice] website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the [DepartmentOffice] will respond in a timely manner.

706.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the [DepartmentOffice]:

[Insert attachment here]

706.5 APPROVAL

The [agencyHead] or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the [agencyHead] or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the [departmentoffice] website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

Military Equipment

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this [departmentoffice].
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

706.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

706.7 ANNUAL REPORT

Upon approval of a military equipment policy, the [agencyHead] or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The [agencyHead] or the authorized designee should also make each annual military equipment report publicly available on the [departmentoffice] website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in [departmentoffice] inventory.

706.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the [DepartmentOffice] shall hold at least one well-publicized and conveniently located community engagement meeting, at which the [DepartmentOffice] should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

1. Unmanned Aerial Systems

a. Description, Quantity, Capabilities, and Purchase Cost:

DJI M300 with HT20 drone, Quantity 1, Cost \$25,000 each

- The Mavic 2 Enterprise was specifically built to serve industries and applications in public safety, inspection, search & rescue, fire response, and law enforcement. This Unmanned Aerial System (UAS) is a battery powered, remote operated device with a mounted camera, light and infrared imaging device. This UAS has proven to be useful to public safety agencies in firefighting, search and rescue, pre-operational surveillance, and other tactical situations where aerial views enhance the safety and efficiency of public safety personnel. This UAS has a flight time of 45 minutes.

b. Purpose: May be deployed when an aerial view would enhance situational awareness and assist officers or incident commanders during, but not limited to, the following occurrences:

- Arrest/Search Warrant
- CBRNE (Chemical, Biological, Radiological, Nuclear, Explosives)
- Crowd Control/Special Events
- Dignitary Protection Detail
- Disaster Management
- Ongoing Criminal Investigation
- Explosive Ordnance Disposal/Investigation
- Fire
- Forensic/Crime Scene
- Missing Persons Investigations
- Perimeter Search and Security
- Search and Rescue
- SWAT Operation
- Traffic Collision
- Training
- Public Relations/Multimedia Productions
- Assisting outside agencies in any of the above situations
- Assisting other City of Oroville departments with carrying out their mission of better serving Oroville residents and visitors.

- c. **Authorized Use:** UAS may be utilized to enhance the department's mission of protecting lives and property when other means and resources are not available or are less effective. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations. The use of UAS shall not be used in the following circumstance:
- To conduct random surveillance.
 - To target a person based solely on actual or perceived characteristics, such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability.
 - To harass, intimidate, or discriminate against any individual or group.
 - To conduct personal business of any type.
 - UAS shall never be weaponized.
- d. **Expected Lifespan:** 5 – 10 years
- e. **Fiscal Impact:** \$500 - \$1000 battery replacement

2. Specialized Firearms

- a. **Description, Quantity, Capabilities, and Purchase Cost:** Rifles are firearms that are fired from shoulder level, having a long spirally grooved barrel intended to make bullets spin and thereby have greater accuracy over a long distance. Rifles are magazine fed and either bolt-action or semi-automatic. Rifles can be configured for different purposes such as patrol, traffic motorcycle, or SWAT. The cost of the weapon greatly depends on the configuration. The below costs are averages. Submachine guns are magazine fed automatic carbines designed to fire handgun cartridges. All submachine guns and sniper rifles are exclusively used by the SWAT team.

Colt AR15-A1 5.56, Quantity 15, Cost \$1400 each

Remington 700 .308, Quantity 1, Cost \$1400 each

Springfield M1A .308, Quantity 1, Cost \$1200 each

Plainfield M1 Carbine .30, Quantity 1, Cost \$900 each

Heckler and Koch MP5 submachine gun 9mm, Quantity 3, Cost \$2300 each

Winchester.308 WIN Match, Quantity 100 Cost \$2 each

- 165 gr specialized duty ammunition for the Patrol Officer

Hornady TAP 5.56 NATO, Quantity 1,000

- 75 gr ammunition for duty carbine rifles

Hornady TAP .223 Training .223 REM, Quantity 9,500

- 55 gr practice rounds used for qualifications and training

Federal 12g. Slug 1oz, Quantity 500

- 1oz slug used by Patrol Officers and the SWAT team.

- b. **Purpose:** To be used as precision weapons to address a threat with more precision and/or greater distances than a handgun, if present and desirable.
- c. **Authorized Use:** Only POST certified and department trained officers may use rifles. Only POST certified and department trained SWAT officers may use submachine guns. All personnel who are authorized to use a rifle must demonstrate proficiency annually. SWAT members must demonstrate proficiency monthly with both rifles and submachine guns.
- d. **Expected Lifespan:** Lifespans vary, and some have none as parts can be changed.
- e. **Fiscal Impact:** Annual maintenance is approximately \$50 for each weapon.

3. Distraction Devices

- a. **Description, Quantity, Capabilities, and Purchase Cost:**

Defense Technology Mutli-Port Distraction Device, Quantity 3, Cost \$60

Defense Technology Fuse, Quantity 15, Cost \$34

- A non-bursting, non-fragmenting reusable device that produces a loud noise with an intense bright light. These distraction devices are commonly referred to as “flashbangs” and they are extremely useful for distracting dangerous persons during assaults, hostage rescues, and other high-risk arrest situations. The devices are re-usable up to 25 times by replacing the fuse.

- b. **Purpose:** To produce a distraction with a loud noise and bright light in order to provide a tactical advantage for officers.
- c. **Authorized Use:** Distraction devices shall only be used by officers who have been trained in their use during hostage or barricaded subject situations, situations that pose a high risk of death or serious bodily injury to officers, or during training exercises.
- d. **Expected Lifespan:** 5 years
- e. **Fiscal Impact:** Replace fuses and bodies as needed. Currently about 0 replaced a year for an average cost \$0 annually.

4. Chemical Agents and Smoke Canisters

- a. **Description, Quantity, Capabilities, and Purchase Cost:** Chemical Agents munitions, which are commonly referred to as “tear gas,” can be used by the Oroville Police Department as a non-lethal tool to disperse rioting suspects or barricaded subjects. The Oroville Police Department uses chemical agents which are used by law enforcement agencies across the United States: CS (2-Chlorobenzylidenemalononitrile) and OC (Oleoresin Capsicum). CS is an irritating agent and lachrymator (irritates the eyes and causes tears to flow). CS has been medically tested in the UK and the US, specifically by the US Army. There are no known allergic reactions to CS. OC was de-regulated in California in 1996, is endorsed by the FBI, and is available to civilians to legally possess (2.5 oz or less). OC is an inflammatory agent which causes involuntary closure of eyes (open in 2-5 minutes) and respiratory inflammation (subsides in approximately 2 minutes).

Defense Technology Riot Control Continuous Discharge CS, Quantity 1, \$33 each

- The Riot Control CS Grenade is designed specifically for outdoor use in crowd control situations with a high-volume continuous burn that expels its payload in approximately 20-40 seconds through four gas ports located on the canister. This grenade dispels smoke as well as CS which allows for concealed tactical movement as well as crowd displacement.

Sage Control Ordnance 37MM Sage CS Smoke, Quantity 10, Cost \$18 each

- A less lethal 37MM spin stabilized impact baton fire from a multi-round purpose built 37MM launcher with a rifled barrel. 37MM SAGE RIFLED - IRRITANT SMOKE MODEL: KO2 The KO2 is a pyrotechnic irritant smoke munition primarily used for crowd management situations. It is designed to be used to deny specific outdoor area occupation and to relocate or move unruly crowds. In a single source configuration, the KO2 is offered in short- and long-range variations.
- b. **Purpose:** To de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury to all persons, when a decision has been made to restrain or arrest a violent or threatening subject(s).
- c. **Authorized Use:** Chemical Agents may be used for crowd control, crowd dispersal, or against barricaded suspects based on the circumstances. Only the Watch Commander, Incident Commander, or Tactical Commander may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.
- d. **Expected Lifespan:** All chemical agents have a life span of 5 years
- e. **Fiscal Impact:** Replace expired or used chemical agents- \$500 annually

5. Less Lethal Impact Weapons

a. **Description, Quantity, Capabilities, and Purchase Cost:**

Penn Arms 37MM 6 Shot Launcher, Quantity 1, Cost \$2,700

- The 37MM 6 shot launcher is a tactical 6 shot launcher that fires a standard 37MM less lethal ammunition up to 131ft. This launcher provides multi-shot capability before having to reload.

Tru Flite 37 MM Super Long Range Gas Gun, Quantity 1, Cost \$700

- The 37MM single shot launcher is a tactical single shot launcher that fires a standard 37MM less lethal ammunition up to 350 yards. This launcher is a breach loaded and must be reloaded after each use.

Remington 870 Less Lethal Shotgun, Quantity 8, Cost \$500 each

- The Remington 80 Less Lethal Shotgun is used to deploy the less lethal 12-gauge Super-Sock Beanbag Round up to 75 feet. The range of the weapon system helps to maintain space between officers and a suspect reducing the immediacy of the threat which is a principle of de-escalation.

12-Gauge Super-Sock Beanbag Round, Quantity 55, Cost \$5 each

- A less lethal 2.4 inch 12-gauge shotgun round firing a ballistic fiber bag filled with 40 grams or lead shot at a velocity of 270-290 feet per second. These rounds are discharged from a Remington 870 12-gauge shotgun that is distinguishable by an orange butt stock and fore grip. This round provides accurate and effective performance when fired from the approved distance of not fewer than 5 feet. The maximum effective range of this munition is up to 75 feet.

Sage Control Ordnance 37MM Sage Rifled-Impact, Quantity 27, Cost \$18 each

- A less lethal 37MM spin stabilized impact baton fire from a multi-round purpose built 37MM launcher with a rifled barrel at up to 240 feet per second. The 72.2-gram Polyurethane Ogive & two (2) Nylon rotating bands projectile delivers 162/lbs. of energy upon impact.
- The KO1 is a direct fire modular impact baton round that is designed to be used in situations where kinetic energy is preferred for the incapacitation of hostile and/or non-compliant individuals.
- Available in either standard energy or less-energy variations. The KO1 is reloadable and is available with smokeless or black powder blended propelling charges to provide law enforcement with affordable realistic training capabilities.

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 - Available in either standard energy or less-energy variations. The KO1 is reloadable and is available with smokeless or black powder blended propelling charges to provide law enforcement with affordable realistic training capabilities.
- b. **Purpose:** Less Lethal munitions can be used to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.
- c. **Authorized Use:** Less lethal munitions may be used by those officers trained in their use in the following type of situations, but are not limited to these situations:
- Persons armed with a weapon and the tactical circumstances allow for the safe application of the approved munitions
 - Persons making credible threats to harm themselves or others.
 - Persons engaged in riotous behavior such as throwing rocks, bottles, or other dangerous projectiles at people or officers.
- d. **Expected Lifespan:**
- All launchers and less lethal shotguns – 10 years
 - All munitions 5 years
- e. **Fiscal Impact:** Replace stock as needed (varying cost) and maintenance cost of launchers/shotguns (\$100 annual)



CITY OF OROVILLE STAFF REPORT

TO: MAYOR REYNOLDS AND CITY COUNCIL MEMBERS

**FROM: RUTH WRIGHT, ASSISTANT CITY ADMINISTRATOR,
ADMINISTRATIVE SERVICES**

RE: TRANSPARENCY SOFTWARE

DATE: MAY 3, 2022

SUMMARY

The Council may consider approving the authorization of switching software for transparency software from OpenGov to ClearGov.

DISCUSSION

Staff is asking the Council to consider a switch of software for our transparency portal. Currently our Transparency Portal is provided by OpenGov. We currently added two products from ClearGov, Operational Budgeting and the Digital Budget Book. We will get a \$2,760.00 discount for the Transparency product for bundling all the products together. The cost of this software is \$6,950.00 annually less the bundled discount of \$2,760.00 for a net cost of \$4,190.00.

This also includes waived set up fees worth \$1,350.00.

Staff feels that both OpenGov and ClearGov are excellent providers of Transparency software that benefit taxpaying citizens. The switch is to realize the bundled discount and keep everything together and interfaced with each of the products.

FISCAL IMPACT

\$4,190.00 annual subscription services, utilizing the Local Recovery Funds.

RECOMMENDATION

Approve the Mayor to sign a contract with ClearGov for annual transparency software.

ATTACHMENTS

Software contract



2 Mill & Main; Suite 630; Maynard, MA 01754

Service Order

Created by	Joe Eiskant
Contact Phone	607-760-0524
Contact Email	jeiskant@cleargov.com

Order Date	Apr 19, 2022
Order valid if signed by	May 4, 2022

Customer Information			
Customer	City of Oroville	Contact	Chuck Reynolds
Address	1735 Montgomery Street	Title	Mayor
City, St, Zip	Oroville, CA 95965	Email	creynolds@cityoforoville.org
Phone	530-538-2436	Billing Contact	
		Title	
		Email	
		PO # (If any)	

To be clear, you will be billed as follows...		
Billing Date(s)	Amount(s)	Notes
Jul 1, 2022	\$4,190.00	Annual Subscription Fee

Additional subscription years and/or renewals will be billed annually in accordance with pricing and terms set forth herein.

ClearGov will provide your Services according to this schedule...			
Period	Start Date	End Date	Description
Setup	May 3, 2022	May 3, 2022	ClearGov Setup Services
Value Add	May 3, 2022	Jun 30, 2022	ClearGov Setup Services
Initial	Jul 1, 2022	Jun 30, 2023	ClearGov Subscription Services

The Services you will receive and the Fees for those Services are...		
Set up Services	Tier/Rate	Service Fees
ClearGov Setup: Includes activation, onboarding and training for ClearGov solutions.	Tier 2	\$ 1,350.00
ClearGov Setup Bundle Discount: Discount for bundled solutions.	Tier 2	\$ (1,350.00)
Total ClearGov Setup Service Fee - Billed ONE-TIME		\$ -
Subscription Services	Tier	Service Fees
ClearGov Transparency - Civic Edition	Tier 2	\$ 6,950.00
ClearGov Budget Cycle Management Bundle Discount: Discount for bundled solutions.	Tier 2	\$ (2,760.00)
Total ClearGov Subscription Service Fee - Billed ANNUALLY IN ADVANCE		\$ 4,190.00
Billing Terms and Conditions		
Valid Until	May 4, 2022	Pricing set forth herein is valid only if ClearGov Service Order is executed on or before this date.
Payment	Net 30	All invoices are due Net 30 days from the date of invoice.
Rate Increase	3% per annum	After the Initial Service Period, the Annual Subscription Service Fee shall automatically increase by this amount.

General Terms & Conditions	
Customer Satisfaction Guarantee	During the first thirty (30) days of the Service, Customer shall have the option to terminate the Service, by providing written notice. In the event that Customer exercises this customer satisfaction guarantee option, such termination shall become effective immediately and Customer shall be eligible for a full refund of the applicable Service Fees.
Cancellation Option	This ClearGov Service Order is subject to the approval of the City Council as set forth herein. In the event that the Board does not approve this Service Order at its May 3rd meeting, Customer shall have the option to terminate this Service Order immediately by providing written notice. In the event that Customer exercises this option, Customer shall have no payment obligation under this Service Order.
Statement of Work	ClearGov and Customer mutually agree to the ClearGov Service activation and onboarding process set forth in the attached Statement of Work.
Taxes	The Service Fees and Billing amounts set forth above in this ClearGov Service Order DO NOT include applicable taxes. In accordance with the laws of the applicable state, in the event that sales, use or other taxes apply to this transaction, ClearGov shall include such taxes on applicable invoices and Customer is solely responsible for such taxes, unless documentation is provided to ClearGov demonstrating Customer's exemption from such taxes.

Term & Termination	Subject to the termination rights and obligations set forth in the ClearGov Service Agreement, this ClearGov Service Order shall commence upon the Order Date set forth herein and shall continue until the completion of the Service Period(s) for the Service(s) set forth herein. Each Service shall commence upon the Start Date set forth herein and shall continue until the completion of the applicable Service Period.
Auto-Renewal	After the Initial Period, the Service Period for any ClearGov Annual Subscription Services shall automatically renew for successive annual periods (each an "Annual Term"), unless either Party provides written notice of its desire not to renew at least sixty (60) days prior to the end of the then current Annual Term.
Agreement	This ClearGov Service Order shall become binding upon execution by both Parties. The signature herein affirms your commitment to pay for the Service(s) ordered in accordance with the terms set forth in this ClearGov Service Order and also acknowledges that you have read and agree to the terms and conditions set forth in the ClearGov Service Agreement found at the following URL: http://www.ClearGov.com/terms-and-conditions . This Service Order incorporates by reference the terms of such ClearGov Service Agreement.

Customer	
Signature	
Name	Chuck Reynolds
Title	Mayor

ClearGov, Inc.	
Signature	
Name	Bryan A. Burdick
Title	President

Please e-mail signed Service Order to Orders@ClearGov.com or Fax to (774) 759-3045

Statement of Work

This Statement of Work outlines the roles and responsibilities by both ClearGov and Customer required for the activation and onboarding of the ClearGov Service. ClearGov will begin this onboarding process upon execution of this Service Order. All onboarding services and communications will be provided through remote methods - email, phone and web conferencing.

ClearGov Responsibilities

- ClearGov will activate ClearGov Service subscription(s) as of the applicable Start Date(s). ClearGov will create the initial Admin User account, and the Customer Admin User will be responsible for creating additional User accounts.
- ClearGov will assign a Client Success Manager (CSM) responsible for managing the activation and onboarding process. ClearGov CSM will coordinate with other ClearGov resources, as necessary.
- ClearGov CSM will provide a Kickoff Call schedule to Customer's Primary Contact - to be scheduled within two weeks after the Service Order has been executed.
- ClearGov will provide Customer with financial data requirements and instructions, based on the ClearGov Service subscription(s). If necessary, ClearGov will set up a Data Discovery call to assist with such requirements/instructions.
- ClearGov will review financial data files and confirm that data is complete, or request additional information, if necessary. Once complete financial data files have been received, ClearGov will format the data, upload it to the ClearGov platform and complete an initial mapping of the data.
- After initial mapping, ClearGov will schedule a Data Review call with a ClearGov Data Onboarding Consultant (DOC), who will present how the data was mapped, ask for feedback and get answers to open questions. Depending upon Customer feedback and the complexity of data mapping requests, there may be additional follow up calls or emails required to complete the data onboarding process.
- ClearGov will make Customer aware of all training, learning and support options. ClearGov recommends all Users attend training sessions and/or read Support Center articles before using the ClearGov Service to ensure a quick ramp and success. As needed, ClearGov will design and deliver one customized remote training session for Admins and one for End Users - via video conference - and these sessions will be recorded for future reference.
- ClearGov will make commercially reasonable efforts to complete the onboarding process in a timely fashion, provided Customer submits financial data files and responds to review and approval requests by ClearGov in a similarly timely fashion. Any delay by Customer in meeting these deliverable requirements may result in a delayed data onboarding process. Any such delay shall not affect or change the Service Period(s) as set forth in the applicable Service Order.

Customer Responsibilities

- Customer's Primary Contact will coordinate the necessary personnel to attend Kickoff Call within two weeks after the Service Order has been executed. If Customer needs to change the date/time of the Kickoff Call, the Primary Contact will notify the ClearGov CSM at least one business day in advance.
- Customer will provide requested financial data files (revenue, expense, chart of accounts, etc.) to ClearGov in accordance with the requirements provided by ClearGov.
- Customer's Primary Contact will coordinate the necessary personnel to attend the Data Review call. It is recommended that all stakeholders with input on how data should be mapped should attend. Based on the Data Review call and any subsequent internal review, Customer shall provide a detailed list of requested changes in a timely manner, and Customer will approve the final data mapping, once completed to Customer's satisfaction.
- Customer shall be solely responsible for inputting applicable text narrative, custom graphics, performance metrics, capital requests and personnel data and other such information for budget books, projects, dashboards, etc.



CITY OF OROVILLE STAFF REPORT

TO: MAYOR REYNOLDS AND CITY COUNCIL MEMBERS

**FROM: DAWN NEVERS, ASSISTANT COMMUNITY DEVELOPMENT DIRECTOR
BILL LAGRONE, CITY ADMINISTRATOR**

**RE: RECONSIDERATION FOR AUTHORIZATION TO AWARD CONTRACT
FOR TREE PRUNING SERVICE**

DATE: MAY 3, 2022

SUMMARY

The Council will reconsider the action taken at the April 19, 2022 meeting to reject all bids, and may award a contract for tree pruning services within the City's public right of way to P31 Enterprises, Inc. in an amount not to exceed \$1,595.00 per day or \$120,000.00 annually.

DISCUSSION

At the April 19, 2022 City Council meeting the Council directed Staff to reject all bids and republish the Request for Proposal for tree pruning services. Since the meeting at least one of the Council members that voted in the majority to reject the bids has asked to reconsider their vote. Rosenberg's Rules of Order allow for reconsideration of an item if one of the members voting in the majority ask to reconsider their vote at the same meeting. Due to the request not occurring at the same meeting the Council would need to set aside their rule in this instance if the Council chooses to reconsider the item.

Staff recommends Council reconsider this item. This request for proposal was properly advertised, posted and all submitted questions from contractors were answered. Four (4) responsive bids were received.

The City of Oroville has been contracting with qualified tree trimmers for two years now. The RFP and tree pruning services provided relief to the Parks and Trees Department while eliminating many safety issues within the Cities tree inventory. The City Arborist reviewed all work performed over the last two years and is satisfied with the work the completed work to date.

Staff published a Request for Proposal on March 7, 2021 with a Mandatory Walk Through on March 21, 2022 at 9:00am at City Hall. Four (4) bids was received by the closing date of April 7, 2022 for the public bid process. The bids ranged from a high bid of \$3,525.00 per day to a low of \$1,595.00 per day. See attached bid opening sheet for a list of all bids.

The low bidder is P31 Enterprises, Inc. at \$1,595.00 per day.

FISCAL IMPACT

The funds in the amount of \$120,000 are budgeted in 2021/2022 Parks & Trees Operations Account No. 3112-6360 – Outside Services.

RECOMMENDATION

Authorize Staff to award the bid and sign a contract for tree pruning services within the City's public right of way to P31 Enterprises, Inc.

ATTACHMENTS

1. Bid Summary / Opening date
2. Submitted Bid form
3. Agreement

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of April 19, 2022, by and between the City of Oroville, a municipal corporation ("City") and **P31 Enterprises, Inc.** Tree Service ("Contractor").

RECITALS

- A. The Contractor is specially trained, licensed, experienced and competent to provide tree trimming services to the City of Oroville as required by this Agreement.
- B. The Contractor possesses the skill, experience, ability, background, license, certification, and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- B. City desires to retain the Contractor to render the professional services as set forth in this Agreement.

AGREEMENT

1. Scope of Services. The Contractor shall furnish the following services in a professional manner. Contractor shall perform the scope of services described in Exhibit "A", which is attached hereto and incorporated herein by reference.
2. Time of Performance. The services of Contractor are to commence upon execution of this Agreement and shall continue until the funds are exhausted, unless subsequently amended by the parties, or until cancelled by either party.
3. Compensation. Compensation to be paid to Contractor shall be in accordance with the Daily Cost Estimate described in Exhibit "A", which is attached hereto and incorporated herein by reference. In no event shall Contractor's total compensation exceed the amount of One Hundred and Twenty Thousand Dollars (\$120,000). Payment by City under this Agreement shall not be deemed a waiver of defects

in Contractor's services, even if such defects were known to the City at the time of payment.

4. Method of Payment. Contractor shall submit monthly billing to City describing the work performed during the preceding month. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Contractor no later than 30 days after approval of the monthly invoice by City staff and upon receipt of funds through the funding agreement as outlined in Paragraph 3.
5. Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of Contractor's services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without prior written authorization from City.
6. Termination. This Agreement may be terminated by the City immediately for cause or by either party without cause upon fifteen (15) days' written notice of termination. Upon termination, Contractor shall be entitled to compensation for services properly performed up to the effective date of termination.
7. Contractor's Books and Records
 - a. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, expenditures, and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement.

- b. Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of termination or completion of the Agreement.
 - c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Administrator, City Attorney, City Finance Director, or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at 1735 Montgomery Street, Oroville, California when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.
 - d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment, or termination of Contractor's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that documents be maintained by City Hall.
8. Independent Contractor. It is understood that Contractor, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Contractor shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Contractor hereby expressly waives any claim it may have to any such rights.
9. Interest of Contractor. Contractor (including principals, associates, and professional employees) covenants and represents that it does not now have any

investment or interest in real property, and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Contractor's services hereunder. Contractor further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement. Contractor is not a designated employee within the meaning of the Political Reform Act because Contractor:

- a. will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or any City official, other than normal agreement monitoring; and
 - b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation, or counsel. (FPPC Reg. 18700(a)(2).)
10. Professional Ability of Contractor. City has relied upon the professional training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Agreement. All work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.
 11. Compliance with Laws. Contractor shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations, including the terms of the applicable O.S.H.A., ANSI Z133 Safety Requirements and CAL E.P.A. Safety Orders.
 12. Licenses. Contractor represents and warrants to City that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are

legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance, and approvals which are required by the City for its business.

13. Indemnity. To the maximum extent available by law, Contractor agrees to defend, indemnify, and hold harmless the City, its officers, officials, agents, employees, and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therein), arising from its performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, including Prevailing Wage requirements.
14. California Labor Code. Requirements. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. The Services herein are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and the total compensation is \$1,000 or more, therefore, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Contractor shall therefore comply with such Labor Code sections to the fullest extent required by law. It shall be mandatory upon the Contractor and all subcontractors to comply with all

California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

The Services herein are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements.

15. Verification of Employment Eligibility. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.
16. Insurance Requirements. Contractor, at Contractor's own cost and expense, shall procure and maintain, for the duration of the Agreement, the insurance coverage and policies as set forth in Exhibit "B" attached hereto.
17. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: **Director of Community Development**
 City of Oroville
 1735 Montgomery Street
 Oroville, CA 95965

If to Contractor: **P31 Enterprises, Inc.**
 4288 State Highway 70
 Oroville, CA 95965

18. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Contractor. All prior written and oral communications, including correspondence, drafts, memoranda, and representations are superseded in total by this Agreement.
19. Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.
20. Assignments and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience, and competence of Contractor. Assignments of any or all rights, duties, or obligations of the Contractor under this Agreement will be permitted only with the express prior written consent of the City. Contractor shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the City. If City consents to such subcontract, Contractor shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law.

21. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
22. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
23. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Butte, or in the United States District Court, Eastern District of California.
24. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other part arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.
25. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
26. Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority, to make this Agreement and to bind each respective party.

27. Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
28. Equal Opportunity Employment. Contractor represents that is and equal opportunity employer and it shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, disability, ancestry, sex, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF OROVILLE

P31 Enterprises, Inc.

By: _____

Lori Curtis

Title: _____

APPROVED AS TO FORM:

Business License No.: _____

By: _____

Scott E. Huber, City Attorney

Tax ID No.: _____

ATTEST:

By: _____

City Clerk

ATTACHMENTS:

Exhibit A Scope of Services and Cost Estimate

SPECIFICATIONS
For
Tree Trimming Services
For
City Street Trees and Public right of way Trees

SCOPE:

- A. The "City Representative" shall refer to the City's Parks and Trees Supervisor, or his or her designee. The terms "Contract" shall refer to the contract entered between City and the selected Contractor.
- B. The Contractor shall take a proactive approach in correcting problems within the Contractors' span of responsibility and control. Other problems and suggestions for improvements, both short and long term, must be submitted promptly to the City Representative for appropriate action.
- C. Contractor's employees shall wear proper protective clothing, and their clothing shall bear their business name or be unmarked. When needed, the Contractor's staff will utilize rain gear, rain boots, safety shoes, and other high visibility and protective equipment. All contracted employees while on the site shall exhibit a professional appearance. Contractor's equipment and vehicles shall also be professional in appearance and be well maintained for safe operation.
- D. In order to submit a bid for Routine Work, the Contractor must have a maintenance yard in the Oroville Area, Shall have a Certified Arborist on Staff and have Ariel trucks in their work fleet
- E. Scheduled operations for residential zones shall commence no earlier than 7:00 A.M. and shall be completed each day no later than 6:00 P.M. The use of power equipment or other work close to residential areas that results in noises shall not be permitted before 8:00 AM or after 5:00 PM. Work along major arterial streets may be subject to additional time restrictions
- F. Any private property or City property damaged or altered in any way during the performance of the work under this contract shall be reported promptly to the City Representative and shall be rectified in an approved manner back to its condition prior to damage, at the Contractor's expense, within 72 hours. Any hazardous conditions noted, or seen, by the Contractor that have occurred by any means other than during the performance of the Contractor's work, whether by vandalism or any other means, shall be promptly reported to the City Representative. The Contractor is responsible for securing any immediate hazards with caution tape, safety cones, and/or barricades until a City Representative arrives to the location.

G. Contractor agrees to perform all work outlined in the Contract in such a manner as to meet all accepted standards for safe practices during the maintenance operation and to safely maintain stored equipment, machines, and materials or other hazards consequential or related to the work; and agrees additionally to accept the sole responsibility for complying with all City, County, State or other legal requirements including, but not limited to, full compliance with the terms of the applicable O.S.H.A., ANSI Z133 Safety Requirements and CAL E.P.A. Safety Orders at all times so as to protect all person, including Contractor's employees, agents of the City, vendors, members of the public or others from foreseeable injury, or damage to their property. Contractor shall cooperate fully with City in the investigation of any accident, injury or death occurring on City property, including a complete written report thereof to the City Representative within twenty-four (24) hours following the occurrence.

H. The Contractor will be permitted to reduce traffic to one through lane except on arterial or collector streets. On arterial or collector streets, the Contractor shall maintain traffic as directed by the City Representative. All traffic control shall conform to the requirements of the California Manual on Uniform Traffic Control Devices (CAMUTCD), Revision 3 for construction and maintenance work zones. Contractor at its own expense shall ensure proper signage, as approved by the City Representative, during lane closures. Traffic Control may include: lights, flares, signs, temporary railings, flag person(s), or other devices as required by the City Representative. It shall be the Contractor's responsibility to post no parking areas as required to perform work. Barricades can be provided by the City, if available, for pickup at the City Corporation Yard. Arrangements for signs and barricades can be made by verbal or written request to the City Representative five working days in advance of the need for signs and barricades. Full compensation for conforming to the requirements of this Section including Traffic Control shall be considered as included in the contract prices paid for the various items of work and no separate payment may be made.

I. Adjacent property and improvements shall be protected from damage and intrusion at all times during the execution of the work embraced herein. Any damage to adjacent properties shall be repaired or replaced by the Contractor at its sole expense. Work shall be carried out in a manner to avoid all conflicts with use of and access to adjacent properties.

J. During the progress of the work, if latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the City Representative in writing of such specific differing conditions before they are disturbed and before the affected work is performed. Upon notification, the City Representative will investigate the conditions, and if the City Representative determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of the work under the Contract, an adjustment will be

made, and the Contract modified in writing accordingly. The City Representative will notify the Contractor of his determination if an adjustment of the Contract is warranted in writing. No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has requested such in writing. No Contract adjustment will be allowed under provisions specified in this section for any effects on unchanged work .

K. Contractor shall invoice the City monthly in a form approved by the City representative. Invoicing shall include a detail of costs for work performed during the payment period, a summary of current invoice amounts, previous payments, and total payments to date. The Contractor shall provide monthly progress reports with the monthly invoices. These reports are to include the following information:

1. - Date of work performed
2. - Description of work performed
3. - Tree location (street address and side)
4. - Tree condition

L. Payment will be made for work satisfactorily completed as called for in the Contract. The City Representative shall inspect and notify the Contractor of any unsatisfactory work. Unsatisfactory work shall be corrected within 24 hours. Contractor or Contractor's representative shall meet with a representative from the City as requested by the City, during the life of the Contract, in order to inspect work performed. Full compensation for conforming to the work of these specifications shall be considered as included in the Contract unit prices, or the proposed hourly rates and material markup, and no further payment may be made thereof. The Contract rates shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in completing the work as specified herein, and as directed by the City.

M. If City gives reasonable notice to Contractor, City may propose in writing changes to Contractor's work within the Scope of Services described. If Contractor believes any proposed change causes an increase or decrease in the cost, or a change in the schedule for performance, of the services, Contractor shall notify City in writing of that fact within five (5) days after receipt of written proposal for changes . Contractor may also initiate such notification, upon identifying a condition which may change the Scope of Services as agreed at the time of execution of this Agreement covering such Scope of Services. When and if City and Contractor reach agreement on any such proposed change and its effect on the cost and time for performance, they shall confirm such agreement in writing as an amendment to this Agreement. In the event the Parties cannot reach agreement as to the proposed change, at the City's sole discretion, Contractor shall perform such work and will be paid for labor, materials, equipment rental, etc., used to perform the work. City shall not be liable for payment of any changes in this section, nor shall Contractor be obligated to perform any such changes, except upon such written amendment or supplement; provided that if, upon City's written request, Contractor begins work in accordance with a proposed change, City

shall be liable to Contractor for the amounts due with respect to Contractor's work pursuant to such change, unless and until City notifies Contractor to stop work on such change. Any additional work requested once the not-to-exceed amounts for the term of the Contract have been reached will require a formal amendment to the Contract.

N. Rates shall include all direct and indirect costs. For labor or equipment not listed in the Bid Proposal which is needed to perform additional work, the hourly rate shall be agreed upon between the City and Contractor before the services are performed.

O. Routine work shall be scheduled with the City Representative and must be performed within the prescribed amount of time. It will be necessary to perform some of the assignments on weekends (Saturdays and Sundays) or during nighttime hours due to the location of the work to be performed. The necessity of this will be determined by the City Representative. Compensation for work completed on a weekend or at night will be in accordance with the State of California labor codes and based on normal working hour rates.

P. The Contractor shall have experience conducting routine and emergency tree services over the past five (5) years and shall be duly registered and licensed with either a C61-D49 or C27-D49 license in the State of California. The Contractor's employees shall be subject to the following minimum requirements, skills, abilities and knowledge:

1. • Demonstrated knowledge of tree care and related operations.
2. • Current licenses for operation of equipment utilized by such employee.
3. • Ability to operate and maintain equipment in accordance with the manufacturer's recommendations
4. • Mechanical ability to make required operator adjustments to the equipment being used.
5. • Knowledge of safety regulations as they relate to tree care and traffic control.
6. • At all times during contracted tree maintenance activities, the firm shall have work crews on site that have a foreperson who can effectively communicate with residents and receive and complete instructions given by City staff and proper authorities. The City has the right to determine crew size for all City tree work assignments.

Q. It will be the responsibility of the Contractor to provide all equipment and labor as necessary to perform the work described in these documents in a safe, efficient, aesthetically pleasing, and legal manner. All equipment, vehicles, and tools must be kept in a clean and safe condition as directed by OSHA at all times during the Contract. All vehicles that are used by the Contractor shall have the Contractor's company name, logo, and vehicle number on it. The Contractor shall always furnish and maintain sufficient equipment as necessary to perform the work of the Contract. Such equipment shall be subject to the inspection and approval of the City Representative. If the

contractor is unable to consistently provide the necessary equipment to perform the work, it may be considered a breach of the Contract.

R. For all Routine Work the Contractor shall, with City approval, aggregate or collect tree work that needs to be performed so that work is performed on a reasonable number of trees on the same day (a standard work day is considered at least 8 hours of field work) to maximize efficiency. All scheduled work shall be preapproved by the City Representative. The City intends to only schedule routine maintenance when the tree contractor crew can fill up a standard work day

S. Tree Trimming and Pruning Standards:

Trimming and pruning operations shall be coordinated with the City Representative and meet the most current editions of the following benchmark standards:

- American National Standards Institute (ANSI) A300 Pruning Standards
- ANSI Z133.1 Safety Standards
- ISA Best Management Practices: Tree Pruning

To ensure that pruning is appropriate for the species and tree/site conditions, it is important to have a clear understanding of the specific needs of the tree and the objectives for pruning. Pruning objectives include the following:

- Improve structural strength and reduce failure potential
- Provide clearance for pedestrians, vehicles, structures and low voltage utilities
- Improve safety and security for residents and visitors
- Repair structural damage from wind loading
- Improve aesthetic characteristics
- Reduce maintenance costs
- Prevent or mitigate a pest problem

Standard 1: All pruning cuts shall conform to ANSI A300 standards (Part 1: Pruning). Do not make flush cuts or leave branch stubs. Cuts shall be made outside the branch collar in a manner that promotes callous growth to cover wounds.

Standard 2: Not more than 25% of the crown shall be removed within an annual growing season. The percentage of foliage removed shall be adjusted according to age, health, and species considerations. Up to 30% crown removal may be accepted for *Ulmus parvifolia* or other special species after consultation with the City Arborist.

Standard 3: Pruning equipment shall be sharp and sized appropriately for the pruning cut. Chainsaws shall not be used to remove branches 2" or less in diameter. Avoid the use of any pruning and climbing equipment that may cause damage to bark tissue. Spikes (climbing spurs) shall not be used for climbing trees unless the tree is being removed. Pruning tools shall be treated with a disinfectant (such as Lysol) when pruning trees infected with a pathogen that may be transmitted (on tools) from one tree to another of the same species, such as elms (*Ulmus* spp.). Disinfectants should be used before and after pruning individual trees.

Standard 4: All persons engaged in tree pruning shall be familiar with each of the pruning types. Selection of the pruning type(s) shall be based on pruning objectives. Refer to publication ISA Best Management Practices Tree Pruning for descriptions of

pruning types. Clearance pruning that does not comply with Standard 2 shall be conducted only under the supervision of the City Arborist.

Standard 5: Heading cuts shall not be used when pruning mature trees, except in very limited cases with approval from the City Arborist. Whenever possible, use reduction cuts to reduce height and branch removal cuts (thinning cuts) to reduce branch end weights. When reduction and branch removal cuts are not possible (such as when interior lateral branches are not present) and tree hazard potential is high, then heading cuts may be needed, but their use should be minimized.

Standard 6: Clearance pruning shall be defined as to provide the following distances:

- Roadway- not less than 14' from road surfaces
- Sidewalk- not less than 7' from sidewalk surfaces
- Building- not less than 8' from vertical building surfaces
- Roofs and street lights- not less than 10' from building roof surfaces or street lamps
- Utility and telecom drop lines- not less than 2' or sufficient clearance to prevent service interruption and vascular tree growth onto wires

Standard 7: Wildlife Protection: Prior to the commencement of any work near any tree, each tree shall be visually surveyed, from all sides, for the sole purpose of detecting the presence of bird nests or wildlife of any type. If a nest is found and is determined to be active, there shall be no work of any type in the tree in which the nest is found without the written permission of the City's designated representative. At no time shall any nest or wildlife be removed from its location. If wildlife is accidentally displaced, the Contractor shall notify the City representative for assistance.

T. Prior to beginning City tree pruning, removal and maintenance work, the Contractor shall review with the City Representative various methods, tools, and work scheduling to be used on the project(s). Any structural weakness, decayed trunk or branches, split crotches or limbs and included bark discovered by the Contractor while trimming shall be reported to the City Representative for determination of action, as soon as it is discovered. When working on a tree, the Contractor shall be responsible for the removal of all vines entwined in the tree or around its trunk, and for the removal of sucker growth from tree trunks. Limbs over one inch in diameter shall be precut to prevent splitting or ripping bark. Removal from a tree of branches three and one-half inches (3.5") or larger in diameter shall be lowered by proper ropes to the ground. Potentially damaging limbs that can damage property must be rope lowered. Any damage caused by dropping limbs shall be repaired within three (3) days at the Contractor's expense and to the satisfaction of the City Representative. All debris resulting from tree pruning operations shall be removed from the work site daily. A work zone shall be established and maintained for each tree trimming or other operation. The Contractor shall use all appropriate methods used in the field of tree trimming and tree maintenance for establishing and maintaining such work zone. No person other than members of the Contractor's work crew may be allowed to enter such work zone. If any person enters such work zone, the Contractor shall immediately cease all work and operation of all equipment until the work zone is clear. The Contractor agrees to provide

the highest quality commercially accepted methods, procedures and controls for tree pruning, removal and maintenance consistent with the International Society of Arboriculture Pruning Standards (BMPs), ANSI A300 Standards and information in standard arboriculture industry references. This shall include the use of proper knowledge, skills, materials and equipment of a timely basis to maintain all areas in a clean, safe, healthy, and aesthetically acceptable manner during the entire term of the Contract. The Contractor shall furnish tree services by qualified arborists, site managers and tree worker crews to provide tree pruning, removal and maintenance activities that comply with this Specification. It will be the responsibility of the Contractor to provide all equipment, materials, and labor as necessary to perform the work described in these documents in a safe, efficient and legal manner.

U. Types of Tree Work

a. Pruning

i. Pruning for Structure:

Structural pruning is the removal of live branches and stems to influence the orientation, spacing, growth rate, strength of attachment and ultimate size of branches and stems. It is used on young and medium aged trees to help engineer a sustainable trunk and branch arrangement. It is used on large maturing trees to reduce certain defects and space main branches along one dominant trunk. This pruning type can be summed -up in the phrase: subordinate or remove codominant stems. This practice can limit the failure potential of included branch attachments. The maximum diameter of reduction cuts will be specified. Structural pruning is also the foundation for the following pruning types.

ii. Pruning to Raise:

Raising is the selective removal of branches to provide vertical clearance. Crown raising shortens or removes lower branches of a tree to provide clearance for buildings, signs, vehicles, pedestrians and views. Live crown ratio should be no less than 66% when raising is completed and some structural pruning is considered by the City to be part of this pruning. Clearance objectives are specified above in Tree Pruning Standard 6.

iii. Pruning to Clean:

Crown Cleaning or cleaning out is the removal of dead, diseased, detached and broken branches 1 1/2" or larger. This type of pruning is done to reduce the risk of falling branches and to reduce the risk of decay spreading into the tree from dead or dying branches. Cleaning is the preferred pruning method for mature trees. Cleaning removes branches with cracks that may be prone to fail. Care must be used to avoid stripping branches of too foliage at the interior of the tree crown. This practice which is known as "lion tailing" is unacceptable. The location and diameter of branches to be removed may be specified.

iv. Pruning to Reduce:

Crown Reduction is the selective removal of branches and stems to decrease the height and/or spread of a tree. This is done to minimize risk of failure, to reduce height or spread, to clear vegetation from buildings, structures or utilities. Crown reduction should be accomplished with reduction cuts, not heading cuts. While reducing a crown, tree workers must adhere to basic tree trimming practices involving limb/branch size relationships and use of the branch bark collar to avoid the onset of decay at cut sites

v. Pruning to Restore:

Crown Restoration is the selective removal of branches, sprouts and stubs from trees that have been previously topped, severely headed, lion tailed or otherwise damaged. One to three sprouts are selected for retention on trees with many sprouts originating at the tips of branches. Location and percentage of sprouts are specified

vi. Grid Pruning:

A Consists of pruning 7 or more trees located at the same or at consecutive street addresses. The term is used to reflect an economy of scale when pruning trees in one location and shall be reflected with bid pricing reduced from the single tree pruning bid price.

B Stump Grinding and Tree Removal Tree removal consists of the removal of the above ground portion of a hardwood tree or palm tree. Stump removal consists of the removal of the tree root crown and tree roots to a depth of 18" or until roots are no longer encountered and distances of at least 24" from the outer circumference of the tree stump or until roots are no longer encountered.

b. The Contractor shall comply with all general standards described herein.

i. The price given by the Contractor for tree removals shall be inclusive of all staff, materials and equipment necessary to remove trees as described herein

ii. The City is responsible for marking trees for removal so that they are easily identified for Underground Service Alert (USA) and the Contractor. The Contractor shall be required to contact USA at least 2 working days prior to stump grinding. The Contractor is hereby made aware that many trees in the downtown area are located adjacent to street lighting or other utilities within, which are within 12" of finished grade.

iii. The Contractor shall notify the City Representative in writing of any condition that prevents the removal of a tree and/or the removal of its root system. The Contractor shall take all responsibility for any damage that occurs once the process of removing a tree and/or associated root removal begins.

iv. The Contractor shall comply with wildlife protection standards described herein whenever removing a tree: The Contractor shall not remove any tree without first confirming that the tree being considered is indeed the tree to be removed. Any confusion should be resolved by contacting the City Arborist for assistance. The errant removal of trees shall be penalized up to but limited to the cost of the replacement.

v. During a tree removal, the Contractor shall maintain control of the tree and its parts at all times, which shall include the selection and use of proper techniques and equipment. At no time shall branches, limbs or tree trunks be allowed to freefall and create damage of any type. The Contractor will be held liable for loss of control incidents and shall pay for all damages and associated costs.

vi. Cranes and other rigging equipment shall be properly certified, with evidence of such available for inspection prior to use of said equipment in the City. Crane operators shall be certified by the National Commission for the Certification of Crane Operators (NCCCO) and shall display current certification prior to operating a crane in the City. The use of cranes and certified operators shall not result in additional charges to the City beyond the unit price for the work being performed (e.g., the price for tree removal).

vii. While loading and handling debris, the Contractor shall maintain control at all times so as not to result in damage to the public rights of way or private property. In

addition, the Contractor shall not drop logs or trunks as to create undue noise or shock impact related damages to public and/or private property.

viii. The Contractor shall be responsible for the repair of any private property including any irrigation system components damaged during a tree removal or stump grinding. Repairs shall be made using components matching those that were damaged.

c. Clean up and Debris Disposal

i. Contractor shall clean all job sites when work is completed and/or daily, including the raking of leaves, twigs, etc. from the lawns, street gutters, sidewalks and parkways and the sweeping or blowing of streets. Each day's scheduled work shall be completed and cleaned up and only under City approved emergency circumstances may any brush, leaves, debris or equipment be left on the street overnight. The City Representative shall be the sole judge as to the adequacy of the cleanup.

ii. Wood waste generated from tree removals shall be chipped. Diseased trees shall not be commingled with regular trees in the creation of wood chips. The disease-free chips shall be dumped and spread in specified locations in the City at the direction of the City Representative. It is the responsibility of the Contractor to appropriately dispose of diseased trees. Wood and branches not suitable for chipping may be dumped at the City Green Waste disposal site. All tree branches produced because of the Contractor's operations under the Contract will be reduced, reused, recycled, and/or transformed.

V. Non-City Maintained Trees

The Contractor shall NOT perform any work on non-City maintained trees without the direction from the City Representative. The Contractor shall NOT perform work for adjacent homeowners; all inquiries to this effect shall be forwarded to the City Representative.

X. Insurance Requirements

The City requires contractors to obtain and maintain insurance throughout the contract term, as described in the attached draft Contract for Routine Tree Services. The required insurance certificates must comply with all requirements described in and must be provided with the Contract. The City will award one contract for Routine Work to a responsive and responsible bidder, provided that the Bidder is determined to be qualified based on the requirements listed herein. In order to be determined responsive, a Bidder must respond to all requested information and supply all required information in this RFP. Any bid may be rejected if it is conditional, incomplete, or contain irregularities. Minor or immaterial irregularities in a bid may be waived. Waiver of an irregularity shall in no way modify this RFP nor affect recommendation for award of contract. This contract shall consist of the following coverages:

1. Worker's Compensation and Employer's Liability Insurance;
2. Commercial General Liability Insurance in an amount of at least \$2,000,000 per occurrence;
3. Automobile Liability Insurance, including coverage for Contractor's owned, hired and non-owned automobiles in an amount of at least \$1,000,000 per occurrence

Your proposal will require a returned signed copy of this Specification from the authorized submitter of the bid for this service:

P31 Enterprises, Inc.

Name of Company or Business

Printed Name of Signatory

Signature

Date

CITY OF OROVILLE
BID SUMMARY

PROJECT: TREE PRUNING SERVICES

OPENING DATE: 04/07/2022

TIME: 2:00 p.m.

City Hall, Front Lobby
1735 Montgomery Street
Oroville, CA 95965

ATTENDANCE FOR BID OPENING: Cecilia Carmona and Noelle Snow

Bidder Name/Address and Phone	Base Bid Amount	Additive Alternatives	Total Base Bid + Additive Alternatives
PBI Enterprises, Inc	\$1,595.00 per day		
A-1 Tree Service	\$3,525.00		
Atlas	\$2,684.00		
West Coast Arborist	\$2,000		



CITY OF OROVILLE

**1735 MONTGOMERY STREET
OROVILLE, CALIFORNIA 95965
(530) 538-2401**

PARKS AND TREES

PROPOSAL

FOR

TREE PRUNING SERVICES

Bid Submission and Opening Date: April 07, 2022, at 2:00 PM

CITY OF OROVILLE

PUBLIC NOTICE

Sealed Proposal for the following are being accepted:

Tree Trimming Services

at the City Hall, 1735 Montgomery Street, Oroville, CA 95965 until April 07, 2022, 2:00 P.M., at which time they will be publicly opened and read.

A mandatory “Walk Through” of the project with a detailed explanation of expected level of services and specific criteria will be conducted on March 21, 2022 at 9am at 1735 Montgomery Street, City Council Chambers.

Bid specifications including bid proposal forms are available at City Hall - 1735 Montgomery Street, Oroville, CA 95965. Any questions should be directed to Wade Atteberry at (530) 693-0396.

BID FORM

Tree Trimming Services

TOTAL COST FOR SERVICES PER DAY		\$ <u>1,595</u> .00
<p>All-inclusive Total Cost for Services per Day will be <u>One Thousand Five Hundred Ninety Five Dollars and Zero Cents</u> (This entry must be written out)</p>		

The undersigned has checked carefully all the above figures and understands that the City Council shall not be responsible for any error or omissions on the part of the undersigned in making up this bid.

In case of a discrepancy between words and figures, the words shall prevail.

The undersigned hereby certifies that this bid is genuine and not a sham or collusive, or made in the interest of or in behalf of any person not herein named, and that the undersigned has not directly or indirectly induced or solicited any other bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the undersigned has not in any manner sought by collusion to secure for himself an advantage over any other bidder.

The City reserves the right to reject any or all bids. The City reserves the right to delete or award all or part of the bid.


It is agreed that this bid may not be withdrawn for a period of forty-five (45) days from the opening thereof.

The terms and conditions of the final contract when executed shall control and supersede anything herein to the contrary or inconsistent with such contract.

P31 Enterprises, Inc.
Company Name

4/6/22 530-370-1209
Date Area Code/Phone

Lori Curtis
Print Name


Signature

SPECIFICATIONS

For

Tree Trimming Services

For

City Street Trees and Public right of way Trees

SCOPE:

- A. The “City Representative” shall refer to the City’s Parks and Trees Supervisor, or his or her designee. The terms “Contract” shall refer to the contract entered between City and the selected Contractor.
- B. The Contractor shall take a proactive approach in correcting problems within the Contractors’ span of responsibility and control. Other problems and suggestions for improvements, both short and long term, must be submitted promptly to the City Representative for appropriate action.
- C. Contractor’s employees shall wear proper protective clothing, and their clothing shall bear their business name or be unmarked. When needed, the Contractor’s staff will utilize rain gear, rain boots, safety shoes, and other high visibility and protective equipment. All contracted employees while on the site shall exhibit a professional appearance. Contractor’s equipment and vehicles shall also be professional in appearance and be well maintained for safe operation.
- D. In order to submit a bid for Routine Work, the Contractor must have a maintenance yard in the Oroville Area, Shall have a Certified Arborist on Staff and have Ariel trucks in their work fleet
- E. Scheduled operations for residential zones shall commence no earlier than 7:00 A.M. and shall be completed each day no later than 6:00 P.M. The use of power equipment or other work close to residential areas that results in noises shall not be permitted before 8:00 AM or after 5:00 PM. Work along major arterial streets may be subject to additional time restrictions
- F. Any private property or City property damaged or altered in any way during the performance of the work under this contract shall be reported promptly to the City Representative and shall be rectified in an approved manner back to its condition prior to damage, at the Contractor's expense, within 72 hours. Any hazardous conditions noted, or seen, by the Contractor that have occurred by any means other than during the performance of the Contractor's work, whether by vandalism or any other means, shall be promptly reported to the City Representative. The Contractor is responsible for securing any immediate hazards with caution tape, safety cones, and/or barricades until a City Representative arrives to the location.

G. Contractor agrees to perform all work outlined in the Contract in such a manner as to meet all accepted standards for safe practices during the maintenance operation and to safely maintain stored equipment, machines, and materials or other hazards consequential or related to the work; and agrees additionally to accept the sole responsibility for complying with all City, County, State or other legal requirements including, but not limited to, full compliance with the terms of the applicable O.S.H.A., ANSI Z133 Safety Requirements and CAL E.P.A. Safety Orders at all times so as to protect all person, including Contractor's employees, agents of the City, vendors, members of the public or others from foreseeable injury, or damage to their property. Contractor shall cooperate fully with City in the investigation of any accident, injury or death occurring on City property, including a complete written report thereof to the City Representative within twenty-four (24) hours following the occurrence.

H. The Contractor will be permitted to reduce traffic to one through lane except on arterial or collector streets. On arterial or collector streets, the Contractor shall maintain traffic as directed by the City Representative. All traffic control shall conform to the requirements of the California Manual on Uniform Traffic Control Devices (CAMUTCD), Revision 3 for construction and maintenance work zones. Contractor at its own expense shall ensure proper signage, as approved by the City Representative, during lane closures. Traffic Control may include: lights, flares, signs, temporary railings, flag person(s), or other devices as required by the City Representative. It shall be the Contractor's responsibility to post no parking areas as required to perform work. Barricades can be provided by the City, if available, for pickup at the City Corporation Yard. Arrangements for signs and barricades can be made by verbal or written request to the City Representative five working days in advance of the need for signs and barricades. Full compensation for conforming to the requirements of this Section including Traffic Control shall be considered as included in the contract prices paid for the various items of work and no separate payment may be made.

I. Adjacent property and improvements shall be protected from damage and intrusion at all times during the execution of the work embraced herein. Any damage to adjacent properties shall be repaired or replaced by the Contractor at its sole expense. Work shall be carried out in a manner to avoid all conflicts with use of and access to adjacent properties.

J. During the progress of the work, if latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the City Representative in writing of such specific differing conditions before they are disturbed and before the affected work is performed. Upon notification, the City Representative will investigate the conditions, and if the City Representative determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of the work under the Contract, an adjustment will be

made, and the Contract modified in writing accordingly. The City Representative will notify the Contractor of his determination if an adjustment of the Contract is warranted in writing. No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has requested such in writing. No Contract adjustment will be allowed under provisions specified in this section for any effects on unchanged work.

K. Contractor shall invoice the City monthly in a form approved by the City representative. Invoicing shall include a detail of costs for work performed during the payment period, a summary of current invoice amounts, previous payments, and total payments to date. The Contractor shall provide monthly progress reports with the monthly invoices. These reports are to include the following information:

1. - Date of work performed
2. - Description of work performed
3. - Tree location (street address and side)
4. - Tree condition

L. Payment will be made for work satisfactorily completed as called for in the Contract. The City Representative shall inspect and notify the Contractor of any unsatisfactory work. Unsatisfactory work shall be corrected within 24 hours. Contractor or Contractor's representative shall meet with a representative from the City as requested by the City, during the life of the Contract, in order to inspect work performed. Full compensation for conforming to the work of these specifications shall be considered as included in the Contract unit prices, or the proposed hourly rates and material markup, and no further payment may be made thereof. The Contract rates shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in completing the work as specified herein, and as directed by the City.

M. If City gives reasonable notice to Contractor, City may propose in writing changes to Contractor's work within the Scope of Services described. If Contractor believes any proposed change causes an increase or decrease in the cost, or a change in the schedule for performance, of the services, Contractor shall notify City in writing of that fact within five (5) days after receipt of written proposal for changes. Contractor may also initiate such notification, upon identifying a condition which may change the Scope of Services as agreed at the time of execution of this Agreement covering such Scope of Services. When and if City and Contractor reach agreement on any such proposed change and its effect on the cost and time for performance, they shall confirm such agreement in writing as an amendment to this Agreement. In the event the Parties cannot reach agreement as to the proposed change, at the City's sole discretion, Contractor shall perform such work and will be paid for labor, materials, equipment rental, etc., used to perform the work. City shall not be liable for payment of any changes in this section, nor shall Contractor be obligated to perform any such changes, except upon such written amendment or supplement; provided that if, upon City's written request, Contractor begins work in accordance with a proposed change, City

shall be liable to Contractor for the amounts due with respect to Contractor's work pursuant to such change, unless and until City notifies Contractor to stop work on such change. Any additional work requested once the not-to-exceed amounts for the term of the Contract have been reached will require a formal amendment to the Contract.

N. Rates shall include all direct and indirect costs. For labor or equipment not listed in the Bid Proposal which is needed to perform additional work, the hourly rate shall be agreed upon between the City and Contractor before the services are performed.

O. Routine work shall be scheduled with the City Representative and must be performed within the prescribed amount of time. It will be necessary to perform some of the assignments on weekends (Saturdays and Sundays) or during nighttime hours due to the location of the work to be performed. The necessity of this will be determined by the City Representative. Compensation for work completed on a weekend or at night will be in accordance with the State of California labor codes and based on normal working hour rates.

P. The Contractor shall have experience conducting routine and emergency tree services over the past five (5) years and shall be duly registered and licensed with either a C61-D49 or C27-D49 license in the State of California. The Contractor's employees shall be subject to the following minimum requirements, skills, abilities and knowledge:

1. • Demonstrated knowledge of tree care and related operations.
2. • Current licenses for operation of equipment utilized by such employee.
3. • Ability to operate and maintain equipment in accordance with the manufacturer's recommendations
4. • Mechanical ability to make required operator adjustments to the equipment being used.
5. • Knowledge of safety regulations as they relate to tree care and traffic control.
6. • At all times during contracted tree maintenance activities, the firm shall have work crews on site that have a foreperson who can effectively communicate with residents and receive and complete instructions given by City staff and proper authorities. The City has the right to determine crew size for all City tree work assignments.

Q. It will be the responsibility of the Contractor to provide all equipment and labor as necessary to perform the work described in these documents in a safe, efficient, aesthetically pleasing, and legal manner. All equipment, vehicles, and tools must be kept in a clean and safe condition as directed by OSHA at all times during the Contract. All vehicles that are used by the Contractor shall have the Contractor's company name, logo, and vehicle number on it. The Contractor shall always furnish and maintain sufficient equipment as necessary to perform the work of the Contract. Such equipment shall be subject to the inspection and approval of the City Representative. If the

contractor is unable to consistently provide the necessary equipment to perform the work, it may be considered a breach of the Contract.

R. For all Routine Work the Contractor shall, with City approval, aggregate or collect tree work that needs to be performed so that work is performed on a reasonable number of trees on the same day (a standard work day is considered at least 8 hours of field work) to maximize efficiency. All scheduled work shall be preapproved by the City Representative. The City intends to only schedule routine maintenance when the tree contractor crew can fill up a standard work day

S. Tree Trimming and Pruning Standards:

Trimming and pruning operations shall be coordinated with the City Representative and meet the most current editions of the following benchmark standards:

- American National Standards Institute (ANSI) A300 Pruning Standards
- ANSI Z133.1 Safety Standards
- ISA Best Management Practices: Tree Pruning

To ensure that pruning is appropriate for the species and tree/site conditions, it is important to have a clear understanding of the specific needs of the tree and the objectives for pruning. Pruning objectives include the following:

- Improve structural strength and reduce failure potential
- Provide clearance for pedestrians, vehicles, structures and low voltage utilities
- Improve safety and security for residents and visitors
- Repair structural damage from wind loading
- Improve aesthetic characteristics
- Reduce maintenance costs
- Prevent or mitigate a pest problem

Standard 1: All pruning cuts shall conform to ANSI A300 standards (Part 1: Pruning).

Do not make flush cuts or leave branch stubs. Cuts shall be made outside the branch collar in a manner that promotes callous growth to cover wounds.

Standard 2: Not more than 25% of the crown shall be removed within an annual growing season. The percentage of foliage removed shall be adjusted according to age, health, and species considerations. Up to 30% crown removal may be accepted for *Ulmus parvifolia* or other special species after consultation with the City Arborist.

Standard 3: Pruning equipment shall be sharp and sized appropriately for the pruning cut. Chainsaws shall not be used to remove branches 2" or less in diameter. Avoid the use of any pruning and climbing equipment that may cause damage to bark tissue. Spikes (climbing spurs) shall not be used for climbing trees unless the tree is being removed. Pruning tools shall be treated with a disinfectant (such as Lysol) when pruning trees infected with a pathogen that may be transmitted (on tools) from one tree to another of the same species, such as elms (*Ulmus spp.*). Disinfectants should be used before and after pruning individual trees.

Standard 4: All persons engaged in tree pruning shall be familiar with each of the pruning types. Selection of the pruning type(s) shall be based on pruning objectives. Refer to publication ISA Best Management Practices Tree Pruning for descriptions of

pruning types. Clearance pruning that does not comply with Standard 2 shall be conducted only under the supervision of the City Arborist.

Standard 5: Heading cuts shall not be used when pruning mature trees, except in very limited cases with approval from the City Arborist. Whenever possible, use reduction cuts to reduce height and branch removal cuts (thinning cuts) to reduce branch end weights. When reduction and branch removal cuts are not possible (such as when interior lateral branches are not present) and tree hazard potential is high, then heading cuts may be needed, but their use should be minimized.

Standard 6: Clearance pruning shall be defined as to provide the following distances:

- Roadway- not less than 14' from road surfaces
- Sidewalk- not less than 7' from sidewalk surfaces
- Building- not less than 8' from vertical building surfaces
- Roofs and street lights- not less than 10' from building roof surfaces or street lamps
- Utility and telecom drop lines- not less than 2' or sufficient clearance to prevent service interruption and vascular tree growth onto wires

Standard 7: Wildlife Protection: Prior to the commencement of any work near any tree, each tree shall be visually surveyed, from all sides, for the sole purpose of detecting the presence of bird nests or wildlife of any type. If a nest is found and is determined to be active, there shall be no work of any type in the tree in which the nest is found without the written permission of the City's designated representative. At no time shall any nest or wildlife be removed from its location. If wildlife is accidentally displaced, the Contractor shall notify the City representative for assistance.

T. Prior to beginning City tree pruning, removal and maintenance work, the Contractor shall review with the City Representative various methods, tools, and work scheduling to be used on the project(s). Any structural weakness, decayed trunk or branches, split crotches or limbs and included bark discovered by the Contractor while trimming shall be reported to the City Representative for determination of action, as soon as it is discovered. When working on a tree, the Contractor shall be responsible for the removal of all vines entwined in the tree or around its trunk, and for the removal of sucker growth from tree trunks. Limbs over one inch in diameter shall be pre-cut to prevent splitting or ripping bark. Removal from a tree of branches three and one-half inches (3.5") or larger in diameter shall be lowered by proper ropes to the ground. Potentially damaging limbs that can damage property must be rope lowered. Any damage caused by dropping limbs shall be repaired within three (3) days at the Contractor's expense and to the satisfaction of the City Representative. All debris resulting from tree pruning operations shall be removed from the work site daily. A work zone shall be established and maintained for each tree trimming or other operation. The Contractor shall use all appropriate methods used in the field of tree trimming and tree maintenance for establishing and maintaining such work zone. No person other than members of the Contractor's work crew may be allowed to enter such work zone. If any person enters such work zone, the Contractor shall immediately cease all work and operation of all equipment until the work zone is clear. The Contractor agrees to provide

the highest quality commercially accepted methods, procedures and controls for tree pruning, removal and maintenance consistent with the International Society of Arboriculture Pruning Standards (BMPs), ANSI A300 Standards and information in standard arboriculture industry references. This shall include the use of proper knowledge, skills, materials and equipment of a timely basis to maintain all areas in a clean, safe, healthy, and aesthetically acceptable manner during the entire term of the Contract. The Contractor shall furnish tree services by qualified arborists, site managers and tree worker crews to provide tree pruning, removal and maintenance activities that comply with this Specification. It will be the responsibility of the Contractor to provide all equipment, materials, and labor as necessary to perform the work described in these documents in a safe, efficient and legal manner.

U. Types of Tree Work

a. Pruning

i. Pruning for Structure:

Structural pruning is the removal of live branches and stems to influence the orientation, spacing, growth rate, strength of attachment and ultimate size of branches and stems. It is used on young and medium aged trees to help engineer a sustainable trunk and branch arrangement. It is used on large maturing trees to reduce certain defects and space main branches along one dominant trunk. This pruning type can be summed –up in the phrase: subordinate or remove codominant stems. This practice can limit the failure potential of included branch attachments. The maximum diameter of reduction cuts will be specified. Structural pruning is also the foundation for the following pruning types.

ii. Pruning to Raise:

Raising is the selective removal of branches to provide vertical clearance. Crown raising shortens or removes lower branches of a tree to provide clearance for buildings, signs, vehicles, pedestrians and views. Live crown ratio should be no less than 66% when raising is completed and some structural pruning is considered by the City to be part of this pruning. Clearance objectives are specified above in Tree Pruning Standard 6.

iii. Pruning to Clean:

Crown Cleaning or cleaning out is the removal of dead, diseased, detached and broken branches 1/2" or larger. This type of pruning is done to reduce the risk of falling branches and to reduce the risk of decay spreading into the tree from dead or dying branches. Cleaning is the preferred pruning method for mature trees. Cleaning removes branches with cracks that may be prone to fail. Care must be used to avoid stripping branches of too foliage at the interior of the tree crown. This practice which is known as "lion tailing" is unacceptable. The location and diameter of branches to be removed may be specified.

iv. Pruning to Reduce:

Crown Reduction is the selective removal of branches and stems to decrease the height and/or spread of a tree. This is done to minimize risk of failure, to reduce height or spread, to clear vegetation form buildings, structures or utilities. Crown reduction should be accomplished with reduction cuts, not heading cuts. While reducing a crown, tree workers must adhere to basic tree trimming practices involving limb/branch size relationships and use of the branch bark collar to avoid the onset of decay at cut sites

v. Pruning to Restore:

Crown Restoration is the selective removal of branches, sprouts and stubs from trees that have been previously topped, severely headed, lion tailed or otherwise damaged. One to three sprouts are selected for retention on trees with many sprouts originating at the tips of branches. Location and percentage of sprouts are specified

vi. Grid Pruning:

A Consists of pruning 7 or more trees located at the same or at consecutive street addresses. The term is used to reflect an economy of scale when pruning trees in one location and shall be reflected with bid pricing reduced from the single tree pruning bid price.

B Stump Grinding and Tree Removal Tree removal consists of the removal of the above ground portion of a hardwood tree or palm tree. Stump removal consists of the removal of the tree root crown and tree roots to a depth of 18" or until roots are no longer encountered and distances of at least 24" from the outer circumference of the tree stump or until roots are no longer encountered.

b. The Contractor shall comply with all general standards described herein.

i. The price given by the Contractor for tree removals shall be inclusive of all staff, materials and equipment necessary to remove trees as described herein

ii. The City is responsible for marking trees for removal so that they are easily identified for Underground Service Alert (USA) and the Contractor. The Contractor shall be required to contact USA at least 2 working days prior to stump grinding. The Contractor is hereby made aware that many trees in the downtown area are located adjacent to street lighting or other utilities within, which are within 12" of finished grade.

iii. The Contractor shall notify the City Representative in writing of any condition that prevents the removal of a tree and/or the removal of its root system. The Contractor shall take all responsibility for any damage that occurs once the process of removing a tree and/or associated root removal begins.

iv. The Contractor shall comply with wildlife protection standards described herein whenever removing a tree: The Contractor shall not remove any tree without first confirming that the tree being considered is indeed the tree to be removed. Any confusion should be resolved by contacting the City Arborist for assistance. The errant removal of trees shall be penalized up to but limited to the cost of the replacement.

v. During a tree removal, the Contractor shall maintain control of the tree and its parts at all times, which shall include the selection and use of proper techniques and equipment. At no time shall branches, limbs or tree trunks be allowed to freefall and create damage of any type. The Contractor will be held liable for loss of control incidents and shall pay for all damages and associated costs.

vi. Cranes and other rigging equipment shall be properly certified, with evidence of such available for inspection prior to use of said equipment in the City. Crane operators shall be certified by the National Commission for the Certification of Crane Operators (NCCCO) and shall display current certification prior to operating a crane in the City. The use of cranes and certified operators shall not result in additional charges to the City beyond the unit price for the work being performed (e.g., the price for tree removal).

vii. While loading and handling debris, the Contractor shall maintain control at all times so as not to result in damage to the public rights of way or private property. In

addition, the Contractor shall not drop logs or trunks as to create undue noise or shock impact related damages to public and/or private property.

viii. The Contractor shall be responsible for the repair of any private property including any irrigation system components damaged during a tree removal or stump grinding. Repairs shall be made using components matching those that were damaged.

c. Clean up and Debris Disposal

i. Contractor shall clean all job sites when work is completed and/or daily, including the raking of leaves, twigs, etc. from the lawns, street gutters, sidewalks and parkways and the sweeping or blowing of streets. Each day's scheduled work shall be completed and cleaned up and only under City approved emergency circumstances may any brush, leaves, debris or equipment be left on the street overnight. The City Representative shall be the sole judge as to the adequacy of the cleanup.

ii. Wood waste generated from tree removals shall be chipped. Diseased trees shall not be commingled with regular trees in the creation of wood chips. The disease-free chips shall be dumped and spread in specified locations in the City at the direction of the City Representative. It is the responsibility of the Contractor to appropriately dispose of diseased trees. Wood and branches not suitable for chipping may be dumped at the City Green Waste disposal site. All tree branches produced because of the Contractor's operations under the Contract will be reduced, reused, recycled, and/or transformed.

V. Non-City Maintained Trees

The Contractor shall NOT perform any work on non-City maintained trees without the direction from the City Representative. The Contractor shall NOT perform work for adjacent homeowners; all inquiries to this effect shall be forwarded to the City Representative.

X. Insurance Requirements

The City requires contractors to obtain and maintain insurance throughout the contract term, as described in the attached draft Contract for Routine Tree Services. The required insurance certificates must comply with all requirements described in and must be provided with the Contract. The City will award one contract for Routine Work to a responsive and responsible bidder, provided that the Bidder is determined to be qualified based on the requirements listed herein. In order to be determined responsive, a Bidder must respond to all requested information and supply all required information in this RFP. Any bid may be rejected if it is conditional, incomplete, or contain irregularities. Minor or immaterial irregularities in a bid may be waived. Waiver of an irregularity shall in no way modify this RFP nor affect recommendation for award of contract

Your proposal will require a returned signed copy of this Specification from the authorized submitter of the bid for this service:

P31 Enterprises, Inc.

Name of Company or Business

Lori Curtis

Printed Name of Signatory

Lori Curtis

Signature

4/6/22

Date

FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects
Division of Dam Safety and Inspections – San Francisco Regional Office
100 First Street, Suite 2300, San Francisco, CA 94105-3084
(415) 369-3300 Office - (415) 369-3322 Facsimile

April 14, 2022

In reply refer to:
Project No. 2100-CA

Ms. Gwen Knittweis, Chief
Hydropower License Planning and Compliance Office
California Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

Re: Tenth Part 12D Independent Consultants' Safety Inspection Report and Supporting
Technical Information Document for Parish Camp Saddle Dam

Dear Ms. Knittweis:

This is in response to your letters dated August 3, 2020 and December 10, 2021 that submitted the Tenth Independent Consultant's (IC) Safety Inspection Report (Part 12D report) and 2018 Supporting Technical Information Document (STID) for Parish Camp Saddle Dam, which is part of the Upper North Fork Feather River Hydroelectric Project, FERC No. 2105.

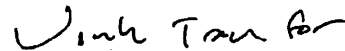
Our review of the Part 12D report concludes that the scope and content of the report satisfies the requirements of Part 12, Subpart D, §12.37 of Title 18 of the Code of Federal Regulations. The Part 12D Report and STID were found to be prepared in general accordance with the Engineering Guidelines Chapter 14 outline provided in our reminder letter dated September 20, 2017. We have reviewed the submittals, and we have the following comments:

1. **Liquefaction Analysis:** Section 8.3.2 of the November 2018 STID states that liquefaction is not applicable as the dam consists of compacted embankment and is founded on rock. Please provide additional engineer justification and discussion that includes embankment and foundation material properties and evidence of the compaction level used to determine the likelihood of liquefaction.
2. Comments on the L2RA will be provided separately in our review for the complete P-2100 risk analysis.

Within 60 days from the date of this letter, provide a response to our comments or submit a plan and schedule to address our comments. File your submittal using the Commission's eFiling system at <https://www.ferc.gov/ferc-online/overview>. For all Dam Safety and Public Safety Documents, select Hydro: Regional Office and San Francisco Regional Office from the eFiling menu. The cover page of the filing must indicate that the material was eFiled. For assistance with eFiling, contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

We appreciate your cooperation in this aspect of the Commission's dam safety program. If you have any questions, please contact Mr. Rakesh Saigal at (415) 369-3317 or Mr. Wes Cooley at (415) 369-3340.

Sincerely,



Frank L. Blackett, P.E.
Regional Engineer

cc:
Ms. Sharon Tapia, Division Manager
CA Dept. of Water Resources
Division of Safety of Dams
P.O. Box 942836
Sacramento, CA 94236-0001

FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects
Division of Dam Safety and Inspections – San Francisco Regional Office
100 First Street, Suite 2300, San Francisco, CA 94105-3084
(415) 369-3300 Office - (415) 369-3322 Facsimile

April 14, 2022

In reply refer to:
Project No. 2100-CA

Ms. Gwen Knittweis, Chief
Hydropower License Planning and Compliance Office
California Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

Re: Tenth Part 12D Independent Consultants' Safety Inspection Report and Supporting
Technical Information Document for Bidwell Bar Canyon Saddle Dam

Dear Ms. Knittweis:

This is in response to your letters dated August 3, 2020 and December 10, 2021 that submitted the Tenth Independent Consultant's (IC) Safety Inspection Report (Part 12D report) and 2018 Supporting Technical Information Document (STID) for Bidwell Bar Canyon Saddle Dam, which is part of the Upper North Fork Feather River Hydroelectric Project, FERC No. 2105.

Our review of the Part 12D report concludes that the scope and content of the report satisfies the requirements of Part 12, Subpart D, §12.37 of Title 18 of the Code of Federal Regulations. The Part 12D Report and STID were found to be prepared in general accordance with the Engineering Guidelines Chapter 14 outline provided in our reminder letter dated September 20, 2017. We have reviewed the submittals, and we have the following comments:

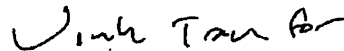
1. Please include the material property used for random, dirty rockfill (1B/S) in the west dam in Section 8 Table 8-4 of the STID.
2. Liquefaction Analysis: Section 8.3.2 of the November 2018 STID states that liquefaction is not applicable as the dam consists of two compacted earth embankments. Please provide additional engineering justification and discussion that includes embankment and foundation material properties and evidence of the compaction level used to evaluate the likelihood of liquefaction.

3. Comments on the L2RA will be provided separately in our review for the complete P-2100 risk analysis.

Within 60 days from the date of this letter, provide a response to our comments or submit a plan and schedule to address our comments. File your submittal using the Commission's eFiling system at <https://www.ferc.gov/ferc-online/overview>. For all Dam Safety and Public Safety Documents, select Hydro: Regional Office and San Francisco Regional Office from the eFiling menu. The cover page of the filing must indicate that the material was eFiled. For assistance with eFiling, contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

We appreciate your cooperation in this aspect of the Commission's dam safety program. If you have any questions, please contact Mr. Rakesh Saigal at (415) 369-3317 or Mr. Wes Cooley at (415) 369-3340.

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Frank L. Blackett, P.E.
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Project No. 2100-CA

Ms. Gwen Knittweis, Chief
Hydropower License Planning and Compliance Office
California Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

Re: Spillway Monolith Stability Technical Memorandum, 9th Part 12D Safety Inspection Recommendation R-6

Dear Ms. Knittweis:

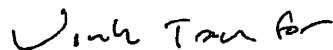
This is in response to your letter dated October 4, 2018 that submitted spillway monolith stability technical memorandum for Oroville Dam, which is part of the Feather River Project, FERC Project No. 2100. We have reviewed the submittal and have the following comment:

- The stability analysis provided was the design analysis for the emergency spillway. The spillway has since been constructed. Please evaluate the as-built condition against the design condition and determine if an updated analysis is warranted and update the analysis by the next Part12D if necessary.

Within 60 days from the date of this letter, please provide a response to our comment or submit a plan and schedule to address our comment. File your submittal using the Commission's eFiling system at <https://www.ferc.gov/ferc-online/overview>. For all Dam Safety and Public Safety Documents, select Hydro: Regional Office and San Francisco Regional Office from the eFiling menu. The cover page of the filing must indicate that the material was eFiled. For assistance with eFiling, contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

We appreciate your cooperation in this aspect of the Commission's dam safety program. If you have any questions, please contact Mr. Wes Cooley at (415) 369-3340 or Mr. Rakesh Saigal at (415) 369-3317.

Sincerely,



Frank L. Blackett, P.E.
Regional Engineer

cc:

Ms. Sharon Tapia, Division Manager
Division of Safety of Dams
California Department of Water Resources
2200 X Street, Suite 200
Sacramento, CA 95818

MEMORANDUM

Item ii.

TO: Mayor Reynolds and Council Members
CC: Bill LaGrone, City Administrator
FROM: Ron Belser, Director of Code Enforcement
DATE: May 03, 2022
SUBJECT: Parcel management software

Trakit is the case management software utilized by Code Enforcement. Code Enforcement relies on the Trakit System for property owner information. The counties data input for property owner information into the Trakit System is months behind. Code Enforcement investigates cases and mails notices to the owner information listed in the Trakit System. It is common for the property owner of record to contact Code Enforcement and advise they are no longer the owner of said property. This causes a waste of manpower, operating fees, and a delay in case investigation.

After extended research and talking with other Code Enforcement Departments I learned of ParcelQuest. ParcelQuest is the sole provider of the most current California property data available online and is used by dozens of Code Enforcement Departments in California. Code Enforcement was granted trial access to ParcelQuest. Staff located numerous parcel number errors listed in the Trakit system and easily identified current property owners. Code Enforcement was able to update the current information into the Trakit system. **Note: This will not replace Trakit but will be used as another tool to identify current property owners.**

I made the annual purchase for access to this system. The cost is \$2399 per year which would allow for 10,000 data exports per month and Free Transaction history on properties. Code Enforcement will hold the single user license, but can assist other city departments such as Planning, Community Development and the Police Department on any property information needed.

Handouts at 05.03.22 Meeting

Butte County Neighborhood Preparedness & Action

FIREWISE USA®



The National Fire Protection Association's (NFPA) Firewise USA® program teaches people how to adapt to living with wildfire and encourages neighbors to work together and take action to help make their community more firesafe.

The Butte County Fire Safe Council is encouraging neighborhood groups to join the growing network of more than 1,500 national Firewise USA® sites by taking ownership in preparing and protecting their homes and communities against the threat of wildfire.

Why become an NFPA Firewise USA® Site?

The number of homes destroyed and lives lost from wildfire has soared in California during the last 10 years.

The Firewise USA® program promotes steps to better protect your residence and your property and to create defensible spaces to help reduce wildfire risk and minimize the danger to you, your family, and your community.

A growing number of insurance companies are requiring that homes be better protected to maintain home-owners insurance. Some will **provide a discount** if you are part of a Firewise USA® community, including USAA Insurance, the California Fair Plan, and Mercury Insurance. *Check with your insurance provider.

How does our Neighborhood become a Firewise USA® Site?

1. Form a small committee or team of neighbors who will spearhead the effort. Then create a Wildfire Risk Assessment of your area followed by an Action Plan of possible risk reduction projects (See other side).
2. Inform and educate your neighborhood group on the Firewise USA® program, its benefits to everyone, and the proposed Action Plan. Prioritize the Action Plan measures with your neighbors.
3. Maintain your Good Standing as a community by working on the items in the Action Plan to reduce wildfire threat. For each home in your Firewise Community, **one volunteer hour of effort per household**, completed by the homeowner or the community, must be contributed.
4. Report your neighborhood group's efforts back to the Firewise USA® program and make plans for which Action Plan items to address during the following year. When applying, you can count previous work completed within the past year. This process could take a couple of months, depending on group motivation and participation.

The Butte County Fire Safe Council and a Firewise USA® representative will help you as needed during this process.



FIREWISE USA®
RESIDENTS REDUCING WILDFIRE RISKS

BCFSC Firewise Coordinator: Lauren de Terra | Laurendeterra@buttefiresafe.net
www.buttefiresafe.net | 530-922-0883

COMPLETING THE WILDFIRE RISK ASSESSMENT

The wildfire risk assessment is a **survey that identifies areas of wildfire risk and where improvements could be made**. A fire professional will be available to help create and/or review the risk assessment document. The assessment can be completed in a variety of ways, including by walking or driving through the neighborhood. Document the conditions of homes and nearby ignition zones such as empty lots and unmaintained areas. Note specific concerns such as inadequate vent screening and debris on roofs and in gutters.

The assessment speaks to the wildfire risk of the overall neighborhood, focusing on:



- vulnerability of homes to embers, surface fire, and tree crown fire
- how well vegetation, especially near structures, is being maintained
- obvious fire hazards on individual properties
- structural characteristics such as roofing, gutters, siding, and decks
- concerns presented by common/open space areas or adjacent public lands

The issues noted in the completed risk assessment document will be the primary tool in determining action priorities to be documented in the Action Plan, below.

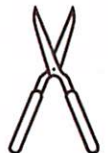
More information can be found on the NFPA Web site at www.firewise.org

CREATING THE ACTION PLAN

There are numerous measures that homeowners and neighborhoods can then take that are documented in the Action Plan, including:



- removing debris on roofs and in gutters
- adding 1/8" wire mesh over attic and crawl space vents
- clearing flammable debris from around homes
- reducing ladder fuels and performing general vegetation management
- maintaining common areas such as empty lots
- establishing neighborhood emergency preparedness and response plans
- helping other neighbors who may not be able to reduce their wildfire risks



Neighbors can work individually or as a group on these actions. The team then reports their efforts back to Firewise USA® and makes plans for which items to address next year. **These efforts will benefit both the individual neighbors and the entire neighborhood by helping to reduce, as much as possible, the destructive effects of a wildfire.**

Many example Action Plan measures can be found on the NFPA Web site at www.firewise.org