

**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 8<sup>th</sup> day of December, 2015 by the following vote:

AYES: BRUINS, MORDO, PEPPER, PROCHNOW, SATTERLEE  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

  
\_\_\_\_\_  
Jeannie Bruins, MAYOR

Attest:

  
\_\_\_\_\_  
Jon Maginot, CMC, CITY CLERK