



**CITY OF LOS ALTOS
CITY COUNCIL MEETING
December 8, 2015**

CONSENT CALENDAR

Agenda Item # 6

SUBJECT: Adopt Resolution No. 2015-40, updating adoption of Safe Harbors and reporting requirements to the Internal Revenue Service under the Patient Protection and Affordable Care Act

BACKGROUND

On November 12, 2013, the City Council adopted Resolution No. 2013-36 establishing the Look Back Measurement Method and affordability Safe Harbors under the Patient Protection and Affordable Care Act (ACA). The Look Back Measurement Method Safe Harbor allowed the City to consider an employee's hours over a defined period of time (e.g., twelve months) when determining an employee's status as "full-time" and, subsequently, the employee's eligibility for healthcare benefits from the City.

The City can be penalized if it fails to offer affordable healthcare to all "full-time" employees as defined by the ACA and minimum essential coverage that provides minimum value to dependents. The ACA defines a "full-time" employee as one who averages 30 or more hours of service per week in any given month. Penalties for not offering affordable coverage are triggered when a "full-time" employee obtains subsidized coverage through Covered California, California's health benefits exchange, or the City fails to offer minimum essential coverage providing minimum value that is affordable.

EXISTING POLICY

Resolution 2015-36

PREVIOUS COUNCIL CONSIDERATION

November 12, 2013

DISCUSSION

Since the adoption of Resolution No. 2013-36, final regulations regarding the ACA have been released and employers must report to the Internal Revenue Service (IRS), information on full-time employee status and City-offered coverage. This reporting was previously optional during a transitional grace period after adoption of the law. The final regulations also provide final definitions of employee categories. An updated resolution to comply with the federal regulations is necessary.

In accordance with Section 6056 of Title 26 of the United States Code, the Internal Revenue Code requires applicable large employers to begin reporting information about employee hours and coverage in early 2016. Resolution 2015-40 accounts for changes in law, terminology, and reporting requirements to the Internal Revenue Service. This Resolution establishes the Look Back Measurement Method Safe Harbor with regard to all represented employees for reporting purposes only, compliant with final regulations in the Internal Revenue Code. Adopting this Resolution will enable City staff and administrators to implement the revised ACA policy for reporting beginning in early 2016.

PUBLIC CONTACT

Posting of the meeting agenda serves as notice to the general public.

FISCAL/RESOURCE IMPACT

None

ENVIRONMENTAL REVIEW

Not applicable

RECOMMENDATION

Adopt Resolution No. 2015-40, updating adoption of Safe Harbors and reporting requirements to the Internal Revenue Service under the Patient Protection and Affordable Care Act

ALTERNATIVES

1. None

Prepared by: Chris Muyo, Management Analyst

Reviewed by: Kim Juran-Karageorgiou, Administrative Services Director

Approved by: Marcia Somers, City Manager

ATTACHMENT:

1. Resolution 2015-40

Adopt Resolution No. 2015-40, updating adoption of Safe Harbors and reporting requirements to the Internal Revenue Service under the Patient Protection and Affordable Care Act

RESOLUTION NO. 2015-40

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
ADOPTING SAFE HARBORS UNDER THE PATIENT PROTECTION AND
AFFORDABLE CARE ACT**

WHEREAS, the Patient Protection and Affordable Care Act (“ACA”) was enacted on March 23, 2010; and

WHEREAS, ACA added Section 4980H Shared Responsibility for Employers Regarding Health Care Coverage (Section 4980H) and Section 6056 Certain Employers Required to Report on Health Insurance Coverage (Section 6056) to Title 26 of the United States Code, the Internal Revenue Code; and

WHEREAS, Section 4980H imposes an assessable payment on an applicable large employer when (1) it fails to offer “substantially all” of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage, or offers coverage to “substantially all” of its full-time employees (and their dependents), but that coverage is either “unaffordable” or does not provide “minimum value” and (2) any full-time employee is certified to the employer as having received a subsidy for coverage through Covered California (“Assessable Payment”); and

WHEREAS, Section 6056 requires an applicable large employer to file with the Internal Revenue Service an annual return for each full-time employee; and

WHEREAS, the City of Los Altos (“City”) is considered an applicable large employer because it employed an average of at least 50 full-time employees (including full-time equivalents) on business days during the preceding calendar year; and

WHEREAS, the Department of Treasury issued final regulations regarding Section 4980H that permit the City to adopt the Look Back Measurement Method Safe Harbor in order to determine the status of an employee as “full-time” for purposes of reporting and calculating the Assessable Payment, if any (79 Federal Register 8544, 8586, February 12, 2014); and

WHEREAS, the City intends to adopt the provisions of the Look Back Measurement Method Safe Harbor in order to determine the full-time status of its employees for reporting purposes and for purposes of the Assessable Payment; and

WHEREAS, the Department of Treasury issued final regulations regarding Section 4980H that permit the City to use one of three affordability safe harbors for any reasonable category of employees as long as it is applied on a uniform and consistent basis for all employees in the category (79 Federal Register 8544, 8599-8601, February 12, 2014); and

WHEREAS, the City intends to use the affordability safe harbors as contemplated in the final regulations; and

WHEREAS, the City intends to use good faith efforts to comply with legal requirements under ACA despite that they have not yet been fully developed; and

WHEREAS, the City expects that further guidance and regulations may be issued regarding ACA.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Los Altos as follows:

- 1) The City hereby establishes the Look Back Measurement Method Safe Harbor with regard to all employees for the purpose of identifying full-time employees for IRS reporting purposes relating to the Assessable Payment.
- 2) The City hereby establishes the Look Back Measurement Method Safe Harbor with regard to all represented employees for reporting purposes only. As to represented employees, the City does not establish the Look Back Measurement Method Safe Harbor for the purpose of determining eligibility for an offer of coverage. All represented employees' eligibility for an offer of medical coverage shall continue to be governed by the terms of any applicable Memorandum of Understanding.
- 3) The City establishes the Look Back Measurement Method Safe Harbor with regard to all unrepresented classified employees for the purpose of determining eligibility for an offer of coverage.
- 4) The City hereby delegates authority to the City Manager, including his/her designee(s), to create an Administrative Policy (Policy) that establishes measurement, administrative, and stability periods, governs the measurement and tracking of employee hours, and/or otherwise establishes procedures in accordance with Section 4980H to comply with the Look Back Measurement Method Safe Harbor.
- 5) For each reasonable category of employees, the City in its sole discretion, but on a uniform and consistent basis for all of the employees in a reasonable category, will apply one of the three affordability safe-harbors (*i.e.*, Form W-2 Safe Harbor, Rate of Pay Safe Harbor, or Federal Poverty Line Safe Harbor) to determine the affordability of the minimum value coverage that it may offer its full-time employees.
- 6) The City hereby delegates authority to the City Manager, including his/her designee(s), to establish the Policy to comply with any of the three affordability safe harbors in accordance with and as permitted by Section 4980H.

- 7) The City Manager, including his/her designee(s), shall have authority to modify the Policy to ensure the City's compliance with Sections 4980H and 6056 of the Internal Revenue Code.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the ___ day of ___, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jeannie Bruins, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK