

RESOLUTION NO. 2013-36

**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, to Title 26 of the United States Code, the Internal Revenue Code (Section 4980H); 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) that 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 Marketplace (“Penalty”); 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 proposed 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 determining and calculating the Assessable Payment (78 Federal Register 218, 243, January 2, 2013); 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 purposes of determining and calculating the Penalty; and

WHEREAS, the Department of Treasury issued proposed 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 (78 Federal Register 218, 251-253, January 2, 2013); and

WHEREAS, the City intends to use the affordability Safe Harbors as contemplated in the proposed 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 will be issued regarding ACA.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Los Altos hereby adopts 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 calculation of the Penalty.
2. 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. As to unrepresented classified employees, the City establishes the Look Back Measurement Method Safe Harbor 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 time 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 (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 Section 4980H of ACA.

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 12th day of November, 2013 by the following vote:

AYES: BRUINS, CARPENTER, PEPPER, SATTERLEE, FISHPAW
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE



Jarrett Fishpaw, MAYOR

Attest:



Jon Maginot, CMC, CITY CLERK