



# Agenda

## STUDENT AND NEIGHBORHOOD RELATIONS COMMISSION

### Regular Student and Neighborhood Relations Commission Meeting

Monday, November 9, 2015, 6:30 p.m.

City Council Chambers

1 Civic Center Drive

San Marcos, CA 92069

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Agenda-related writings or documents provided to a majority of the Commission after distribution of the agenda packet will be available for public inspection at the time of distribution in the City Manager's Department located on the second floor of City Hall, 1 Civic Center Drive, San Marcos, CA, during normal business hours.

#### CALL TO ORDER

#### PLEDGE OF ALLEGIANCE

#### ROLL CALL

#### 1. APPROVAL OF MINUTES – Regular Commission Meeting – September 14, 2015

#### PUBLIC COMMUNICATIONS (*This is the public's opportunity to address the Commission on items not on the agenda.*)

#### 2. ORAL COMMUNICATIONS

Speakers are limited to five minutes. Please complete a "Request to Speak" form and place in basket provided.

#### 3. PRESENTATIONS

A) Tobacco Retailer Licensing Program Ordinance

B) Parking Issues; Rosemont Neighborhood

#### 4. REPORTS

A) Sheriff's Department Report – Sgt. Lebitski

B) Code Compliance Report – Building Official Reynolds

**STAFF COMMENTS**

**COMMISSION COMMENTARY**

**ADJOURNMENT**

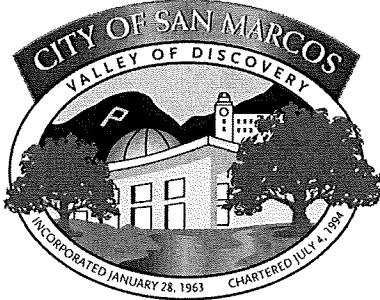
**AFFIDAVIT OF POSTING**

STATE OF CALIFORNIA    )  
COUNTY OF SAN DIEGO    ) ss.  
CITY OF SAN MARCOS    )

I, Sandra Gallegos, Recording Secretary of the Student and Neighborhood Relations Commission, hereby certify that I caused the posting of this agenda in the glass display case at the north entrance of City Hall on Thursday, November 5, 2015, at 5:00 p.m.

Dated: November 5, 2015

*Sandra Gallegos*  
Sandra Gallegos, Recording Secretary



# MINUTES

## Regular Meeting of the Student and Neighborhood Relations Commission

MONDAY, SEPTEMBER 14, 2015

City Council Chambers  
1 Civic Center Drive, San Marcos, CA 92069

**CALL TO ORDER:** Chair Paris called the meeting to order at 6:35 PM.

**PLEDGE OF ALLEGIANCE:** Led by Chair Paris.

**ROLL CALL:**

PRESENT:	CAVANAUGH, CLARK, HINCH, KRETCHMAN, PARIS, RUMER, MEUM
ABSENT:	NONE

**ALSO PRESENT:** Deputy City Manager Romero, Building Official Reynolds, Sheriff's Deputy White, and Recording Secretary Gallegos

**1) APPROVAL OF MINUTES:**

MOVED BY KRETCHMAN, SECONDED CLARK, TO APPROVE THE REGULAR MEETING MINUTES OF 4/13/15 WITH A CORRECTION ON PAGE 3, COMMISSIONER KRETCHMAN'S COMMENTS CHANGE ASSOCIATED STUDENT GOVERNMENT TO STRATEGIC PLANNING COUNCIL.

AYES:	CAVANAUGH, CLARK, KRETCHMAN, PARIS
NOES:	NONE
ABSTENTION:	HINCH AND RUMER

**2) ORAL COMMUNICATIONS**

**CATHY NGUYEN** is a homeowner and resident in the Rosemont community located on the corner of Twin Oaks Valley Road and Village Drive across from the Campus Plaza. She is also an employee of Cal State San Marcos for the last 15 years. As a resident and board member of the home owner's association she is frustrated with the increase in traffic and parking in the neighborhood. There are about 80 homes in the neighborhood and in the last 3 years



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there has been an increase in parking where it is impossible for residents to park on the streets. Some of the issues the residents are experiencing besides parking is loitering, trash, illegal parking in front of fire hydrants and on the curbs making it difficult and unsafe because drivers can't see if there is a pedestrian or a parked car around the corner. There has also been an increase in car thefts and they have filed numerous reports with the Sheriff's Department. The biggest issue they have is that not only do they have possible students parking in their neighborhood but there are also residents from across the street coming into their neighborhood to park because there is not adequate parking where they live. The owners of the restaurant establishments are also telling their employees to park in their neighborhood so they can leave the parking spaces open for customers. They have also witnessed people parking their cars and then a friend will come pick them up. This becomes a problem because not only are they parking over 72 hours but they have also found people sleeping in cars in front of their homes. Besides the increase in traffic flow within their small neighborhood, there is also a safety concern because the people coming in to park are not concerned about the kids in the neighborhood, the increase in traffic or how fast they are driving. Several parked cars have been hit and the driver does not stop. They have spoken with the City Council and asked about possibly permitting the streets and were told the City needed to do an evaluation and assessment and it would take a while, possibly last year but it did not happen. They also presented these issues at the Traffic Safety Commission meeting last week and that Commission recommended they bring these issues to this Commission. Their major concern right now is there are plans to build new homes on Village Drive. She asked what the strategic plan for parking is and did the City take into consideration the impact parking will have on surrounding neighborhoods.

**CHAIR PARIS** thanked Ms. Nguyen for her comments. She stated that because this is not agendized the Commission could not address Ms. Nguyen's concerns at this meeting but they would take a poll whether to put it on the agenda for the next meeting in November.

### 3) NEW BUSINESS:

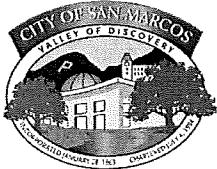
#### A) ELECT VICE CHAIR

**MOVED BY COMMISSIONER KRETCHMAN, SECONDED BY COMMISSIONER CLARK TO APPOINT COMMISSIONER CAVANAUGH AS VICE CHAIR OF THE STUDENT & NEIGHBORHOOD RELATIONS COMMISSION.**

AYES: CAVANAUGH, CLARK, HINCH, KRETCHMAN, PARIS, RUMER

NOES: NONE

ABSTENTION: NONE



## B) TOBACCO RETAILER LICENSING PROPOSAL

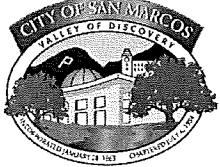
**DEPUTY CITY MANAGER ROMERO** introduced Gena Knutson from the Vista Community Clinic. Ms. Knutson made a presentation to the Commission about electronic cigarettes. Soon after the electronic cigarettes ordinance was adopted, the City Council asked them to take a look at a tobacco retailer license program. There are several communities in the County as well as statewide that has this type of program. City staff reached out to their partners and Ms. Knutson and Vista Community Clinic stepped up and they are helping the City put together a program.

**GENA KNUTSON**, Vista Community Clinic, Program Manager for the Tobacco Control Program presented a power point presentation on Tobacco Retail Licensing Health Environments Against Tobacco H.E.A.T. Project.

**DEPUTY CITY MANAGER ROMERO** indicated that the Commission is being asked to instruct staff to come back with a tobacco retailer licensing program draft ordinance that they can vet at a public hearing to be held at the next Commission meeting in November. Staff will work with the Chamber of Commerce to ensure the business community is covered. At the November meeting the Commission would make a formal decision to move it on to the next step which is recommendation to the City Council or they have the option to meet monthly if they wish to make on the language.

**GENA KNUTSON** stated that the program requires that they go out and provide education to retailers that are in violation. The program has been in place for 10 years and store owners and managers are familiar that they have to train their clerks on how to read an ID correctly. She explained that Vista's ordinance is a collaboration between the previous deputy city manager and a stakeholder group that included retailers. Ms. Knutson likes Vista's ordinance because it rewards the retailers for good behavior. The retailer will receive a \$25 reduction in fee if they did not have a violation that year, a \$25 reduction in fee if they have a device that allows for automatic scanning of the drivers license, a \$25 reduction in fee if they do not have tobacco advertising on the outside of the doors. It has brought the fee down for most of the retailers to \$125 and they are still able to conduct their operations.

**LILI RAMIREZ** is a student at Mission Hills High School, member of the San Marcos Prevention of Drugs and Alcohol Coalition, and a youth liaison to this Commission. She stated that the tobacco retail license ordinance is important to ensure that stores do not sell tobacco products to minors and could assist with removing the drug paraphernalia that is being sold in smoke shops many of which are located next to schools, parks and homes.



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**LETTY ROBLES** is a resident, parent, member of the San Marcos Prevention Coalition dedicated to reducing youth alcohol and drug use and advocate for a safe and healthy environment in San Marcos. She has gone out to do several assessments to identify needs and build strategies to reduce alcohol and drugs. In December they had an alcohol sign campaign where they visited almost 50 stores in San Marcos that sell alcohol. They asked retailers if they could put up a sign warning customers and employees that selling alcohol to minors is against the law. The sign was made in 9 different languages. Some stores already have a basic sign but they wanted to enhance it because their sign is bigger and in red. Most stores agreed to put up the sign. At the same time they informally assessed stores to see how many of them sold e-cigarettes and over 50% of those stores did. The e-cigarettes are readily accessible and in view to a minor. In addition, they have also gone out and assessed the 7 smoke shops in San Marcos and 6 of them do sell drug paraphernalia. They also assessed the 5 vape shops in San Marcos. They found that in one of the vape shops although minors are not suppose to be there, middle school students were hanging out in the lounge area of the vape shop without any question. Minors are entering and are not being told to leave.

**K.C. STRANG** is a resident, coalition manager for the San Marcos Prevention Coalition and a board member of the County of San Diego Behavioral Health Advisory Board. Both the coalition and the advisory board are very passionate about reducing substance abuse among the young people. Preventing youth from smoking is important life saving work. The County of San Diego has a Live Well Initiative which talks about 3 behaviors (smoking, poor diet, no physical activity) that contribute to 4 diseases (cancer, heart disease and stroke, type 2 diabetes, and lung disease) that then contribute to over 50% of the deaths in San Diego County. The tobacco retail ordinance supports the Live Well Initiative and this city and many other groups and agencies and coalitions around San Diego County have become official partners with this Initiative. The tobacco retail license can expressly prohibit the selling of drug paraphernalia in San Marcos stores. Mr. Strang explained that Health and Safety Code 11364.7 was passed 30 years ago by the State of California and prohibits the selling of drug paraphernalia in retail stores. Unfortunately that is not happening because they are not enforcing the law. A local tobacco retail license as part of the license they make sure that retailers do not sell drug paraphernalia and if they do there will fines and other consequences. He stated that a study done by the University of San Francisco measured the amount of nicotine found in the liquid nicotine sold in vape shops. They found that the amounts were different than what was indicated on the vial and that is because it is not being regulated. He stated



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that e-cigarette use has tripled among middle school and high school students. Just recently they received the California Healthy Kids Survey for San Marcos youth and for the first time the survey started asking questions about electronic use. They found that e-cigarette use is twice as high amongst 7<sup>th</sup>, 9<sup>th</sup>, and 11<sup>th</sup> graders as traditional cigarettes. Traditional cigarettes continue to go down but e-cigarette use is going up. He spoke about a trend called dabbing where they take the concentrated form of marijuana wax or oil and put it in a vaporizer. That is a common way for kids to vape the high potency marijuana concentrate. He stated that the tobacco retail license is an effective tool to ensure that our shops do not sell drug paraphernalia which is against the law and that our shops do not sell to minors.

**MOVED BY COMMISSIONER KRETCHMAN, SECONDED BY COMMISSIONER CLARK TO  
BRING BACK A DRAFT ORDINANCE TO IMPLEMENT THE TOBACCO RETAILER LICENSING  
PROGRAM WITH A MODEL SIMILAR TO THE CITY OF VISTA AND WITH THE FOUR MAIN  
COMPONENTS OUTLINED IN THE STAFF REPORT.**

AYES: CAVANAUGH, CLARK, HINCH, KRETCHMAN, PARIS, RUMER  
NOES: NONE  
ABSTENTION: NONE

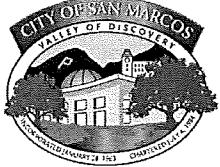
### 4) REPORTS:

#### A) SHERIFF'S DEPARTMENT REPORT

**DEPUTY WHITE** reported that they started the year off with 25 party calls in January. The party calls increased from 35 in June to 37 in July and 57 in August. He stated the numbers for August could be due to students returning to San Marcos from the summer break. As for noise calls there were 14 calls for service in January and there were 38 in June, 29 in July and 30 in August. The increase could be due to new developments especially near Double Peak where citizens have been going to that park afterhours to see the sunrise, sunset.

#### B) CODE COMPLIANCE REPORT

**BUILDING OFFICIAL REYNOLDS** stated they are working several cases involving the rooming house ordinance that were discovered through complaints about property maintenance and parking. He encouraged the public to report all concerns because



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minor issues can lead to the root cause of what is going on. Currently there are no cases related to students and the rooming house ordinance.

**CHAIR PARIS** asked about the Rosemont community parking issue and if that is something they need to look into.

**DEPUTY CITY MANAGER ROMERO** stated it is certainly within the purview of the Commission. If the Commission would like a presentation, please let the staff know. In the last week, 22 parking tickets have been written in the Rosemont neighborhood. Tickets are written to vehicles in violation and so we do not know if those are the cars that the residents are complaining about or if the cars belong to residents or students. The Commissioners indicated they would like to have this issue agendized.

**STAFF COMMENTS:**

**DEPUTY CITY MANAGER** stated that the Biennial Education Forum will be held on September 16<sup>th</sup> from 6:00 p.m. to 7:30 p.m. at St. Augustine University. Mayor Jim Desmond, Interim President of Palomar College Alex Gonzalez, President Karen Haynes of Cal State San Marcos and Superintendent Kevin Holt of San Marcos Unified School District will be speaking. The theme of this year's forum is the past 10 years and how all those institutions have worked together to create the education hub of North County. The forum will be available on the city's website and public news channel.

**COMMISSION COMMENTARY**

**COMMISSIONER CLARK** stated that the fall semester started August 31<sup>st</sup> at Cal State San Marcos with yet another record attendance of over 14,000 students. The sports center on campus is coming along nicely and will hopefully be completed in the spring. The Quad student housing is down in occupancy; they are at about 92% this year. It is the first year they have opened with less than 100% occupancy since they started that program.

**COMMISSIONER KRETCHMAN** stated that enrollment is down 4% at Palomar College. There is a lot of work going in to improving retention and enrollment at the college. She attended the foundation's annual gala recently as did Commissioner Hinch. It was an amazing event and over \$270,000 was raised at that event. The college is currently looking for the new president to be hired and is hoping to have that done by January. The CERT early retirement program had over 90 retirees which included President Deegan, two vice presidents and a few deans. There were some major administrative changes over the summer and they are looking forward to some of



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the new hires coming in. The accreditation was reaffirmed this summer and that is excellent news for the college.

**COMMISSIONER HINCH** stated that on behalf of the Palomar College Associated Student Government he would be sure to report to the president and senators the topics covered tonight.

**COMMISSIONER PARIS** stated that she is involved with the Foundation for Senior Well Being and they hold an annual festival of trees. For the past 3 years the event was held at City Hall. The event is very successful and has grown. This year they are moving the festival to the museum at the California Performing Arts in Escondido. She thanked the City for their hospitality the past 3 years and stated that it helped kick start it into a great festival that raises money for seniors in need. They have started decorating the trees and that is being done at one of the retail spots at The Quad. She invited the Commissioners to stop by and visit and help with decorating.

**ADJOURNMENT:** Chair Paris adjourned the meeting at 7:43 PM.

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CATHERINE PARIS, CHAIR  
STUDENT AND NEIGHBORHOOD RELATIONS COMMISSION  
CITY OF SAN MARCOS

ATTEST:

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SANDRA GALLEGOS, RECORDING SECRETARY  
CITY OF SAN MARCOS



## STUDENT AND NEIGHBORHOOD RELATIONS COMMISSION

# Report

CITY COUNCIL CHAMBERS  
1 CIVIC CENTER DRIVE  
SAN MARCOS, CA 92069  
(760) 744-1050  
WWW.SAN-MARCOS.NET

**MEETING DATE:** November 9, 2015

**SUBJECT:** Tobacco Retailer Licensing Program Ordinance - DRAFT

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### **Recommendation**

Discuss and Advise

### **Introduction**

At the September 14, 2015 Student and Neighborhood Relations Commission (Commission) meeting, city staff in partnership with Gena Knutson from the Vista Community Clinic gave an overview of tobacco licensing programs in existence in California. The Commission instructed city staff to bring back at its next meeting a draft of a Tobacco Retailer Licensing Program Ordinance for discussion.

### **Discussion**

For the consideration of the Commission, residents and business owners, attached is a draft ordinance that sets forth a Tobacco Retailer Licensing (TRL) Program. The ordinance before the Commission for discussion is based in large part on the existing program in the City of Vista. This program provides for a reduction in the annual fee when businesses comply with certain conditions.

#### *San Marcos Tobacco Retailer Program:*

The proposed program would require all sellers of tobacco and smoking products to obtain a local license annually. Attached, is a sample application with the proposed information from a business seeking a tobacco retailer license. The core of the program is the annual compliance checks conducted by the San Diego Sheriff's Department.

Compliance checks shall include:

- Tobacco laws regulating underage sales;
- Compliance with STAKE Act; and
- Prohibiting sales of drug paraphernalia.

Retailers will receive a reduction in their annual fee should no violations be found during the annual compliance check. Additionally, fee reductions will be available if the retailer has a magnetic strip reader to verify age, staff training and/or no tobacco advertising on store windows or doors. Fee reductions are cumulative, so a retailer may have up to four discounts.

*Violations:*

If during the annual compliance checks, any retailer is found to be in violation of this ordinance the penalties are as follows:

- 1<sup>st</sup> violation within 3 years results in a warning and a requirement to train employees within 60 days.
- 2<sup>nd</sup> violation within 3 years is a suspension of up to 30 days.
- 3<sup>rd</sup> violation within 3 years is up to a 90-day suspension.
- 4<sup>th</sup> violation within 3 years is a suspension of up to 12 months.
- 5<sup>th</sup> violation within 3 years may result in the revocation of the license.

Should a license be suspended or revoked, the proposed ordinance sets forth an appeal process for the retailer.

It should be mentioned that any violation(s) found during the annual compliance check will automatically result in full payment of the annual fee.

*Remaining issues:*

A few remaining issues related to a TRL program are left open for discussion. The first is the term of the license. To have an effective program the TRL should be renewed on an annual basis with the compliance checks completed near the end of the term. For example if the TRL was based on a calendar year, compliance checks could take place in the fall. Unfortunately, the current business licenses process renews on the business anniversary date not a traditional January to December cycle. The issue at hand is how to link the business license process with the TRL program.

*Cost of the program:*

The proposed TRL program is based on a similar program in the City of Vista. The rate the City of Vista charges for a base tobacco retailer license is \$250.00. Staff is currently working on calculating the cost to San Marcos businesses; it most likely will be near what Vista charges for its license.

*Outreach*

A letter was sent to each retailer that sells tobacco and smoking products letting them know about the proposed tobacco retailer licensing program and invited them to tonight's meeting to participate in a discussion about the proposed program. A separate page on the City's web site was created to post the proposed ordinance and background materials.

**Commission Action:**

Hold workshop and receive public comments on the proposed TRL program.

Commissioners are encouraged to discuss and comment on the program as well.

Commission should give direction to city staff on bringing back a final draft ordinance for consideration.

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**Attachment(s)**

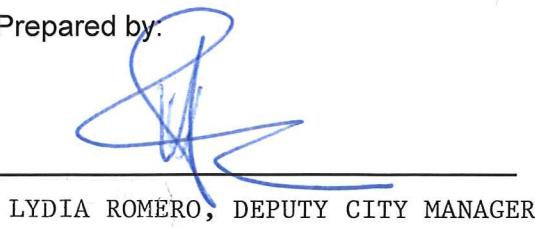
Proposed Tobacco Retailer License  
Retailer Letter

STUDENT AND NEIGHBORHOOD RELATIONS COMMISSION

November 9, 2015

**Page 3 of 3**

Prepared by:

A handwritten signature in blue ink, appearing to read "LR", is written over a horizontal line. Below the line, the name "LYDIA ROMERO" is printed in a standard black font, followed by "DEPUTY CITY MANAGER" in a smaller font.

**CHAPTER ##****TOBACCO RETAIL LICENSE****SECTIONS:**

- #.##.### **Legislative Findings**
- #.##.### **Purpose**
- #.##.### **Definitions**
- #.##.### **Requirement for Tobacco Retail License**
- #.##.### **Applications Procedure**
- #.##.### **Issuance and Renewal of License**
- #.##.### **Display of License**
- #.##.### **License Fee**
- #.##.### **Licenses Nontransferable**
- #.##.### **License Violation - Compliance Monitoring**
- #.##.### **Suspension or Revocation of License**
- #.##.### **Denial, Suspension and Revocation - Appeals**
- #.##.### **Hearings - Generally**
- #.##.### **Conduct of Hearing**
- #.##.### **Form and Contents of Decision of Hearing Officer - Appeal to City Manager**
- Finality of Decision**

**#.##.### Legislative Findings**

The City Council finds and determines that:

- A. California Penal Code Section 308 prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors.
- B. California Business & Professions Code Section 22956 requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age.
- C. California Business & Professions Code Section 22952 and California Penal Code Section 308 require that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under 18 years of age is illegal.
- D. California Business & Profession Code Section 22962 prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk.
- E. California Penal Code Section 308.1 prohibits the sale of "bidis" (hand-rolled filterless cigarettes imported primarily from India and Southeastern Asia countries) except at those businesses that prohibit the presence of minors.
- F. California Penal Code Section 308.3 prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco.
- G. Chapter 10.10 of the San Marcos Municipal Code regulates access to and use of tobacco products by minors.
- H. California Business & Professions Code Section 22971.3 authorizes local authorities to adopt tobacco retailer licensing laws to provide for the suspension and revocation of the local tobacco retailer license for any violation of a state tobacco control law.
- I. In a 2015 Center for Disease Control and Prevention report states that middle and high school students' use of electronic cigarettes have tripled from 2013 to 2014.
- J. The same report states that 9 out of 10 cigarette smokers had their first cigarette before the age of 18.
- K. The City of San Marcos has a substantial interest in promoting compliance with federal, state and local laws intended to regulate tobacco sales and use.

- L. Studies have shown that local tobacco retail licensing programs coupled with a strong enforcement program substantially reduces youth access to tobacco.
- M. State law prohibits sales of "drug paraphernalia" however many retailers sell items that are commonly known to be "drug paraphernalia" including water pipes and personal vaporizers used to smoke illicit drugs, claiming the items are for tobacco or e-liquid use.
- N. San Marcos intends to require compliance with state drug paraphernalia laws as a condition of obtaining and maintaining the local tobacco retailers license.

#### #.##.###      Purpose

The purpose of this chapter is to encourage responsible tobacco retailing and discourage violations of tobacco related laws that prohibit the sale or distribution of tobacco products to minors and tobacco- related laws that prohibit the display of tobacco products within reach of the public, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided therefore.

#### #.##.###      Definitions

When used in this chapter, the following definitions shall have the meanings given by this section, whether or not these words or phrases are capitalized:

**"Hearing Officer"** means the City employee designated by the City Manager to serve in this capacity.

**"Itinerant Tobacco Retailing"** means engaging in tobacco retailing at other than a fixed location.

**"Person"** means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

**"Proprietor"** means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or can have, sole or shared control over the day- to-day operations of a business.

**"Tobacco Product"** means: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence.

**"Tobacco Paraphernalia"** includes cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.

**"Tobacco Retailer"** means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

**"Tobacco Retailing"** shall mean selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

**"Drug Paraphernalia"** is set forth as defined in Health & Safety Code section 11014.5.

**Electronic Smoking Device** means an electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances by delivering a vaporized solution. Electronic smoking device includes any such device, whether manufactured, distributed marketed or sold as an electronic cigarette, an e-cigarette, an electronic cigar, electronic cigarillo, an electronic pipe, an electronic hookah, or any product name or descriptor, including any component, part or accessory of such a device, whether or not sold separately. Electronic smoking device does not include any inhaler or other product specifically approved by the United States Food and Drug Administration for therapeutic purposes or for use in the mitigation, treatment or prevention of disease, where such product is marketed and sold solely for such an approved purpose

**Electronic Smoking Device Paraphernalia** means cartridges, cartomizers, e-liquid, smoke juices, tips, atomizers, electronic smoking device batteries, electronic smoking chargers and any other item specifically designed for the preparations, charging or use of electronic devices.

**Smoking Materials** means tobacco products, an electronic smoking device, electronic smoking device paraphernalia, and any other product containing tobacco or nicotine that releases gases, particles or vapors into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose is human inhalation of the byproducts, except when the purpose of inhalation is solely olfactory.

#### **#.##.### Requirement for Tobacco Retail License**

- A. It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retail license pursuant to this chapter for each location at which tobacco retailing is to occur. No tobacco retail license will be issued to authorized tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.
- B. Nothing in this chapter shall be construed to grant any person obtaining a tobacco retail license any status or right other than the right to act as a tobacco retailer at the location in the City identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by Labor Code Section 6404.5.

#### **#.##.### Applications Procedure**

- A. Application for a tobacco retail license shall be submitted to the Finance Department in the name of each proprietor proposing to conduct tobacco retailing and shall be signed by each proprietor or an authorized agent thereof. A proprietor proposing to conduct tobacco retailing at more than one location shall submit a separate application for each location.
- B. All applications shall be submitted on a form supplied by the City and shall contain the following information:
  1. The name, address, and telephone number of each proprietor.
  2. The business name, address and telephone number of the fixed location for which a tobacco retail license is sought.
  3. The name and mailing address authorized by each applicant to receive all license- related communications and notices (the "authorized address"). Failure to supply an authorized address shall be understood to consent to the provision of notice at the business address specified in paragraph 2, above.
  4. Whether or not any applicant has previously been issued a license pursuant to this chapter that is or was at any time suspended or revoked and, if so, the dates of the suspension period or the date of revocation.
  5. Such other information as the City Manager deems necessary for the administration or enforcement of this chapter.

#### **#.##.### Issuance and Renewal License**

- A. Upon the receipt of an application for a tobacco retail license and the payment of a tobacco retail license fee, the City shall issue a license unless:
  1. The application is incomplete or inaccurate.
  2. The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this chapter; provided, however, this subparagraph shall not constitute a basis for denial of a license if either or both of the following apply:

- a) The applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For the purposes of this subparagraph, an "arm's length transaction" is defined as sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this chapter that occurred at the location, is presumed not to be an "arm's length transaction."
- b) It has been more than three years since the most recent license for that location was revoked.

- 3. The application seeks authorization for tobacco retailing by a proprietor for which or whom a suspension is in effect or by a proprietor which or who has had a license revoked, pursuant to this chapter.
- 4. The application seeks an authorization for tobacco retailing that is unlawful pursuant to this code, or that is unlawful pursuant to any other local, state, or federal law.
- 5. The City has information that the applicant or his or her agents or employees have violated any local, state, or federal tobacco control law at the location for which the license or renewal of the license is sought within the preceding 30 day period.
- 6. The issuance of a tobacco retail license would be in conflict with any other City ordinance.

B. Beginning from the effective date of this ordinance, all current licenses and any new licenses issued pursuant to the provisions of this chapter shall expire on June 30, 20##, regardless of the date of issuance and then June 30, annually, thereafter, unless prior thereto revoked by the City. An application to renew such license shall be made no later than 30 days prior, but no earlier than 60 days prior to the expiration of the license. A license may be renewed annually by submitting a tobacco retail license application to the Finance Department along with payment of a tobacco retail licensing fee; provided, however, a tobacco retail license that is suspended, has been revoked, or is subject to suspension or revocation proceedings shall not be renewed. The applicant shall follow all of the procedures and provide all of the information required by Section #.##.## above. The City shall process the application according to the provisions of this section.

C. If the information required in the license application pursuant to Section #.##.##, items 1, 2, or 3, changes, a new tobacco retail license is required before the business may continue to act as a tobacco retailer. For example, if a proprietor to whom a license has been issued changes business location, that proprietor must apply for a new license prior to acting as a retailer at the new location. If the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer.

D. A tobacco retail license that is not timely renewed pursuant to this chapter shall be automatically suspended by operation of law. If not renewed, a license shall be automatically revoked two years after the renewal date. To reinstate the paid status of a license that has been suspended due to the failure to timely pay the renewal fee, the tobacco retailer must:

1. Submit the renewal fee plus a reinstatement fee of ten percent of the renewal fee; and
2. Submit a signed affidavit affirming that he or she has not sold any tobacco product or tobacco paraphernalia during the period the license was suspended for failure to pay the renewal fee.

#### #.##.## #.##.##.##.##.## **Display of License**

Each license shall be prominently displayed in a publicly visible location at the licensed premises.

**#.##.### License Fees**

The fee for issuance or renewal of a tobacco retail license shall be established by resolution of the City Council and shall be in addition to the City's business license fee and any other license or permit fee imposed by this code upon the applicant. The tobacco retail license fee shall be paid to the City at the time the license application is submitted.

**#.##.### Licenses Nontransferable**

A tobacco retail license is nontransferable and is valid only for the person and location of license issued, unless it is suspended or revoked for cause, for the period indicated. If a tobacco retail licensee changes the location of his or her business, that tobacco retail licensee must obtain a new tobacco retail license prior to acting as a tobacco retailer at the new location. If a business licensed to conduct tobacco retailing is sold or transferred, the new owner must obtain a tobacco retail license for that location before acting as a tobacco retailer.

**#.##.### License Violation – Compliance Monitoring**

- A. It shall be a violation of a tobacco retail license for a tobacco retail licensee or his or her agents or employees to violate any local, state or federal tobacco- related law.
- B. Compliance with this chapter shall be monitored by the San Diego Sheriff's Department. Any peace officer or code compliance official also may enforce this chapter. The San Diego Sheriff's Department shall check compliance of each tobacco retailer at least one time per 12 month period and shall conduct additional compliance checks as warranted. The compliance checks shall be conducted to determine, at a minimum, if the tobacco retailer is complying with tobacco laws regulating underage sales. The San Diego Sheriff's Department shall use youth decoys and comply with protocols for the compliance checks developed in consultation with the San Diego County Department of Health and Human Services and the San Diego District Attorney. When appropriate, the compliance checks shall determine compliance with other tobacco- related laws.
- C. The City shall not enforce any tobacco- related minimum-age law against a person who otherwise might be in violation of such law because of a person's age (hereinafter "youth decoy") if the potential violation occurs when:
  1. The youth decoy is participating in a compliance check supervised by a peace officer or a Code compliance official; or
  2. The youth decoy is participating in a compliance check funded in part by the San Diego County Department of Health and Human Services or funded in part, either directly or indirectly through sub- contracting, by the California Department of Health Services.

**#.##.### Suspension or Revocation of License**

- A. In addition to any other penalty authorized by law, a tobacco retail license may be suspended or revoked if the City finds, after notice to the tobacco retail licensee and opportunity to be heard, that the tobacco retail licensee or his or her agents or employees has or have violated any of the provisions of this chapter; provided, however, violations by a licensee at one location may not be accumulated against other locations of that same tobacco retail licensee, nor may violations accumulated against a prior tobacco retail licensee at a licensed location be accumulated against a new tobacco retail licensee at the same licensed location.
  1. Upon a finding by the City of a first license violation within any three-year period, the City shall:
    - a) Issue a written warning to the licensee.
    - b) Advise the licensee of the penalties for further violations of the ordinance.

- c) Require the licensee to provide documentation to the City that all employees engaged in the retail sales of tobacco have received training in a City approved program within 60 days after the warning, or such other time as shall be set by the City.

2. Upon a finding by the City of a second license violation within any three year period, the license may be suspended up to 30 days.
3. Upon the finding by the City of a third license violation within any three year period, the license may be suspended for up to 90 days.
4. Upon the finding by the City of a fourth license violation within any three year period, the license may be suspended for up to one year.
5. Upon a finding by the City of a fifth license violation within any three year period, the license may be revoked.

B. A tobacco retail license shall be revoked if the City finds, after notice and opportunity to be heard, that any one of the conditions listed below exist. The revocation shall be without prejudice to the filing of a new application for a tobacco retail license.

1. One or more of the bases for denial of a tobacco retail license under Section #.##.### existed at the time the tobacco retail license application was made or at any time before the tobacco retail license was issued.
2. The application is incomplete for failure to provide the information required by Section #.##.###.
3. The information contained in the application, including supplemental information, if any, is found to be false in any material respect.
4. The application seeks authorization for tobacco retailing that is unlawful pursuant to this Code, or that is unlawful pursuant to any other local, state, or federal law.

C. In the event the City suspends or revokes a tobacco retail license, written notice of the suspension or revocation shall be served upon the tobacco retail licensee within five days of the suspension or revocation in a manner prescribed in Section #.##.###. The notice shall contain:

1. A brief statement of the specific grounds for such suspension or revocation;
2. A statement that the tobacco retail licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of Section #.##.###, to the City, within ten calendar days of the date of the service of the notice; and
3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all rights to an administrative appeal hearing, and the suspension or revocation will be final.

#### #.##.### Denial, Suspension and Revocation - Appeals

A. Any tobacco retail license applicant or licensee aggrieved by the decision of the City in denying, suspending, or revoking a tobacco retail license, may appeal the decision, by submitting a written appeal to the City Clerk within ten calendar days from the date of service of the notice of denial, suspension, or revocation. The written appeal shall contain:

1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;
2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;
3. The signatures of all parties named as appellants and their official mailing addresses; and
4. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

B. The appeal hearing shall be conducted by a hearing officer.

- C. Upon receipt of any appeal filed pursuant to this section, the City Clerk shall transmit said appeal to the hearing officer who shall calendar it for a hearing. The hearing officer shall give the parties at least 15 calendar days written notice of the time and place of the hearing either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal. Upon good cause, the hearing officer may grant one extension for the date of the hearing not to exceed 15 days from the original date set for the hearing.
- D. Only those matters or issues specifically raised by the appellant in the notice of appeal shall be considered in the hearing of the appeal.
- E. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.
- F. Following the hearing on the appeal by the hearing officer, the decision of the hearing officer may be appealed to the City Manager or his or her designee. A decision of the City Manager or his or her designee shall be the final decision of the City.
- G. During a period of license suspension the tobacco retail licensee must remove from public view all tobacco products and tobacco paraphernalia at the address that appears on the suspended or revoked tobacco retail license.

#### **#.##.### Hearings – Generally**

- A. At the time set for hearing, the hearing officer shall proceed to hear the testimony of material witnesses, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.
- B. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.
- C. The hearing officer may, upon the request of the appellant or upon the request of the City, grant continuances from time to time for good cause shown, or upon his or her own motion.

#### **#.##.### Conduct of Hearing**

- A. Hearings need not be conducted in accordance to the technical rules relating to evidence and witnesses. Government Code Section 11513, Subsections (a), (b) and (c) as presently written or hereinafter amended shall apply to hearings under this chapter.
- B. Oral evidence shall be taken only upon oath or affirmation.
- C. Irrelevant and unduly repetitious evidence shall be excluded.

- D. Each party shall have these rights, among others:
  - 1. To call and examine witnesses on any matter relevant to the issues of the hearing.
  - 2. To introduce documentary and physical evidence.
  - 3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing.
  - 4. To impeach any witness regardless of which party first called the witness to testify.
  - 5. To rebut evidence presented against the party.
  - 6. To represent himself, herself, or itself, or to be represented by anyone of his, her, or its choice who is lawfully permitted do so.
- E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the City of any of its departments.

**#.##.### Form and Contents of Decision of Hearing Officer - Appeal to City Manager - Finality of Decision**

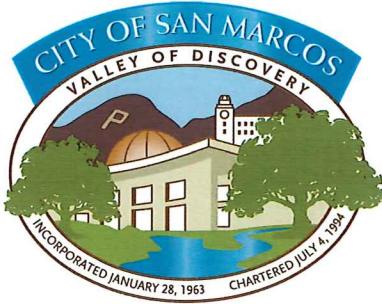
- A. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, or revoke the tobacco retail license, the hearing officer shall affirm the City's decision to deny, suspend, or revoke the tobacco retail license. The decision of the hearing officer shall be in writing and shall contain findings of fact and a determination of the issues presented.
- B. The decision of the hearing officer shall inform the appellant that the decision may be appealed to the City Manager by filing a written appeal with the hearing officer within ten days of receipt of the decision of the hearing officer. The written appeal shall be forwarded to the City Manager upon receipt.
- C. Within 15 days of receipt of the written appeal, the City Manager shall review the record of the hearing and issue a written decision to grant or deny the appeal. A decision of the City Manager shall be final. The City Manager shall provide appellant with a copy of his or her decision and that the time for judicial review is governed by California Code of Civil Procedure Section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by City Manager and served as provided in this section.

**#.##.### Enforcement**

- A. In addition to any other remedy, any person violating any provision of this chapter shall be guilty of a misdemeanor for each day a violation continues.
- B. Any violation of this chapter may be remedied by a civil action brought by the City Attorney. The City may recover reasonable attorney fees and costs of suit in any civil action brought by the City Attorney to remedy any violation of this chapter.
- C. Violations of this chapter are hereby declared to be public nuisances subject to abatement by the City.
- D. In addition to criminal sanctions and other remedies set forth in this chapter, administrative penalties may be imposed pursuant to Section 1.14.30 of this code against any person violating any provision of this chapter. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Chapter 1.14 of this code.

**#.##.## Severability**

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



October 19, 2015

Dear Business Owner or Manager:

The City of San Marcos invites you to attend a public workshop at the Student and Neighborhood Relations Commission meeting on Monday, November 9 at 6:30 p.m. in the City Council Chambers to discuss a proposed municipal Tobacco Retail License (TRL) ordinance.

A recent survey by Vista Community Clinic showed that there are some businesses in San Marcos that are selling tobacco products, including e-cigarettes, to minors in violation of state law. In order to help further reduce the number of stores selling these products to children, the City is considering implementing a TRL ordinance.

The proposal is modeled on the successful ordinance that Vista has had for 10 years. Tobacco retailers would be required to pay an annual licensing fee that covers the costs of administration and yearly compliance checks by the San Diego Sheriff's Department. Under the Vista model, retailers could receive cumulative discounts on the TRL fee for each of the following: no tobacco violations in the previous year, no tobacco advertising on the store windows or doors, driver's license readers at the point of sale, and employee tobacco retailing education programs.

The public workshop will allow you, the public and the Commission the opportunity to review and discuss the proposed ordinance and its potential impacts on the community. No votes will be taken on the proposal. A copy of the proposed ordinance and supporting documentation will be posted on the City's webpage a few days before the Commission meeting. Once posted, it can be accessed as part of the meeting agenda by clicking on the events calendar for November 9.

We look forward to hearing from you at the meeting getting your input.

Sincerely,

Lydia Romero  
Deputy City Manager

**AGENDA ITEM NO. 3A**



# Report

## STUDENT AND NEIGHBORHOOD RELATIONS COMMISSION

CITY COUNCIL CHAMBERS  
1 CIVIC CENTER DRIVE  
SAN MARCOS, CA 92069  
(760) 744-1050  
[WWW.SAN-MARCOS.NET](http://WWW.SAN-MARCOS.NET)

**MEETING DATE:** November 9, 2015

**SUBJECT:** Parking Issues; Rosemont Neighborhood

### **Recommendation**

Review the report; listen to public comment and direct staff to come back to the Commission with detailed recommendations for corrective action.

### **Background**

Over the years City staff has received numerous complaints about what was perceived as student parking near California State University, San Marcos (CSUSM) in the Rosemont neighborhood. The residential streets most impacted in the Rosemont community are; Carnation Court, Yarrow Way and the eastern portion of Violet Avenue (see attached map of the impacted area). The complaints began in late 2013 and have been about students parking legally and illegally in some cases. The City has continuously patrolled this area since the complaints began and has issued hundreds of parking tickets to illegally parked cars over the years.

### **Discussion**

In February of 2014 the City was contacted by residents and the management company from the Rosemont community complaining about student parking on their neighborhood streets. Rosemont is a neighborhood of 68 homes with an active Homeowners Association (HOA) and the community is approximately 7/10ths of a mile south of CSUSM's main buildings. In early 2014 City staff investigated the early complaints received from residents and the management company. On July 9, 2014 staff met with the HOA Board to discuss the parking issues within the Rosemont neighborhood. City staff determined during its investigation in 2014 that the parking issue being complained about was not just students, but residents, guests and customers visiting the community on the east side of Twin Oaks Valley Road. People would park their cars in the Rosemont neighborhood and walk or carpool over to the homes, businesses and CSUSM on the east side of Twin Oaks Valley Road. The parking issue was at its worse during the evening and over the weekends; not the normal weekday daytime parking issues associated with students. The HOA was informed that the neighborhood would be included on the regular patrol of the parking enforcement officers.

Between September 9, 2014 and October 29, 2015, 183 parking tickets have been issued on the three streets within the Rosemont HOA: 78 on Violet Avenue, 17 on Yarrow Way, and 88 on Carnation Court. Carnation and Yarrow are each only one block long. A breakdown of the type of parking violations will be presented at the Commission meeting. Since the City added a complaint report feature to its website: [www.san-](http://WWW.SAN-MARCOS.NET)

[marcos.net](http://marcos.net), in February of 2015 it has received 21 complaints as of October 29<sup>th</sup> from 11 residents about parking and trash in Rosemont. The difference with some of these recent complaints is that in addition to the general complaint about the heavy volume of both legally and illegally parked cars, there were complaints of late night noise and littering by the people parking on Rosemont's streets.

The City currently cleans residential streets every two weeks. When the complaints came into the City a "windshield survey" was conducted by both Public Works and Parking staff. No excessive trash or parking issues were observed. In order to illustrate this, the attached photos were taken of the streets in question on a typical school day. The City's Parking Enforcement Officers regularly patrols the Rosemont neighborhood, however, it is worth noting that the city employs only two part-time Parking Enforcement Officers and San Marcos is 24 square miles in size, has 235 miles of streets with over 90,000 residents.

The public street is for temporary "on-street" parking of vehicles for the public in general, not solely for the use of those that live in the neighborhood. The City requires all single and multi-family homes to have ample "off-street" parking in the form of designated parking spaces, garages and driveways. The public street is not for storage of personal vehicles, watercraft or recreational vehicles but for temporary parking for residents, guests and the general public.

### **Possible Solutions**

Possible solutions that the Commission might consider to address the concerns of the residents of Rosemont are:

1. Recommend to the City that specific streets be posted no parking on street sweeping days
2. Continue to heavily target the Rosemont neighborhood for illegal parking during school hours and weekends.

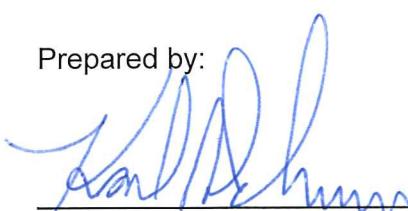
In addition, from past experience with other restricted parking areas in the City, the groups most ticketed in this type of program are residents and their guest.

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#### Attachment

Photographs of the Rosemont Neighborhood  
Map of Rosemont Neighborhood

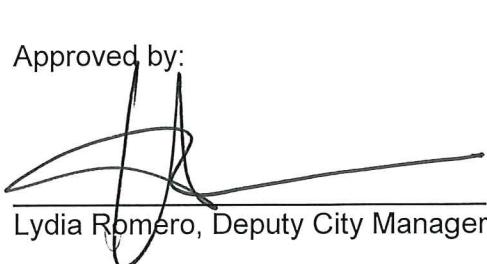
Prepared by:



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Karl Schwarm, HANS Div. Director

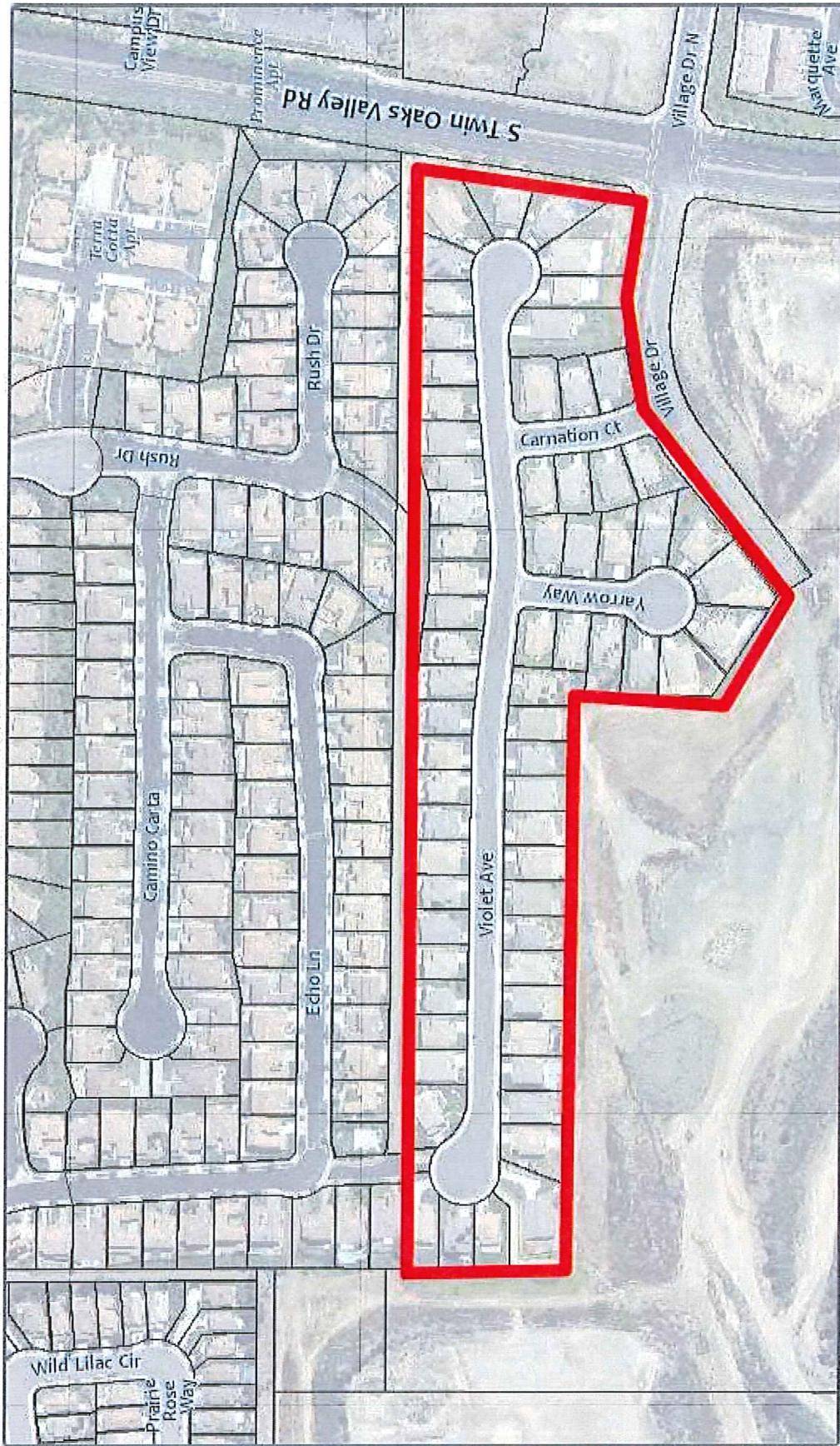
Approved by:



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Lydia Romero, Deputy City Manager

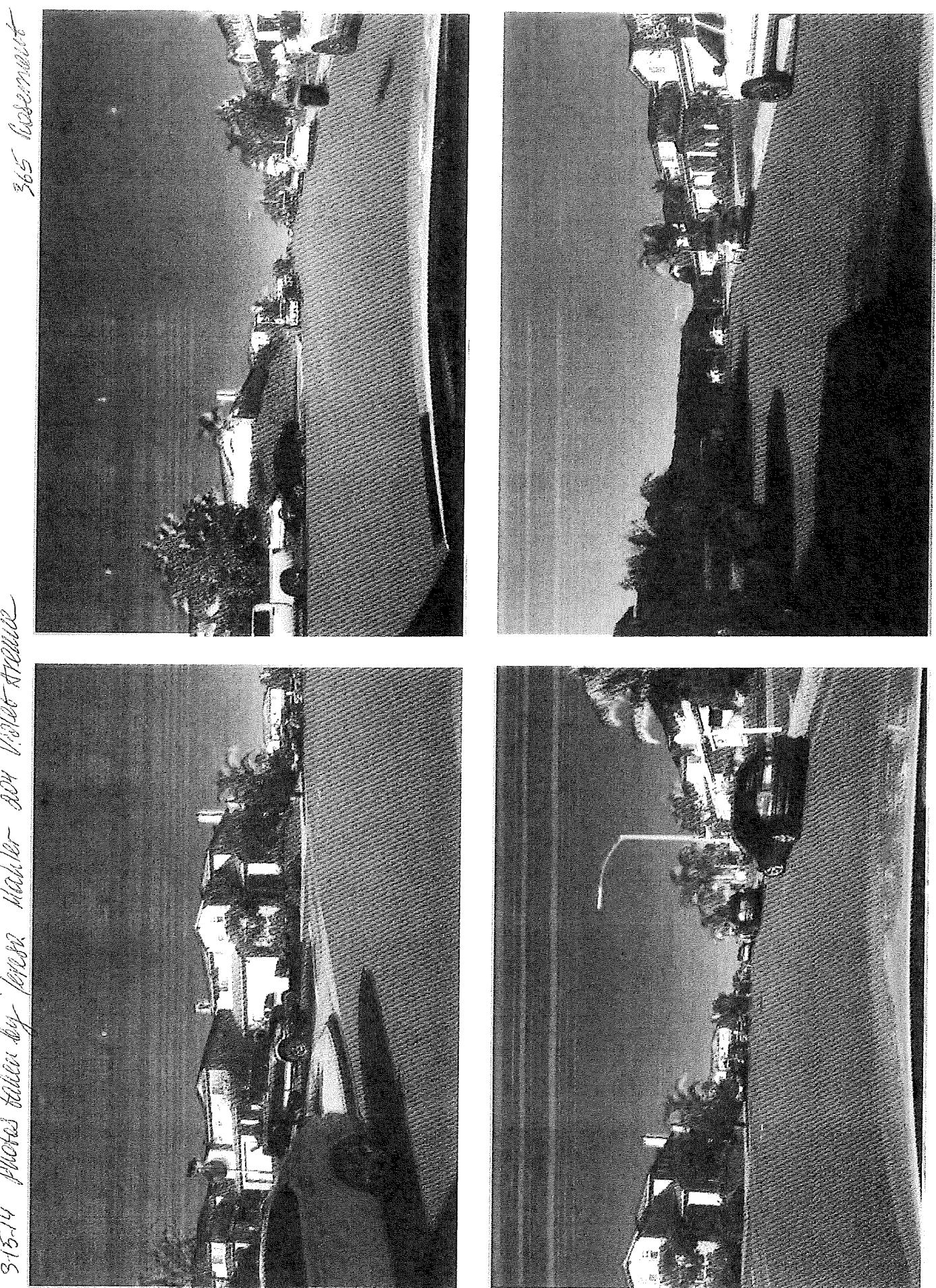
Rosemont Homeowners Association



*Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.*

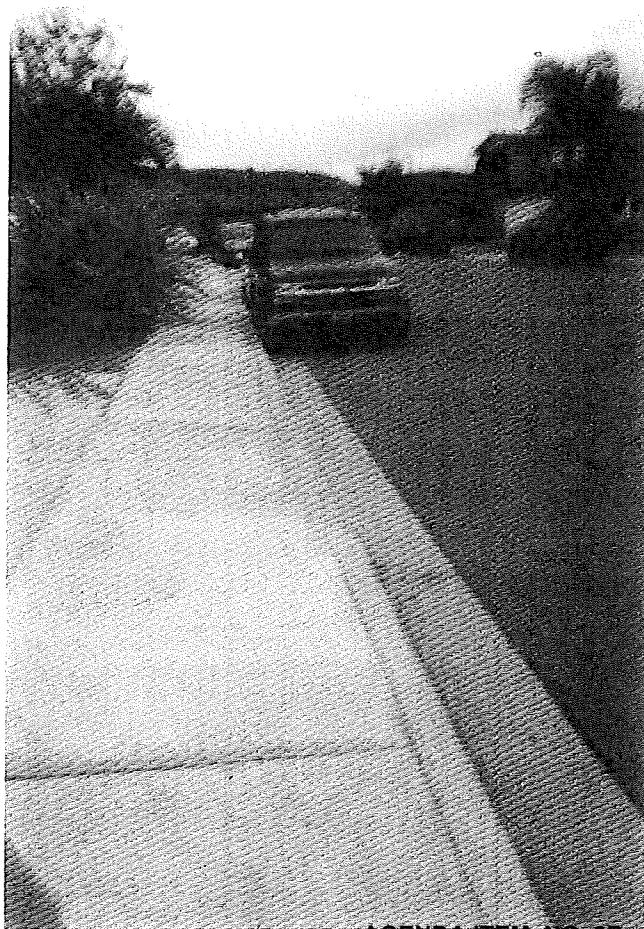
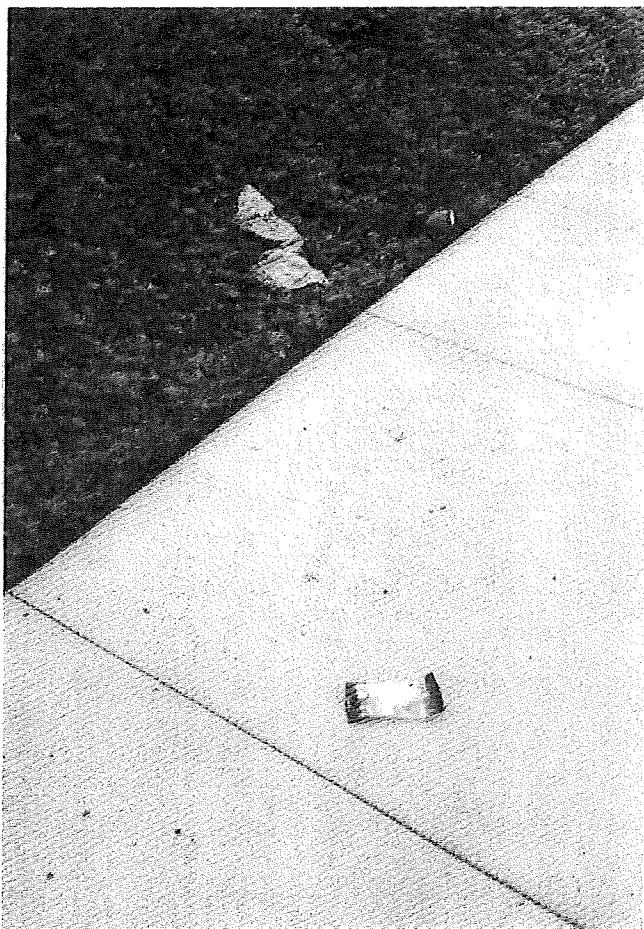
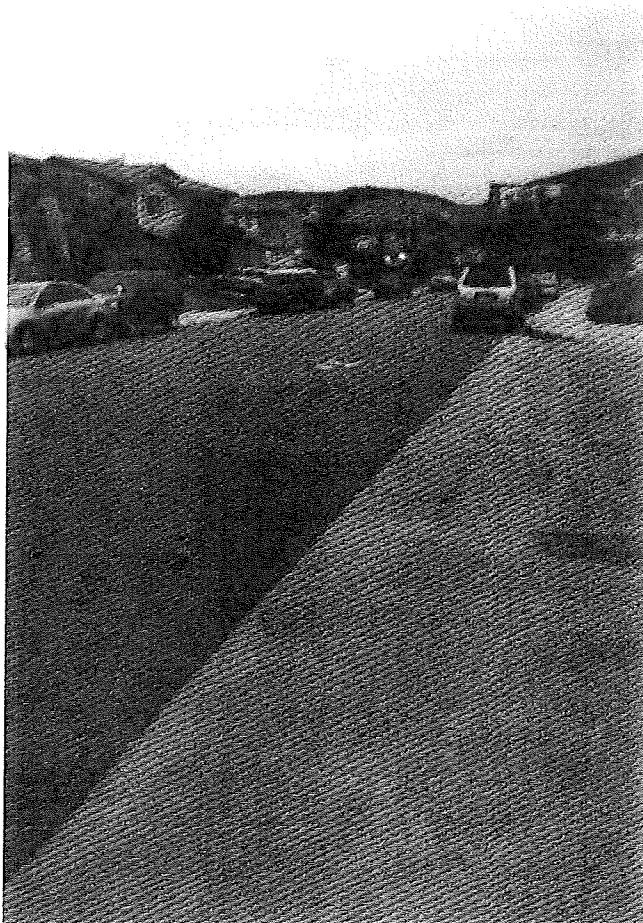
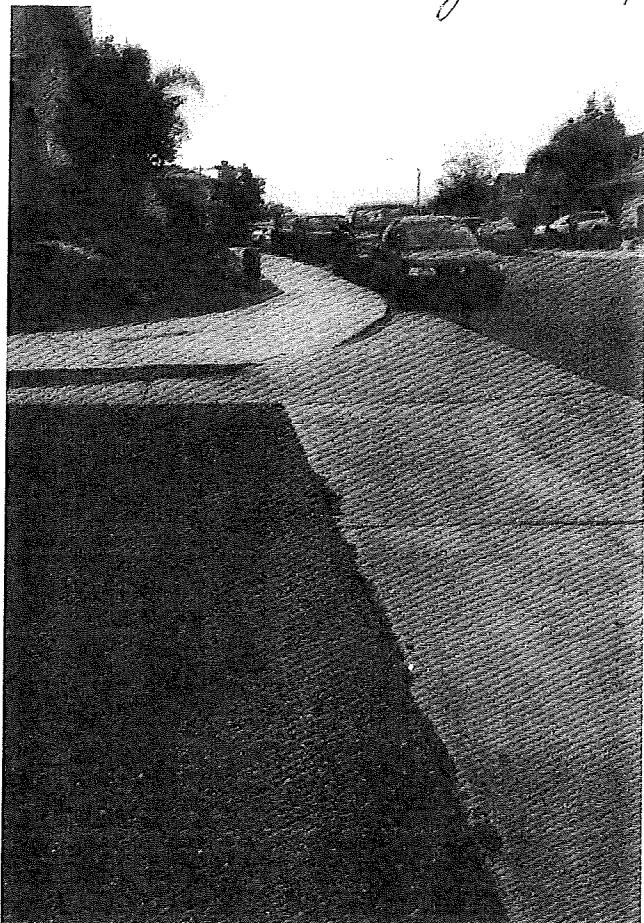


315-14 Photos taken by Teresa Mahler 804 Violin troupe



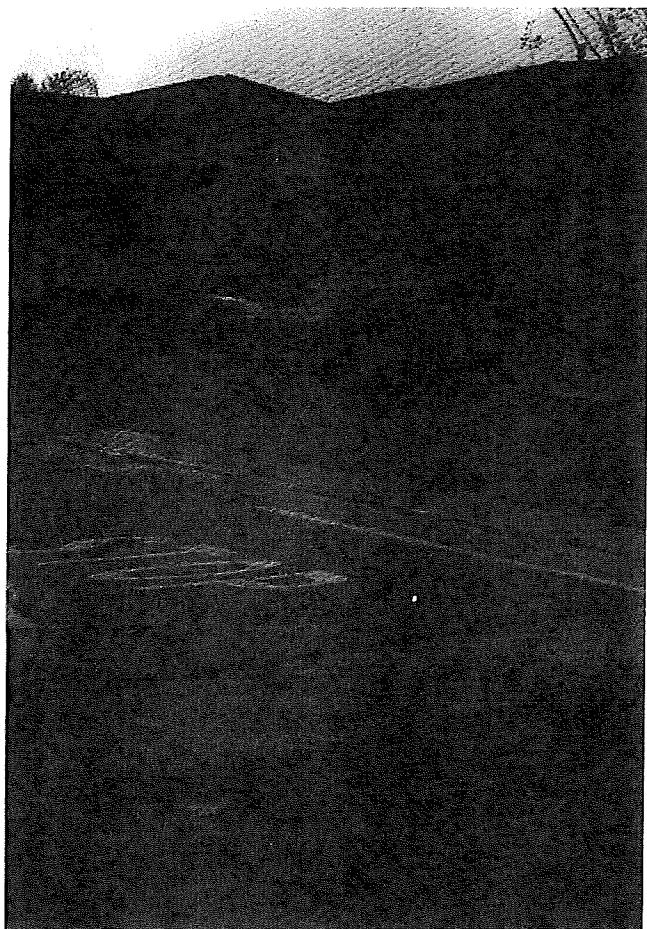
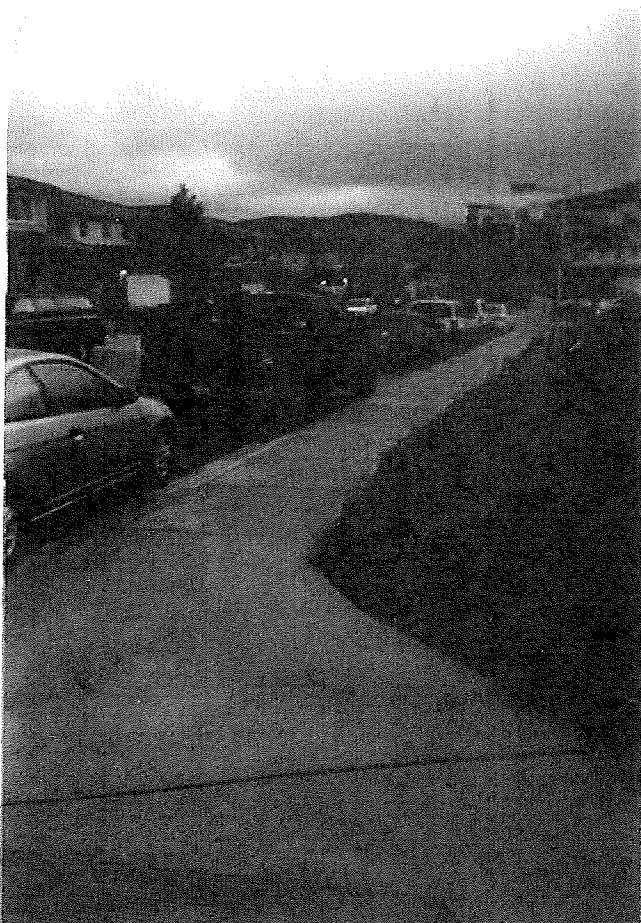
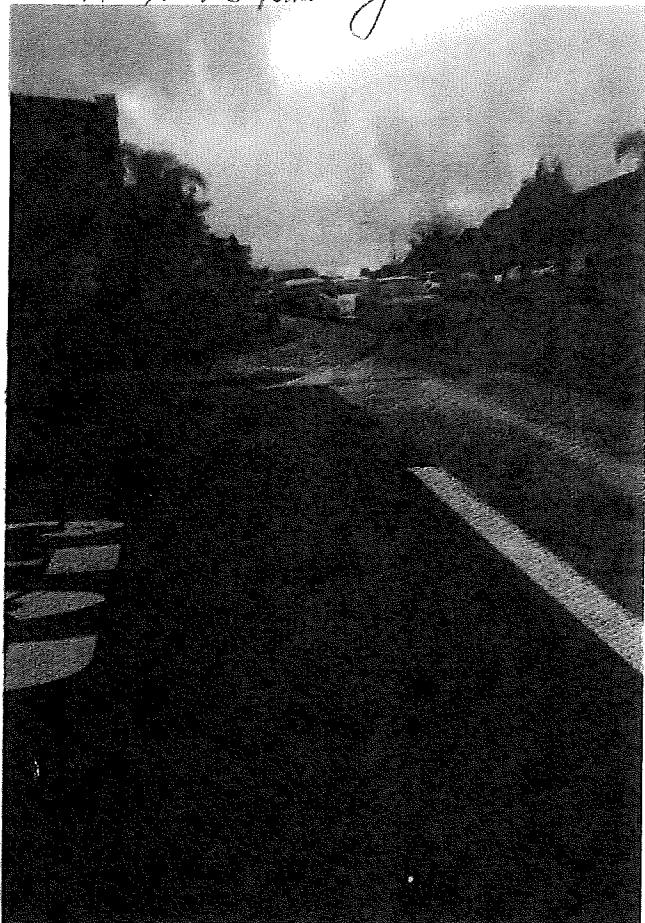
365 Basement

2-25-14 Photos taken by Dick Gorzenian for Carnation Et. 365008



3-1-14 Photos taken by Dick Gorzenow for Corvallis Pt.

365 Revs

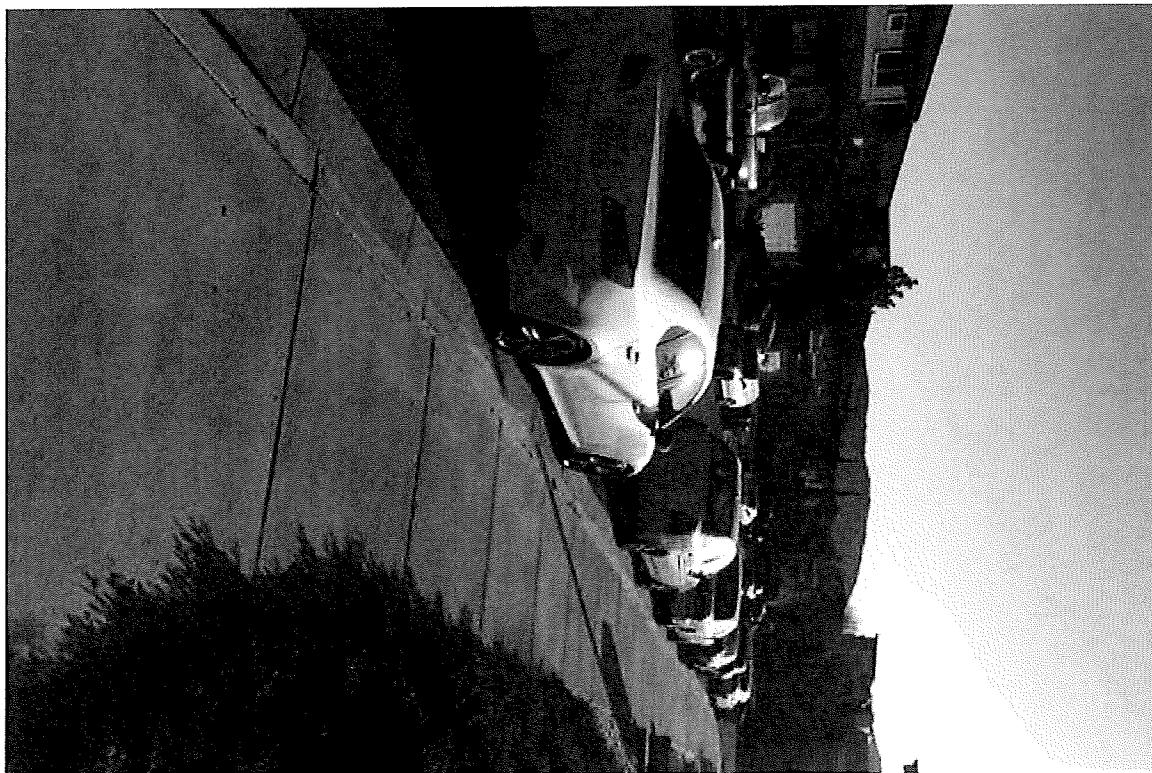


2-24-14 photos taken by John Lee 233 Vilet Avenue

3625 Roseville St

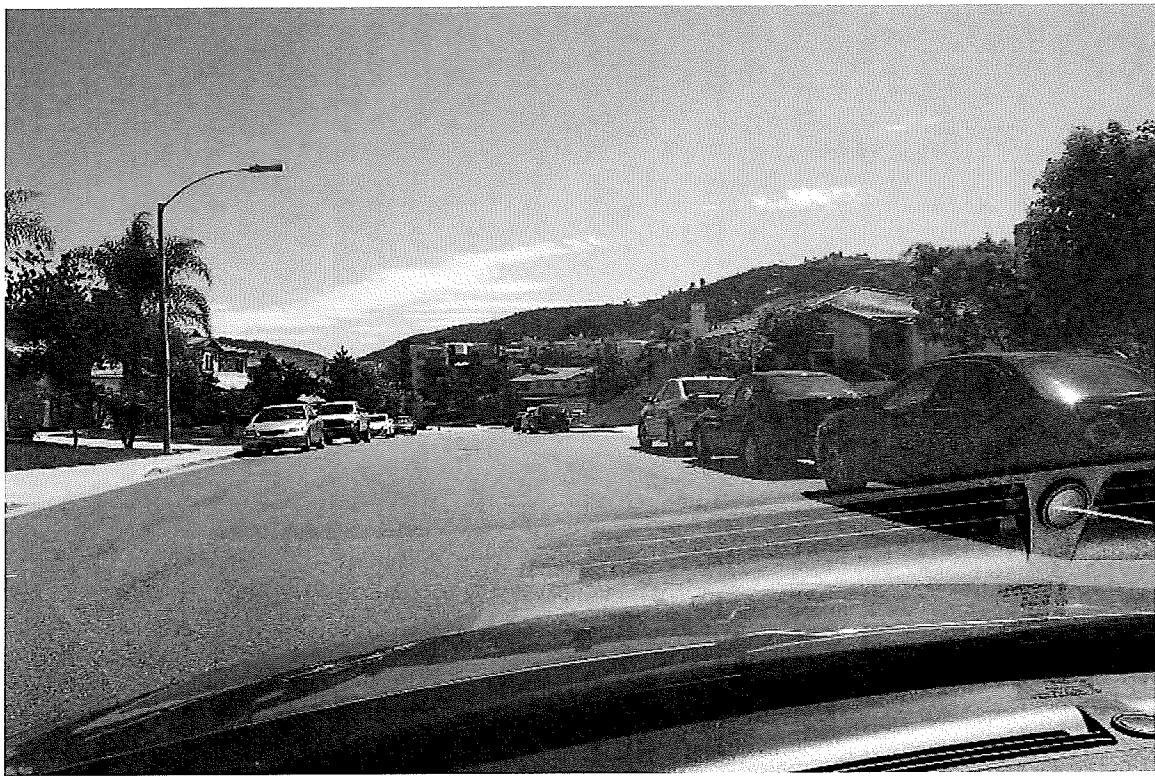










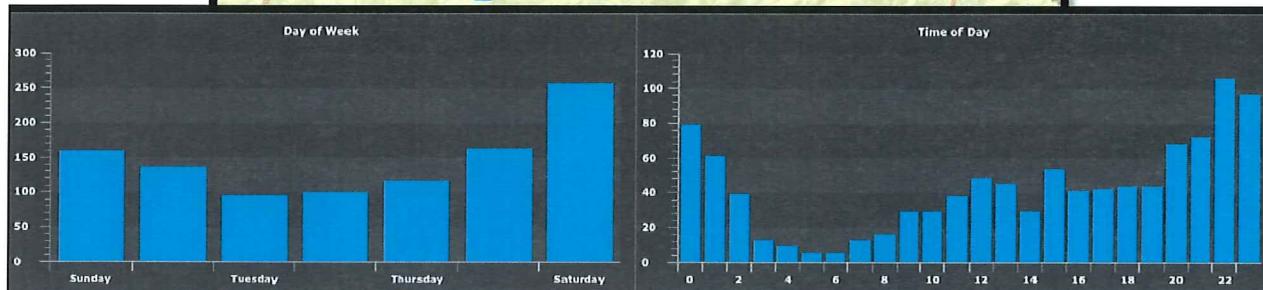
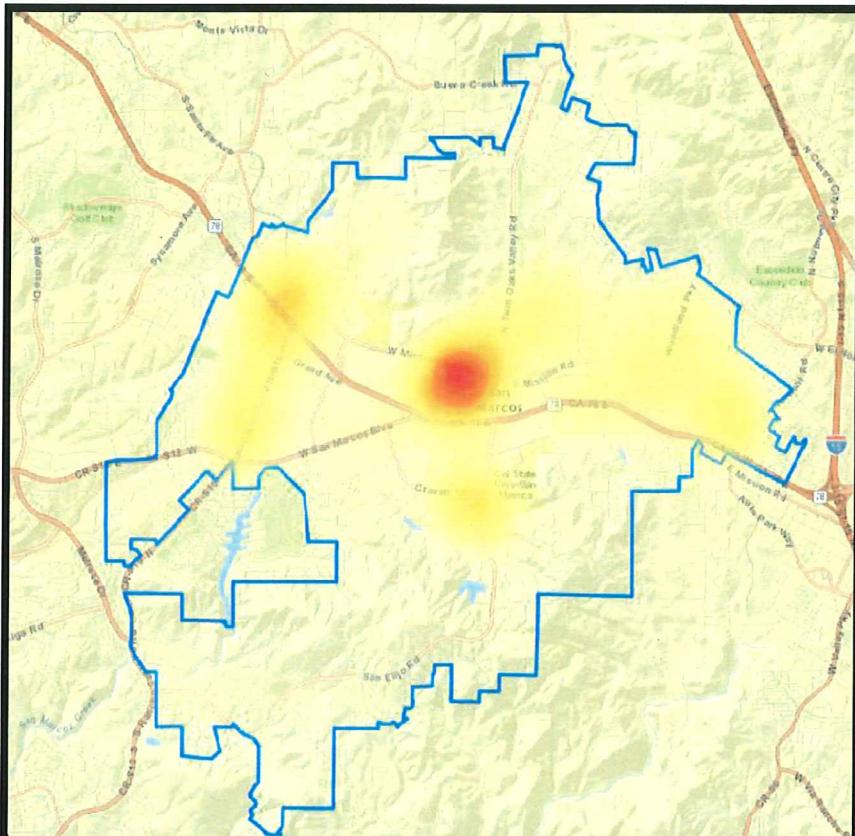






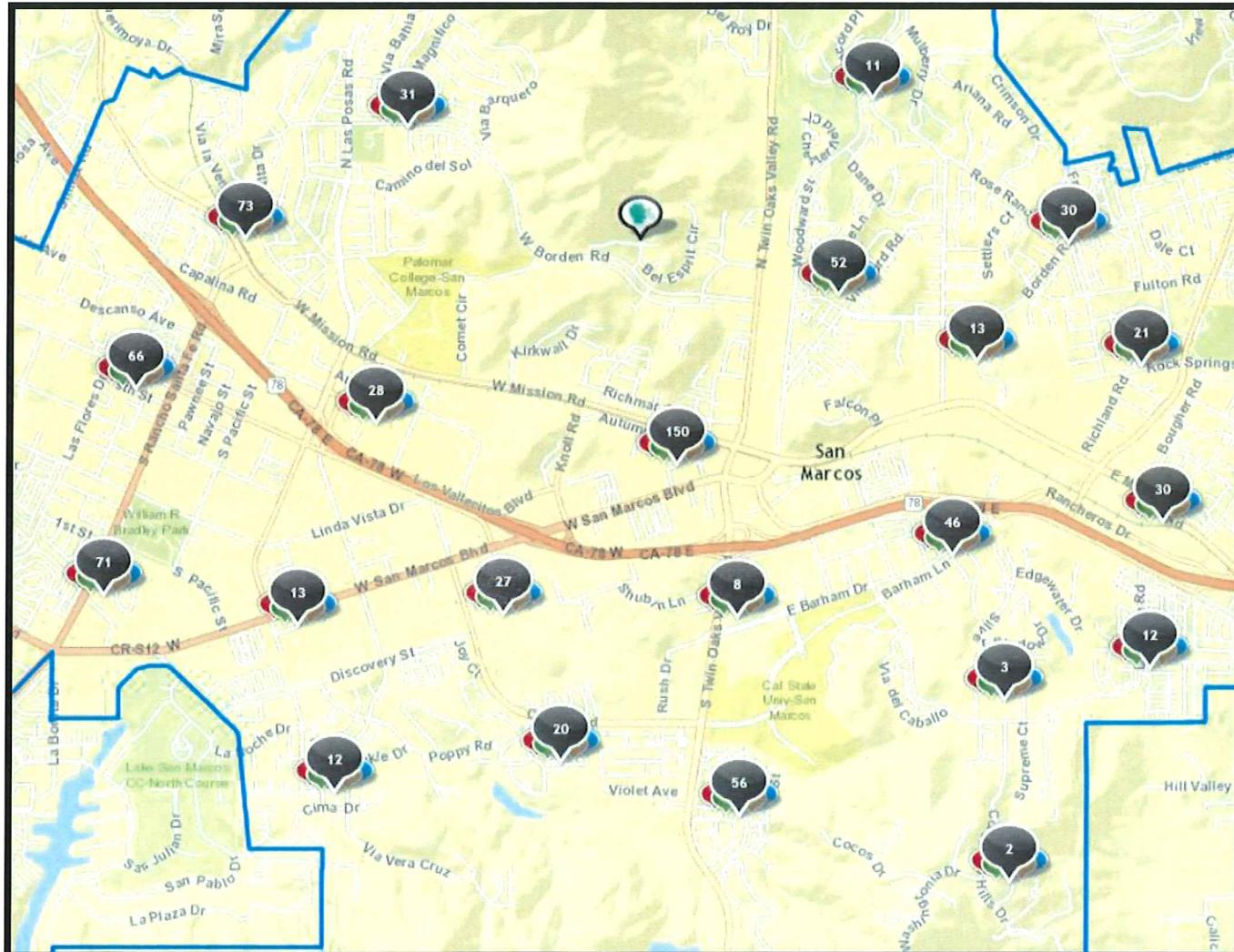


# Calls for service San Marcos City (August-October 2015)



DISTURBANCE	60
DISTURBANCE, ARGUMENT	124
DISTURBANCE, CUSTOMER	36
DISTURBANCE, FAMILY	144
DISTURBANCE, FIGHT	26
DISTURBANCE, GROUP	17
DISTURBANCE, JUVENILES	35
DISTURBANCE, NOISE	100
DISTURBANCE, PARTY	186
DISTURBANCE, PYROTECHNICS	12
DISTURBANCE, VEHICLE	8
DISTURBANCE, DOG	49
OFF ROAD VEHICLE	5
PRESERVE THE PEACE	62
REPORT - DISTURBANCE	
JUVENILE	2
REPORT - DISTURBANCE, CUSTOMER	2
REPORT - DISTURBANCE, FAMILY	17
REPORT - MISC DISTURBANCE	23
REPORT - SPOUSAL ABUSE	18
REPORT - TEMPORARY RESTRAINING ORDER	11
REPORT - VERBAL ARGUMENT	30
SPOUSAL ABUSE	48
VIOL. OF TEMPORARY RESTRAINING ORDER	10
(blank)	
<b>Grand Total</b>	<b>1025</b>

# Calls for service San Marcos City



# Calls for service (Party)

## San Marcos City

