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City Manager**

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Staff Report

ITEM NO. 2-3

To: Lemoore City Council

From: Brooke Austin, Executive Secretary 

Date: January 13, 2015 **Meeting Date:** January 20, 2015

Subject: Resolution 2015-01 Adopting Safe Harbors Under the Patient Protection and Affordable Care Act

Discussion:

Effective January 1, 2015, the Affordable Care Act (ACA) mandates that a large employer (at least 50 full-time equivalent employees) offer affordable health care to substantially all of its "full-time" employees or face potential penalties. Substantially all is defined as at least 70% of its full-time employees effective January 1, 2015 and at least 95% of its full-time employees effective January 1, 2016. The new law defines a "full-time" employee as one who averages 30 or more hours of service per week in any given month. The penalties are triggered when a "full-time" employee obtains subsidized coverage through Covered California, California's health benefits exchange.

The City of Lemoore is considered a "large employer" for the purposes of the ACA. As a large employer the City has the responsibility of offering all "full-time" employees (employees working on average 30 or more hours per week or 130 hours per month) affordable health care coverage.

While all bargaining unit and unrepresented management employees will continue to be offered affordable medical coverage in accordance with the applicable Memorandum of Understanding or resolution, the City does have part-time employees who are not covered under such agreements. The IRS allows employers to adopt a "Look Back Measurement Method Safe Harbor" to determine whether an employee is "full-time" for the purposes of the ACA. Under the Look Back Method, the employer establishes a "standard measurement period" that can be no less than three months and no more than twelve months. At the end of the standard measurement period, the employer looks back at hours worked during the measurement period and calculates the average number of hours worked weekly or monthly by each employee. Any employee determined to be "full-time" under this method must then be offered affordable health care coverage during an identified "administrative period". If the employee elects health care coverage, they would continue coverage during the ensuing "stability period".

The regulations of the ACA are very complex and both federal and state agencies will continue to issue regulations that could impact administration and compliance requirements as it is phased-in over the next several years. Furthermore, there are

many details to the ACA and the Safe Harbors which are best placed in a City Administrative Policy. Thus staff is developing an administrative policy that on a uniform and consistent basis lays out the protocols the City follows to comply with the mandates. The Administrative Policy will establish how the City measures and tracks employee hours of work and identify the standard measurement, administrative and stability periods. In addition, it will outline the affordability safe harbors used to ensure the minimum value coverage that the City offers its full-time employees meets the affordability standards of the ACA. The policy will be maintained and updated as changes become available from the IRS.

It is recommended that Council adopt the safe harbors pursuant to the attached Resolution and delegate authority to the City Manager or his designee to establish, and modify as needed, the Administrative Policy that describes the details of these safe harbors in compliance with the ACA. The Resolution or Administrative Policy does not impact the benefits or coverage currently offered to bargaining unit or unrepresented management employees.

Budget Impact:

None at this time.

Recommendation:

That the City Council, by motion, adopt Resolution No. 2015-01 Adopting Safe Harbors Under the Patient Protection and Affordable Care Act (ACA), and delegating authority to the City Manager or his designee to implement the details of the Safe Harbors through an Administrative Policy.

RESOLUTION NO. 2015-01

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMOORE
ADOPTING SAFE HARBORS UNDER THE PATIENT PROTECTION AND
AFFORDABLE CARE ACT AND DELEGATING AUTHORITY TO THE CITY
MANAGER TO IMPLEMENT THE DETAILS OF THE SAFE HARBORS
THROUGH AN ADMINISTRATIVE POLICY**

At a Regular Meeting of the City Council of the City of Lemoore duly called and held on January 20, 2015, at 7:30 p.m. on said day, it was moved by Council Member _____, seconded by Council Member _____ and carried that the following Resolution be adopted:

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

WHEREAS, the ACA added Section 4980 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 the exchange (“Assessable Payment”); and

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

WHEREAS, the City of Lemoore (“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 the purposes of reporting and calculating the Assessable Payment, if any; and

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

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

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

1. Establishes the Look Back Measurement Method Safe Harbor with regard to all employees for the purposes of identifying full-time employees for calculation of the Assessable Payment and IRS reporting.

2. Does not establish the Look Back Measurement Method Safe Harbor for the purpose of determining eligibility for an offer of medical coverage as to any employee. All represented and unrepresented management employees' eligibility for an offer of medical coverage shall continue to be governed by the terms of any applicable memorandum of understanding or resolution.

3. Delegates authority to the City Manager , including his designee, to create and implement an ACA Administrative Policy that establishes standard measurement, administrative and stability periods, governs the measurement and tracking of employees' hours of service, and/or otherwise establishes procedures in accordance with Section 4980H to comply with the Look Back Measurement Method Safe Harbor.

4. 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 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 offers its full-time employees.

5. Delegates authority to the City Manager, including his designee, to establish the Administrative Policy to comply with any of the three affordability safe harbors in accordance with and as permitted by Section 4980H.

6. Delegates authority to the City Manager, including his designee, to establish and modify as needed an Administrative Policy to ensure the City's compliance with Sections 4980 H and 6056 of the Internal Revenue Code.

PASSED AND ADOPTED at a Regular Meeting of the City Council of the City of Lemoore held on the 20th day of January 2015 by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

ATTEST:

Mary J. Venegas, City Clerk

Lois Wynne, Mayor