



AGENDA

REGULAR CITY COUNCIL MEETING September 21, 2021 – 7:00 p.m.

Members:

Mayor Paul Fadelli

Mayor Pro Tem Gabe Quinto • Councilmember Janet Abelson
Councilmember Lisa Motoyama • Councilmember Tessa Rudnick

Join Via Zoom:

<https://us06web.zoom.us/j/87982009250?pwd=OVRReloyNVI3b1g5V1pNREl3RW5ndz09>

Meeting ID: 879 8200 9250 **Password:** 151459

or Dial in: 1-408-638-0968

Pursuant to Executive Order N-29-20, teleconference restrictions of the Brown Act have been suspended, as well as the requirement to provide a physical location for members of the public to participate in the meeting.

Members of the public can watch or listen to City Council meetings as follows:

1. Cable T.V. Broadcast on KCRT Channel 28
2. Radio Broadcast on FM 88.1 Or 97.7
3. Livestream Online at www.el-cerrito.org/CouncilMeetingMaterials
4. Via Zoom using the meeting information listed above.

Each period for public comment will be announced. Public Comments may be submitted one of two ways:

- Via Zoom using the “[Raise Hand](#)” icon to request to speak. If joining by phone, dial *9 to "raise your hand", and when prompted by the host, *6 to unmute/mute.
- Via email to cityclerk@ci.el-cerrito.ca.us. Email must contain in the subject line **Public Comments – Not on the Agenda** or **Public Comments – agenda item #.**

To ensure City Council receives your written comments prior to taking action, they must be received by **4:00 p.m. the day of the meeting**. All written comments received by this deadline will be provided to the City Council and posted online in advance of the meeting.

Comments received after the deadline will be provided to the City Council and included with supplemental materials **after the meeting. No written comments will be read into the record.**

7:00 P.M. ROLL CALL – CONVENE REGULAR CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF A MOMENT OF SILENCE

2. TELECONFERENCE AND PUBLIC COMMENT INSTRUCTIONS

3. COUNCIL/STAFF COMMUNICATIONS

Reports of closed session, commission appointments and informational reports on matters of general interest which are announced by the City Council and staff.

A. City Council Financial Ad-Hoc Committee Update

4. ORAL COMMUNICATIONS FROM THE PUBLIC

Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers and may limit the total time for public comment to facilitate the completion of business on the agenda. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda will be heard prior to the City Council taking action on each item.

5. ADOPTION OF THE CONSENT CALENDAR

All items on the consent calendar shall be acted upon in one motion, unless a member of the City Council or staff request separate consideration.

A. Approval of Minutes

Action Proposed: Pass a motion to approve City Council Meeting minutes from August 17 and August 31, 2021.

Contact: Holly M. Charléty, City Clerk, City Management

B. Urban Forest Committee Appointment

Action Proposed: Approve an Urban Forest Committee recommendation to appoint Melissa Feudi to the Urban Forest Committee, effective October 1, 2021.

Contact: Stephen Prée, Environmental Programs Manager/City Arborist; Will Provost, Operations and Environmental Services Division Manager; Yvetteh Ortiz, Public Works Director/City Engineer, Public Works Department

C. Economic Development Committee Appointment

Action Proposed: Approve one Economic Development Committee recommendation to appoint a new member, Robert Travis Campbell, effective September 21, 2021.

Contact: Aissia Ashoori, Community Development Analyst, Community Development Department

D. Hispanic Heritage Proclamation

Action Proposed: Pass a motion to approve a proclamation declaring September 15, 2021 - October 15, 2021 as Hispanic Heritage Month, by recognizing and celebrating the histories, cultures, and contributions of American citizens whose ancestors came from Spain, Mexico, the Caribbean, and Central and South America.

Contact: Alexandra Orologas, Assistant City Manager, City Management

E. Suicide Prevention Awareness Proclamation

Action Proposed: Pass a motion to approve a proclamation declaring September as Suicide Prevention Awareness Month in the City of El Cerrito.

Contact: Alexandra Orologas, Assistant City Manager, City Management

F. League of California Cities 2021 Annual Conference Resolutions Packet

Action Proposed: Pass a motion to authorize and provide direction to the annual conference voting delegate, Mayor Fadelli, to vote in favor of the proposed resolutions packet and Proposed Bylaws amendments for 2021.

Contact: Holly M. Charléty, City Clerk, City Management

G. Agreement with A Plus Tree Inc. for Tree Removal and Fire Hazard Reduction Work in the El Cerrito Hillside Natural Area

Action Proposed: Adopt a resolution approving and authorizing the City Manager to execute a General Services Agreement with A Plus Tree Incorporated for dead, dying, and hazardous tree removal and other fire hazard reduction work in the El Cerrito Hillside Natural Area in the amount of \$71,585, and approving a contingency amount not to exceed 15% of the contract amount, for a total not to exceed amount of \$82,323.

Contact: Stephen Prée, Environmental Programs Manager/City Arborist; Will Provost, Operations + Environmental Services Division Manager; Yvetteh Ortiz, Public Works Director/City Engineer, Public Works

Department

6. PRESENTATIONS

7. PUBLIC HEARINGS

A. Fire Hazard Abatement

*Exempt from CEQA review pursuant to Sections 15304 and 15308.
Public Hearing noticed 9/11/2021*

Action Proposed: 1) Adopt a resolution declaring weeds, rubbish, litter, or other flammable material on certain real property identified in the resolution constitutes a public nuisance; and 2) Conduct a public hearing and upon conclusion, adopt a resolution overriding objections by property owners and ordering the City Manager or their designee to abate certain public nuisances pursuant to El Cerrito Municipal Code Chapter 16.26.

Contact: David Yun, Fire Prevention Officer; Michael Pigoni, Fire Chief, Fire Department

8. POLICY MATTERS

A. Equity Considerations and Equity and Inclusion Workplan

Action Proposed: At the request of Mayor Fadelli, pass a motion directing the Human Relations Commission to work with staff to develop an Equity and Inclusion workplan for the community.

Contact: Karen Pinkos, City Manager, City Management

B. Study Session on Boards, Commissions, and Committees

Action Proposed: Conduct a study session on City Boards, Commissions, and Committees (Advisory Bodies) and provide staff direction regarding committee term length and limits, appointment and removal process for advisory bodies, and adopt a resolution authorizing conditions for automatic removal.

Contact: Holly M. Charléty, City Clerk, City Management

9. CITY COUNCIL LOCAL & REGIONAL LIAISON ASSIGNMENTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

10. ADJOURN REGULAR CITY COUNCIL MEETING

The next regularly scheduled City Council meeting is Tuesday, October 5, 2021 at 7:00 p.m.

The City of El Cerrito serves, leads and supports our diverse community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety and creating an economically and environmentally sustainable future.

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT- Channel 28. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/CouncilMeetingMaterials> and is streamed with closed caption. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, 510-215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 510-215-4305, email cityclerk@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 11:00 p.m., unless extended to a specific time determined by a majority of the Council.



**CITY OF EL CERRITO
CORRECTIVE ACTION PLAN – STATE AUDIT 2020-803
Progress Report: September 16, 2021**

High Risk Issue # 1 Financial Condition and General Fund Reserves		
Overview: The City Council and City staff are determined to restore the City to fiscal health, increasing the General Fund reserves, and provide appropriate levels of service with respect to revenues. City staff will continue to monitor revenues and expenditures closely and work with the City Council to determine adjustments in a timely manner, if warranted.		
High Risk Area #1 - State Auditor Recommendations	Response May 2021	Corrective Action Updated: September 2021
1. To eliminate its reliance on short-term loans, El Cerrito should address its overspending and its revenue shortfalls as discussed throughout this report	The Administration Agrees with this Recommendation – The Administration goal is to not have to rely on a TRAN (Tax & Revenue Anticipation Note) in the future. The City will continue to work with the City Council on implementing strategies to achieve the GFOA recommended reserve levels that will eliminate the need for a TRAN.	• The City's unaudited ending year totals reflects over \$2 million surplus in the General Fund, not including American Rescue Plan Act (ARPA) funding. The City met its reduced expenditure targets and, due to conservative projections and a robust real estate market, exceeded revenue targets. The surplus is targeted for General Fund Reserves. Completed for FY 2020-21, and ongoing. • The City was allocated \$6.2 million from ARPA and has received its first payment in the amount of \$3.1 million. This funding, per the direction of the City Council, will be allocated to eligible expenditures for FY 2020-21, intended to further improve the amount of General Fund balance. The City is working with our independent auditor Badawi & Associates and consultant Management Partners to ensure appropriate ARPA spending and reporting. Estimated Completion: FY 2021-22 and ongoing. Responsible staff: City Management/Finance Department.

		- The FY 2020-21 audit is underway, and, depending upon completed audited actuals, expects that the General Fund surplus plus ARPA funding will result in a General Fund balance of approximately \$4 million, meeting the City's General Fund minimum reserve target of 10%. Completed. Responsible staff: City Management/Finance Department. - Because of progress in increasing General Fund reserve levels, the City issued a TRAN amount of \$5.8 million for FY 2021-22, which is a decrease from previous years; with the next payment of ARPA funding of \$3.1 million in 2022, the City hopes to avoid the need for a TRAN for FY 2022-23. Completed for FY 2021-22, and ongoing. Responsible staff: Finance Department/City Management. - The City Council passed a motion directing staff to set a goal of one million dollars minimum surplus funds annually moving forward, at the recommendation of the Financial Advisory Board (FAB). Estimated Completion: FY 2022-23 and ongoing. - City Management and Finance staff have implemented stricter policies for staff to monitor revenues and expenditures and will continue to report monthly to City Council on budget performance. Completed (May 2021).
2. To ensure that its rising pension costs do not jeopardize the City's ability to provide services to its residents or contribute to potential insolvency, El Cerrito should identify and use alternative methods of paying for the obligation, such as establishing	The Administration Agrees with this Recommendation – As a first step, the Administration has been focused on building its reserve levels. Establishing a Section 115 Trust would be an extension of those efforts. The Administration intends to work with the City Council to	The City Council has directed City staff to establish a Section 115 Trust. Staff is now researching vendors and a recommended funding policy for the City Council's consideration. Financial policies are also slated to be discussed by the City's Financial Advisory Board in the coming months. Estimated



a trust funded by the City or through employee contributions that invests amounts that can be used to pay for future pension benefits and reduce future pension costs	recommend establishing a Section 115 Trust or consider other methods to fund CalPERS obligations.	completion: FY 2022-23. Responsible staff: City Management/Finance Department/Human Resources. The City Council directed staff to work with all employee bargaining units to negotiate increased contributions to CalPERS. The Management/Confidential group (which is unrepresented), the Fire Chief, and the Police Chief are now contributing an additional 2% as of FY 2021-22. Estimated completion: to be determined. Responsible staff: City Management/Human Resources.
3. To ensure that its policy of allowing individuals to remain as members of City-sponsored health care plans upon retirement does not result in additional costs for the City, El Cerrito should calculate the subsidy it provides to those retirees and charge them for the difference in cost resulting from their inclusion in the health care pool	The Administration Agrees with this Recommendation – The Administration intends to work with its benefits broker to determine the cost of the implicit subsidy that is provided to retirees by allowing them to stay on the City’s plan (at the retiree’s cost), and work with the City Council on implementing this subsidy fee to those respective retirees.	City staff is working with the City’s benefits broker to determine the cost impact of retirees on the healthcare plan and will implement fees to recover the cost. Estimated completion: FY 2021-22. Responsible staff: Human Resources/City Management.



High Risk Issue # 2
Budget Development and Monitoring

Overview: The City is committed to continuous improvement in implementing policies and procedures that conform with best practices in local government, and to provide information to the City Council and the community in order to make informed and educated decisions.

High Risk Area #2 - State Auditor Recommendations	Response	Corrective Action Updated: September 2021
1. El Cerrito should adopt GFOA budgeting best practices that specifically include the following: - o Using historical trends and analysis as the basis for financial projections. - o Expanding its monthly revenue and expenditure budget updates to include comparisons to actual results to minimize overspending - o Establishing procedures to prevent, detect, and correct deviations from adopted budgets during the fiscal year to ensure that departments do not significantly overspend.	The Administration Agrees with this Recommendation – The Administration believes in continuous improvement. The Administration is committed to implementing procedures that hold departments accountable in keeping with best practices. The Administration does adhere to GFOA Budgeting Best Practices (such as using historical trends analysis as the basis for projections, monthly updates do include comparison to actuals) and has consistently been awarded the GFOA Distinguished Budget Presentation Award.	• The City continues to follow GFOA best practices to use historical trends and analysis as the basis for financial projections. Current pandemic conditions continue to provide uncertainty within the projections, however for FY 2021-22 staff worked with our tax consultants and department directors to provide a five-year General Fund projection that was presented to the City Council and included in the FY 2021-22 budget document. Completed. Responsible staff: Finance Department/City Management. • Following the adoption of the FY 2021-22 budget and the receipt of ARPA funding, staff and the City Council has worked with Management Partners to develop a ten-year General Fund projection model. This was discussed with the City Council at their study session in August 2021 and will continue to be updated with information. The ten-year projection will be shared in detail with the Council as the Fiscal Recovery and Sustainability Plan is completed, and during the fiscal year. Completed for FY 2021-22, ongoing. Responsible staff: Finance Department/City Management. • City staff has worked with the City Council subcommittee to improve monthly reporting to City Council,



		which started in September 2020 at the request of Council, to include department updates and trends. Staff will present these updated reports to the Council beginning in October/November. Estimated completion: In progress, October/November 2021. Responsible staff: Finance Department/City Management. • City Management and the Finance Director have implemented stricter policies for department staff to monitor revenues and expenditures. Completed (May 2021).
2. To ensure accountability in the budget development process, city management should document the assumptions and data used to develop each department's projections of financial activity for the fiscal year. This information should be made available to the city council during the budget review and approval process.	The Administration Agrees with this Recommendation – The Administration plans to provide documentation of assumptions and data for Department projections to the City Council. Each Department will continue to be required to submit assumptions with revenue and expense projections as appropriate.	• City Management and the Finance Director worked with department directors and documented assumptions and data resulting in department budgets that were included within the adopted FY 2021-22 budget. Directors presented their budgets directly to the City Council during the FY 2021-22 budget hearings. City Management and Finance continue to meet with directors regularly to review progress. Completed. Responsible staff: City Management/Finance.
3. To ensure accountability in monitoring the budget, city management should present monthly updates to the city council on the current status of departmental budgets and comparisons to prior year budgeted and actual amounts. City management should promptly seek approval of proposed budget adjustments by department when warranted. City management should also prepare and provide supporting	The Administration Agrees with this Recommendation – The Administration will consult with the Financial Advisory Board (FAB) to review the City's current Comprehensive Financial Policy, which calls for budgeting by Fund, to consider the impacts of budgeting by Department. If the FAB recommends and the City Council approves this policy change, the information provided to the City Council will provide justification by	• City staff has worked with the City Council subcommittee to improve monthly reporting to City Council to include department updates and trends. Staff will present these updated reports to the Council beginning in October/November. Estimated completion: In progress, October/November 2021. • City staff is researching financial policies and working with the Financial Advisory Board and City Council to determine any recommended updates to the policy that would change from the current



documentation to justify any budget increases.	Department (including revenues, expenditures, and adjustments).	policy of budgeting by fund. Estimated completion: FY 2021-22. Responsible staff: Finance Department/City Management.
4. To ensure that it fulfills its duty to guard the fiscal health of the city, the city council should direct staff to provide the information described above and regularly review such documents.	The Administration Agrees with this Recommendation – The City Council has directed staff to provide monthly financial reports, and this has been done since mid-2020. The Administration is committed to continuing this practice that includes the recommendations from the State Auditor that are contained in this risk area.	The City has provided a monthly General Fund report to the City Council since 2020, and is working to improve this monthly reporting to include department updates and trends. Estimated completion: October/November 2021. Responsible staff: Finance Department/City Management.
5. To ensure that departments do not exceed their budgeted spending authority, the city should establish and enforce safeguards within its financial system that prevent expenditure from being incurred without appropriate budget authorization.	The Administration Agrees with this Recommendation -- The current financial policy and the adopted budget gives the City spending authority at the fund level, which permits departments to balance funding needs with available budgeted funds within the line-item budget. In the short term, the Administration will hold departments accountable to prevent the total departmental budget being exceeded. In the long term, departments will continue to be required to analyze their line item budgets to ensure there are adequate funds before submitting payment requests to Finance, and/or submit a budget transfer request to Finance moving funds where available to cover the expense	- City Management and the Finance Director have implemented policies for departments to monitor revenues and expenditures and hold staff accountable. Budget performance will be noted in future department director evaluations. Finance staff have been directed to return payment requests to departments not in compliance and report discrepancies to the Finance Director. Departments are being monitored by City Management to ensure appropriate spending within departments as well as compliance with the current financial policy to ensure spending authority by fund is not exceeded. Completed. (May 2021) Note: As of September 2021 the preliminary, unaudited actuals show that all funds met their targets for FY 2020-21. - City Management and the Finance Director have initiated a restructuring of functions in the Finance Department. The incumbent Finance Supervisor will be retired as of September 30, and the position is proposed to be replaced by a Budget Manager position that will specifically focus on budgeting and



		financial analysis for the City, allowing City Management to be responsive to the City Council and the public in communicating budget strategies and information. This classification is being developed and is expected to be presented to the City Council for approval in October, and staff will seek to fill this position by the end of the calendar year. Expected Completion: December 2021.
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**High Risk Issue # 3
Fiscal Recovery Plan**

Overview: The City will develop and implement a Fiscal Recovery Plan that will focus on financial sustainability and accountability.

High Risk Area #3 - State Auditor Recommendations	Response	Corrective Action Updated: September 2021
1. To ensure accountability in its fiscal recovery process, El Cerrito should develop and adopt a financial recovery plan by July 2021 that describes its goals and intended corrective actions, prioritizes its resources, identifies individuals responsible for monitoring its progress in implementing each action, and outlines when it anticipates completing key milestones related to each action. City management should also inform the city council quarterly of its progress in implementing the plan.	The Administration Agrees with this Recommendation – The Administration will expand upon the City’s existing Fiscal Response Plan to include the State Auditor’s recommended additions. This will be a living document that will continue to serve as the City’s roadmap to financial stability in FY 2025-26. The City Council will be informed quarterly on implementation progress.	• The City Council adopted its FY 2021-22 budget in July 2021 that included many of the elements as discussed in the Corrective Action Plan sent to the State Auditor in May 2021, and both the Fiscal Response Plan adopted in 2020 and the Corrective Action Plan were included within the budget document. The Council then met on August 31, 2021 and held a study session facilitated by local government consultant Management Partners to discuss the City’s short-term recovery and long-term financial sustainability. The Fiscal Recovery and Sustainability Plan will move the City from its previous crisis response to a measured approach toward long term fiscal health. The Plan is currently in development and is expected to be adopted by the City Council in the coming months. Estimated completion: December 2021. Responsible staff: City Management.



**High Risk Issue # 4
Reducing Costs**

Overview: The City will work to ensure that expenses, particularly in personnel, are at appropriate levels within the City's resources while allowing the City to recruit and retain a talented staff to provide services. City management will work with all bargaining units to ensure fair and reasonable compensation that is consistent with ensuring the financial sustainability of the City.

High Risk Area #4 - State Auditor Recommendations	Response	Corrective Action Updated: September 2021
1. To identify potential savings and efficiencies, El Cerrito should perform the following tasks: - o By September 2021, conduct an analysis of the organizational structure of the city and assess the functions it needs to achieve its goals - o Based on the results of the organizational structure study, conduct an analysis of the duties and responsibilities assigned to each of the city's current staff positions to identify any overlapping areas of responsibility and inefficiencies. - o Using the results of its organizational structure study and its analysis of duties and responsibilities, conduct a compensation study by comparing total compensation for its staff positions with compensation paid by other cities. Based on the results of this study, implement personnel and salary changes that	The Administration Agrees with this Recommendation - A comprehensive study of the City's classification and compensation structure (including total compensation – not just base salaries) would be beneficial to the City. However, costs are expected to exceed \$100,000. If the City Council directed the Administration to allocate funding for a comprehensive classification and compensation study, staff believes this cannot be completed by September 2021. A study of this magnitude must be completed by an industry expert. A Request for Qualifications (RFQ) would have to be developed, issued and a subsequent selection process would follow. In addition, the consultant's work would take several months of extensive research of comparing classifications and the intricacies of total compensation before the City would be provided with preliminary findings.	• The City Council has expressed interest in completing a comprehensive classification and compensation study, and the scope of work will include assessments of the functions and staffing of the organization with the intention of providing detailed information on the organization, staffing, and comparative compensation levels to the staff and the Council. This study will inform any further organizational assessment to evaluate staffing needs and opportunities. Staff still intends to issue an RFQ/RFP by the end of calendar year 2021. Based on the cost, staff will then determine with the City Council if funding is available, if budget amendments would be necessary to fund the study, or if the study should wait until the following fiscal year. It is not likely that this study will be completed in FY 2021-22. Estimated completion: FY 2022-23. Responsible staff: Human Resources/City Management. • As previously mentioned, City Management and the Finance Director has initiated a restructuring of functions in the Finance Department. The incumbent Finance Supervisor will be retired as of September 30, and the position is proposed to be replaced by a Budget Manager position that will



would result in ongoing cost reductions		specifically focus on budgeting and financial analysis for the City, allowing City Management to be responsive to the City Council and the public in communicating budget strategies and information. This classification is being developed and is expected to be presented to the City Council for approval in October, and staff will seek to fill this position by the end of the calendar year. Estimated Completion: December 2021.
2. To better control its salary costs, El Cerrito should end its practice of providing city management authority to pay certain employees over the threshold established in its salary ranges	The Administration Agrees with this Recommendation - The Administration would study management compensation as part of the classification and compensation study recommended by the State Auditor. In 2020, the Administration suspended this practice for Management & Confidential employees and will consider eliminating this when the Management & Confidential Resolution is updated this fiscal year. However, this practice was not suspended for members of the Public Safety Management Association (PSMA) as they are a bargaining unit, therefore, the City would have to engage in a meet and confer to discuss the possibility. The Administration cannot unilaterally impose the elimination of this practice to the PSMA.	This practice has been indefinitely suspended for the Management and Confidential (unrepresented) group, with a permanent change to be considered pending the completion of a classification/compensation study. This study may also be used as a basis for discussions on compensation during future negotiations with the PSMA. Estimated completion: FY 2022-23. Responsible staff: Human Resources/City Management.
3. Based on the results of its comprehensive analysis, El Cerrito should do the following:	The Administration Partially Agrees with this Recommendation – The Administration would study	The City has frozen salary increases for Management/Confidential since FY 2019-20 and has continued to do so through FY 2021-22. City Management



- o Freeze salary increases for management with salaries above those of comparable cities until they are in line with those salaries. For positions with salaries above those of comparable cities that are represented by bargaining units, the City should not agree to additional salary increases until those positions' salaries are in line with salaries in comparable cities - o Seek to eliminate or consolidate positions that have overlapping responsibilities	management compensation as part of the classification and compensation study recommended by the State Auditor. The Administration has already taken action to freeze salaries, as no unrepresented employees have received merit increases this fiscal year and received no COLAs. In addition, the Administration imposed 26 non-paid furlough days (roughly a 10% reduction in pay) for FY 2020-21 for unrepresented Management employees.	worked with PSMA to discuss deferring their COLAs per their closed contracts for FY 2021-22, and PSMA declined to defer their salary increases for FY 2021-22. However, two of the units within PSMA (Police Chief and Fire Chief) agreed to increase their CalPERS contribution by 2%. Completed for FY 2021-22 and ongoing. Responsible staff: City Management. • Staff will consider conducting updated salary/benefits surveys for positions within the Management group to confirm that compensation is within the market of comparable cities/agencies; however due to limited staff resources this will likely not take place until at least the end of calendar year 2021. Estimated completion: FY 2021-22.
4. To reduce its fire department's costs, El Cerrito should develop a timeline by July 2021 for controlling the department's personnel expenditures, such as through negotiated salary reductions or freezes.	The Administration Partially Agrees with this Recommendation – The Administration continues to look into personnel cost reduction options Citywide, however, the Administration has no ability to impose salary reductions or freezes on the two bargaining groups that represent sworn members of the Fire Department. Any proposals from the Administration are subject to meet and confer and there is no obligation from the labor groups to accept. In 2020, the Administration negotiated an elimination of a 3% COLA set to take place in July 2020. In addition, the City filled three long-standing vacancies to reduce the amount of	• City Management worked with Local 1230, who represents Fire Department employees, to discuss the City's current financial situation and this recommendation during the FY 2021-22 budget process. Local 1230 declined to defer their salary increases for FY 2021-22. The current MOU expires in June 2022 and City Management will work with the City Council with respect to its direction and authority during negotiations for the next MOU. Estimated completion: 2022. Responsible staff: Human Resources/City Management.



	overtime in the Fire Department.	
5. To reduce its police department's costs, El Cerrito should perform the following by December 2021: - o Assess the services provided by the police department to identify opportunities to reduce its staffing levels - o Negotiate with its police union to increase the overtime threshold for sworn officers to 86 hours over 14 days to 80 hours over 14 days.	The Administration Partially Agrees with this Recommendation – The Administration continues to look into personnel cost reduction options Citywide, however, the Administration has no ability to impose salary reductions or freezes on the two bargaining groups that represent sworn members of the Police Department. Any proposals from the Administration (including those regarding overtime) are subject to meet and confer and there is no obligation from the labor groups to accept. In 2020, the Administration negotiated an elimination of a 3% COLA set to take place in January 2020 and another 3% COLA set to take place in January 2021. In addition, the Police Chief has conducted several assessments and implemented a restructuring of the Police Department in order to achieve cost savings while still maintaining critical public safety service within the community.	• City Management worked with the El Cerrito Police Employees Association (PEA), who represents Police Department employees, to discuss the City's current financial situation and this recommendation during the FY 2021-22 budget process. PEA declined to defer their salary increases for FY 2021-22. The current MOU expires in June 2024. Estimated completion: unknown. Responsible staff: Human Resources/City Management.
6. To identify all available options to reduce its costs for its fire and police services, El Cerrito should perform an analysis by December 2021 to determine whether it would be more cost-effective to contract with nearby fire or police departments for services.	The Administration Does Not Agree with this Recommendation – The Administration would study public safety personnel costs as part of the classification and compensation study recommended by the State Auditor. Per conversations with the State Auditor, the intent of	• Public Safety has been the highest priority and concern of residents of the City. The City Council discussed this during their study session in August 2021 and did not direct staff to perform such an analysis at this time. The Council determined that they were not interested in pursuing a contract for police services; and while the Council discussed evaluating options for fire services, they also



	this recommendation was for the City to “receive a cost estimate.” However, the Administration believes that it is professionally necessary that this analysis of this magnitude must be a comprehensive study completed by an industry expert(s) to extensively evaluate the detailed service delivery impacts in contemplating an outsourcing of both of the City’s Public Safety Departments. There would be significant impacts to current sworn employees that would have to be to extensively evaluated. The amount of work necessary plus the costs involved to complete such an analysis is not realistic by December 2021. After the City Council is informed by the classification and compensation study, the City Council can determine if this is an area they would like the Administration to study, and allocate the appropriate resources to complete.	recognized the complications involved because the Kensington Fire Protection District contracts with the City for fire services. The Council remains interested in the results of the classification/compensation study that will be conducted to inform future discussions on the Fire Department, as well as the entire organization however the Council is not currently considering contracting out for public safety services. Completed. Responsible staff: City Management.
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**High Risk Issue # 5
Increasing Revenues**

Overview: The City continues to explore all opportunities for increasing revenues through various fees within all departments, in addition to the recommendations listed. City staff also continuously seeks and utilizes grant opportunities to supplement revenues.

High Risk Area #5 State Auditor Recommendations	Response	Corrective Action Updated: September 2021
1. To more fully recover costs at its swim center after the pandemic, the city should perform the following: - o Conduct an analysis to identify the demand for the swim center under normal conditions at different times – including holidays, weekends, and when the public has restricted access to neighboring swim centers – and determine whether increasing single-use fees during these hours could better cover the costs of operating the swim center - o Establish separate single-use fees in its master fee schedule for nonresidents at the swim center, in order to increase revenue	The Administration Agrees with this Recommendation – The Administration plans to conduct an analysis during normal conditions (not during the current pandemic). The Administration has concerns over the potential disproportionate accessibility impacts to minority and low-income communities as a result of further increasing swim center fees.	• Recreation staff assessed various fees for the swim center, and increased fees were included in the Master Fee Schedule approved by the City Council in May 2021. Staff will conduct an analysis on swim center demand and cost recovery once normal operations resume and a typical season can be conducted. Since the pandemic is ongoing, the date of completion cannot be estimated at this time. Estimated completion: to be determined. Responsible staff: Recreation Department.
2. To more fully recover costs for its senior services, the city should do the following: o By August 2021, assess free and low-fee senior activities and prepare an analysis for the city council that includes a	The Administration Agrees with this Recommendation – The Administration plans to conduct an analysis during normal conditions (not during the current pandemic) to appropriately understand the current demand for service.	• Recreation staff assessed various fees for senior services, and increased fees were included in the Master Fee Schedule approved by the City Council in May 2021. Staff will conduct an analysis on future demand for senior services once normal operations resume and a typical operation can be

plan for recovering the full cost of these activities o Continue to seek opportunities to sublease its modular buildings and move senior activities to the city-owned community center or clubhouses	Senior Services have been closed for the past year and will not likely be reopened before August. The Administration has racial equity concerns that increasing fees for Senior Services could have serious implications for the City's most vulnerable residents, most of whom are on fixed incomes. The Administration also agrees with the State Auditor's recommendation regarding subleasing its costly modular buildings and moving senior activities to city-owned spaces.	conducted. Since the pandemic is ongoing, the date of completion cannot be estimated at this time. Estimated completion: to be determined. Responsible staff: Recreation Department. • Staff continues to explore subleasing the modular buildings, though due to the pandemic and lack of interest, it is more likely that the buildings will be removed once the lease expires in 2023. Estimated completion: FY 2022-23. Responsible staff: Recreation Department/City Management.
3. To more fully recover the costs of the emergency medical services it provides, El Cerrito should conduct an analysis by July 2021 to identify the cost to the city of providing such services. Using this analysis, El Cerrito should consider the following: - o Determine whether it can renegotiate its contract with Contra Costa County - o Determine whether charging fees for its services would be cost-effective considering any additional administrative costs it may incur - o Pursue other options to generate revenue	The Administration Agrees with this Recommendation – The Administration has completed a preliminary investigation on this issue and will provide this information in written form to the City Council. The City can conduct a more robust and finalized analysis if directed by the City Council. Regarding additional revenue opportunities, the Administration is currently developing an analysis reviewing various Fire Department fees to determine if fees align with actual costs. Recommendations will be brought forward to the City Council as a part of the budget process.	• Staff is currently reviewing data and will provide information to the City Council regarding increasing emergency fees, and upon direction will initiate further analysis. Estimated completion: January 2022. Responsible staff: Fire Department/City Management.

EL CERRITO CITY COUNCIL DRAFT MINUTES

CONCURRENT SPECIAL PLANNING COMMISSION AND REGULAR CITY COUNCIL MEETING AUGUST 17, 2021 – 7:00 p.m.

City Council (in-person):
Mayor Paul Fadelli

Mayor Pro Tem Gabe Quinto • Councilmember Janet Abelson
Councilmember Lisa Motoyama • Councilmember Tessa Rudnick

Planning Commission (via Zoom):
Chair Leslie Mendez

Member Brendan Bloom • Member Greg Crump • Member Erin Gillett
Member Daniel Hamilton • Member Linda Klein • Member Joy Navarrete

Meeting Location:
(City Council and staff only - no public attendance)
Council Chambers, 10890 San Pablo Ave El Cerrito, CA 94530

Join Via Zoom:
<https://zoom.us/j/97341195745?pwd=QVlxSkhSQTgweCtEVmg0aGxrT3BjZz09>

Meeting ID: 973 4119 5745 **Password:** 873597
or Dial in: 1-408-638-0968

Pursuant to Executive Order N-29-20, teleconference restrictions of the Brown Act have been suspended, as well as the requirement to provide a physical location for members of the public to participate in the meeting.

This meeting is the first step in conducting "hybrid" City Council meetings, which will provide options for both in-person and remote participation. For the August 17, 2021 meeting, ONLY City Council and staff will be permitted to attend in person. Planning Commission members will participate via zoom, and members of the public will be able to participate remotely using any of the methods listed below. Beginning September 21, 2021 any interested individual will be able to attend City Council meetings in-person or participate via Zoom, unless changes in public health conditions prompt a return to remote-only meetings.

Members of the public can watch or listen to City Council meetings as follows:

1. Cable T.V. Broadcast on KCRT Channel 28
2. Radio Broadcast on FM 88.1 Or 97.7
3. Livestream Online at www.el-cerrito.org/CouncilMeetingMaterials
4. Via Zoom using the meeting information listed above.

Each period for public comment will be announced. Public Comments may be submitted one of two ways:

- Via Zoom using the “[Raise Hand](#)” icon to request to speak. If joining by phone, dial *9 to "raise your hand", and when prompted by the host, *6 to unmute/mute.
- Via email to cityclerk@ci.el-cerrito.ca.us. Email must contain in the subject line **Public Comments – Not on the Agenda** or **Public Comments – agenda item #.**

To ensure City Council receives your written comments prior to taking action, they must be received by **4:00 p.m. the day of the meeting**. All written comments received by this deadline will be provided to the City Council and posted online in advance of the meeting.

Comments received after the deadline will be provided to the City Council and included with supplemental materials **after the meeting**. **No written comments will be read into the record.**

7:00 P.M. ROLL CALL – CONVENE CONCURRENT SPECIAL PLANNING COMMISSION AND REGULAR CITY COUNCIL MEETING

Mayor Fadelli called the meeting to order at 7:06 PM.

Council Present (in-person): Mayor Fadelli, Mayor Pro Tem Quinto (via zoom), Councilmember Abelson, Councilmember Motoyama, Councilmember Rudnick **Absent:** None

Planning Commission Present (via zoom): Chair Hamilton, Vice Chair Mendez, Member Bloom (arrived at 7:48), Member Gillett, Member Klein (arrived at 7:30), Member Navarrete **Absent:** Member Crump

1. TELECONFERENCE AND PUBLIC COMMENT INSTRUCTIONS

2. COUNCIL/STAFF COMMUNICATIONS

Reports of closed session, commission appointments and informational reports on matters of general interest which are announced by the City Council and staff.

City Manager Pinkos – provided an update on the county health orders.

Councilmember Motoyama – requested the meeting adjourn in memory of Marlene George.

Mayor Pro Tem Quinto – announced attendance at the opening of the first marijuana dispensary in El Cerrito.

Mayor Fadelli - announced issuance of a Mayoral Certificate of Recognition in celebration of Theodore Crum's 100th birthday, and announced moving forward with the Committee on Aging recommendation to recognize centenarians in El Cerrito.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers and may limit the

total time for public comment to facilitate the completion of business on the agenda. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda will be heard prior to the City Council taking action on each item.

All written comments submitted prior to and during the meeting were posted online as supplemental materials and incorporated into the official meeting record. Written public comments for matters not on the agenda were received from Kenneth Epley - Committee on Aging Chair, Cordell Hindler, and Dianne Brenner.

Oral Public Comments:

Betsy Dasher - spoke regarding the San Pablo Ave Specific Plan, height limits and affordable housing.

Buddy Akacic - commented on upcoming Committee on Aging meeting, senior seminar, and masks affecting sound.

4. ADOPTION OF THE CONSENT CALENDAR

All items on the consent calendar shall be acted upon in one motion, unless a member of the City Council or staff request separate consideration.

Moved/Seconded: Councilmember Rudnick/Councilmember Motoyama

Action: Approved the consent calendar as indicated below. **Ayes:** Mayor Fadelli, Mayor Pro Tem Quinto, Councilmember Abelson, Councilmember Motoyama, Councilmember Rudnick **Noes:** None

A. Approval of Minutes

Action Proposed: Pass a motion to approve City Council Meeting minutes from June 15, June 22, and July 20, 2021.

Contact: Holly M. Charléty, City Clerk, City Management

Action: Approved minutes

B. Crime Prevention Committee Appointment

Action Proposed: Approve a Crime Prevention Committee recommendation to appoint William Cobb and Kathryn Fournier to the Crime Prevention Committee, effective August 17, 2021.

Contact: Scott Cliatt, Sergeant, Police Department

Action: Approved appointments

C. Construction Contract Award for Gladys Avenue, El Dorado Street, and B Street Improvement Project, City Project No. C3079, State Project No. LPPSB1L-5239(030)

Action Proposed: Adopt a resolution approving plans and specifications for the Gladys Avenue, El Dorado Street, and B Street Improvement Project, City Project No. C3079, State Project No. LPPSB1L-5239(030) (Project); rejecting the bid submitted by QA Constructors as non-responsive and accepting the other five (5) bids

submitted for the Project; and authorizing the City Manager to execute a contract in the amount of \$424,850 with California Highway Construction Group Inc. and to approve change orders in an amount not to exceed \$43,000 for the construction of the Project.

Contact: Ana Bernardes, Engineering Manager/Senior Engineer; Yvetteh Ortiz, Public Works Director/City Engineer, Public Works Department

Action: Approved Resolution 2021-43

D. El Cerrito del Norte Transit-Oriented Development Complete Streets Improvement Project - Subregional Transportation Mitigation Program (STMP) Cooperative Funding Agreement

Action Proposed: Adopt a resolution approving the Subregional Transportation Mitigation Program (STMP) Cooperative Funding Agreement (Agreement) between the West Contra Costa County Transportation Advisory Committee (WCCTAC) and the City of El Cerrito (City) for the El Cerrito del Norte Transit-Oriented Development (TOD) Complete Streets Improvement Project and authorizing the City Manager to execute the Agreement.

Contact: Yvetteh Ortiz, Public Works Director/City Engineer, Public Works Department

Action: Approved Resolution 2021-44

5. PRESENTATIONS

**A. CITY COUNCIL/PLANNING COMMISSION ITEM
Access Planning for Transit-Oriented Development at the El Cerrito Plaza Bay Area Rapid Transit (BART) Station – Study Session**

Action Proposed: Receive presentations from City staff, Bay Area Rapid Transit (BART) staff, and consultants regarding the Berkeley-El Cerrito Corridor Access Plan, mobility improvements and parking components of the proposed Transit-Oriented Development (TOD) project at the El Cerrito Plaza BART station, and provide feedback regarding TOD access strategies, including the on-street parking management component.

Contact: Melanie Mintz, Community Development Director, Community Development Department; Yvetteh Ortiz, Public Works Director, Public Works Department

Presentation and Discussion: Presenters and staff responded to comments and questions raised by members of the council regarding street parking revenues, line bike and micro mobility options, strategies around using app-based services, parameters of regional access study, timed shuttle up and down the El Cerrito Hills, equity and racial diversity in public input process, impact on Del Norte station with reduced parking at Plaza station, impacts on service and increase in remote work, parking alternatives such as stacking, plans for

conducting an updated parking study, timing and alignment of components of parking studies and development design, parking pricing strategy in residential areas, revenue projections for on-street parking program options, designated library parking,

Public Comments: All written comments submitted prior to and during the meeting were posted online as supplemental materials and incorporated into the official meeting record. Written public comments for this item were received from Dan Schulman, Al Miller, and Michael Fischer.

Oral Public Comments

Dan Cloak - commented on maximizing housing, reducing the demand for parking, and a managed parking plan.

Rebecca Bennassini - spoke in favor of focusing on on-street parking options and inclusion of a library in the development.

Tom Panas - spoke in support of transit oriented development, San Pablo Avenue specific plan and strategic plan, and in moving forward on the project.

Howdy Goudey - spoke in support of reduced parking, increasing walking and biking access to the station, and mobility improvements.

Laura Maurer - spoke in support of further studies to use existing street parking near the station and near zero parking at the station.

Michael Fisher - spoke in support of the project and best opportunity for a new library in El Cerrito.

Betsy Bashor - commented on looking at lowering the height limit in the San Pablo specific plan and a broader corridor access study on parking.

Steve Price - commented on experience biking from El Cerrito neighborhoods to the BART station and options.

Linda Cain - commented on charging for on-street parking, effect on residential homes and accessibility for senior residents.

Rose Vekony - spoke in favor of reducing parking and sustainable alternatives, and limitation of parking per household.

Amy Smolens - commented on reliance on plaza parking, and multi-city alternatives for biking solutions.

Jeff Levin - spoke in support of the project, minimizing replacement parking, expanding access plans, alternatives to driving, and a parking plan.

Fred Bialy - commented on studies on use of disability spaces.

Action: Received and filed

6. PUBLIC HEARINGS

7. POLICY MATTERS

A. FY 2020-21 General Fund Budget Update for June 2021

Action Proposed: Receive and file an update on City General Fund revenues and expenses for FY 2020-21 through June 2021.

Contact: Mark R. Rasiah, Finance Director/City Treasurer, Finance Department

Presentation and Discussion: Presenters and staff responded to comments and questions raised by members of the council regarding clarification that American Rescue Plan Act (ARPA) funds are not included and use of ARPA funds.

Action: Received and filed

8. CITY COUNCIL LOCAL & REGIONAL LIAISON ASSIGNMENTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

9. ADJOURN CONCURRENT SPECIAL PLANNING COMMISSION AND REGULAR CITY COUNCIL MEETING

The regular meeting adjourned at 10:56 PM in memory of El Cerrito resident, Marlene George.

Paul Fadelli, Mayor

This is to certify that the foregoing is a true and correct copy of the minutes of the concurrent City Council/Planning Commission meeting of August 17, 2021 as approved by the El Cerrito City Council.

Holly M. Charléty, MMC, City Clerk

EL CERRITO CITY COUNCIL DRAFT MINUTES

SPECIAL CITY COUNCIL MEETING

August 31, 2021 – 4:00 p.m.

Members:

Mayor Paul Fadelli

Mayor Pro Tem Gabe Quinto • Councilmember Janet Abelson
Councilmember Lisa Motoyama • Councilmember Tessa Rudnick

Meeting Location:

(City Council and Staff only - no public attendance)

Council Chambers, 10890 San Pablo Avenue El Cerrito, CA 94530

Join Via Zoom:

<https://zoom.us/j/96241293798?pwd=Nm1tTWFYaHQ1bVI5SDI4cXdBdEh4UT09>

Meeting ID: 962 4129 3798 **Passcode:** 251933
or Dial in: 1-408-638-0968

Pursuant to Executive Order N-29-20, teleconference restrictions of the Brown Act have been suspended, as well as the requirement to provide a physical location for members of the public to participate in the meeting.

This meeting will be conducted as a "hybrid" meeting, which will provide options for both in-person and remote participation. For the August 31, 2021 meeting, ONLY City Council and staff will be permitted to attend in-person. Members of the public will be able to participate remotely using any of the methods listed below. Beginning September 21, 2021 any interested individual will be able to attend City Council meetings in-person or participate via zoom, unless changes in public health conditions prompt a return to remote-only meetings.

Public Comments may be submitted one of two ways and are **limited to items on the special meeting agenda only:**

- Via Zoom using the "[Raise Hand](#)" icon to request to speak. If joining by phone, dial *9 to "raise your hand", and when prompted by the host, *6 to unmute/mute.
- Via email to cityclerk@ci.el-cerrito.ca.us. Email must contain in the subjectline **Public Comments – agenda item #.**

Members of the public can watch or listen to City Council meetings as follows:

1. Livestream Online at www.el-cerrito.org/CouncilMeetingMaterials
2. Via Zoom using the meeting information listed above.

To ensure City Council receives your written comments prior to taking action, they must be received by **1:00 p.m. the day of the meeting**. All written comments received by this deadline will be provided to the City Council and posted online in advance of the meeting.

Comments received after the deadline will be provided to the City Council and included with supplemental materials **after the meeting**. **No written comments will be read into the record.**

4:00 P.M. ROLL CALL - CONVENE SPECIAL CITY COUNCIL MEETING

Mayor Fadelli called the meeting to order at 4:07 PM.

Present: Mayor Fadelli, Mayor Pro Tem Quinto, Councilmember Abelson, Councilmember Motoyama (arrived at 4:23 p.m.), Councilmember Rudnick **Absent:** None

1. ORAL COMMUNICATIONS FROM THE PUBLIC

Remarks are typically limited to 3 minutes per person and to items on the special meeting agenda only.

Oral Public Comments:

Cordell Hindler - thanked the facilitators for their work.

Deb Sanders - commented on the financial status of the city.

2. STUDY SESSION - FISCAL RECOVERY AND SUSTAINABILITY PLAN

Action Proposed: Conduct a study session on the Fiscal Recovery and Sustainability Plan.

Contact: Karen Pinkos, City Manager, City Management; Nancy Hetrick, Management Partners

Presentation and Discussion: Management Partners facilitated a workshop on the road to fiscal sustainability; a forecast update including prior reductions, approved budget strategies, staffing, assumptions, cannabis revenue, and American Rescue Plan Act (ARPA) funds; review of city services, strategic goals, State Auditor's report and recommendations, townhall community input, and next steps.

City Council recessed at 5:18 p.m., and reconvened at 5:34 p.m.

Presenters and staff responded to comments and questions raised by members of the council regarding use of ARPA funding, physical city assets, fundraising opportunities, classification and compensation study, eligible ARPA uses, auditor recommendations; options for contracting out services including building/permitting, police, and fire; fire dispatch, equipment needs, aging public safety building, use of the Tax Revenue Anticipation Note (TRAN), retiree health care subsidy, and establishing a section 115 trust.

3. ADJOURN SPECIAL CITY COUNCIL MEETING

The special meeting adjourned at 7:13 p.m.

Paul Fadelli, Mayor

This is to certify that the foregoing is a true and correct copy of the minutes of the City Council meeting of August 31, 2021 as approved by the El Cerrito City Council.

Holly M. Charléty, MMC, City Clerk



AGENDA BILL

Agenda Item No. 5.B.

Date: September 21, 2021
To: El Cerrito City Council
From: Stephen Prée, Environmental Programs Manager/City Arborist; Will Provost, Operations and Environmental Services Division Manager; Yvetteh Ortiz, Public Works Director/City Engineer, Public Works Department
Subject: Urban Forest Committee Appointment

ACTION PROPOSED

Approve an Urban Forest Committee recommendation to appoint Melissa Feudi to the Urban Forest Committee, effective October 1, 2021.

BACKGROUND AND ANALYSIS

Melissa Feudi submitted her application to serve on the Urban Forest Committee (UFC) on July 13, 2021. During the September 13, 2021 regular meeting of the UFC, the Committee voted to recommend to the City Council that Ms. Feudi be appointed to the Urban Forest Committee.

Melissa Feudi has been an El Cerrito resident for four years. As stated in her UFC application, she is deeply passionate about local ecology and the beautification of the community. Ms. Feudi has volunteered in the East Bay Regional Parks Botanic Garden and in El Cerrito's Canyon Trail Park with Jim McKissock. She received a Bachelor of Fine Arts degree from the Fashion Institute of Technology of the State University of New York and is currently studying the indigenous ecology of California with Nicholas Hummingbird.

Ms. Feudi has attended at least three UFC meetings, as required for appointment. If the City Council approves this recommendation, the number of Urban Forest Committee members will be seven (7) out of a possible membership total of fifteen (15).

STRATEGIC PLAN CONSIDERATIONS

The work of the UFC members helps the City achieve Goal C of the El Cerrito Strategic Plan, which is to "Deepen a sense of place and community identity", and Goal F, which is to "Foster environmental sustainability citywide."

ENVIRONMENTAL CONSIDERATIONS

As stated in its enabling Resolution 2007-96, the Urban Forest Committee was established to assist the City in the "stewardship of its urban forest, including establishing a citywide commitment to a healthy, growing forest, and creating a coordinated, high quality forest management program." The Urban Forest Committee supports the City in developing programs and policies that help protect the local

environment, while also engaging in activities that have a direct impact on trees and environmental quality (e.g., tree planting).

FINANCIAL CONSIDERATIONS

This section is not applicable to this agenda item.

LEGAL CONSIDERATIONS

This section is not applicable to this agenda item.

Reviewed by:

A handwritten signature in blue ink, appearing to read "Karen Pinkos".

Karen Pinkos, City Manager

Attachments:

Application(s) on file with the City Clerk



AGENDA BILL

Agenda Item No. 5.C.

Date: September 21, 2021
To: El Cerrito City Council
From: Aissia Ashoori, Community Development Analyst, Community Development Department
Subject: Economic Development Committee Appointment

ACTION PROPOSED

Approve one Economic Development Committee recommendation to appoint a new member, Robert Travis Campbell, effective September 21, 2021.

BACKGROUND/ ANALYSIS

Mr. Campbell has been an El Cerrito resident for over two years. He is a licensed attorney specializing in litigation. Prior to law school, he obtained a Bachelor of Science in Economics and is looking for ways to contribute his skills locally. He would like to serve on the EDC specifically to support businesses/residents.

Mr. Campbell has demonstrated through his participation in EDC meetings that he is committed to keeping with the mission of the Committee and bolstering economic growth in our community.

The Economic Development Committee voted unanimously to recommend the appointment of Mr. Campbell at its regular meeting on August 23, 2021.

If the City Council approves this recommendation for appointment, the number of committee members will be 7 out of a possible membership total of 15, as established by Resolution 2013-66.

STRATEGIC PLAN CONSIDERATIONS

The recommended appointment fulfills the City's Strategic Plan Goal C: Deepen a sense of place and community identity.

ENVIRONMENTAL CONSIDERATIONS

This section is not applicable to this agenda item.

FINANCIAL CONSIDERATIONS

This section is not applicable to this agenda item.

LEGAL CONSIDERATIONS

This section is not applicable to this agenda item.

Reviewed by:

A handwritten signature in blue ink, appearing to read "Karen Pinkos".

Karen Pinkos, City Manager

Attachments:

Application(s) on file with the City Clerk

EL CERRITO CITY COUNCIL PROCLAMATION
Designating September 15, 2021 – October 15, 2021 as
Hispanic Heritage Month

WHEREAS, each year, the federal government and local governments observe National Hispanic Heritage Month as the period from September 15 to October 15, by recognizing and celebrating the histories, cultures, and contributions of American citizens whose ancestors came from Spain, Mexico, the Caribbean and Central and South America; and

WHEREAS, September 15th is significant as a starting date for Hispanic Heritage month because it is the anniversary of independence for the Latin American countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. In addition, Mexico and Chile celebrate their independence on September 16th and September 18th respectively; and

WHEREAS, Hispanics are the largest ethnic group in the State of California and at nearly 17% of the United States population, make up the largest ethnic or race minority group in America; and

WHEREAS, Hispanics have made innumerable contributions to the El Cerrito community, and it is important the City recognize and celebrate the diverse histories and cultures of the Hispanic population.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby proclaim the period of September 15, 2021 – October 15, 2021, as Hispanic Heritage Month in the City of El Cerrito in recognition of the many contributions Hispanics have made both locally and nationally, and to promote greater awareness of the rich history and culture of the Hispanic community.

Dated: September 21, 2021

Paul Fadelli, Mayor

EL CERRITO CITY COUNCIL PROCLAMATION
September Is Suicide Prevention Awareness Month

WHEREAS, September is known around the United States as “National Suicide Prevention Awareness Month”; and

WHEREAS, most of us are quite aware of suicide. Suicide Prevention Awareness Month is intended to help promote and give attention to the Suicide Prevention services available to us and our community. The goal is to speak openly about the topic of suicide to help erase the stigma surrounding it, and to direct those in need to the appropriate support services; and

WHEREAS, suicide is the 10th leading cause of death among adults in the US, and nearly 20% of all suicides were committed by people ages 45-54; and

WHEREAS, according to the American Foundation for Suicide Prevention, 48,344 people died by suicide in the year 2018 and in 2018, there were an estimated 1.4 million suicide attempts; and

WHEREAS, suicidal thoughts can affect anyone regardless of age, gender, race, orientation, income level, religion, or background; and

WHEREAS, local organizations like the Contra Costa Crisis Center and national organizations like the National Alliance on Mental Illness and the American Foundation for Suicide Prevention are on the front lines of a war that many still refuse to discuss, as suicide and mental illness remain too uncomfortable of a topic to talk about; and

WHEREAS, every member of our community should understand that throughout life’s struggles we all need the occasional reminder that we are all fighting our own battles; and

WHEREAS, the City Council of the City of El Cerrito encourages all residents to take the time to check in with their family, friends, and neighbors on regular basis and to honestly communicate their appreciation for their existence by any gesture they deem appropriate. A simple phone call, message, handshake, or hug can go a long way towards helping someone realize that suicide is not the answer.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby proclaim the month of September 2021 as National Suicide Prevention Awareness Month in the City of El Cerrito.

Dated: September 21, 2021

Paul Fadelli, Mayor



Annual Conference Resolutions Packet

2021 Annual Conference Resolutions



September 22 - 24, 2021

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League of California Cities (Cal Cities) bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration at the Annual Conference and referred to Cal Cities policy committees.

POLICY COMMITTEES: Three policy committees will meet virtually one week prior to the Annual Conference to consider and take action on the resolutions. The sponsors of the resolutions have been notified of the time and location of the meetings.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 23, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of Cal Cities regional divisions, functional departments, and standing policy committees, as well as other individuals appointed by the Cal Cities president. Please check in at the registration desk for room location.

CLOSING LUNCHEON AND GENERAL ASSEMBLY: This meeting will be held at 12:30 p.m. on Friday, September 24, at the SAFE Credit Union Convention Center.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a petition resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Closing Luncheon & General Assembly. This year, that deadline is 12:30 p.m., Thursday, September 23. Resolutions can be viewed on Cal Cities Web site: www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond mdesmond@calcities.org.

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within Cal Cities. The principal means for deciding policy on the important issues facing cities is through Cal Cities seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop Cal Cities policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing Cal Cities policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for Cal Cities policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
 - (c) Consider important issues not adequately addressed by the policy committees and board of directors.

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action
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		1	2	3
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1 - Policy Committee Recommendation
to General Resolutions Committee
2 - General Resolutions Committee
3 - General Assembly

HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

REVENUE & TAXATION POLICY COMMITTEE

		1	2	3
1	Online Sales Tax Equity			

TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

KEY TO ACTIONS TAKEN ON RESOLUTIONS (*Continued*)

Resolutions have been grouped by policy committees to which they have been assigned.

KEY TO REVIEWING BODIES

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

KEY TO ACTIONS TAKEN

- | | |
|-----|---|
| A | Approve |
| D | Disapprove |
| N | No Action |
| R | Refer to appropriate policy committee for study |
| a | Amend+ |
| Aa | Approve as amended+ |
| Aaa | Approve with additional amendment(s)+ |
| Ra | Refer as amended to appropriate policy committee for study+ |
| Raa | Additional amendments and refer+ |
| Da | Amend (for clarity or brevity) and Disapprove+ |
| Na | Amend (for clarity or brevity) and take No Action+ |
| W | Withdrawn by Sponsor |

ACTION FOOTNOTES

* Subject matter covered in another resolution

** Existing League policy

*** Local authority presently exists

Procedural Note:

The League of California Cities resolution process at the Annual Conference is guided by the Cal Cities Bylaws.

1. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES (“CAL CITIES”) CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

Source: City of Rancho Cucamonga

Concurrence of five or more cities/city officials:

Cities: Town of Apple Valley; City of El Cerrito; City of La Canada Flintridge; City of La Verne; City of Lakewood; City of Moorpark; City of Placentia; City of Sacramento

Referred to: Revenue and Taxation Policy Committee

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of “siting” the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines “out-of-state” online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale (“situs”) as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state’s largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being entirely allocated to the specific city where the warehouse fulfillment center is located as opposed to going into a countywide pool that is shared with all jurisdictions in that County, as was done previously; and

WHEREAS, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue from the retailer that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment center; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting a 1 million square foot fulfillment center, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their RHNA obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering product from that center now receive no revenue from the center's sales activity despite also experiencing the impacts created by the center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background Information to Resolution

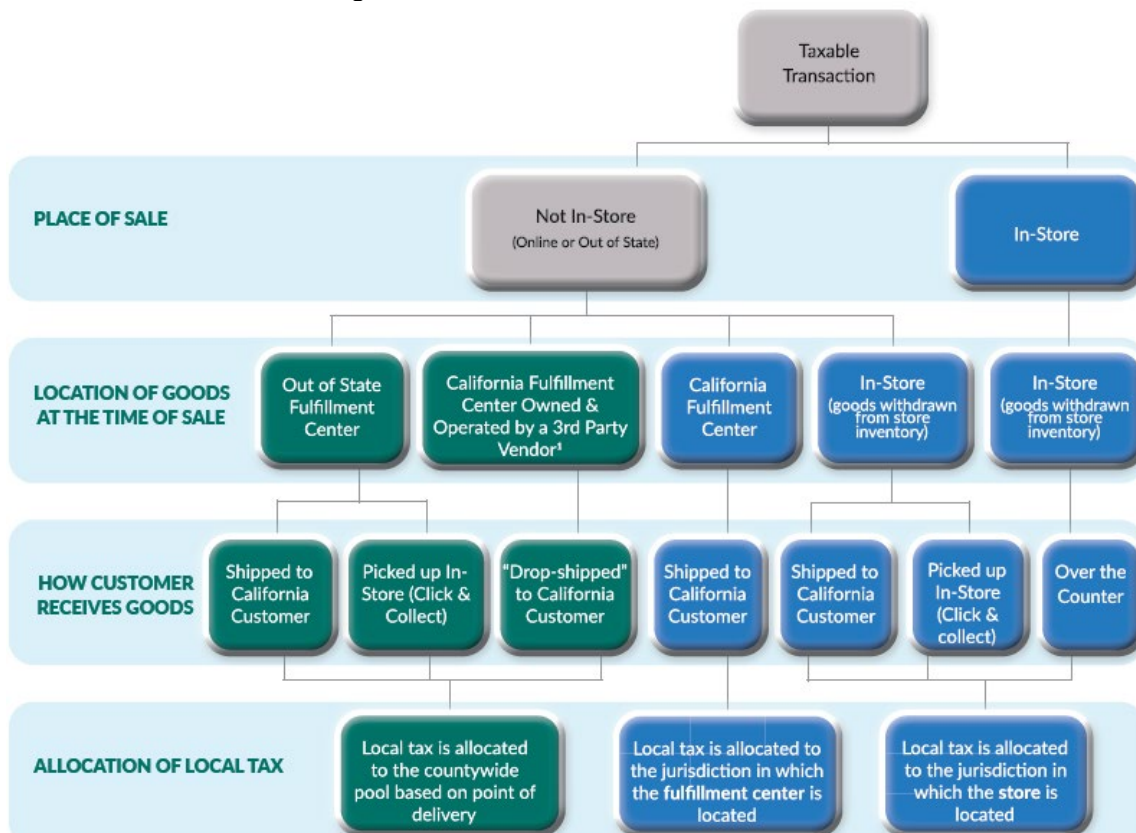
Source: City of Rancho Cucamonga

Background:

Sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950's, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction's boundaries.

Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances. The California Department of Tax and Fee Administration (CDTFA) is responsible for administering this system and issuing rules regarding how it is applied in our state.

The following chart created by HdL Companies, the leading provider of California sales tax consulting, illustrates the complex structure of how sales and use tax allocation is done in California, depending on where the transaction starts, where the goods are located, and how the customer receives the goods:



¹ In this scenario the retailer does not own a stock of goods in California and sales orders are negotiated/processed out of state. An out of state company is not required to hold a seller's permit for an in-state third party warehouse if they do not own a stock of goods at the time of sale.

With the exponential growth of online sales and the corresponding lack of growth, and even decline, of shopping at brick and mortar locations, cities are seeing much of their sales tax

growth coming from the countywide sales tax pools, since much of the sales tax is now funneled to the pools.

Recently, one of the world's largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated. Following the chart above, previously much of the sales tax would have followed the green boxes on the chart and been allocated to the countywide pool based on point of delivery. Now, much of the tax is following the blue path through the chart and is allocated to the jurisdiction in which the fulfillment center is located. (It should be noted that some of the tax is still flowing to the pools, in those situations where the fulfillment center is shipping goods for another seller that is out of state.)

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers.

This has brought to light again the need to address the issues in how sales and use taxes are distributed in the 21st century. Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies especially favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

With that stated, it is important to note the many impacts to the jurisdictions home to the fulfillment centers. These centers do support the ecommerce most of us as individuals have come to rely on, including heavy wear and tear on streets – one truck is equal to about 8,000 cars when it comes to impact on pavement – and increased air pollution due to the truck traffic and idling diesel engines dropping off large loads. However, it is equally important that State policies acknowledge that entities without fulfillment centers also experience impacts from ecommerce and increased deliveries. Cities whose residents are ordering products that are delivered to their doorstep also experience impacts from traffic, air quality and compromised safety, as well as the negative impact on brick-and-mortar businesses struggling to compete with the sharp increase in online shopping. These cities are rightfully entitled to compensation in an equitable share of sales and use tax. We do not believe that online sales tax distribution between fulfillment center cities and other cities should be an all or nothing endeavor, and not necessarily a fifty-fifty split, either. But we need to find an equitable split that balances the impacts to each jurisdiction involved in the distribution of products purchased online.

Over the years, Cal Cities has had numerous discussions about the issues surrounding sales tax in the modern era, and how state law and policy should be revisited to address these issues. It is a heavy lift, as all of our cities are impacted a bit differently, making consensus difficult. We believe that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.

It is for these reasons, that we should all aspire to develop an equitable sales tax distribution for online sales.

League of California Cities Staff Analysis on Resolution No. 1

Staff: Nicholas Romo, Legislative Affairs, Lobbyist

Committee: Revenue and Taxation

Summary:

This Resolution calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background:

The City of Rancho Cucamonga is sponsoring this resolution to *“address the issues in how sales and use taxes are distributed in the 21st century.”*

The City notes that *“sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950’s, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction’s boundaries. Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances.*

Recently, one of the world’s largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated.

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer’s fulfillment centers.”

The City’s resolution calls for action on an unspecified solution that *“rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction,”* which aims to acknowledge the actions taken by cities to alleviate poverty, catalyze economic development, and improve financial stability within their communities through existing tax sharing and zoning powers.

Ultimately, sponsoring cities believe *“that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.”*

Sales and Use Tax in California

The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply its own sales and use tax on the same base of tangible personal property (taxable goods). This tax rate currently is fixed at 1.25% of the sales price of taxable goods sold at retail locations in a local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use this 1% of the tax to support general operations, while the remaining 0.25% is used for county transportation purposes.

In California, all cities and counties impose Bradley-Burns sales taxes. California imposes the sales tax on every retailer engaged in business in this state that sells taxable goods. The law requires businesses to collect the appropriate tax from the purchaser and remit the amount to the California Department of Tax and Fee Administration (CDTFA). Sales tax applies whenever a retail sale is made, which is basically any sale other than one for resale in the regular course of business. Unless the person pays the sales tax to the retailer, they are liable for the use tax, which is imposed on any person consuming taxable goods in the state. The use tax rate is the same rate as the sales tax rate.

Generally, CDTFA distributes Bradley-Burns tax revenue based on where a sale took place, known as a *situs-based system*. A retailer’s physical place of business—such as a retail store or restaurant—is generally the place of sale. “Sourcing” is the term used by tax practitioners to describe the rules used to determine the place of sale, and therefore, which tax rates are applied to a given purchase and which jurisdictions are entitled to the local and district taxes generated from a particular transaction.

California is primarily an origin-based sourcing state – meaning tax revenues go to the jurisdiction in which a transaction physically occurs if that can be determined. However, California also uses a form of destination sourcing for the local use tax and for district taxes (also known as “transactions and use taxes” or “add-on sale and use taxes”). That is, for cities with local add-on taxes, they receive their add-on rate amount from remote and online transactions.

Generally, allocations are based on the following rules:

- The sale is sourced to the place of business of the seller - whether the product is received by the purchaser at the seller’s business location or not.
- If the retailer maintains inventory in California and has no other in state location, the source is the jurisdiction where the warehouse is situated. *This resolution is concerned with the growing amount of online retail activity being sourced to cities with warehouse/fulfillment center locations.*
- If the business’ sales office is located in California but the merchandise is shipped from out of state, the tax from transactions under \$500,000 is allocated

via the county pools. The tax from transactions over \$500,000 is allocated to the jurisdiction where the merchandise is delivered.

- When a sale cannot be identified with a permanent place of business in the state, the sale is sourced to the allocation pool of the county where the merchandise was delivered and then distributed among all jurisdictions in that county in proportion to ratio of sales. *For many large online retailers, this has been the traditional path.*

Online Sales and Countywide Pools

While the growth of e-commerce has been occurring for more than two decades, led by some of the largest and most popular retailers in the world, the dramatic increase in online shopping during the COVID-19 pandemic has provided significant revenue to California cities as well as a clearer picture on which governments enjoy even greater benefits.

In the backdrop of booming internet sales has been the steady decline of brick-and-mortar retail and shopping malls. For cities with heavy reliance on in-person retail shopping, the value of the current allocation system has been diminished as their residents prefer to shop online or are incentivized to do so by retailers (during the COVID-19 pandemic, consumers have had no other option but to shop online for certain goods). All the while, the demands and costs of city services continue to grow for cities across the state.

As noted above, the allocation of sales tax revenue to local governments depends on the location of the transaction (or where the location is ultimately determined). For in-person retail, the sales tax goes to the city in which the product and store are located - a customer purchasing at a register. For online sales, the Bradley Burns sales tax generally goes to a location other than the one where the customer lives – either to the city or county where an in-state warehouse or fulfillment center is located, the location of in-state sales office (ex. headquarters) or shared as use tax proceeds amongst all local governments within a county based on their proportionate share of taxable sales.

Under current CDTFA regulations, a substantial portion of local use tax collections are allocated through a countywide pool to the local jurisdictions in the county where the property is put to its first functional use. The state and county pools constitute over 15% of local sales and use tax revenues. Under the pool system, the tax is reported by the taxpayer to the countywide pool of use and then distributed to each jurisdiction in that county on a pro-rata share of taxable sales. If the county of use cannot be identified, the revenues are distributed to the state pool for pro-rata distribution on a statewide basis.

Concentration of Online Sales Tax Revenue and Modernization

Sales tax modernization has been a policy goal of federal, state, and local government leaders for decades to meet the rapidly changing landscape of commercial activity and ensure that all communities can sustainably provide critical services.

For as long as remote and internet shopping has existed, policy makers have been concerned about their potential to disrupt sales and use tax allocation procedures that underpin the funding of local government services. The system was designed in the early twentieth century to ensure that customers were paying sales taxes to support local government services within the community where the transactions occurred whether they resided there or not. This structure provides benefit to and recoupment for the public resources necessary to ensure the health and safety of the community broadly.

City leaders have for as long been concerned about the loosening of the nexus between what their residents purchase and the revenues they receive. Growing online shopping, under existing sourcing rules, has led to a growing concentration of sales tax revenue being distributed to a smaller number of cities and counties. As more medium and large online retailers take title to fulfillment centers or determine specific sales locations in California as a result of tax sharing agreements in specific cities, online sales tax revenue will be ever more concentrated in a few cities at the control of these companies. Furthermore, local governments are already experiencing the declining power of the sales tax to support services as more money is being spent on non-taxable goods and services.

For more on sales and use tax sourcing please see Attachment A.

State Auditor Recommendations

In 2017, the California State Auditor issued a report titled, "[The Bradley-Burns Tax and Local Transportation Funds](#)", noting that:

"Retailers generally allocate Bradley Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley Burns tax revenue into the warehouses' or sales offices' respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley Burns tax, and therefore Local Transportation Fund, revenue.

The State could make its distribution of Bradley Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale."

The Auditor's report makes the following recommendation:

"To ensure that Bradley-Burns tax revenue is more evenly distributed, the Legislature should amend the Bradley-Burns tax law to allocate revenues from Internet sales based on the destination of sold goods rather than their place of sale."

In acknowledgement of the growing attention from outside groups on this issue, Cal Cities has been engaged in its own study and convening of city officials to ensure pursued solutions account for the circumstances of all cities and local control is best protected. These efforts are explored in subsequent sections.

Cal Cities Revenue and Taxation Committee and City Manager Working Group

In 2015 and 2016, Cal Cities' Revenue and Taxation Policy Committee held extensive discussions on potential modernization of tax policy affecting cities, with a special emphasis on the sales tax. The issues had been identified by Cal Cities leadership as a strategic priority given concerns in the membership about the eroding sales tax base and the desire for Cal Cities to take a leadership role in addressing the associated issues. The policy committee ultimately adopted a series of policies that were approved by the Cal Cities board of directors. Among its changes were a recommended change to existing sales tax sourcing (determining where a sale occurs) rules, so that the point of sale (situs) is where the customer receives the product. The policy also clarifies that specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood. See "Existing Cal Cities Policy" section below.

Cal Cities City Manager Sales Tax Working Group Recommendations

In the Fall of 2017, the Cal Cities City Managers Department convened a working group (Group) of city managers representing a diverse array of cities to review and consider options for addressing issues affecting the local sales tax.

The working group of city managers helped Cal Cities identify internal common ground on rapidly evolving e-commerce trends and their effects on the allocation of local sales and use tax revenue. After meeting extensively throughout 2018, the Group made several recommendations that were endorsed unanimously by Cal Cities' Revenue and Taxation Committee at its January, 2019 meeting and by the board of directors at its subsequent meeting.

The Group recommended the following actions in response to the evolving issues associated with e-commerce and sales and use tax:

Further Limiting Rebate Agreements: The consensus of the Group was that:

- Sales tax rebate agreements involving online retailers should be prohibited *going forward*. They are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
- Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited *going forward*. Existing law already prohibits such agreements for auto dealers and big box stores.

Shift Use Tax from Online Sales, including from the South Dakota v. Wayfair Decision Out of County Pools: The Group's recommendation is based first on the principle of "situs" and that revenue should be allocated to the jurisdiction where the use occurs. Each city and county in California imposed a Bradley Burns sales and use tax rate

under state law in the 1950s. The use tax on a transaction is the rate imposed where the purchaser resides (the destination). These use tax dollars, including new revenue from the South Dakota v. Wayfair decision, should be allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

- Shift of these revenues, from purchases from out of state retailers including transactions captured by the South Dakota v. Wayfair decision, out of county pools to full destination allocation on and after January 1, 2020.
- Allow more direct reporting of use taxes related to construction projects to jurisdiction where the construction activity is located by reducing existing regulatory threshold from \$5 million to \$100,000.

Request/Require CDTFA Analysis on Impacts of Sales Tax Destination Shifts: After discussion of numerous phase-in options for destination sourcing and allocation for sales taxes, the Group ultimately decided that a more complete analysis was needed to sufficiently determine impacts. Since the two companies most cities rely on for sales tax analysis, HdL and MuniServices, were constrained to modeling with transaction and use tax (district tax) data, concerns centered on the problem of making decisions without adequate information. Since the CDTFA administers the allocation of local sales and use taxes, it is in the best position to produce an analysis that examines:

- The impacts on individual agencies of a change in sourcing rules. This would likely be accomplished by developing a model to examine 100% destination sourcing with a report to the Legislature in early 2020.
- The model should also attempt to distinguish between business-to-consumer transactions versus business-to-business transactions.
- The model should analyze the current number and financial effects of city and county sales tax rebate agreements with online retailers and how destination sourcing might affect revenues under these agreements.

Conditions for considering a Constitutional Amendment that moves toward destination allocation: Absent better data on the impacts on individual agencies associated with a shift to destination allocation of sales taxes from CDTFA, the Group declined to prescribe if/how a transition to destination would be accomplished; the sentiment was that the issue was better revisited once better data was available. In anticipation that the data would reveal significant negative impacts on some agencies, the Group desired that any such shift should be accompanied by legislation broadening of the base of sales taxes, including as supported by existing Cal Cities policy including:

- Broadening the tax base on goods, which includes reviewing existing exemptions on certain goods and expanding to digital forms of goods that are otherwise taxed; and
- Expanding the sales tax base to services, such as those commonly taxed in other states.

This Resolution builds upon previous work that accounts for the impacts that distribution networks have on host cities and further calls on the organization to advocate for changes to sales tax distribution rules.

The Resolution places further demands on data collected by CDTFA to establish a “fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases.” Such data is proposed to be collected by [SB 792 \(Glazer, 2021\)](#). More discussion on this topic can be found in the “Staff Comments” section.

Staff Comments:

Proposed Resolution Affixes Equity Based, Data Driven Approach to Existing Cal Cities Policy on Sales Tax Sourcing

The actions resulting from this resolution, if approved, would align with existing policy and efforts to-date to modernize sales tax rules. While not formalized in existing Cal Cities policy or recommendations, city managers and tax practitioners generally have favored proposals that establish a sharing of online sales tax revenues rather than a full destination shift. City leaders and practitioners across the state have acknowledged during Cal Cities Revenue and Taxation and City Manager’s working group meetings that the hosting of fulfillment centers and ancillary infrastructure pose major burdens on local communities including detrimental health and safety impacts. This acknowledgement has moved mainstream proposals such as this one away from full revenue shifts towards an equity-based, data driven approach that favors revenue sharing. This Resolution would concretely affix this approach as Cal Cities policy.

More Data is Needed to Achieve Equity Based Approach

A major challenge is the lack of adequate data to model the results of shifting in-state online sale tax revenues. Local government tax consultants and state departments have limited data to model the effects of changes to sales tax distribution because their information is derived only from cities that have a local transactions and use tax (TUT). Tax experts are able to model proposed tax shifts using TUTs since they are allocated on a destination basis (where a purchaser receives the product; usually a home or business). However, more than half of all cities, including some larger cities, do not have a local TUT therefore modeling is constrained and incomplete.

Efforts to collect relevant sales tax information on the destination of products purchased online are ongoing. The most recent effort is encapsulated in [SB 792 \(Glazer, 2021\)](#), which would require retailers with online sales exceeding \$50 million a year to report to CDTFA the gross receipts from online sales that resulted in a product being shipped or delivered in each city. The availability of this data would allow for a much more complete understanding of online consumer behavior and the impacts of future proposed changes to distribution. SB 792 (Glazer) is supported by Cal Cities following approval by the Revenue and Taxation Committee and board of directors.

Impact of Goods Movement Must Be Considered

As noted above, city leaders and practitioners across the state acknowledge that the hosting of fulfillment centers and goods movement infrastructure pose major burdens on local communities including detrimental health, safety, and infrastructure impacts. Not least of which is the issue of air pollution from diesel exhaust. According to California Environmental Protection Agency (Cal EPA):

“Children and those with existing respiratory disease, particularly asthma, appear to be especially susceptible to the harmful effects of exposure to airborne PM from diesel exhaust, resulting in increased asthma symptoms and attacks along with decreases in lung function (McCreanor et al., 2007; Wargo, 2002). People that live or work near heavily-traveled roadways, ports, railyards, bus yards, or trucking distribution centers may experience a high level of exposure (US EPA, 2002; Krivoshto et al., 2008). People that spend a significant amount of time near heavily-traveled roadways may also experience a high level of exposure. Studies of both men and women demonstrate cardiovascular effects of diesel PM exposure, including coronary vasoconstriction and premature death from cardiovascular disease (Krivoshto et al., 2008). A recent study of diesel exhaust inhalation by healthy non-smoking adults found an increase in blood pressure and other potential triggers of heart attack and stroke (Krishnan et al., 2013) Exposure to diesel PM, especially following periods of severe air pollution, can lead to increased hospital visits and admissions due to worsening asthma and emphysema-related symptoms (Krivoshto et al., 2008). Diesel exposure may also lead to reduced lung function in children living in close proximity to roadways (Brunekreef et al., 1997).”

The founded health impacts of the ubiquitous presence of medium and heavy-duty diesel trucks used to transport goods to and from fulfillment centers and warehouses require host cities to meet increased needs of their residents including the building and maintenance of buffer zones, parks, and open space. While pollution impacts may decline with the introduction of zero-emission vehicles, wide scale adoption by large distribution fleets is still in its infancy. Furthermore, the impacts of heavy road use necessitate increased spending on local streets and roads upgrades and maintenance. In addition, many cities have utilized the siting of warehouses, fulfillment centers, and other heavy industrial uses for goods movements as key components of local revenue generation and economic development strategies. These communities have also foregone other land uses in favor of siting sales offices and fulfillment networks.

All said, however, it is important to acknowledge that disadvantaged communities (DACs) whether measured along poverty, health, environmental or education indices exist in cities across the state. For one example, see: [California Office of Environmental Health Hazard Assessment \(OEHHA\) CalEnviroScreen](#). City officials may consider how cities without fulfillment and warehouse center revenues are to fund efforts to combat social and economic issues, particularly in areas with low property tax and tourism-based revenues.

The Resolution aims to acknowledge these impacts broadly (this analysis does not provide an exhaustive review of related impacts) and requests Cal Cities to account for them in a revised distribution formula of the Bradley Burns 1% local sales tax from in-state online purchases. The Resolution does not prescribe the proportions.

Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. *To review the proposed changes, please see Attachment B.*

Fiscal Impact:

Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts fulfillment centers involved in online retail have on the cities that host them. The Resolution does not prescribe the revenue distribution split nor does it prescribe the impacts, positive and negative, of distribution networks.

Existing Cal Cities Policy:

- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Support as Cal Cities policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.
- Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)
- The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.
- Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change. Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.
- Support Cal Cities working with the state California Department of Tax and Fee Administration (CDTFA) to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered). Use Tax collections from online sales, including from the South Dakota v Wayfair Decision, should be shifted out of county pools and allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

Support:

The following letters of concurrence were received:

Town of Apple Valley

City of El Cerrito

City of La Canada Flintridge

City of La Verne

City of Lakewood

City of Moorpark
City of Placentia
City of Sacramento

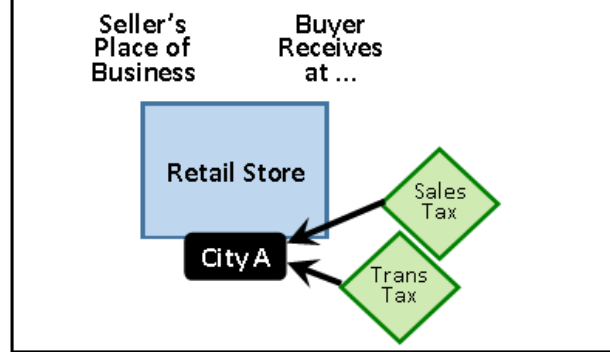
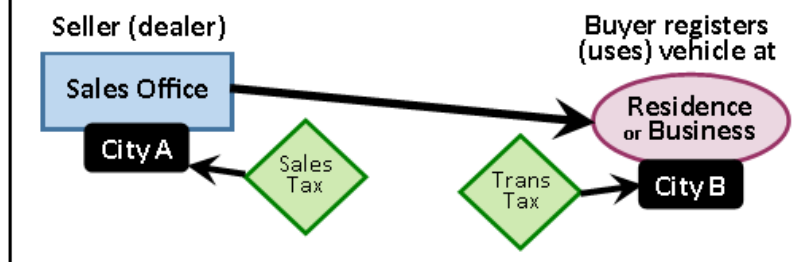
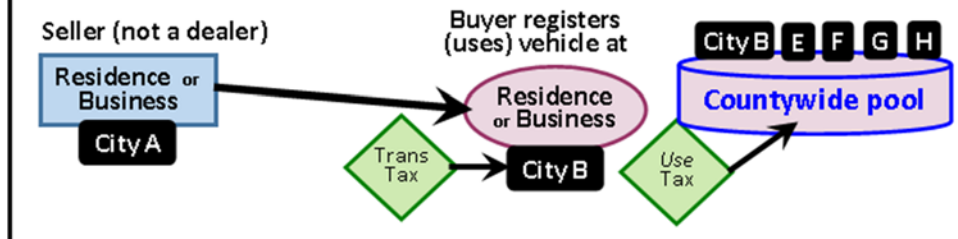
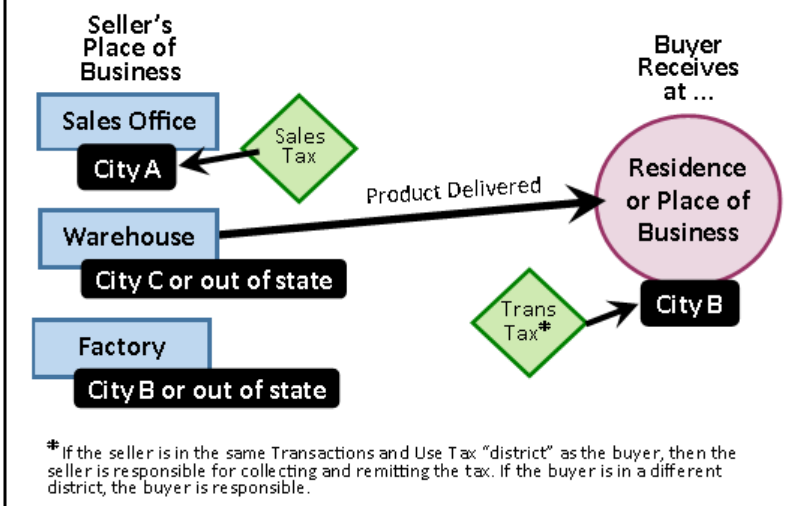
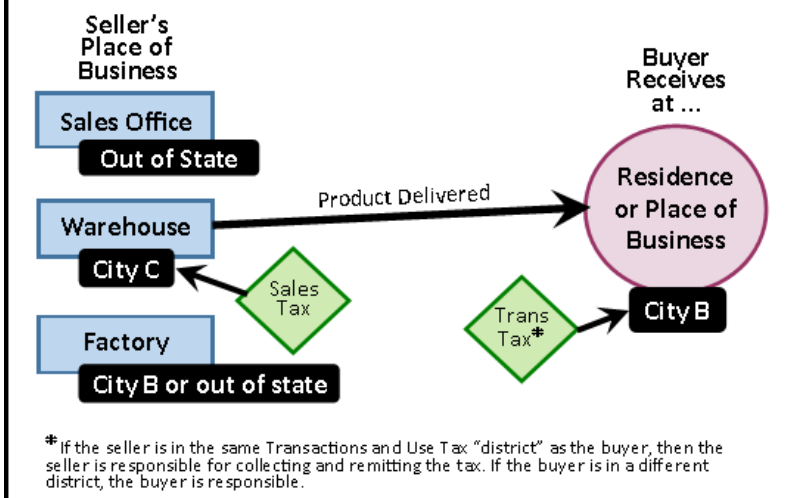
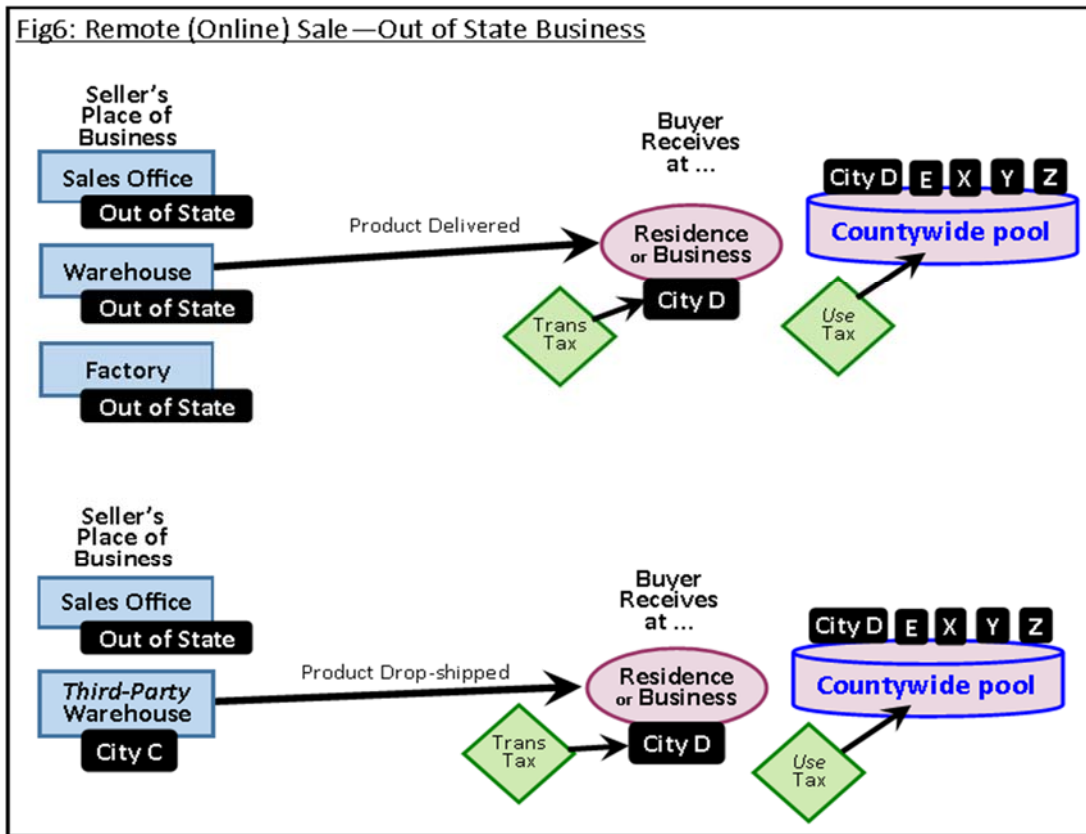
Fig1: Typical "Over the Counter" TransactionFig2: Dealership Automobile SaleFig3: Private Party Automobile Sale

Fig4: Remote (Online) Sale — In-State Business Office**Fig5: Remote (Online) Sale — In-State Warehouse, Out-of-State Sales Office**



GUIDELINES FOR ALLOCATION OF		LOCAL TAX - ONLINE AND IN-STORE	
Place of Sale	Location of Goods at the Time of Sale	How Customer Receives Goods	Allocation of Tax
Online – Order is placed or downloaded outside California	California Fulfillment Center	Shipped to California Customer	Local tax is allocated to the jurisdiction in which the fulfillment center is located
Online – Order is placed or downloaded in California	California Fulfillment Center	Shipped to California Customer	Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed
Online	Out of State Fulfillment Center	Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	Out of State Fulfillment Center	Picked Up In-Store (Click & Collect)	Local tax is allocated to the countywide pool based on point of delivery
Online	California Fulfillment Center Owned and Operated by Third Party Vendor	Drop-Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	In-Store (Goods withdrawn from store inventory)	Shipped to California Customer	Local Tax is allocated to the jurisdiction where the store is located
Online	In-Store (Goods withdrawn from store inventory)	Picked Up In-Store (Click & Collect)	Local Tax is allocated to the jurisdiction where the store is located
In-Store	In-Store (Goods withdrawn from store inventory)	Over the Counter	Local Tax is allocated to the jurisdiction where the store is located

Courtesy of HdL Companies

CaliforniaCityFinance.com

Tax Incentive Programs, Sales Tax Sharing Agreements

In recent years, especially since Proposition 13 in 1978, local discretionary (general purpose revenues) have become more scarce. At the same time, options and procedures for increasing revenues have become more limited. One outcome of this in many areas has been a greater competition for sales and use tax revenues. This has brought a rise in arrangements to encourage certain land use development with rebates and incentives which exploit California's odd origin sales tax sourcing rules.

The typical arrangement is a sales tax sharing agreement in which a city provides tax rebates to a company that agrees to expand their operations in the jurisdiction of the city. Under such an arrangement, the company generally agrees to make a specified amount of capital investment and create a specific number of jobs over a period of years in exchange for specified tax breaks, often property tax abatement or some sort of tax credit. In some cases, this has simply taken the form of a sales office, while customers and warehouses and the related economic activity are disbursed elsewhere in the state. In some cases the development takes the form of warehouses, in which the sales inventory, owned by the company, is housed.⁶

Current sales tax incentive agreements in California rebate amounts ranging from 50% to 85% of sales tax revenues back to the corporations.

Today, experts familiar with the industry believe that between 20% to 30% of local Bradley-Burns sales taxes paid by California consumers is diverted from local general funds back to corporations; over \$1 billion per year.

The Source of Origin Based Sourcing Problems

Where other than over-the-counter sales are concerned origin sourcing often causes a concentration of large amounts of tax revenue in one location, despite the fact that the economic activity and service impacts are also occurring in other locations.

The large amounts of revenue concentrated in a few locations by California's "warehouse rule" origin sourcing causes a concentration of revenue far in excess of the service costs associated with the development.

In order to lure jobs and tax revenues to their communities, some cities have entered into rebate agreements with corporations. This has grown to such a problem, that 20% to 30% of total local taxes paid statewide are being rebated back to corporations rather than funding public services.

Moving to Destination Sourcing: The Concept⁷

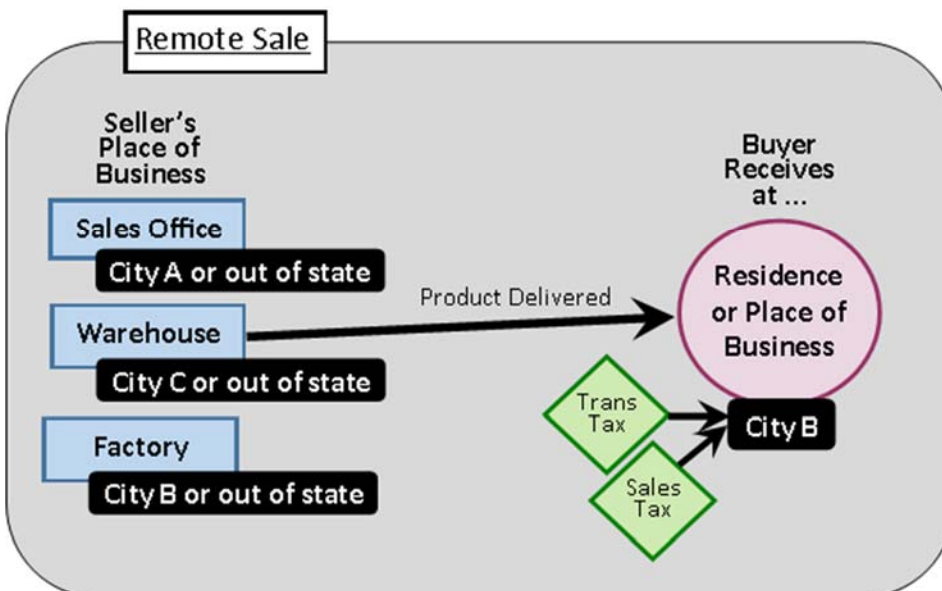
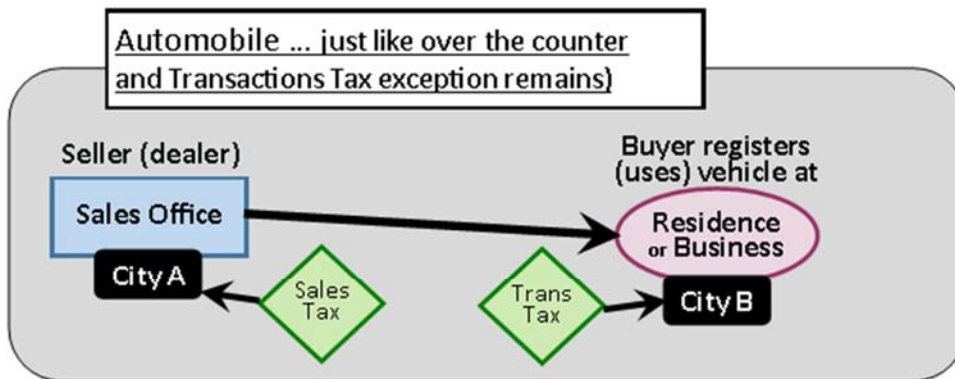
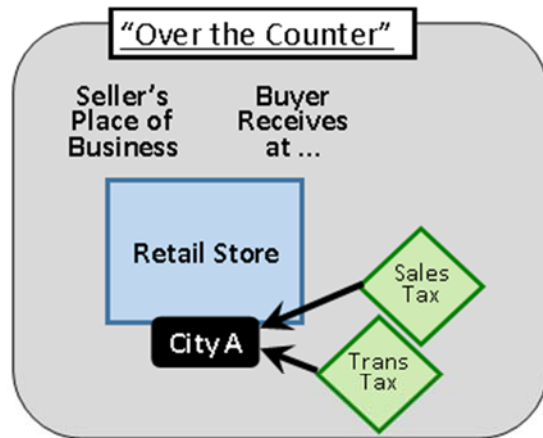
A change from origin sourcing rules to destination sourcing rules for the local tax component of California's sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

A change from origin based sourcing to destination based sourcing would have no effect on state tax collections. However, it would alter the allocations of local sales and use tax revenues among local agencies. Most retail transactions including dining, motor fuel purchases, and in-store purchases would not be affected. But in cases where the property is received by the purchaser in a different jurisdiction than where the sales agreement was negotiated, there would be a different allocation than under the current rules.

⁶ See Jennifer Carr, "Origin Sourcing and Tax Incentive Programs: An Unholy Alliance" Sales Tax Notes; May 27, 2013.

⁷ The same issues that are of concern regarding the local sales tax do not apply to California's Transactions and Use Taxes ("Add-on sales taxes") as these transactions, when not over the counter, are generally allocated to the location of use or, as in the case of vehicles, product registration. There is no need to alter the sourcing rules for transactions and use taxes.

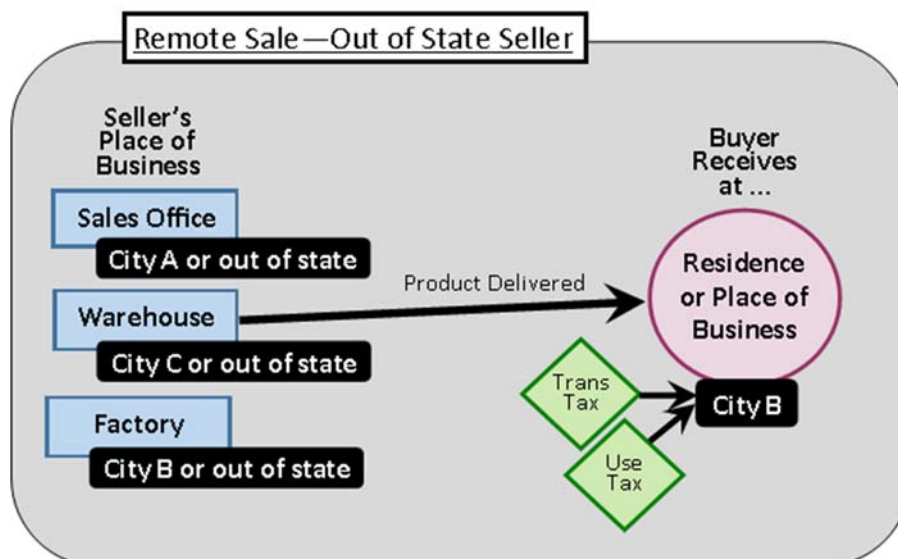
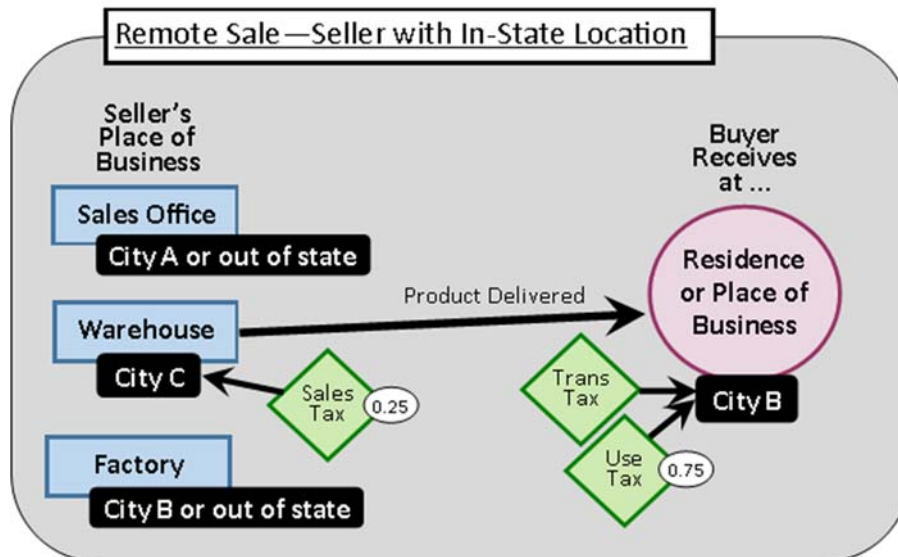
Destination Sourcing Scenario 1: Full-On



CaliforniaCityFinance.com

Destination Sourcing Scenario 2: Split Source

- Same as now for “over the counter” and automobile.
- Leave 0.25% on current seller if instate (origin)
- Could be phased in.



mjgc

CaliforniaCityFinance.com

RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES")
CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES
FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL
SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE
PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO
CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST
CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT
AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of "siting" the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines "out-of-state" online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale ("situs") as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being ~~entirely~~ allocated to ~~the specific city~~ cities where ~~the~~ warehouse fulfillment centers ~~is-are~~ located as opposed to going into ~~a~~ countywide pools that ~~is are~~ shared with all jurisdictions in ~~those counties~~ that County, as was done previously; and

WHEREAS, this all-or-nothing ~~change for the~~ allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue ~~from the retailer~~ that was once spread amongst all cities in countywide pools is now concentrated in select cities that host ~~a~~ fulfillment centers; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting ~~a 1 million square foot~~ fulfillment centers, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering products from those that centers now receive no Bradley Burns revenue ~~from the center's sales activity~~ despite also experiencing the impacts created by the m center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECCESARY FUNDING FOR CUPC TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QAULITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETLY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUTT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials:

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the California Public Utilities Commission for operational safety and maintenance; and

WHEREAS, the California Public Utilities Commission (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Annual Conference on September 24, 2021, in Sacramento, that the League calls for the Governor and the Legislature to work with the League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.

Background Information to Resolution

Source: City of South Gate

Background:

The State of California has over 6,000 miles of rail lines, with significant amount running through communities that are either economically disadvantaged and/or disadvantaged communities of color. While the Federal Railroad Administration (FRA) has primary oversight of rail operations, they delegate that obligation to the State of California for lines within our State. The administration of that oversight falls under the California Public Utilities Commission (CPUC). The CPUC has only 41 inspectors covering those 6,000 miles of railroad lines in the State of California. Their primary task is ensuring equipment, bridges and rail lines are operationally safe.

The right-of-way areas along the rail lines are becoming increasingly used for illegal dumping, graffiti and homeless encampments. Rail operators have admitted that they have insufficient funds set aside to clean up or sufficiently police these right-of-way areas, despite reporting a net income of over \$13 billion in 2020. CPUC budget does not provide the resources to oversee whether rail operators are properly managing the right-of-way itself.

The City of South Gate has three rail lines traversing through its city limits covering about 4 miles. These lines are open and inviting to individuals to conduct illegal dumping, graffiti buildings and structures along with inviting dozens of homeless encampments. As private property, Cities like ourselves cannot just go upon them to remove bulky items, trash, clean graffiti or remove encampments. We must call and arrange for either our staff to access the site or have the rail operator schedule a cleanup. This can take weeks to accomplish, in the meantime residents or businesses that are within a few hundred feet of the line must endure the blight and smell. Trash is often blown from the right-of-way into residential homes or into the streets. Encampments can be seen from the front doors of homes and businesses.

South Gate is a proud city of hard working-class residents, yet with a median household income of just \$50,246 or 65% of AMI for Los Angeles County, it does not have the financial resources to direct towards property maintenance of any commercial private property. The quality of life of communities like ours should not be degraded by the inactions or lack of funding by others. Cities such as South Gate receive no direct revenue from the rail operators, yet we deal with environmental impacts on a daily basis, whether by emissions, illegal dumping, graffiti or homeless encampments.

The State of California has record revenues to provide CPUC with funding nor only for safety oversight but ensuring right-of-way maintenance by operators is being managed properly. Rail Operators should be required to set aside sufficient annual funds to provide a regular cleanup of their right-of-way through the cities of California.



LETTERS OF CONCURRENCE
Resolution No. 2

League of California Cities Staff Analysis on Resolution No. 2

Staff: Damon Conklin, Legislative Affairs, Lobbyist
Jason Rhine, Assistant Director, Legislative Affairs
Caroline Cirrincione, Policy Analyst

Committees: Transportation, Communications, and Public Works
Housing, Community, and Economic Development

Summary:

The City of South Gate submits this resolution, which states the League of California Cities should urge the Governor and the Legislature to provide adequate regulatory authority and necessary funding to assist cities with railroad right-of-way areas to address illegal dumping, graffiti, and homeless encampments that proliferate along the rail lines and result in public safety issues.

Background:

California Public Utilities Commission (CPUC) Railroad Oversight

The CPUC's statewide railroad safety responsibilities are carried out through its Rail Safety Division (RSD). The Railroad Operations and Safety Branch (ROSB), a unit of RSD, enforces state and federal railroad safety laws and regulations governing freight and passenger rail in California.

The ROSB protects California communities and railroad employees from unsafe practices on freight and passenger railroads by enforcing rail safety laws, rules, and regulations. The ROSB also performs inspections to identify and mitigate risks and potential safety hazards before they create dangerous conditions. ROSB rail safety inspectors investigate rail accidents and safety-related complaints and recommend safety improvements to the CPUC, railroads, and the federal government as appropriate.

Within the ROSB, the CPUC employs 41 inspectors who are federally certified in the five Federal Railroad Administration (FRA) railroad disciplines, including hazardous materials, motive power and equipment, operations, signal and train control, and track. These inspectors perform regular inspections, focused inspections, accident investigations, security inspections, and complaint investigations. In addition, the inspectors address safety risks that, while not violations of regulatory requirements, pose potential risks to public or railroad employee safety.

CPUC's Ability to Address Homelessness on Railroads

Homeless individuals and encampments have occupied many locations in California near railroad tracks. This poses an increased safety risk to these homeless individuals of being struck by trains. Also, homeless encampments often create unsafe work environments for railroad and agency personnel.

While CPUC cannot compel homeless individuals to vacate railroad rights-of-way or create shelter for homeless individuals, it has the regulatory authority to enforce measures that can reduce some safety issues created by homeless encampments. The disposal of waste materials or other disturbances of walkways by homeless individuals can create tripping hazards in the vicinity of railroad rights-of-way. This would cause violations of [Commission GO 118-A](#), which sets standards for walkway surfaces alongside railroad tracks. Similarly, tents, wooden structures, and miscellaneous debris in homeless encampments can create violations of

[Commission GO 26-D](#), which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

Homelessness in California

According to the [2020 Annual Homeless Assessment Report \(AHAR\)](#) to Congress, there has been an increase in unsheltered individuals since 2019. More than half ([51 percent or 113,660 people](#)) of all unsheltered homeless people in the United States are found in California, about four times as high as their share of the overall United States population.

Many metro areas in California lack an adequate supply of affordable housing. This housing shortage has contributed to an increase in homelessness that has spread to railroad rights-of-way. Homeless encampments along railroad right-of-way increase the incidents of illegal dumping and unauthorized access and trespassing activities. Other impacts include train service reliability with debris strikes, near-misses, and trespasser injuries/fatalities. As of April 2021, there have been 136 deaths and 117 injuries reported by the [Federal Railroad Administration](#) over the past year. These casualties are directly associated with individuals who trespassed on the railroad.

Cities across the state are expending resources reacting to service disruptions located on the railroad's private property. It can be argued that an increase in investments and services to manage and maintain the railroad's right-of-way will reduce incidents, thus enhancing public safety, environmental quality, and impacts on the local community.

State Budget Allocations – Homelessness

The approved State Budget includes a homelessness package of \$12 billion. This consists of a commitment of \$1 billion per year for direct and flexible funding to cities and counties to address homelessness. While some details related to funding allocations and reporting requirements remain unclear, Governor Newsom signed AB 140 in July, which details key budget allocations, such as:

- \$2 billion in aid to counties, large cities, and Continuums of Care through the Homeless Housing, Assistance and Prevention grant program (HHAP);
- \$50 million for Encampment Resolution Grants, which will help local governments resolve critical encampments and transitioning individuals into permanent housing; and
- \$2.7 million in onetime funding for Caltrans Encampment Coordinators to mitigate safety risks at encampments on state property and to coordinate with local partners to connect these individuals to services and housing.

The Legislature additionally provided \$2.2 billion specifically for Homekey with \$1 billion available immediately. This funding will help local governments transition individuals from Project Roomkey sites into permanent housing to minimize the number of occupants who exit into unsheltered homelessness.

With regards to this resolution, the State Budget also included \$1.1 billion to clean trash and graffiti from highways, roads, and other public spaces by partnering with local governments to pick up trash and beautify downtowns, freeways, and neighborhoods across California. The program is expected to generate up to 11,000 jobs over three years.

Cities Railroad Authority

A city must receive authorization from the railroad operator before addressing the impacts made by homeless encampments because of the location on the private property. Additionally, the city

must coordinate with the railroad company to get a flagman to oversee the safety of the work crews, social workers, and police while on the railroad tracks.

A city may elect to declare the encampment as a public nuisance area, which would allow the city to clean up the areas at the railroad company's expense for failing to maintain the tracks and right-of-way. Some cities are looking to increase pressure on railroad operators for not addressing the various homeless encampments, which are presenting public safety and health concerns.

Courts have looked to [compel railroad companies](#) to increase their efforts to address homeless encampments on their railroads or [grant a local authority's application](#) for an Inspection and Abatement Warrant, which would allow city staff to legally enter private property and abate a public nuisance or dangerous conditions.

In limited circumstances, some cities have negotiated Memoranda of Understandings (MOU) with railroad companies to provide graffiti abatement, trash, and debris removal located in the right-of-way, and clean-ups of homeless encampments. These MOUs also include local law enforcement agencies to enforce illegally parked vehicles and trespassing in the railroad's right-of-way. MOUs also detailed shared responsibility and costs of providing security and trash clean-up. In cases where trespassing or encampments are observed, the local public works agency and law enforcement agency are notified and take the appropriate measures to remove the trespassers or provide clean-up with the railroad covering expenses outlined in the MOU.

Absent an MOU detailing shared maintenance, enforcement, and expenses, cities do not have the authority to unilaterally abate graffiti or clean-up trash on a railroad's right-of-way.

Fiscal Impact:

If the League of California Cities were to secure funding from the state for railroad clean-up activities, cities could potentially save money in addressing these issues themselves or through an MOU, as detailed above. This funding could also save railroad operators money in addressing concerns raised by municipalities about illegal dumping, graffiti, and homeless encampments along railroads.

Conversely, if the League of California Cities is unable to secure this funding through the Legislature or the Governor, cities may need to consider alternative methods, as detailed above, which may include significant costs.

Existing League Policy:

Public Safety:

Graffiti

The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

Transportation, Communications, and Public Works

Transportation

The League supports efforts to improve the California Public Utilities Commission's ability to respond to and investigate significant transportation accidents in a public and timely manner to improve rail shipment, railroad, aviation, marine, highway, and pipeline safety

Housing, Community, and Economic Development

Housing for Homeless

Homelessness is a statewide problem that disproportionately impacts specific communities. The state should make funding and other resources, including enriched services, and outreach and case managers, available to help assure that local governments have the capacity to address the needs of the homeless in their communities, including resources for regional collaborations.

Homeless housing is an issue that eludes a statewide, one-size-fits-all solution, and collaboration between local jurisdictions should be encouraged.

Staff Comments:

Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment A.

The committee may also wish to consider clarifying language around regulatory authority and funding to assist cities with these efforts. The resolution asks that new investments from the state be sent to the CPUC to increase their role in managing and maintaining railroad rights-of-ways and potentially to cities to expand their new responsibility.

The committee may wish to specify MOUs as an existing mechanism for cities to collaborate and agree with railroad operators and the CPUC on shared responsibilities and costs.

Support:

The following letters of concurrence were received:

City of Bell Gardens
City of Bell
City of Commerce
City of Cudahy
City of El Segundo
City of Glendora
City of La Mirada
City of Paramount
City of Pico Rivera
City of Huntington Park
City of Long Beach
City of Lynwood
City of Montebello

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE ~~NECCESARY~~ NECESSARY FUNDING FOR ~~CUPC~~ THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE ~~QAULTY~~ QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC ~~SAFETLY~~ SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the ~~California Public Utilities Commission~~ CPUC for operational safety and maintenance; and

WHEREAS, the ~~California Public Utilities Commission (CPUC)~~ is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well as a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Cal Cities Annual Conference on September 24, 2021, in Sacramento, that ~~the~~ Cal Cities League calls for the Governor and the Legislature to work with ~~the~~ Cal Cities League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. ~~The~~ Cal Cities League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.



RECEIVED

SEP 09 2021

City of El Centro
City Clerk

**2020-2021
CAL CITIES OFFICERS**

President

Cheryl Viegas Walker
Mayor,
El Centro

First Vice President

Cindy Silva
Council Member,
Walnut Creek

Second Vice President

Ali Taj
Council Member,
Artesia

Immediate Past President

John F. Dunbar
Mayor,
Yountville

**Executive Director
and CEO**

Carolyn M. Coleman

TO: Mayors, City Managers, and City Clerks

RE: Cal Cities 2021 Annual Conference
Notice of Proposed Bylaws Amendments to be Considered at General Assembly

During a special board meeting on August 17, the League of California Cities Board of Directors approved proposed bylaws amendments to enhance Cal Cities' governance and effectuate technical changes. The proposed bylaws amendments will go before the General Assembly for a vote at the Annual Business meeting on September 24 during the Annual Conference and Expo in Sacramento. At least two-thirds of the General Assembly must vote in favor of the proposed bylaws amendments in order for them to take effect.

Proposed Bylaws: The enclosed Proposed Bylaws Amendments packet includes background information, a resolution for adopting the bylaws amendments, a summary of the proposed changes to the bylaws, and a full redlined version of the proposed changes to the bylaws. Specifically, the proposed bylaws amendments would accomplish the following:

1. Recognize the Cal Cities diversity caucuses in the Cal Cities bylaws to reflect the full contribution the caucuses make to Cal Cities' mission and vision.
2. Adjust the composition of the Board to achieve a higher impact and be more representative by adding Director seats to the Board for each of the five Diversity Caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Cal Cities Board.
3. Update the League of California Cities' moniker to "Cal Cities" to promote consistency.
4. Make various minor technical corrections.

Voting Delegates: In order to vote during the General Assembly, your city council must designate a voting delegate. If your city has already made its appointment for the 2021 Annual Conference and provided your city's voting delegate information to Cal Cities, your delegate may pick up his/her credentials upon arriving at the conference. If your city has not made its appointment, please complete the Voting Delegate form located on the Cal Cities website www.calcities.org/resolutions under the "voting delegates" section, and email it to Darla Yacub at dyacub@calcities.org by Wednesday, September 15.

Cities are encouraged to consider the proposed bylaws amendments prior to their delegate's vote at the Closing Luncheon and General Assembly, which will be held on Friday, September 24, at 12:30 p.m. Should you have questions regarding the enclosed bylaws amendment materials or General Assembly, please contact Norman Copping at ncoppinger@calcities.org or by phone at 916/658-8277.



LEAGUE OF
**CALIFORNIA
CITIES**

PROPOSED BYLAWS AMENDMENTS

***2021 Annual Conference
Sacramento, CA***

***General Assembly
September 24, 2021***



**2020-2021
CAL CITIES OFFICERS**

President

Cheryl Viegas Walker
Mayor,
El Centro

First Vice President

Cindy Silva
Council Member,
Walnut Creek

Second Vice President

Ali Taj
Council Member,
Artesia

Immediate Past President

John F. Dunbar
Mayor,
Yountville

**Executive Director
and CEO**

Carolyn M. Coleman

To: Cal Cities General Assembly
From: Cheryl Viegas Walker, President
Carolyn Coleman, Executive Director
Date: September 2021
Re: Proposed Cal Cities Bylaws Amendments

On August 17, 2021, the League of California Cities (Cal Cities) Board of Directors (Board) voted to present proposed bylaws amendments to the General Assembly at the 2021 Cal Cities' Annual Conference. This document describes the background of the proposed amendments, summarizes the proposed amendments, and explains the procedure for adopting amendments to the bylaws.

Background

Beginning in 2017, the Board directed Cal Cities to undertake a strategic planning process that resulted in the adoption of the "Powering Up for California Cities Strategic Growth Plan 2018-2021" (Strategic Growth Plan). The Strategic Growth Plan set forth goals to enhance Cal Cities' governance to: (a) achieve even higher levels of engagement and effectiveness; (b) ensure optimal engagement by members and their effectiveness in supporting fulfillment of Cal Cities' mission; and (c) ensure the pathway to leadership is transparent and inclusive.

In furtherance of its governance goals, the Board engaged an association governance consultant (Consultant) to evaluate the Cal Cities governance system and make recommendations for enhancing Cal Cities' governance. The Consultant gathered and considered input from more than 350 Cal Cities members through advisory groups, roundtable discussions, interviews, and surveys. On July 8, 2021, the Consultant produced a report (Governance Report) detailing 49 recommendations to the Board to deepen the engagement of Cal Cities' Member Cities and ensure Cal Cities' governance is operating at peak performance.

The Governance Report included findings indicating that Cal Cities is a strong organization, with a high level of member engagement, but also highlighted opportunities for Cal Cities to enhance its governance. The opportunities for enhancement included: (a) improving the clarity, ease, and consistency in how the governance system works; (b) clarifying the guidelines for position qualifications and performance expectations; (c) identifying ways to deepen member engagement and enhance the quality of the experience of involvement; and (d) ensuring Cal Cities has an intentional, consistent organizational culture at all levels of the governance system.

The findings and recommendations from the report were presented at the July Cal Cities Board meeting, and following a robust exchange of ideas and input, the Board decided to move forward with many of the recommendations, referred other recommendations to a Board subcommittee for further study, and deferred consideration of still other recommendations. Two of the approved recommendations adopted by the Board require bylaws amendments; specifically, the recommendations to adjust the composition of the Board, and fully recognize the Diversity Caucuses in the Cal Cities bylaws.¹

In addition to governance goals, the Strategic Growth Plan also set forth goals to increase the visibility of Cal Cities to: (a) ensure that Cal Cities conveys a strong and consistent brand to all audiences; and (b) elevate the voice of Cal Cities across all channels, including media, on priority issues for California cities. In furtherance of its visibility goals, Cal Cities adopted the abbreviated moniker “Cal Cities” to identify and differentiate Cal Cities as the voice of California cities on priority issues. To promote consistency, the Cal Cities bylaws should be amended to change the League of California Cities’ moniker to Cal Cities.

Finally, in reviewing the Cal Cities bylaws amendments staff identified various minor technical corrections to the bylaws.

Summary of Amendments

At this time, the Board recommends for adoption the following amendments to the bylaws:

1. Adjust the composition of the Board to achieve a higher impact and be more representative by adding Director seats to the Board for each of the five Diversity Caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Cal Cities Board.
2. Recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws to reflect the full contribution the caucuses make to Cal Cities’ mission and vision.
3. Update the League of California Cities’ moniker to Cal Cities.
4. Make various minor technical corrections.

While the work to enhance Cal Cities’ governance is a process that will be implemented in phases over several years, the Board believes these proposed amendments constitute an important first step towards ensuring Cal Cities’ governance is operating at peak performance.

¹ Cal Cities Diversity Caucuses are currently recognized through Board Policy. See page 35 of the Board Manual, available at [https://www.calcities.org/docs/default-source/default-document-library/2016-board-manual-\(b15\).pdf](https://www.calcities.org/docs/default-source/default-document-library/2016-board-manual-(b15).pdf).

Procedure for Amending the Cal Cities Bylaws

Amendments to the Cal Cities bylaws may be proposed by the Cal Cities Board and may be adopted: (a) by vote of the Cal Cities General Assembly, or (a) by mail ballot to member cities.² In this case, the amendments will be considered by the General Assembly. Bylaws amendments need to be approved by 2/3 of those voting,³ and the number that constitutes 2/3 of those voting (1) cannot be less than a majority of the voting delegates present if there is a quorum at the time the vote is taken;⁴ or (2) cannot be less than a majority of a quorum if the meeting started with a quorum but a quorum is not present when the vote is taken.⁵

If approved by the General Assembly, the amendments to the bylaws will go into effect after the expiration of a 60-day protest period.⁶ If, within 60 days after the adoption of the amendments, one-third or more of the Member Cities submit a written protest against the amendments, the amendments are automatically suspended until the next Annual Conference, when they may be taken up again for reconsideration and vote.⁷

² Article XVI, Section 1.

³ Article XVI, Section 2.

⁴ Cal. Corp. Code 7512, subd. (a).

⁵ Cal. Corp. Code 7512, subd. (d).

⁶ Article XVI, section 6.

⁷ Article XVI, section 7.

**RESOLUTION RELATING TO AMENDMENTS TO THE CAL CITIES BYLAWS
(2/3 vote at General Assembly required to approve)**

Source: League of California Cities Board of Directors

WHEREAS, the League of California Cities (Cal Cities) is a nonprofit mutual benefit corporation under California law and, as such, is governed by corporate bylaws; and

WHEREAS, the Cal Cities Board of Directors (Board) periodically reviews the Cal Cities bylaws for issues of clarity, practicality, compliance with current laws, and responsiveness to membership needs and interests; and

WHEREAS, beginning in 2017, the Board directed Cal Cities to undertake a strategic planning process that resulted in the adoption of the "Powering Up for California Cities Strategic Growth Plan 2018-2021" (Strategic Growth Plan); and

WHEREAS, the Strategic Growth Plan set forth goals to enhance Cal Cities' governance to: (a) achieve even higher levels of engagement and effectiveness; (b) ensure optimal engagement by members and effectiveness in supporting fulfillment of the Cal Cities' mission; and (c) ensure the pathway to leadership is transparent and inclusive; and

WHEREAS, in furtherance of its governance goals, the Board engaged an expert in association governance (Consultant) who gathered and considered input from more than 350 Cal Cities members through advisory groups, roundtable discussions, interviews, and surveys to evaluate the Cal Cities governance system and make recommendations for enhancing Cal Cities' governance; and

WHEREAS, the Board approved certain recommendations made by the Consultant as a result of that governance assessment, which identified amendments to the bylaws that: (a) fully recognize the Cal Cities diversity caucuses; and (b) adjust the composition of the Board by adding Director seats to the Board for each of the five caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Board; and

WHEREAS, Corporations Code section 7222(c) provides that a bylaws amendment that reduces the number of directors or the number of classes of directors does not remove any director prior to the expiration of the director's term of office; and

WHEREAS, the Directors currently serving as Directors of Cal Cities by virtue of their service as Directors on the National League of Cities Board will continue to serve on the Cal Cities Board until the expiration of their terms and the bylaws amendment providing for one non-voting advisor to the Cal Cities Board to be appointed if members of the National League of Cities Board of Directors hold an office in a Member City will not become effective until December 1, 2022; and

WHEREAS, the Strategic Growth Plan also set forth goals to increase the visibility of Cal Cities to: (a) ensure that Cal Cities conveys a strong and consistent brand to all audience; and (b) elevate the voice of Cal Cities across all channels, including media, on priority issues for California cities; and

WHEREAS, in furtherance of its visibility goals, the Board engaged a strategic communications expert to work alongside Cal Cities staff to assess the Cal Cities' brand; and

WHEREAS, that assessment indicated that numerous abbreviations for the "League of California Cities" were diluting its brand; and

WHEREAS, Cal Cities thus adopted the abbreviated moniker "Cal Cities" to identify and differentiate Cal Cities across all channels, including media, as the voice of California cities on priority issues; and

WHEREAS, the Cal Cities Board offers the following proposed amendments and additions to the bylaws, as summarized in the attached Summary of Proposed Bylaw Changes, and as set forth in full in the attached redlined version of the bylaws referenced below, both of which are hereby incorporated by reference, which (1) fully recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws; (2) adjust the composition of the Board by adding Director seats to the Board for each of the five caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Board; (3) change the League of California Cities' moniker to Cal Cities; and (4) make various minor technical corrections; and

now therefore, be it

RESOLVED, by the General Assembly of the League of California Cities assembled during the Annual Conference in Sacramento on September 24, 2021, that Cal Cities makes the specified changes to the Cal Cities bylaws set forth in full in the attached redlined version of the bylaws, and as summarized in the attached Summary of Proposed Bylaws Changes.

See ATTACHMENT 1 for a summary of the proposed bylaws changes.

See ATTACHMENT 2 for full redlined version of the proposed changes to the bylaws.

ATTACHMENT 1
Summary of Proposed Bylaws Changes

Summary of Proposed Bylaws Changes

1. Fully Recognize the Cal Cities Diversity Caucuses in the Cal Cities Bylaws.

- Add a new Article XI, formally recognizing the caucuses in the bylaws consistent with how departments and divisions are recognized. Provide default rules for caucus structure and process where the caucuses do not have bylaws or where caucus bylaws are silent.
- Make conforming changes as follows:
 - Amend Article VI, Section 3, Subdivisions (a) and (b) to allow for one elected official from each caucus to be appointed to the resolutions committee by their respective caucus, or by the Cal Cities President in the event a caucus does not make its appointment.
 - Amend Article VII, Section 10, Subdivision (c) to provide that one member of each standing policy committee shall be appointed by each caucus president.
 - Amend new Article XII (formerly, Article XI), Section 1, Subdivision (a) to specify that a majority of the members of a caucus constitutes a quorum for the purpose of making decisions.
 - Amend new Article XII (formerly, Article XI), Section 2, Subdivision (a) to provide that all voting in a caucus meeting is by voice vote.
 - Amend new Article XII (formerly, Article XI), Section 4 to provide that representatives of each Member City present and in good standing at a caucus meeting collectively cast one vote, except as otherwise provided in caucus bylaws.
 - Amend new Article XII (formerly, Article XI), Section 5, Subdivision (d) to allow caucuses to use mail balloting as specified in their bylaws.
 - Amend Article XIII (formerly, Article XII), Section 1, Subdivision (a) to provide that persons must officially be in city service in a Member City in order to be eligible to hold office in a caucus.
 - Amend Article XIII (formerly, Article XII), Section 2, Subdivisions (c) and (d) to clarify the effective date of a caucus office resignation or vacancy.
 - Amend Article XIV (formerly, Article XIII), Section 2, Subdivision (b) to provide that a copy of Cal Cities' budget shall be sent to each caucus president who shall make it available to caucus members.

- Amend Article XVI (formerly, Article XV), Section 5 to provide that Robert's Rules of Order or other parliamentary rules adopted by the Cal Cities Board shall prevail at caucus meetings.

2. **Adjust the Composition of the Board.**

- **Add directors from each diversity caucus:**
 - Amend Article VII, Section 2, Subdivision (d) to add one director from each of the five caucuses to the Board for a term of two years.
 - Make conforming changes to the following sections:
 - Amend Article VII, Section 3, to stagger the terms of the caucus directors so that the terms of approximately one-half of the Board continue to expire each year. Provide that the terms for the directors from the African American, Asian Pacific Islander, and LGBTQ caucuses expire in even-numbered years, and terms of the directors from the Latino and Women's caucuses expire in odd-numbered years.
 - Amend Article VII, Section 4, Subdivision (c) to provide that the initial caucus director shall either be the caucus president or another caucus member appointed by the caucus president, and thereafter, that caucus directors are to be elected by their caucuses.
 - Amend Article VII, Section 4, new Subdivision (f) (formerly Subdivision (e)) to provide that newly created caucuses can elect a representative to the Board.
 - Amend Article VII, Section 6, Subdivision (c) to provide that, if a vacancy occurs in a caucus directorship, the caucus officers may elect a new director.
- **Transition members of the National League of Cities (NLC) Board of Directors from Cal Cities Directors to one non-voting advisor to the Board:**
 - Delete Article VII, Section 2, Subdivision (e) which provides that directors on the NLC Board who hold an office in a Member City are directors on the Cal Cities Board, and make a conforming change as follows:
 - Delete the language from Article VII, Section 2, Subdivision (g) which provides that directors that sit on the Cal Cities Board by virtue of their directorship on the NLC Board shall serve until their terms on the NLC Board conclude.

- Add new Section 17 to Article VII to provide that effective December 1, 2022 (after the terms of the currently serving NLC Board directors expire), if members of the NLC Board hold office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board for a term that coincides with their service on the NLC Board. Provide further that such non-voting advisor shall be invited to attend regularly-scheduled Board meetings, but shall not attend emergency meetings and/or closed/executive sessions unless otherwise determined by the Board.
- 3. **Change the League of California Cities Moniker.** Amend Article I, Section 1 to read, "This corporation is the League of California Cities (~~the League~~) (Cal Cities)" and make conforming changes to replace "League" with "Cal Cities" throughout the entirety of the bylaws.
- 4. **Make Technical Corrections.**
 - Amend the following sections of the bylaws to correct technical errors and typos:
 - Article I, Section 3: change "to" to "do"
 - Article II, Section 2(a): change "Advocate legislation" to "Advocate for legislation"
 - Article II, Section 2(g): change "member cities" to "Member Cities"
 - Article III, Section 3: change "state and federal laws" to "state or federal laws"
 - Article V, Section 3(b): changed "Designating" to "Designated"
 - Article VI: clarify that "Petitioned Resolutions" is a defined term in Section 2 and capitalize "Petitioned Resolutions" in Section 4(a), Section 5(f), and Section 5(g)
 - Article VI, Section 5(d): change "late" to "later"
 - Article VII, Section 4(d): change "organization" to "organizational"
 - Article VII, Section 4(f): add "the" before "nominating committee"
 - Article VII, Section 10(c)(ii): capitalize "President"
 - Article IX, Section 7(c)(ii): correct cross-reference from 4(d) to 4(e)
 - Article X, Section 2(c): change "two years established" to "two years as established"
 - Article X, Section 2(d): capitalize "Director"
 - Article XII, Section 4: change "representatives" to "representative" and "cast" to "casts"
 - Article XVI, Section 5: add "and applicable law"
 - Article XVIII, Section 3(c): correct cross-reference from "Article XI" to "Article XII"
 - Article XII, Section 2(b): change "three or Member Cities" to "three or more Member Cities"

ATTACHMENT 2
Full Redlined Version of Proposed Changes to Bylaws

Bylaws for the League of California Cities

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Bylaws for the League of California Cities¹

Article I: General

Section 1: Corporation Name.

This corporation is the League of California Cities (~~Cal Cities~~~~the League~~).

Section 2: Offices.

The principal office of this corporation shall be located in Sacramento, California. The ~~League-Cal Cities~~ Board of Directors (~~League-Cal Cities~~ Board) may establish such other ~~League-Cal Cities~~ offices as it deems necessary to the effective conduct of ~~League-Cal Cities~~ programs.

Section 3: Compliance with Governing Laws.

In all matters not specified in these bylaws, or in the event these bylaws ~~do~~ not comply with applicable law, the California Nonprofit Corporation Law applies.

Article II: Purpose and Objectives

Section 1: General.

~~The League's~~~~Cal Cities'~~ purpose is to strengthen and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

Section 2: Objectives.

~~The League's~~~~Cal Cities'~~ objectives are the following:

- (a) Advocate ~~for~~ legislation that results in benefits to Member Cities,
- (b) Communicate to Member Cities and the public on issues related to the general welfare of citizens in California cities,
- (c) Pursue strong intergovernmental relationships to promote the well being of California cities,
- (d) Organize educational opportunities, such as conferences of city officials,

¹ Note: All footnotes are for reference and explanation only and are not part of the bylaws text.

- (e) Stimulate greater public interest and more active civic consciousness as to the importance of cities in California's system of government,
- (f) Collect and disseminate information of interest to Member Cities, and
- (g) Engage the membership in a continuing analysis of the needs of ~~M~~member ~~C~~eities.

Article III: Membership

Section 1: Qualification.

- (a) **Cities.** Any city, or city and county, in California may, by the payment of annual dues prescribed in Article IV, become a Member City and as such is entitled to ~~League-Cal Cities~~ services and privileges.
- (b) **Elected and Appointed Officials.** All elected and appointed officials in Member Cities are members of ~~the LeagueCal Cities~~.

Section 2: Termination.

- (a) **Grounds for Termination.** Membership is suspended or terminated whenever any of the following occurs:
 - (i) The Member City resigns by giving written notice to ~~the LeagueCal~~ ~~Cities~~;
 - (ii) The Member City does not pay dues, fees or assessments in the amounts and terms set by the ~~League-Cal Cities~~ Board; or
 - (iii) An event occurs that makes the Member City ineligible for membership.
- (b) **Procedures for Termination.** ~~The LeagueCal~~ ~~Cities~~ shall give 15 days notice of any suspension or termination of membership and the reasons for such action, along with the opportunity to respond orally or in writing not less than five days before the effective date of the action.²

Section 3: Honorary Members.

Any person who has given conspicuous service for the improvement of city government may, by the vote of the ~~Cal Cities~~ ~~League~~ Board, be granted an honorary membership

² See Cal. Corp. Code § 7341(c) (requiring termination procedures be included in bylaws and specifying what constitutes a fair and reasonable procedure).

in ~~Cal Cities~~the League. All ex-presidents of ~~the League~~Cal Cities are Honorary Members. Honorary Members as such do not have a voice or vote in any of the meetings of ~~the League~~Cal Cities and do not have membership status in Cal Cities ~~the League~~ for purposes of state ~~and or~~ federal laws.

Section 4: Non-Liability.

No Member City is liable for the debts or obligations of ~~Cal Cities~~the League.

Article IV: Dues

Section 1: Establishment.

The ~~League~~Cal Cities Board establishes ~~the League's~~Cal Cities' dues annually according to city population. The population of each city is the most current population as determined by the California Department of Finance, Demographic Research Unit, or its successor agency or unit. If no successor agency or unit is named, the most current population used to determine dues shall be used to determine future dues until such time as these bylaws are amended to designate a new source for determining city population.

Section 2: Increase in Dues.

(a) Board Vote Requirement. Any increase in dues must be approved by the ~~League~~Cal Cities Board by a two-thirds vote. The Cal Cities~~League~~ Board's approval shall be accompanied by an explanation of the need for the increase, including but not limited to:

- (i) Increases in ~~the League's~~Cal Cities' costs related to general increases in the consumer price index or other factors; and/or
- (ii) The expansion of existing programs or initiation of new programs.

(b) Member City Ratification Requirement. Any dues increase that exceeds either the "consumer price index" for the preceding twelve months or five percent (whichever is greater) requires Member City ratification. In no event, however, shall the ~~League~~Cal Cities Board approve a dues increase in excess of ten percent without Member City ratification.

- (i) **"Consumer Price Index" Defined.** For purposes of this section, the consumer price index is the California consumer price index for all urban consumers calculated by the California Department of Industrial Relations or its state or federal successor.
- (ii) **Approval Threshold.** Member City ratification requires a majority of Member Cities casting votes.

(iii) **Mechanism for Seeking Approval.** The ratification may occur at ~~the League's~~Cal Cities' General Assembly (see Article V) or by using the mail balloting procedure (see Article XI, section 5).

(c) **Dues Cap.** In no event will a Member City's dues increase by more than \$5,000 per year.

Section 3: Delinquency.

Any Member City of ~~the League~~Cal Cities who is delinquent in dues, fees or assessments may be suspended or have that member's membership terminated as provided in Article III, section 2.

Article V: Membership Meetings

Section 1: Annual Conference.

(a) **Time and Place.** ~~The League's~~Cal Cities' regular Annual Conference is held at the time and place as the ~~League~~Cal Cities Board determines. In case of any unusual conditions or extraordinary emergency, the ~~League~~Cal Cities Board may, at its discretion, change the time or place of the meeting.

(b) **Conference Program Planning.** The ~~League~~Cal Cities Board shall establish an Annual Conference program planning process that provides for input from representative segments of Cal Cities' ~~the League's~~ membership.

Section 2: Special Meetings.

Special meetings of Cal Cities ~~the League~~ may be called by the ~~League~~Cal Cities Board and shall be called by the ~~League~~Cal Cities Board upon the written request of five percent or more of the Member Cities.³ Any written request by Member Cities shall describe the general nature of the business to be transacted and the text of any proposed resolution(s).

Section 3: City Delegates as General Assembly.

(a) **Designation.** Each Member City may, with the approval of the city council, designate a city official as the city's designated voting delegate and, in the event that the designated voting delegate is unable to serve in that capacity, up to two alternate voting delegates.

³ See Cal. Corp. Code § 7510 ("special meetings of members for any lawful purpose may be called by 5 percent or more of the members").

(b) **Membership Decision-making Body.** Designated ~~ed~~ing voting delegates (or their alternates) constitute ~~the League's~~Cal Cities' General Assembly.

(c) **Registration for Annual Conference.** For General Assemblies held in conjunction with the Annual Conference, designated voting delegates must register to attend the Annual Conference.

Section 4: Notice of Meetings.

(a) **General.** Notice shall be given to all Member Cities of the time and place of all regular and special meetings by faxing or mailing a written notice at least fifteen days prior to each meeting, or by publishing a notice of the meeting at least two weeks prior to the meeting in an official publication of Cal Cities~~the League~~; provided, however, that failure to receive such notice does not invalidate any proceedings at such meeting.

(b) **Special Notice Requirements for Special Meetings.** Any notice of the calling of a special meeting shall specify the purpose of the special meeting in such detail to enable Member Cities to determine whether they should attend. In the event a special meeting is requested by five percent or more of the Member Cities, the notice shall also set for the text of any proposed resolution(s).

Section 5: Parliamentarian.

The ~~League~~Cal Cities President shall appoint a Parliamentarian to resolve procedural issues at ~~the League's~~Cal Cities' General Assembly and in Resolutions Committee meetings.

Section 6: Credentials.

Designated voting delegates must register with the Credentials Committee. The Cal Cities~~League~~ President shall appoint a three-person Credentials Committee no later than the first day of the General Assembly. In case of dispute, this committee determines the right of a member to participate.

Article VI: Resolutions

Section 1: Role and Scope of Resolutions.

Resolutions adopted by ~~the League's~~Cal Cities' General Assembly and such League Cal Cities Board policies as are not inconsistent with such resolutions constitute League Cal Cities policy. All resolutions shall be germane to city issues.

Section 2: Origination.

Resolutions may originate from city officials, city councils, regional divisions, functional departments, caucuses, policy committees, or the League-Cal Cities Board or by being included in a petition signed by designated voting delegates of ten percent of the number of Member Cities (Petitioned Resolutions). Except for Petitioned Resolutions, all other resolutions must be submitted to the League-Cal Cities with documentation that at least five or more cities, or city officials from at least five or more cities, have concurred in the resolution.

Section 3: Resolutions Committee for Annual Conference Resolutions.

(a) **Resolutions Committee Composition.** The League-Cal Cities President establishes a Resolutions Committee sixty days prior to each Annual Conference, which committee shall consist of:

- (i) One elected official from each regional division, appointed by the regional division;
- (ii) One elected official from each policy committee, appointed by the policy committee;
- (iii) One member from each functional department, appointed by the department;
- (iv) One elected official from each caucus, appointed by the caucus; and
- (iv) Up to ten additional members (at least five of whom are elected officials) as the League-Cal Cities President deems necessary to achieve geographic and population balance, as well as recognize the multiplicity of city functions not represented by the other appointments, including, but not limited to, the perspectives of board and commission members as well as professional staff.

(b) **Presidential Appointments.** In the event a regional division, policy committee, ~~or~~ functional department, or caucus does not make its appointment to the Resolutions Committee, the League-Cal Cities President may make the appointment on the regional division's, policy committee's, ~~or~~ functional department's, or caucus's behalf.

(c) **Chair.** The League-Cal Cities President shall also appoint to the Resolutions Committee a committee chair and vice chair.

(d) **Minimum Committee Size and Composition.** In the event the full committee is not in attendance at the Annual Conference, the League-Cal Cities President shall appoint a sufficient number of city officials in attendance

to achieve a total of thirty. No less than two-thirds of the members of the Resolutions Committee shall be elected officials.

- (e) **Committee Consideration of Proposed Resolutions.** Except for resolutions of courtesy, commendation, appreciation or condolence, no resolution expressing the opinion or policy of the League-Cal Cities on any question may be considered or discussed by the League's-Cal Cities' General Assembly, unless it has been first submitted to, and reported on, by the Resolutions Committee.

Section 4: Procedure for Resolution Review for the Annual Conference.

- (a) **Timing.** Except for Ppetitioned Resolutions, all resolutions shall be submitted to the Resolutions Committee, at the League's-Cal Cities' headquarters, not later than sixty days prior to the opening session of the League's-Cal Cities' Annual Conference.

- (b) **Referral to Policy Committees.**

- (i) **Review and Recommendations.** Except for resolutions of courtesy, commendation, appreciation or condolence, all resolutions submitted to the Resolutions Committee shall be referred by the League-Cal Cities President to an appropriate policy committee for review and recommendation prior to the opening general session of the Annual Conference.
 - (ii) **Report to Resolutions Committee.** Policy committees shall report their recommendations on such resolutions to the Resolutions Committee. The inability of a policy committee to make a recommendation on any resolution does not preclude the Resolutions Committee from acting upon it.

Section 5: Resolutions Proposed by Petition for the Annual Conference.

- (a) **Presentation by Voting Delegate.** A designated voting delegate of a Member Ceity may present by petition a resolution to the League-Cal Cities President for consideration by the Resolutions Committee and the General Assembly at the Annual Conference. These resolutions are known as "Ppetitioned Resolutions."
- (b) **Contents.** The petition shall contain the specific language of the resolution and a statement requesting consideration by the League's-Cal Cities' General Assembly.

- (c) **Signature Requirements.** The petition shall be signed by designated voting delegates registered with the Credentials Committee who represent ten percent of the number of Member Cities.
- (d) **Time Limit for Presentation.** The signed petition shall be presented to the ~~League-Cal Cities~~ President no later than twenty-four hours prior to the time set for convening ~~the League's Cal Cities'~~ General Assembly.
- (e) **Parliamentarian Review.** If the ~~League-Cal Cities~~ President finds that the petition has been signed by designated voting delegates of ten percent of the number of Member Cities, the petition shall be reviewed by the Parliamentarian for form and substance. The Parliamentarian's report shall then be presented to the chair of the Resolutions Committee. Among the issues that may be addressed by the Parliamentarian's report is whether the resolution should be disqualified as being either:
- (i) Non-germane to city issues; or
 - (ii) Identical or substantially similar in substance to a resolution already under consideration.
- (f) **Disqualification.** The Resolutions Committee may disqualify a ~~P~~petitioned ~~R~~resolution as either being:
- (i) Non-germane to city issues; or
 - (ii) Identical or substantially similar in substance to a resolution already under consideration.
- (g) **Consideration by General Assembly.** The ~~P~~petitioned ~~R~~resolution and the action of the Resolutions Committee will be considered by ~~the League's Cal Cities'~~ General Assembly following consideration of other resolutions.
- (h) **Availability of List of Voting Delegates.** A list of voting delegates shall be made available during the Annual Conference to any designated voting delegate upon request.

Section 6: Special Meeting Resolution Procedures.

- (a) **Germane-ness.** All resolutions must be germane to the meeting purpose specified in the special meeting notice.
- (b) **Opportunity for Member Review.** All resolutions to be proposed during the General Assembly shall be available for membership review by electronic (for example, by posting on the ~~Cal CitiesLeague's~~ website) or other means at least 24 hours prior to the beginning of the special meeting.

- (c) **Parliamentarian Review.** The Parliamentarian shall review all proposed resolutions for form and substance. The Parliamentarian's report shall be presented to the General Assembly.

Section 7: Full Debate.

The opportunity for full and free debate on each resolution brought before the General Assembly shall occur prior to consideration of a resolution.

Article VII: Board of Directors

Section 1: Role and Powers; Board Diversity Policy.

- (a) Subject to the provisions and limitations of California Nonprofit Corporation Law, any other applicable laws, and the provisions of these bylaws, ~~Cal Cities' the League's~~ activities and affairs are exercised by or under the direction of the ~~League's~~Cal Cities Board of Directors. The ~~League~~Cal Cities Board is responsible for the overall supervision, control and direction of ~~Cal Cities~~the League. The ~~League~~Cal Cities Board may delegate the management of ~~the League's~~Cal Cities' affairs to any person or group, including a committee, provided the ~~League~~Cal Cities Board retains ultimate responsibility for the actions of such person or group.
- (b) The goal of ~~the League~~Cal Cities is to ensure that the Board of Directors reflects the diverse ethnic and social fabric of California. As such, each Division, Department, Caucus, and Policy Committee should encourage and support members of every race, ethnicity, gender, age, sexual orientation and heritage to seek leadership positions within ~~Cal Cities~~the League, with the ultimate goal of achieving membership on the Board of Directors.

Section 2: Composition.

~~The League's~~The Cal Cities Board is composed of the following:

- (a) A President, First Vice-President and Second Vice-President/Treasurer, who each serve a term of one year;
- (b) The Immediate Past President who serves for a term of one year, immediately succeeding his or her term as President;
- (c) Twelve Directors-at-Large,
- (i) Who serve staggered two-year terms, and

- (ii) At least one of whom is a representative of a small city with a population of 10,000 or less;
- (d) One Director to be elected from each of the regional divisions, ~~and functional~~ departments, and caucuses of ~~Cal Cities~~the League, each of whom serve a term of two years; and
- ~~(e) Members of the National League of Cities Board of Directors who hold an office in a Member City; and~~
- ~~(f)~~(e) Ten Directors that may be designated by the mayors of each of the ten largest cities in California to serve two-year terms.
- ~~(g)~~(f) For purposes of this section, the population of each city is the most current population as determined by the California Department of Finance, Demographic Research Unit, or its successor agency or unit. If no successor agency or unit is named, the most current population used to determine these dues shall be used to determine future dues until such time as these bylaws are amended to designate a new source for determining city population.
- ~~(h)~~(g) Directors hold office until their successors are elected and qualified ~~they sit on the Cal Cities League Board by virtue of their membership on the National League of Cities Board of Directors, until their terms on the National League of Cities Board of Directors conclude.~~

Section 3: Staggered Terms.

The terms of the Directors are staggered, so that the terms of approximately one-half of the members of the ~~League~~Cal Cities Board expire each year.

- (a) **Even-Numbered Year Terms.** The following directorship terms expire in even-numbered years:
 - (i) **Departments.** Directors from the Fiscal Officers, Public Works Officers, Mayors and Council Members, Planning and Community Development, Fire Chiefs, and City Clerks departments;
 - (ii) **Divisions.** Directors from the Central Valley, Desert-Mountain, Imperial County, Monterey Bay, North Bay, Orange County, Redwood Empire, Sacramento Valley and San Diego County divisions; ~~and~~
 - (iii) **Caucuses.** Directors from the African American, Asian Pacific Islander, and LGBTQ caucuses; and
 - (iv)~~(iii)~~ **At Large.** Directors from five of the ten at-large directorships.

(b) Odd-Numbered Year Terms. The following directorships expire in odd-numbered years:

- (i) Departments.** Directors from the City Attorneys, City Managers, Police Chiefs, Recreation, Parks and Community Services, and Personnel and Employee Relations departments;
- (ii) Divisions.** Directors from the Channel Counties, Inland Empire, East Bay, Los Angeles County, Peninsula, Riverside County and South San Joaquin Valley divisions; ~~and~~

(iii) Caucuses. Directors from the Latino and Women's caucuses; and

(ivii) At Large. Directors from five of the ten at-large directorships.

Section 4: Election of Directors.

(a) Functional Department Directors. Unless their respective functional department bylaws provide otherwise, Departmental Directors are elected by their respective departments at the Annual Conference.

(b) Regional Division Directors. Unless their respective regional division bylaws provide otherwise, Regional Directors are elected at the regional division meeting immediately preceding the Annual Conference.

~~**(b)(c) Caucus Directors.**~~ The caucus presidents shall serve, or may appoint a member of their respective caucuses to serve, as the initial Caucus Directors for their respective caucuses. Thereafter, unless their respective caucus bylaws provide otherwise, Caucus Directors shall be elected by their respective caucuses at the Annual Conference.

~~**(e)(d) At-Large Directors.**~~ Directors-at-Large are elected by the League-Cal Cities Board at its organizational a meeting.

~~**(d)(e) Commencement of Terms.**~~ The term of office of all newly elected Directors commences immediately on the adjournment of the Annual Conference; however, the newly constituted League-Cal Cities Board may meet prior to the adjournment of the Annual Conference for the purpose of organization.

~~**(e)(f) Additional Directors.**~~ In the event of the creation of additional regional divisions, ~~or functional departments, or caucuses~~ of Cal Cities the League, each regional division, ~~or functional department, or caucus~~ may elect a representative to the League-Cal Cities Board. When a new functional department, ~~or regional division, or caucus~~ is created at any Annual Conference, the League-Cal Cities Board may select a Director to represent

such functional department, ~~or~~ regional division, or caucus until the entity organizes and elects a Director in the regular manner. The League-Cal Cities Board may fix the initial term of any such Director from a new regional division, ~~or~~ functional department, or caucus at either one or two years, so as to keep the number of terms expiring on alternate years as nearly equal as possible.

Section 5: Nomination Process.

- (a) **Timing.** The League-Cal Cities President, with the concurrence of the League-Cal Cities Board, shall establish a nominating committee at the first Board meeting of the calendar year in which the election is to occur.
- (b) **Composition.** The nominating committee shall be comprised of eleven Board members. Two nominating committee members shall be At-Large Directors and one shall represent a functional department. Regional divisions shall be represented on the nominating committee on the following rotating basis:
 - (i) **Even-Numbered Years:** In even-numbered years, the Central Valley, Imperial County, Monterey Bay, North Bay, Orange County, Redwood Empire, Sacramento Valley and San Diego County Regional Divisions shall be represented on the nominating committee.
 - (ii) **Odd-Numbered Years:** In odd-numbered years, the Channel Counties, Inland Empire, Desert-Mountain, East Bay, Los Angeles County, Peninsula, Riverside County, and South San Joaquin Regional Divisions shall be represented on the nominating committee.
- (c) **Nominating Committee Chair.** The League-Cal Cities President shall appoint the chair of the nominating committee.
- (d) **Candidates for Positions Ineligible.** Candidates for officer and at-large positions on the League-Cal Cities Board are not eligible to serve on the nominating committee. In the event a regional division representative on the nominating committee wishes to be a candidate for an officer or at-large position, the League-Cal Cities President will appoint a substitute nominating committee member from the same regional division, if available. If one is not available, the President shall appoint a substitute from a nearby regional division.
- (e) **Duties.** The duties of the nominating committee are to:
 - (i) **Member Outreach.** Publicize the qualifications for the offices of Second Vice President/Treasurer and the at-large members of the League-Cal Cities Board to Cal Cities' ~~the League's~~ Member Cities;

- (ii) **At-Large and Second Vice President Recommendations.** Make recommendations to the League-Cal Cities Board on the following year's League-Cal Cities officers and at-large board members; and
- (iii) **President and First Vice President Recommendation.** Recommend whether the previous year's First Vice President becomes President and the previous year's Second Vice President/Treasurer becomes First Vice President.
- (f) **Notice to Members.** An explanation of the nomination process and relevant deadlines for submitting nominations to the nominating committee shall be publicized in League-Cal Cities publications and communications throughout the year, along with the identity of nominating committee members once such members are appointed. In addition, the nominating committee shall inform the membership of the opening of the nominations for the following year when it makes its report to the general membership as provided in Article VI, Section 5(g) below.
- (g) **Decision and Report.** The nominating committee's recommendations shall be communicated to the League-Cal Cities Board not later than 30 days prior to the date of Cal Cities' the League's Annual Conference and again at the Annual Conference. In addition, the nominating committee shall make its report to the membership at the opening general session of the Annual Conference.
- (h) **Election.** The election of League-Cal Cities Board officers and Directors-at-Large shall occur at a League-Cal Cities Board meeting at the Annual Conference as provided in Article VII, Section 4(c) and Article VII, section 3.

Section 6: Vacancies.

- (a) **Functional Departmental Directorships.** In the event of a vacancy in a functional departmental directorship, the president of the department may become a member of the League-Cal Cities Board or may appoint a member of his or her department to fill the vacancy.
- (b) **Regional Division Directorships.** If a vacancy occurs in the regional division directorship, the regional division in question may elect a new Director at the next regular meeting of the regional division.
- ~~(b)(c)~~ **Caucus Directorships.** If a vacancy occurs in a caucus directorship, the caucus officers may elect a new Director.
- ~~(e)(d)~~ **At-Large Directorships.** If a vacancy occurs in an at-large directorship, the League-Cal Cities Board may elect a new Director to fill the vacancy at

the next regular board meeting. The League-Cal Cities president may nominate individuals for consideration by the League-Cal Cities Board.

(d)(e) Large City Directorships. In the event of a vacancy in a large-city seat, that large city may designate a new representative.

(e)(f) Terms. The person elected or appointed to fill a vacancy holds office for the remainder of the term of the office in question (see Article VII, section 3).

(f)(g) Grounds for Vacancy. A vacancy in a directorship shall occur due to resignation, a vacancy in elective or appointed office held by the director, or if the League-Cal Cities Board determines the department, ~~or division, or~~ caucus that elected the director, or an appointed director, is not complying with these bylaws or the policies of the League-Cal Cities Board.

Section 7: Resignation.

Any Director resignation is effective upon receipt in writing by the League's-Cal Cities President or Executive Director, unless a later date is specified in the letter.

Section 8: Meetings and Meeting Notice.

(a) Regularly Scheduled Board Meetings. The League-Cal Cities Board shall meet no fewer than four times a year. Notice of regularly scheduled Board meetings shall be mailed to each Director at least 14 days before any such meeting.

(b) Emergency Board Meetings. A good faith effort shall be made to provide notice of any emergency board meetings (for example, by first-class mail, personal or telephone notification, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means).

(c) Telephonic or Electronic Participation. Members of the League-Cal Cities Board may participate in any meeting through the use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting by this means constitutes presence in person at such meeting.

(d) Notice Content. All meeting notices shall include the meeting date, place, time, and, as applicable, the means by which a League-Cal Cities Board member may participate electronically.

Section 9: Policies.

The ~~League-Cal Cities~~ Board may adopt such policies for its government as it deems necessary and which are not inconsistent with these bylaws. In the event of an inconsistency, these bylaws shall prevail.

Section 10: Committees.

(a) **General.** The ~~League-Cal Cities~~ Board may establish committees to study city problems, advise on ~~League-Cal Cities~~ educational efforts, make recommendations with respect to ~~League-Cal Cities~~ advocacy efforts, or to engage in other appropriate ~~Cal Cities League~~ service.

(b) Executive Committee.

(i) **Composition.** The Executive Committee of the ~~League-Cal Cities~~ Board consists of the following: the ~~League's- Cal Cities~~ President, First Vice-President, Second Vice-President/Treasurer, Immediate Past President and Executive Director.

(ii) **Authority.** The Executive Committee has authority to act for the ~~League-Cal Cities~~ Board between Board meetings, provided that no action of the Executive Committee is binding on the ~~League-Cal Cities~~ Board unless authorized or approved by the Board.

(c) Standing Policy Committees.

(i) **Charge.** ~~Cal CitiesThe League~~ shall have a series of standing policy committees, whose charge shall be to make recommendations to the ~~League-Cal Cities~~ Board on matters within the committees' jurisdiction, as well as fulfill other duties specified in these bylaws (see, for example, Article VI, section 4(b)).

(ii) **Membership.** Each ~~League-Cal Cities~~ Policy Committee shall be comprised of the following:

- Two members appointed by each regional division president;
- One member appointed by each functional department president;
- One member appointed by each caucus president;
- No more than 16 members appointed by the ~~League-Cal Cities~~ President, to provide population and geographic balance, as well as expertise; and

- Such representatives of affiliate organizations in the capacity authorized by the League-Cal Cities Board.

(iii) **Feedback.** Policy committees shall receive information on actions taken on committee recommendations and the reasons for those actions.

(d) **Committee Chairs and Vice Chairs.** The League-Cal Cities President appoints the chair of all League-Cal Cities-wide committees. The term of such appointments coincides with the League-Cal Cities President's term. The League-Cal Cities President may appoint vice chairs for such committees, as the League-Cal Cities President deems necessary.

Section 11: Compensation.

The Directors do not receive any compensation for their services, but, with League-Cal Cities Board approval, may be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

Section 12: Reports of Directors.

The League-Cal Cities Board's duties include providing an annual report to League-Cal Cities members at the regular Annual Conference showing ~~the League's~~ Cal Cities work, ~~the League's~~ Cal Cities financial condition, and a statement with respect to ~~the League's~~ Cal Cities plans for further work and proposed policies.

Section 13: Standard of Care.⁴

- (a) **General.** A Director shall perform the Director's duties, including duties on any committee on which the Director serves, in good faith, in a manner the Director believes to be in the best interests of the League-Cal Cities and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.
- (b) **Reliance on Information.** In performing the Director's duties, the Director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by:
- (i) One or more League-Cal Cities officers or employees whom the Director believes to be reliable and competent as to the matters presented;

⁴ See Cal. Corp. Code § 7231 (providing that a director who performs the director's duties according to these standards is not liable for any alleged failure to properly discharge the individual's obligations as a director).

- (ii) Counsel, independent accountants, or other persons as to matters which the Director believes to be within such person's professional or expert competence; or
- (iii) A League-Cal Cities Board committee upon which the Director does not serve, as to matters within the committee's designated authority, provided that the Director believes the committee merits confidence.

The Director may rely on such information, opinions, reports, or statements as long as the Director acts in good faith after reasonable inquiry (when the need for such inquiry is indicated by the circumstances) and as long as the Director has no knowledge that would suggest that such reliance is unwarranted.

- (c) **Non-Liability.** An individual who performs the duties of a Director in accordance with this section will not be liable for any failure or alleged failure to discharge that person's obligations as a Director, including, without limiting the generality of the preceding, any actions or omissions which are inconsistent with the League's Cal Cities' nonprofit purposes.

Section 14: Right to Inspect Records.

Every Director has a right at any reasonable time to inspect and copy all League-Cal Cities books, records and documents of every kind and to inspect the League's Cal Cities' physical property.⁵

Section 15: Policy Changes.

Any policy established by the League's Cal Cities' General Assembly may be changed by the League's Cal Cities Board upon ratification of such proposed change by a majority of the regional divisions representing a majority of Member Cities within the time period specified by the League-Cal Cities Board.

Section 16: Positions on Statewide Ballot Measures.

Notwithstanding any other provision of these bylaws, the League-Cal Cities Board may take a position on a statewide ballot measure by a 2/3rd vote of those Directors present.

Section 17: Non-Voting Advisor to the Board.

Effective December 1, 2022, if members of the National League of Cities Board of Directors hold an office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board, for a term that coincides with their term on the National League of Cities Board

⁵ See Cal. Corp. Code § 833~~43~~ (characterizing this right as absolute).

of Directors. Any such non-voting advisor shall be invited to attend all regularly-scheduled Board meetings. The non-voting advisor shall not attend emergency Board meetings and/or closed/executive sessions of the Board unless a determination is made by the Board to include the non-voting advisor in a particular emergency Board meeting and/or closed/executive session.

Article VIII: Officers

Section 1: Identity.

The officers of the League-Cal Cities are a President, a First Vice-President, a Second Vice-President/Treasurer, an Immediate Past President, and an Executive Director.

Section 2: Duties of League-Cal Cities Officers.

- (a) **President.** The President presides at all League-Cal Cities Board meetings and all General Assemblies. The President has such other powers and duties as may be prescribed by these bylaws or the League-Cal Cities Board.
- (b) **First Vice-President.** The First Vice-President carries on the duties of the President in the President's temporary absence or incapacity. The First Vice-President has such other powers and duties as may be prescribed by these bylaws or the League-Cal Cities Board.
- (c) **Second Vice-President/Treasurer.** The Second Vice-President/Treasurer carries on the duties of the President in the President's and First Vice-President's temporary absence or incapacity. The Second Vice-President/Treasurer has such other powers and duties as may be prescribed by these bylaws or the League-Cal Cities Board.

Section 3: Election.

The League-Cal Cities Board elects the League's-Cal Cities President, First Vice-President and Second Vice-President for terms of one year.⁶ The election occurs at the League-Cal Cities Board's meeting at the Annual Conference.

Section 4: Vacancies.

A vacancy in the office of President is filled by the Immediate Past President who shall serve for the unexpired term of office and, upon election of a new President at the next Annual Conference, shall subsequently serve a full term as Immediate Past President. In the event the Immediate Past President is not available to fill the vacancy in the office of the President, or declines in writing, it shall be filled by the succession of the First

⁶ See Cal. Corp. Code § 7151(c)(5) (suggesting bylaws address this issue).

Vice-President to that office. A vacancy in the office of First Vice-President, or Second Vice-President/Treasurer, is filled for the un-expired term by appointment by the League Cal Cities Board of a member of the League-Cal Cities Board. A vacancy in the office of the Immediate Past President is filled for the un-expired term by the last Past President continuing to hold a city office.

Section 5: Executive Director and League-Cal Cities Employees.

(a) Employment. The League-Cal Cities Board selects an Executive Director who employs, or causes to be employed, such other persons as may be necessary who need not be League-Cal Cities members. The Executive Director and employees perform such duties and receive such compensation as the League-Cal Cities Board may from time to time prescribe.

(b) Specific Duties. The Executive Director performs or causes to be performed the following functions:

(1) Corporate Secretary. These duties include:

- (i) Keeping a full and complete record of the proceedings of the League-Cal Cities Board;
- (ii) Giving such notices as may be proper and necessary;
- (iii) Keeping minute books for Cal Cities~~the League~~;
- (iv) Communicating the League-Cal Cities Board's actions to Member Cities;
- (v) Executing such instruments necessary to carry out Board directives and policies; and
- (vi) Complying with other record-keeping and reporting requirements of California Nonprofit Corporation Law.

(2) Chief Financial Officer. These duties include:

- (i) Having charge of and custody of and receiving, safeguarding, disbursing and accounting for all League-Cal Cities funds;
- (ii) Depositing and investing such funds in such institutions and investments as approved by the League-Cal Cities Board;
- (iii) Maintaining ~~the League's~~Cal Cities' financial books and records; and

- (iv) Preparing and submitting such accounting and tax forms as may be required by local, state and federal law.

(c) **Insurance.** All employees handling the finances of Cal Cities ~~the League~~ shall be insured in such amount as the League-Cal Cities Board deems desirable or necessary, such insurance to be approved by the League-Cal Cities Board or a committee designated by the League-Cal Cities Board and the premiums paid by Cal Cities ~~the League~~.

Article IX: Regional Divisions

Section 1: Listing.

(a) **Existing Regional Divisions.** Cal Cities ~~The League~~ is comprised of the following regional divisions:

Central Valley	North Bay
Channel Counties	Orange County
Desert-Mountain	Peninsula
East Bay	Redwood Empire
Imperial County	Riverside County
Inland Empire	Sacramento Valley
Los Angeles County	San Diego County
Monterey Bay	South San Joaquin Valley

(b) **New Divisions.** Additional divisions may be formed through an amendment to these bylaws (Article XVI).

Section 2: Purposes and Functions.

The purposes and functions of regional divisions of Cal Cities ~~the League~~ are as follows:

- (a) To promote interest in the problems of city government and administration among city officials within such divisions.
- (b) To assist League-Cal Cities officials in formulating policies by expressing, through resolutions duly adopted, the recommendations of the regional divisions. Resolutions adopted by regional divisions to be considered at the Annual Conference shall be submitted in the manner provided by Article VI.
- (c) To take action consistent with general League-Cal Cities policy as duly adopted by Cal Cities' the League's General Assembly or by the League's Cal Cities Board. Regional divisions may take no action in conflict with such policies. Nothing in the foregoing limits or restricts regional division activities in matters of purely local interest and concern.

- (d) To meet not less than once every three months, provided that ~~the League~~Cal Cities' Annual Conference may be considered one such meeting of a regional division.

Section 3: Names of Divisions.

Each regional division will identify itself as a division of the League of California Cities.

Section 4: Boundaries.

The territorial boundaries of each regional division may be fixed by each division subject to the approval of ~~the League's~~Cal Cities' General Assembly.

Section 5. Membership.

All cities within the boundaries of a regional division may become members of and participate in the activities of that division. A city may join a different regional division with the approval of both the existing and proposed division, and the ~~League's~~Cal Cities' Board of Directors.

Section 6: Voting.

Unless otherwise provided in a regional division's bylaws, the representatives of each Member City may cast collectively one vote on division matters, and a majority of the votes cast is necessary for a decision.

Section 7: Officers.

- (a) **Identity.** Each regional division elects a President, a Vice-President, and a representative on the ~~League~~Cal Cities' Board of Directors, and such other officers as any regional division bylaws may establish.
- (b) **Election Timing.** Each regional division elects its officers at the regional division meeting immediately preceding ~~the League's~~Cal Cities' Annual Conference, unless another date is provided by any regional division's bylaws.
- (c) **Terms.**
- (i) **Officers' Terms and Commencement Dates.** Except as provided below, the term of office of all newly elected officers is one year, commencing immediately upon election unless another date is

provided by the regional division's bylaws.⁷ A majority of the members may amend any regional division bylaws to provide for two-year terms for regional division officers.

- (ii) **Directors' Terms and Commencement Dates.** The term of office and commencement date for regional division representatives on the League-Cal Cities Board are established in Article VII, section 2(d) (term length) and 4(~~ed~~) (term commencement).

- (d) **Vacancies.** In the event of a vacancy in any regional division office, such vacancy is filled by election at the next regular meeting of such division for the unexpired term of that office. The fact that such a vacancy will be so filled shall be included in the notice of such meeting. This requirement also applies to a vacancy in the office of regional division director, as provided in Article VII, section 6(b).

(e) Duties.

- (i) **President.** The President presides at all regional division meetings and has such other powers and duties as may be prescribed by any division bylaws.
- (ii) **Vice-President.** The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by any division bylaws.
- (iii) **Secretary.** The Secretary a) immediately notifies ~~the~~ League-Cal Cities of any change in the regional division officers, b) records the minutes of all division meetings and sends one copy to League-Cal Cities headquarters, and c) prepares and mails all notices of the meetings of the division and sends a copy to the League-Cal Cities headquarters.
- (iv) **Director.** The regional division Director shall represent the regional division on the League-Cal Cities Board and shall keep the division membership apprised of League-the Cal Cities Board's activities. The Director serves as a liaison between the regional division and the League-Cal Cities Board.

⁷ Note that this term commencement is different than that for the League-Cal Cities board (whose terms commence upon adjournment of the Annual Conference) and than that for department officers (also upon adjournment of the Annual Conference).

Section 8: Resignation.

Except as provided in Article VII, section 7 for members of the ~~League-Cal Cities~~ Board, a regional division officer's resignation is effective upon receipt in writing by the division's President or Secretary, unless a later date is specified in the letter.

Section 9: Regional Division Bylaws.

Regional divisions may adopt their own bylaws. Division bylaws may not conflict with ~~the League's-Cal Cities'~~ bylaws. In the event of a conflict between a division's bylaws and ~~League-Cal Cities'~~ bylaws, ~~the League's-Cal Cities'~~ bylaws will prevail; ~~the League's-Cal Cities'~~ bylaws also prevail when the division does not have bylaws or the division's bylaws are silent.

Article X: Functional Departments

Section 1: Listing.

(a) **Existing Departments.** ~~The League-Cal Cities~~ includes the following functional departments:

Mayors and Council Members	Police Chiefs
City Attorneys	Fire Chiefs
Fiscal Officers	Community Services
Public Works Officers	City Clerks
City Managers	Personnel and Employee Relations
Planning and Community Development	

(b) **New Departments.** Additional functional departments may be formed through an amendment to these bylaws (Article XVI).

Section 2: Officers.

(a) **Identity.** Each functional department elects a President, a Vice-President, a representative on the Board, and such other officers as the department's bylaws may establish.

(b) **Election Timing.** Each functional department elects its officers at the department's business session at ~~the League's-Cal Cities'~~ Annual Conference, unless the department's bylaws provide otherwise.

(c) **Terms.** The term of office for functional department officers is one year, commencing immediately upon the adjournment of the Annual Conference. The exception is the functional department representatives of the ~~League-Cal Cities~~ Board, whose term is two years as established in Article VII, section 2(d).

(d) Vacancies. A vacancy in the office of President is filled for the unexpired term by the succession of the Vice-President. A vacancy in the office of the Vice-President or any other office of the functional department is filled by appointment by the department President for the unexpired term. The person so appointed shall be a member of such department. A vacancy in the office of department ~~D~~director is filled as provided in Article VII, section 6(a) for the unexpired term.

(e) Duties.

(i) President. The President presides at functional department meetings and has such other powers and duties as may be prescribed by any department bylaws.

(ii) Vice-President. The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by any department bylaws.

(iii) Director. The department Director shall represent the functional department on the ~~League-Cal Cities~~ Board and shall keep the department membership apprised of ~~League-the Cal Cities~~ Board's activities. The Director serves as a liaison between the department and the ~~League-Cal Cities~~ Board.

(f) Resignation. Except as provided in Article VII, section 7 for members of the ~~League-Cal Cities~~ Board, a functional department officer's resignation is effective upon receipt in writing by the department's President or Vice-President, unless a later date is specified in the letter.

Section 3: Voting.

Except as otherwise provided in a functional department's bylaws, the representatives of each Member City may cast collectively one vote on functional department matters. A majority of the votes cast is necessary for a decision.

Section 4: Department Meetings.

Functional departments meet at the Annual Conference and at other times and places as they find necessary.

Section 5: Department Bylaws.

Functional departments may adopt their own bylaws. Such bylaws may not conflict with ~~the League's Cal Cities'~~ bylaws. In the event of a conflict between a department's

bylaws and ~~League-Cal Cities'~~ bylaws, ~~Cal Cities' the League's~~ bylaws will prevail; ~~Cal Cities' the League's~~ bylaws also prevail when the department does not have bylaws or the department's bylaws are silent.

Article XI: Caucuses

Section 1: Listing.

(a) Existing Caucuses. Cal Cities includes the following caucuses:

African American Caucus
Asian Pacific Islander Caucus
Lesbian Gay Bisexual Transgender Queer (LGBTQ) Caucus
Latino Caucus
Women's Caucus

(b) New Caucuses. Additional caucuses may be formed through an amendment to these bylaws (Article XVI).

Section 2: Purposes and Functions.

The purposes and functions of the caucuses are as follows:

- (a) To promote within Cal Cities the active involvement and full participation of a wide spectrum of city officials reflecting the diversity of California's cities, so as to enhance responsive city government.**
- (b) To facilitate the sharing of information between city officials who share characteristics such as nationality, race, ethnicity, gender, sexual orientation, age, or religion, and to provide educational and leadership development opportunities to such city officials.**
- (c) To promote interest in, and advocate for, issues relating to city government and administration that are of concern to caucus members to enhance the quality of life for their diverse constituencies.**
- (d) To assist Cal Cities officials in formulating policies by expressing, through resolutions duly adopted, the recommendations of the caucuses. Resolutions adopted by caucuses to be considered at the Annual Conference shall be submitted in the manner provided by Article VI.**
- (e) To take action consistent with general Cal Cities policy as duly adopted by Cal Cities' General Assembly or by the Cal Cities Board. Caucuses may take no action in conflict with such policies.**

- (f) To meet at the Annual Conference and at other times and places as they find necessary.

Section 3: Names of Caucuses.

Each caucus will identify itself as a caucus of the League of California Cities.

Section 4: Membership.

All elected and appointed officials in Member Cities may apply to become members of a caucus in accordance with such caucus's bylaws or procedures.

Section 5: Voting.

Unless otherwise provided in caucus bylaws, each caucus member may cast one vote on caucus matters, and a majority of the votes cast is necessary for a decision.

Section 6: Officers.

(a) Identity. Each caucus elects a President, a Vice-President, and a representative on the Cal Cities Board of Directors, and such other officers as caucus bylaws may establish.

(b) Election Timing. Each caucus elects its officers at the caucus meeting at the Cal Cities Annual Conference, unless another date is provided by caucus bylaws.

(c) Terms.

(i) Officers' Terms and Commencement Dates. Except as provided below, the term of office of all newly elected officers is one year, commencing immediately upon election, unless another term length or commencement date is provided by caucus bylaws.⁸

(ii) Directors' Terms and Commencement Dates. The term of office and commencement date for caucus representatives on the Cal Cities Board are established in Article VII, section 2(d) (term length) and 4(c) (term commencement).

(d) Vacancies. Unless otherwise provided in caucus bylaws, a vacancy in the office of President is filled for the unexpired term by the succession of the Vice-President. A vacancy in the office of the Vice-President or any other

⁸ Note that this term commencement is different than that for the Cal Cities board (whose terms commence upon adjournment of the Annual Conference) and than that for department officers (also upon adjournment of the Annual Conference).

office of the caucus is filled by appointment by the caucus President for the unexpired term. The person so appointed shall be a member of such caucus. A vacancy in the office of caucus Director is filled as provided in Article VII, section 6(c) for the unexpired term.

(e) Duties.

- (i) President.** The President presides at all caucus meetings and has such other powers and duties as may be prescribed by caucus bylaws.
- (ii) Vice-President.** The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by caucus bylaws.
- (iii) Director.** The caucus Director shall represent the caucus on the Cal Cities Board and shall keep the caucus membership apprised of the Cal Cities Board's activities. The Director serves as a liaison between the caucus and the Cal Cities Board.

Section 7: Resignation.

Except as provided in Article VII, section 7 for members of the Cal Cities Board, a caucus officer's resignation is effective upon receipt in writing by the caucus's President, unless a later date is specified in the resignation letter or provided by caucus bylaws.

Section 8: Caucus Bylaws.

Caucuses may adopt their own bylaws. Such bylaws may not conflict with Cal Cities' bylaws. In the event of a conflict between a caucus's bylaws and Cal Cities' bylaws, Cal Cities' bylaws will prevail; Cal Cities' bylaws also prevail when the caucus does not have bylaws or the caucus's bylaws are silent.

Article XII: Voting

Section 1: Quorum.

- (a) In General.** A majority of the members of the League's Cal Cities Board, functional department, regional division, caucus, committee or other kind of subsidiary body constitutes a quorum for the purpose of making decisions.⁹

⁹ See Cal. Corp. Code § 7211(a)(8) (noting that a board meeting may continue to transact business after a quorum is lost as long as items approved receive a majority of the quorum, unless a higher approval threshold exists for approval of a certain type of action).

- (b) **General Assembly.** The presence, at the General Assembly, of credentialed voting delegates (or alternates) representing a majority of Member Cities, constitutes a quorum.¹⁰
- (c) **Failure to Achieve Quorum.** In the event that a body other than the League Cal Cities Board of directors lacks a quorum, all votes taken by that body will be advisory to the League-Cal Cities Board, which shall be advised that a quorum was not present. In the event that the League's Cal Cities Board is unable to achieve a quorum, the League-Cal Cities Board will adjourn until such time as a quorum can be achieved.

Section 2: Voting Methods.

- (a) **General Assembly.** All voting in meetings of the General Assembly of Cal Cities~~the League~~, its regional divisions, functional departments, caucuses, committees, and other kinds of subsidiary bodies is by voice vote.
- (b) **Alternative Methods.** If the presiding official cannot determine the outcome of the voice vote or three or more Member Cities request, an alternative method of voting may be used. An alternative voting method may be by any means (show of hands, written ballot, display of voting cards, etc.) which allows the presiding official to accurately determine the outcome of the vote.
- (c) **Roll Call Vote.** A roll call may be demanded by representatives of ten percent or more of the voting body.
- (d) **Voting Cards.** A voting card will be issued to each Member City's designated voting delegate upon presentation of evidence of the delegate's designation by the Member City.
- (e) **Proxy Voting.** Proxy voting is not allowed.

Section 3: Vote Threshold.

Except as otherwise provided in these bylaws (see, for example, Article XVI, section 2), a majority vote of approval of those voting is necessary for decision.

¹⁰ See Cal. Corp. Code § 7512(c) (noting that a membership meeting may continue to transact business after a quorum is lost as long as items approved receive a majority of the quorum, unless a higher approval threshold exists for approval of a certain type of action—for example, bylaws approval).

Section 4: One City One Vote.

Except as otherwise provided in a functional department's, ~~or~~ a regional division's, or caucus's bylaws, the representatives of each Member City present and in good standing collectively cast s one vote. A majority of the votes cast is necessary for a decision.

Section 5: Mail Balloting.

In addition to voting at League-Cal Cities meetings, Cal Cities~~the League~~ may solicit member input by mail ballot.

- (a) **Mailing.**¹¹ The question(s) to be voted upon, along with explanatory materials and a ballot, shall be mailed by first class mail to each Member City for consideration and action.
- (b) **Time Frame for Action.** Member Cities shall have at least 45 days to cast their vote. Ballots shall be cast by returning the Member City's ballot to Cal Cities' ~~the League's~~ principal office in Sacramento.
- (c) **Ballot Tabulation and Results Announcement.** The League-Cal Cities President will appoint a counting committee of three board members to count the votes cast by mail ballot. The counting committee will submit its count to the League-Cal Cities Board, which shall canvass the vote and announce the results.
- (d) **Functional Departments, and Regional Divisions, and Caucuses.** Departments, and divisions, and caucuses may also use mail balloting under procedures specified in their respective ~~department and division~~ bylaws.

Article XII: Qualifications to Hold Office and Vacancies

Section 1: Eligibility to Hold Office.

- (a) **In General.** Excepting the office of the Executive Director, no person shall be eligible to hold office in ~~the League~~Cal Cities or any League-Cal Cities division, ~~or~~ department, or caucus unless the individual is officially in city service in a Member City at the time of the person's election or appointment. Regional divisions, and functional department, and caucus bylaws may specify additional eligibility requirements for their respective officeholders.

¹¹ The Administrative Services Committee recommends the League-Cal Cities also include notice of the upcoming ballot in a variety of League-Cal Cities communications to alert Member Cities to make inquiry in the event a city's ballot is lost in the mail.

- (b) **Length of Service.** An individual who has occupied an elected League-Cal Cities Board office (as defined in Article VIII, section 1) for nine months (275 days) or more is ineligible to stand for election for that same office again.

Section 2: Vacancies.

- (a) **Vacancy Defined.** A League-Cal Cities office becomes vacant when an individual resigns, misses three consecutive convened meetings or leaves city service.¹²
- (b) **Effective Date of Vacancy Caused by Leaving City Service.** The effective date of a vacancy caused by a departure from city service is the date an individual ceases to occupy the same or comparable city office as the individual had when the individual was elected or appointed to League-the Cal Cities office. Upon written request of the individual, the League-Cal Cities Board may allow the individual to continue in the League-Cal Cities office for a period not to exceed 3 months from the effective date of the vacancy, which time period may be extended by the Board upon finding of good cause.
- (c) **Effective Date of Resignations.** For the effective dates of resignations, see Article VII, section 7 (effective date of League-Cal Cities Board resignations), Article IX, section 8 (effective date of regional division officer resignations), and Article X, section 2(f) (effective date of department officer resignations), and Article XI, section 78 (effective date of caucus officer resignations).
- (d) **Filling Vacancies.** Vacancies will be filled as provided in these bylaws; see Article VII, section 6 (filling League-Cal Cities Board vacancies), Article IX, section 7(d) (filling regional division officer vacancies), and Article X, section 2(d) (filling functional department officer vacancies), and Article XI, section 67(di) (filling caucus officer vacancies).
- (e) **Successor Terms.** An individual filling a vacancy serves the unexpired term of his or her predecessor.

Article ~~XIV~~VII: Finances

Section 1: Fiscal Year.

The fiscal year of the League-Cal Cities is the calendar year.

¹² See also Cal. Corp. Code § 7221 (board may declare a director's seat vacant if a court declares the director of unsound mind or the director has been convicted of a felony).

Section 2: Budget.

(a) **Preparation and Approval.** Not less than fifteen days prior to the budget meeting of the ~~League-Cal Cities~~ Board, the Executive Director shall distribute to the Board a detailed budget describing the estimated revenues and expenditures for the ensuing budgetary period for the ~~Cal Cities League~~ Board's consideration and approval.

(b) **Dissemination.** Upon approval, a copy of ~~the League's-Cal Cities'~~ budget shall be sent to each regional division, ~~and~~ functional department ~~president,~~ ~~and caucus president,~~ who shall make it available to division, ~~and~~ department, ~~and caucus~~ members.

Section 3: Limitation of Expenditures.

The ~~League-Cal Cities~~ Board may not incur indebtedness in excess of the estimated or actual revenues for the ensuing fiscal year, without the approval of ~~the League's-Cal Cities'~~ General Assembly.

Section 4: Annual Audit.

~~The League's-Cal Cities'~~ accounts shall be audited by a certified public accountant after the close of each fiscal year.

Section 5: Special Assessment for ~~League-Cal Cities~~ Building.

By resolution approved by a majority of those cities present and voting thereon at an Annual Conference, a special assessment may be levied for a permanent headquarters office building in Sacramento as specified in the resolution.

Article XIV: Prohibited Transactions

Section 1: Conflicts of Interest.

General Principle. Members of the ~~League-Cal Cities~~ Board as well as members of ~~League-Cal Cities~~ policy committees, and members of any standing or ad hoc committees and task forces consisting of members of the ~~League-Cal Cities~~ Board or ~~League-Cal Cities~~ policy committees, are expected to make decisions in the best overall interests of cities statewide, as opposed to narrow parochial, personal, or financial interests. This is analogous to city officials being expected to make decisions in the best overall interests of the community as opposed to narrow private or self-interests.

Section 2: Loans.

Except as permitted by California Nonprofit Corporation Law,¹³ ~~the League~~Cal Cities may not make any loan of money or property to, or guarantee the obligation of, any director or officer. This prohibition does not prohibit ~~the League~~Cal Cities from advancing funds to a League-Cal Cities director or officer for expenses reasonably anticipated to be incurred in performance of their duties as an officer or director, so long as such individual would be entitled to be reimbursed for such expenses under League Cal Cities Board policies absent that advance.

Section 3: Self-Dealing and Common Directorship Transactions.¹⁴

(a) **Self-Dealing Transactions.** A self-dealing transaction is a transaction to which ~~the League~~Cal Cities is a party and in which one or more of its directors has a material financial interest.

(b) **Common Directorships.** “Common directorships” occur when ~~the League~~Cal Cities enters into a transaction with an organization in which one of ~~the League~~Cal Cities’ directors also serves on the organization’s board.

(c) **Pre-Transaction Approval.** To approve a transaction involving either self-dealing or a common directorship, the League-Cal Cities Board shall determine, before the transaction, that

- (i) ~~Cal Cities~~The League is entering into the transaction for its own benefit;
- (ii) The transaction is fair and reasonable to ~~the League~~Cal Cities at the time; and
- (iii) After reasonable investigation, the League-Cal Cities Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

Such determinations shall be made by the League-Cal Cities Board in good faith, with knowledge of the material facts concerning the transaction and the director’s interest in the transaction, without counting the vote of the interested director or directors.

(d) **Post-Transaction Approval.** When it is not reasonably practicable to obtain Board approval before entering into such transactions, a Board committee may approve such transaction in a manner consistent with the requirements

¹³ See Cal. Corp. § 7235.

¹⁴ See generally Cal. Corp. Code § 7233. Note that interested or common directors may be counted in determining the existence of a quorum in a board or committee meeting that approves such transactions. See Cal. Corp. Code § 7234.

in the preceding paragraph, provided that, at its next meeting, the full Board determines in good faith that the League-Cal Cities Board committee's approval of the transaction was consistent with such requirements and that it was not reasonably practical to obtain advance approval by the full Board, and ratifies the transaction by a majority of the directors then in office without the vote of any interested director.¹⁵

Section 4: Ethical Considerations.

These restrictions, of course, represent the floor, not the ceiling, for ethical conduct as a League-Cal Cities board member or policy committee member. If a board member or policy committee member believes that there are circumstances under which the League's-Cal Cities' members might reasonably question the board member's or policy committee member's ability to act solely in the best interests of Cal Cities the League and its member cities, the prudent course is to abstain. As an example, typically League-Cal Cities board members have abstained from participating in decisions on legislation that would affect organizations for which they work. Another example is legislation that would uniquely benefit a board member's city. Policy committee members should also consider abstaining in similar circumstances.

Article XVI: Miscellaneous

Section 1: Indemnification.

(a) **Indemnity Authorized.** To the extent allowed by California Nonprofit Corporation Law,¹⁶ the League-Cal Cities may indemnify and advance expenses to its agents in connection with any proceeding, and in accordance with that law. For purposes of this section, "agent" includes directors, officers, employees, other League-Cal Cities agents, and persons formerly occupying these positions.

(b) **Approval of Indemnity.** An individual seeking indemnification shall make a written request to the League-Cal Cities Board in each case.

(i) **Success on the Merits.** To the extent that the individual has been successful on the merits, the League-Cal Cities Board will promptly authorize indemnification in accordance with California Nonprofit Corporation Law.¹⁷

¹⁵ See Cal. Corp. Code § 7233 (specifying under what circumstances a self-dealing transaction is void or voidable).

¹⁶ See Cal. Corp. Code § 7237.

¹⁷ See Cal. Corp. Code § 7237(d).

(ii) **Other Instances.** Otherwise, the League-Cal Cities Board shall promptly determine, by a vote of a majority of a quorum consisting of directors who are not parties to the proceeding, whether, in the specific case, the agent has met the applicable standard of conduct under California law,¹⁸ and, if so, will authorize indemnification to the extent permitted.

(c) **Advancing Expenses.** To the extent allowed under California Nonprofit Corporation Law,¹⁹ the League-Cal Cities Board may authorize an advance of expenses incurred by or on behalf of an agent of this corporation in defending any proceeding prior to final disposition. The League-Cal Cities Board shall find that:

(i) the requested advances are reasonable; and

(ii) before any advance is made, the agent will submit a written undertaking satisfactory to the League-Cal Cities Board to repay the advance unless it is ultimately determined that the agent is entitled to indemnification for the expenses under this section.

Section 2: Insurance.²⁰

The League-Cal Cities Board may authorize the purchase of insurance on behalf of any agent against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, and such insurance may provide for coverage against liabilities beyond Cal Cities' the League's corporation's authority to indemnify an agent under law.

Section 3: Contracts and Execution of Instruments.

All contracts entered into on behalf of Cal Cities the League shall be authorized by the League-Cal Cities Board, or by the person or persons upon whom the League-Cal Cities Board confers such power from time to time. Except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of Cal Cities the League shall be signed by the persons authorized to do so by the Cal Cities League Board.

Section 4: Disposition of Assets Upon Dissolution.

The League's Cal Cities' properties and assets are irrevocably dedicated to the fulfillment of the League's Cal Cities' purposes as described in Article II. No part of the

¹⁸ See Cal. Corp. Code § 7237(b) and (c) (with exceptions).

¹⁹ See Cal. Corp. Code § 7237(fa).

²⁰ See also Cal. Corp. Code § 7237(i) (authorizing insurance).

~~Cal Cities' League's~~ net earnings, properties and assets, on dissolution or otherwise, may inure to the benefit of any private person. On liquidation or dissolution, ~~Cal Cities'the League's~~ net assets shall be distributed to ~~the League's Cal Cities'~~ Member Cities consistent with the provisions of the California Nonprofit Corporation Law relating to mutual benefit corporations then in effect.

Section 5: Parliamentary Authority.

Subject to the provisions of these bylaws and applicable law, Robert's Rules of Order or other such parliamentary rules as may be adopted by the ~~League Cal Cities~~ Board shall prevail at all meetings of ~~the League Cal Cities~~, the ~~League Cal Cities~~ Board, and in all functional departments, and regional divisions, and caucuses.

Section 6: Seal.

The ~~League Cal Cities~~ Board has provided a suitable seal for ~~the League Cal Cities~~ which is circular and which contains the following inscription:

"LEAGUE OF CALIFORNIA CITIES
INCORPORATED NOVEMBER 4, 1932, CALIFORNIA"

The seal may be affixed to corporate instruments, but any failure to affix it does not affect the instrument's validity.

Section 7: Governing Law.

In all matters not specified in these bylaws, or in the event these bylaws are inconsistent with applicable law, the provisions of California Nonprofit Corporation Law then in effect apply.

Section 8: Litigation Authority.

Member Cities authorize ~~the League Cal Cities~~ to initiate or respond to litigation on their collective behalf when the ~~League Cal Cities~~ Board determines such litigation is necessary to protect Member Cities' shared vital interests.

Article XVII: Amendments

Section 1: Consideration.

These bylaws may be amended by ~~the League's Cal Cities'~~ General Assembly (see Article XVII, section 5 for procedures) or by a mail ballot to Member Cities (see Article XII, section 5 for procedures).

Section 2: Vote Threshold.

A two-thirds vote of approval of those voting is necessary to amend these bylaws.

Section 3: Who May Propose.

Amendments may be proposed by the ~~League-Cal Cities~~ Board or by petition of ten percent of Member Cities. The proponent may specify whether the amendment is to be considered at the General Assembly or by mail ballot.

Section 4: Board Review.

Any amendment proposed by petition shall be submitted to the ~~League-Cal Cities~~ Board in writing for its review. The ~~League-Cal Cities~~ Board's recommendation and reasons following its review shall accompany all materials relating to the proposed amendment.

Section 5: Procedure for Consideration by General Assembly.

(a) **Notice.** The meeting notice required by Article V, section 4 for ~~League-Cal Cities~~ meetings shall include notice of any proposal to amend ~~the League's Cal Cities'~~ bylaws, along with the subject of the proposed amendment(s).

(b) **Consideration by General Assembly.** The proposed amendment, along with any action by the ~~League-Cal Cities~~ Board pursuant to section 4 of this Article, shall be considered by the General Assembly along with any resolutions presented pursuant to Article VI.

Section 6: Effective Date.

After approval, amendments go into effect after the expiration of the protest period (see Article XVII, section 7) unless otherwise specified in the amendment.

Section 7: Protest and Suspension until Next Conference.

If, within sixty days after the adoption of any amendment, one-third or more of the Member Cities submit a written protest against such amendment, the amendment is automatically suspended until the next Annual Conference, when it may be taken up again for reconsideration and vote.

Article XVII: Establishment and Financing of Grassroots Network

Section 1: Enhancement of Advocacy Efforts.

To enhance ~~the League's Cal Cities'~~ advocacy efforts on behalf of cities, ~~Cal Cities the League~~ hereby establishes a Grassroots Network. The Grassroots Network consists of

a series of field offices throughout California, responsible for coordinating city advocacy efforts and promoting statewide League-Cal Cities policy priorities.

Section 2: Dues Increase.

(a) **Initial Financing.** The dues increase approved concurrently with the addition of this article shall finance ~~the League's~~Cal Cities' Grassroots Network for the second half of 2001 and 2002. The increase shall be used exclusively to finance the Grassroots Network.

(b) **Continued Financing.** Any subsequent dues increases shall occur in accordance with Article IV.

Section 3: Accountability.

(a) **Annual Goal-Setting and Performance Assessment.** The ~~League-Cal Cities~~ Board shall set long-term goals and annual objectives for Cal Cities'~~the League's~~ Grassroots Network. The League-Cal Cities Board shall periodically report to ~~the League's~~Cal Cities' Member Cities on the Grassroots Network's performance in meeting those goals and objectives.

(b) **Board Discontinuance.** If at any time the League-Cal Cities Board finds the Grassroots Network is not meeting its objectives on behalf of cities, the League-Cal Cities Board may discontinue the Grassroots Network.

(c) **Membership Vote on Program Continuation.** On or before December 31, 2007, Member Cities shall vote (see Article XI, section 5 for procedures) on whether to continue the Grassroots Network beyond December 31, 2008.²¹

²¹ At its meeting of September 8, 2007, the General Assembly of the League of California Cities adopted Resolution #1 that the Grassroots Network Program be continued and operated in accordance with these bylaws.



AGENDA BILL

Agenda Item No. 5.G.

Date: September 21, 2021
To: El Cerrito City Council
From: Stephen Prée, Environmental Programs Manager/City Arborist; Will Provost, Operations + Environmental Services Division Manager; Yvetteh Ortiz, Public Works Director/City Engineer, Public Works Department
Subject: Agreement with A Plus Tree Inc. for Tree Removal and Fire Hazard Reduction Work in the El Cerrito Hillside Natural Area

ACTION PROPOSED

Adopt a resolution approving and authorizing the City Manager to execute a General Services Agreement with A Plus Tree Incorporated for dead, dying, and hazardous tree removal and other fire hazard reduction work in the El Cerrito Hillside Natural Area in the amount of \$71,585, and approving a contingency amount not to exceed 15% of the contract amount, for a total not to exceed amount of \$82,323.

BACKGROUND

As California continues to experience the long term effects of climate change and exceptional drought and, as identified in the Parks and Recreation Facilities Master Plan (PRFMP) adopted by the City Council in April 2019, the City has made plans to reduce risks to public safety by performing additional fire fuel management activities in the El Cerrito Hillside Natural Area (HNA), which is located in a Very High Fire Hazard Severity Zone. The PRFMP, Action 2.4 calls for ensuring that the City's parks network supports a safe community, specifically by supporting the El Cerrito-Kensington Wildfire Action Plan (2017) goals and policies and creating defensible spaces, increasing weed abatement, and managing dead or diseased trees and other vegetation especially in the Hillside Natural Area. Thanks to the passage of Measure H by El Cerrito voters in November 2019, the funding available for this work in the Hillside Natural Area (HNA) has increased in recent years.

The City of El Cerrito Public Works Department, in coordination with the El Cerrito Fire Department, has prepared a scope of work for this year including the removal of dead and dying trees, reducing fuel loads in buffer zones, and raising or reducing individual tree canopies in targeted areas of the Hillside Natural Area. Removing fuel loads in buffer zones includes the removal of ground fuels, standing dead trees, and a few small caliper Eucalyptus and Monterey Pine trees within 100 feet of residences or 20 feet of fire roads. This scope of work is consistent with the El Cerrito Hillside Natural Area Fire Hazard Reduction Plan (1994), which made recommendations to: prune trees of low hanging material, clear debris and leaf litter, and hand remove low branches and shrubby material. Moreover, the selective removal of trees will be restricted to the minimum amount necessary to maintain fuel breaks and to remove hazardous trees, consistent with the El Cerrito Hillside Natural Area Fire Hazard Reduction Plan, Initial Study/Mitigated Negative Declaration (1994). Further, continuing to implement

vegetation management programs in the Hillside Natural Area is a Priority Hazardous Fuel Reduction Project and Prevention Strategy outlined in the El Cerrito- Kensington Wildfire Action Plan.

The following are this year's targeted work areas (as shown in Attachment 2):

- East of the 1400 block of Navellier Street
- Eucalyptus grove and service road south of Wildwood Place and Potrero Avenue
- Madera Court fire road to HNA interior
- Southeast of Potrero Avenue in the Madera property

The work sites were selected and prioritized based on their proximity to building structures and in areas with relatively high vegetative fuel mass in accordance with the City of El Cerrito's Fire Hazard Reduction Program Vegetation Management Standards.

The work is timed to avoid bird nesting season and to take place outside the rainy season, as much as possible, to minimize potential impacts to soils, access trails, and water courses. While none of the sites are located near creeks and no earth work or grading are part of the work scope, the City will employ Best Management Practices (BMPs) for erosion control and to protect water quality and to restrict alteration to natural and naturalized communities on site to the minimum amount necessary to meet the objectives of the project. Prior to the commencement of work, at each work site a qualified biologist shall conduct biological surveys for Special Status and Protected Species. All vegetative debris generated in this project will either be removed and stockpiled on City property for reuse or mulched and broadcast on site.

This work follows upon other work done in recent years, wherein, following the same protocol above, the City conducted fire fuel reduction projects including brush mowing, dead tree removal, clearance pruning, ground fuel reduction, and Eucalyptus thinning in the following HNA locations:

- Area surrounding Snowdon Ave. entrance to the HNA and East of Ganges Avenue
- Motorcycle Hill and an area North of Rogers Ct.
- HNA Interior West of Regency Court
- Quarry Hill Eucalyptus Grove West of King Drive
- Areas East of Park Vista
- Areas East and North of the Recycling Center
- Areas West of Julian Steps

ANALYSIS

A Request for Proposals (RFP) was sent directly to nine (9) contractors on August 13, 2021, with a site walk taking place on August 24, 2021 with five (5) contractors. All five (5) contractors who attended were instructed to bid on each work component and

informed that a contract or contracts may be awarded to one or more companies for some or parts of the work. Three (3) contract proposals were received by the due date of September 1, 2021. Cost proposals received for the whole scope of work reviewed during the site walk exceeded the available FY2021-22 project budget. Therefore, City staff prioritized project components for contract awards this budget year, with the intent to consider the remaining project components in future contract awards, as funding becomes available. This deferred work includes brush mowing and ground fuel reduction north of Regency Court, additional Eucalyptus thinning south of Wildwood, reduction of fallen dead trees in the HNA interior, reinforcing a fire break buffer south of Douglas Drive, and additional brush mowing southeast of the 7600 block of Potrero Ave.

A Plus Tree Inc. submitted the lowest prices and they possess the qualifications and experience to complete the work. Upon consideration of competitive pricing, performance of similar work in El Cerrito and other cities, and the experience, licensing and certification of key personnel, staff determined that the proposal received from A Plus Tree Inc. best fits the needs of the City. City staff is requesting that the City Council approve and authorize the City Manager to execute the agreement with A Plus Tree Inc. in the amount of \$71,585 plus 15% contingency, in order to begin this important work in early October.

Contractor Name	Total cost for all RFP tasks	Cost for priority RFP tasks*
A Plus Tree Inc.	\$136,611	\$71,585
The Professional Tree Care Company Inc.	\$294,880	\$183,520
West Coast Arborists Inc.	\$328,250	\$205,750

(*) Note the final proposed contract amount reflects a smaller scope of work to ensure the project fits within the City's available budget for Fiscal Year 2021-22. The tasks that were not included in the final scope will be prioritized for completion in future contract awards, as funding becomes available.

STRATEGIC PLAN CONSIDERATIONS

The project is consistent with the City of El Cerrito's Strategic Plan goals, including:

- Goal D – *Develop and rehabilitate public facilities as common focal points* by addressing ongoing and deferred maintenance of City trees; and
- Goal E – *Ensure the public's health and safety* by minimizing City tree hazards and reducing wildfire risk; and
- Goal F – *Foster environmental sustainability citywide* by supporting a healthy urban forest which provides multiple environmental benefits, including air quality improvements, carbon sequestration, storm water retention, wildlife habitat, and community beautification.

ENVIRONMENTAL CONSIDERATIONS

This proposed action will not have a significant effect on the environment because mitigation measures outlined in the El Cerrito Hillside Natural Area Fire Hazard Reduction Plan, Initial Study/Mitigated Negative Declaration (1994) and the Parks and Recreation Facilities Master Plan, Initial Study/Mitigated Negative Declaration (2019) will be implemented as part of the project to reduce any potentially significant impacts to insignificant levels.

FINANCIAL CONSIDERATIONS

Funding for the work under the agreement plus contingency amount is available in the Fiscal Year 2021-22 Adopted Budget. Funding is primarily from Measure H (Parks and Recreation Facilities) in the amount of \$75,000 with the remaining amount of \$7,323 coming from the General Fund.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the standard General Services Agreement and will approve the final form prior to execution.

Reviewed by:

A handwritten signature in blue ink, appearing to read "Karen Pinkos".

Karen Pinkos, City Manager

Attachments:

1. Resolution
2. Target Work Area Map
3. Draft General Services Agreement with A Plus

RESOLUTION 2021-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH A PLUS TREE INC. FOR FIRE FUEL REDUCTION WORK IN THE EL CERRITO HILLSIDE NATURAL AREA, IN THE AMOUNT OF \$71,585, AND APPROVING A CONTINGENCY AMOUNT NOT TO EXCEED 15% OF THE CONTRACT AMOUNT, FOR A TOTAL NOT TO EXCEED AMOUNT OF \$82,323.

WHEREAS, the City of El Cerrito (City) and many parts of California are in the second year of an exceptional drought; and

WHEREAS, the City's Hillside Natural Area (HNA) is located in a Very High Fire Hazard Severity Zone; and

WHEREAS, the El Cerrito City Council adopted Resolution 2021-37 declaring wildfire prevention and safety as a top priority; and

WHEREAS, the City has made plans to reduce risks to public safety by performing additional fire fuel management activities in the Hillside Natural Area as identified in the 2019 El Cerrito Parks and Recreation Facilities Master Plan and in support of the El Cerrito-Kensington Wildfire Action Plan (2017); and

WHEREAS, the passage of Measure H by El Cerrito voters in 2019 made additional funding available for this type of work in recent years; and

WHEREAS, the City has previously awarded contracts and completed fire fuel reduction projects in the Hillside Natural Area, including focused efforts in the Quarry Eucalyptus Grove, on Motorcycle Hill, in the Madera Property, and around the Snowdon Ave. entrance to the HNA; and

WHEREAS, on August 13, 2021, the City issued a Request for Proposals (RFP) from qualified contractors to complete an additional Fire Fuel Reduction project in the HNA; and

WHEREAS, the City received three proposals from qualified companies by the September 1, 2021 due date; and

WHEREAS, upon consideration of competitive pricing, performance of similar work in El Cerrito and other cities, and the experience, licensing and certification of key personnel, staff determined that the proposal received from A Plus Tree Inc. best fits the needs of the City; and

WHEREAS, funding of \$82,323 for fire fuel reduction work is available in the Adopted Budget for FY 2021-2022 in an amount of \$75,000 from the Measure H (Parks and Recreation Facilities) Fund and \$7,323 from the General Fund.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it authorizes the City Manager to execute an agreement with A Plus Tree Inc. for fire fuel reduction work in the Hillside Natural Area in an amount not to exceed \$82,323.

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on September 21, 2021, the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September X, 2021.

Holly M. Charléty, City Clerk

APPROVED:

Paul Fadelli, Mayor



GENERAL SERVICES AGREEMENT BETWEEN
THE CITY OF EL CERRITO AND
A PLUS TREE INC.

This agreement for General Services ("Agreement") is entered into on _____ (the "Effective Date") between the CITY OF EL CERRITO, a municipal corporation, with offices located at 10890 San Pablo Avenue, El Cerrito, California ("City") and A Plus Tree Inc. ("Contractor") (together sometimes referred to as the "Parties").

Section 1. SERVICES. In accordance with the terms and conditions set forth in this Agreement, Contractor agrees to perform all services described in the Scope of Services and Fee Schedule, attached as Exhibit A, which is incorporated herein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 **Term of Services.** This Agreement shall begin on the Effective Date and shall end November 30, 2021, unless the term of the Agreement is otherwise terminated or modified, as provided for herein. If the performance of the Scope of Services extends beyond the term of this Agreement, then the term of this Agreement shall be extended solely for and until completion of the Scope of Services.
- 1.2 **Standard of Performance.** Contractor shall diligently perform all services required in connection with this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services in connection with this Agreement.
- 1.4 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Contractor. In the event of termination, Contractor shall be entitled to compensation for services satisfactorily completed as of the date of written notice of termination; City, however, may condition payment of such compensation upon Contractor delivering to City documents and records identified in Section 10.1 of this Agreement.

Section 2. COMPENSATION. City hereby agrees to pay Contractor for the Scope of Services, whether by fixed price, hourly rates subject to a fixed rate schedule, pursuant to the Scope of Services and Fee Schedule attached as Exhibit A, which is incorporated herein. Total compensation for work performed under this Agreement, NOT TO EXCEED EIGHTY-TWO THOUSAND THREE-HUNDRED AND TWENTY-THREE DOLLARS (\$82,323).

- 2.1 **Invoices.** Contractor shall submit invoices once a month, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Contractor shall have ninety (90) days after the completion of work to invoice City for all amounts due and outstanding under each governed by this Agreement. In the event, Contractor fails to invoice City for all amounts due within such ninety (90) day period, Contractor shall waive its right to collect payment from City.
- 2.2 **Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred.

- 2.3 Reimbursable Expenses. No expenses, costs, or liabilities of Contractor shall be reimbursable unless the obligation and manner of reimbursement is expressly set forth in the scope of services and fee schedule (Exhibit A).
- 2.4 Payment of Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

Section 3. CHANGES AND EXTRA SERVICES.

- 3.1 Provided that City gives reasonable advance notice to Contractor, City may propose in writing changes to Contractor's work within the Scope of Services described. If Contractor is of the opinion that any proposed change causes an increase or decrease in the cost, or a change in the schedule for performance, of the services, Contractor shall notify City in writing of that fact within five (5) days after receipt of written proposal for changes. Contractor may also initiate such notification, upon identifying a condition which may change the Scope of Services as agreed at the time of execution of this Agreement covering such Scope of Services. When and if City and Contractor reach agreement on any such proposed change and its effect on the cost and time for performance, they shall confirm such agreement in writing as an amendment to this Agreement. In the event the Parties cannot reach agreement as to the proposed change, at the City's sole discretion, Contractor shall perform such work and will be paid for labor, materials, equipment rental, etc., actually used to perform the work.
- 3.2 City shall not be liable for payment of any changes under Section 3.1, nor shall Contractor be obligated to perform any such changes, except upon such written amendment or supplement; provided that if, upon City's written request, Contractor begins work in accordance with a proposed change, City shall be liable to Contractor for the amounts due with respect to Contractor's work pursuant to such change, unless and until City notifies Contractor to stop work on such change.

Section 4. PROJECT SITE. Contractor shall perform the Services in such a manner as to cause a minimum of interference with City's operations and the operations of other contractors at each Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Services at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish. Each Project site may include all buildings, offices, and other locations where Services are to be performed, including any access roads. Contractor shall be solely responsible for the safe transportation and packing in proper containers and storage of any equipment required for performing the Services, whether owned, leased or rented. City will not be responsible for any such equipment which is lost, stolen or damaged or for any additional rental charges for such equipment. Equipment left or stored at a Project site, with or without permission, is at Contractor's sole risk. City may assume that anything left on the work site an unreasonable length of time after said work is completed has been abandoned. Any transportation furnished by City shall be solely as an accommodation and City shall have no liability therefore. Contractor acknowledges and agrees that it shall assume the risk and is solely responsible for its use of any City owned equipment and property provided by City for the performance of Services. City shall have no liability to Contractor therefore. In addition, Contractor further acknowledges and agrees that it shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or

other motorized vehicles as well as any equipment, tools, or other property which is utilized by Contractor on each Project site.

Section 5. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the Agreement.

- 5.1 **Workers' Compensation.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of not less than One Million Dollars (\$1,000,000.00) per accident.
- 5.2 **Commercial General and Automobile Liability Insurance.** Contractor shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles. The City shall be named as an additional insured and insurance shall provide primary coverage with respect to the City by written endorsement to the policy.
- 5.3 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- 5.4 **Professional Liability Insurance.** (Required for all Licensed Contractors performing design work) Contractor shall maintain professional liability insurance for licensed professionals performing work in connection with this Agreement in an amount not less than One Million Dollars (\$1,000,000.00) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed Two Hundred Fifty-Thousand Dollars (\$250,000.00) per claim.
- 5.5 **All Policies Requirements.**
 - 5.5.1 **Verification of Coverage.** Prior to beginning any work under this Agreement, Contractor shall, at the sole option of the City, provide City with (1) certified Certification of Insurance that demonstrates compliance with all applicable insurance provisions contained herein; and (2) upon request by the City, complete certified copies of all policies and/or complete certified copies of all endorsements that demonstrate compliance with this Section 5.
 - 5.5.2 **Notice of Reduction in or Cancellation of Coverage.** A certified endorsement must be attached to all insurance obtained in accordance with this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or

reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- 5.6 Waiver of Subrogation. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Contractor, its employees, agents and subcontractors.

Section 6. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 6.1 Contractor shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the City and its officials, commissioners, officers, employees, agents and volunteers from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Contractor. Contractor will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the City.

Section 7. STATUS OF CONTRACTOR. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent.

Section 8. LEGAL REQUIREMENTS.

- 8.1 Governing Law. The laws of the State of California shall govern this Agreement.
- 8.2 Compliance with Applicable Laws. Contractor and any subcontractors shall comply with all laws applicable to the performance of the work in connection with this Agreement.
- 8.3 Licenses and Permits. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
- 8.4 Nondiscrimination and Equal Opportunity. In compliance with federal, state and local laws, Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement.
- 8.5 Work Requiring Payment of Prevailing Wages. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than

the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. Copies of such prevailing rate of per diem wages can be found at the following website: <https://protect-us.mimecast.com/s/RKorBEh6zVmC7?domain=dir.ca.gov>.

All contractors and subcontractors who bid or work on a public works project over amounts specified under California Labor Code Section 1725.5(f) must register and pay an annual fee to Department of Industrial Relations (DIR) pursuant to California Labor Code section 1725.5. Information regarding DIR registration can be found at the following website: <https://protect-us.mimecast.com/s/vIRgBQH298rik?domain=dir.ca.gov>.

Contractor agrees, in accordance with Section 1771.1 of the California Labor Code, that contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. Contractor agrees, in accordance with Section 1771.4 of the California Labor Code, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Section 9. MODIFICATION.

- 9.1 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 9.2 **Assignment.** Contractor may not assign this Agreement or any interest therein without the prior written approval of the City.
- 9.3 **Subcontracting.** Contractor shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City. Where written approval is granted by the City, Contractor shall supervise all work subcontracted by Contractor in performing the Services; shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work; the subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Services; and Contractor is obligated to ensure that any and all subcontractors performing any Services shall be fully insured in all respects and to the same extent as set forth under Section 5, to City's satisfaction.
- 9.4 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.
- 9.5 **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

- 9.5.1 Immediately terminate the Agreement;
- 9.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor in accordance with this Agreement;
- 9.5.3 Retain a different Contractor to complete the Services not finished by Contractor;
or
- 9.5.4 Charge Contractor the difference between the costs to complete the work at the time of breach and the amount that City would have paid Contractor in accordance with Section 2 if Contractor had completed the Work.

Section 10. KEEPING AND STATUS OF RECORDS.

- 10.1 **Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains in accordance with this Agreement and that relate to the matters covered under the terms of this Agreement shall be the property of the City.
- 10.2 **Contractor's Books and Records.** Contractor shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 10.3 **Confidential Information and Disclosure.** During the term of this Agreement, either party (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Contractor understands that City is a public City and is subject to the laws that may compel it to disclose information about Contractor's business.

Section 11. WARRANTY.

- 11.1 In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Services (including but not limited to all equipment and materials supplied in connection therewith) shall be free from defects in design and workmanship, and that Contractor shall perform all Services in accordance with all applicable engineering, construction and other codes and standards, and with the degree of high professional skill normally exercised by or expected from recognized professional firms engaged in the practice of supplying services of a nature similar to the Services in question. Contractor further warrants that, in addition to furnishing all tools, equipment and supplies customarily required for performance of work, Contractor shall furnish personnel with the training, experience and physical ability, as well as adequate supervision, required to perform the Services in accordance with the preceding standards and the other requirements of this Agreement. In addition to all other rights and remedies which City may have, City shall

have the right to require, and Contractor shall be obligated at its own expense to perform, all further services which may be required to correct any deficiencies which result from Contractor's failure to perform any Services in accordance with the standards required by this Agreement. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof), any equipment, goods or other materials or Services used or provided by Contractor under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable notice from City, replace or repair the same to City's satisfaction. Unless otherwise expressly permitted, all materials and supplies to be used by Contractor in the performance of the Services shall be new and best of kind.

- 11.2 Contractor hereby assigns to City all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Services.

Section 12. HEALTH AND SAFETY PROGRAMS. The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all City site programs.

- 12.1 Contractor will be responsible for acquiring job hazard assessments as necessary to safely perform all duties of each Project and provide a copy to City upon request.
- 12.2 Contractor will be responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of Project and provide copies of the certified training records upon request by City. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3 Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4 City, or their representatives, shall periodically monitor the safety performance of the Contractor working on the Project. All Contractors and their subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from City to Contractor under this Agreement at any time when, or for any Services performed when, Contractor is not in full compliance with this Section 10.
- 12.5 Contractor shall immediately report any injuries to the City site safety representative. Additionally, the Contractor shall investigate and submit to the City site safety representative copies of all written accident reports, and coordinate with City if further investigation is requested.

- 12.6 Contractor shall take all reasonable steps and precautions to protect the health of their employees and other site personnel with regard to their Scope of Services. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the City site safety representative upon request.
- 12.7 Contractor shall develop a plan to properly handle and dispose of all hazardous wastes they generate within the Scope of Services.
- 12.8 Contractor shall advise its employees and subcontractors that any employee, who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Project.
- 12.9 Contractor shall, at the sole option of the City develop and provide to the City a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials to include diesel fuel used for trucks owned or leased by the Contractor.

Section 13. MISCELLANEOUS PROVISIONS.

- 13.1 **Attorneys' Fees.** If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 **Venue.** In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 13.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect.
- 13.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 **Contract Administration.** This Agreement shall be administered by the City Manager or his designee, who shall act as the City's representative. All correspondence shall be directed to or through the representative.
- 13.6 **Notices.** Any written notice to Contractor shall be sent to:

Sherri Weber, Regional Sales Director- Northern California

A Plus Tree Inc.
3490 Buskirk Ave.
Pleasant Hill, CA 94523

Any written notice to City shall be sent to:

Stephen Prée, Environmental Programs Manager/ City Arborist
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

- 13.7 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.8 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.9 **Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:
- Each Party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority. If dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, et. seq.
- 13.10 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the date signed by the City.

CITY OF EL CERRITO

Date: _____

Karen Pinkos, City Manager

CONTRACTOR

Date: _____

Sherri Weber, Regional Sales Director

EXHIBIT A

SCOPE OF SERVICES AND FEE SCHEDULE

1. The work to be done consists of furnishing all materials, equipment, tools, labor, and incidentals as for work described below in accordance with the following standards.
 - a) All work shall be performed according to ANSI A-300 Standards and ISA BMPs
 - b) Crews shall maintain operable City approved fire extinguishers within 25' of all work sites.
 - c) Spark Arrestors are required on all power equipment
 - d) All "Hot" work shall be suspended during Red Flag Warnings
 - e) Wood chips to be disposed of on City designated sites (City property)
 - f) Contractor shall cover all fresh Eucalyptus stumps with 6 mil black plastic, secured by $\frac{3}{4}$ "staples (or approved equal), or treat with Triclopyr (or approved equal) within 8 hours, as directed by the City Arborist,
2. The classification of Contractor's license required in the performance of this Contract is Class C-61 / D-49.
3. **The work to be performed shall be completed within 30 working days after issuance of a Purchase Order and Notice to Proceed.** Time is of the essence. Liquidated damages = \$500 / day.
4. The successful bidder, including prime contractor and subcontractors, will be required to obtain and pay for City Business Licenses.
5. The successful bidder will be required to obtain a City Encroachment Permit, at no cost.

Specific Requirements

Routine daily tree pruning operations shall commence no earlier than 7:00 A.M. and shall be completed each day no later than 5:00 P.M.

Contractor shall provide the highest quality of Tree Pruning, Removal and Maintenance services. The Contractor agrees to provide the highest quality commercially accepted methods, procedures and controls for tree pruning, removal and maintenance consistent with the International Society of Arboriculture Pruning Standards (BMPs) , ANSI A300 Standards and information in standard arboriculture industry references. This shall include the use of proper knowledge, skills, materials, and equipment of a timely basis to maintain all areas in a clean, safe, healthy, and aesthetically acceptable manner during the entire term of this contract. The Contractor shall furnish tree services by qualified arborists, site managers and tree worker crews to provide tree pruning, removal and maintenance activities that comply with this Specification. It will be the responsibility of the Contractor to

provide all equipment, materials, and labor as necessary to perform the work described in these documents in a safe, efficient, and legal manner.

A work zone shall be established and maintained for each tree trimming or other operations. The Contractor shall use all appropriate methods used in the field of tree trimming and tree maintenance for establishing and maintaining such work zone. No person other than members of the Contractor's work crew may be allowed to enter such work zone. If any person enters such work zone, the Contractor shall immediately cease all work and operation of all equipment until the work zone is clear. City approved signage shall be posted when closing sidewalks, trails or street lanes.

Full compensation for conforming to the requirements of this Specification shall be considered as included in the contract prices paid for the various items of work and no separate payment may be made thereof.

A. Tree Pruning

Tree pruning removal and maintenance services shall be performed according to the most current editions of the following benchmark standards:

1. American National Standards Institute (ANSI) A300 Pruning Standards
2. ANSI Z133.1 Safety Standards
3. ISA Best Management Practices: Tree Pruning

To ensure that pruning is appropriate for the species and tree/site conditions, it is important to have a clear understanding of the specific needs of the tree and the objectives for pruning. Pruning objectives include the following:

- Improve structural strength and reduce failure potential
- Provide clearance for pedestrians, vehicles, structures, and low voltage utilities
- Improve safety and security for residents and visitors
- Repair structural damage from wind loading
- Improve aesthetic characteristics
- Reduce maintenance costs
- Prevent or mitigate a pest problem

Standard 1: All pruning cuts shall conform to ANSI A300 standards (Part 1: Pruning). Do not make flush cuts or leave branch stubs. Cuts shall be made outside the branch collar in a manner that promotes callous growth to cover wounds.

Limbs one inch (1") in diameter or greater shall be removed with a series of three (compound) cuts. Make the first cut on the underside of the branch one foot (1') to two feet (2') from the branch junction. The undercut should be at least one-third ($\frac{1}{3}$) of the

diameter. Make the second cut one-inch (1") to three inches (3") further from the branch junction than the first. Make the final cut just outside the branch collar in a manner that will stimulate rapid callus growth that will cover the wound.

Removal from a tree of branches three and one-half inches (3.5") or larger in diameter, unless dead, broken or cracked, require prior approval by the City Arborist and once cut, shall be lowered by proper ropes to the ground. Any damage caused by dropping limbs shall be reported to the City Arborist within 24 hours and shall be repaired at the Contractor's expense and to the satisfaction of the City Arborist. All debris resulting from tree pruning operations shall be removed from the work site daily.

Standard 2: Not more than 25% of the crown shall be removed within an annual growing season. The percentage of foliage removed shall be adjusted according to age, health, and species considerations. Up to 33% crown removal may be accepted for *Ulmus parvifolia* or other special species after consultation with the City Arborist.

Standard 3: Pruning equipment shall be sharp, clean and sized appropriately for the pruning cut. *Chainsaws shall not be used to remove branches 1.5" or less in diameter.* Avoid the use of any pruning and climbing equipment that may cause damage to bark tissue. Spikes (climbing spurs) shall not be used for climbing trees unless the tree is being removed. Pruning tools shall be treated with a disinfectant (such as Lysol) when pruning trees infected with a pathogen that may be transmitted (on tools) from one tree to another of the same species, such as Pears (*Pyrus* spp.). Disinfectants should be used before and after pruning individual trees.

Standard 4: All persons engaged in tree pruning shall be familiar with each of the pruning types. Selection of the pruning type(s) shall be based on pruning objectives. Refer to publication ISA Best Management Practices Tree Pruning (Third Edition) for descriptions of pruning types. Clearance pruning that does not comply with Standard 2 shall be conducted only by direct approval of the City Arborist.

Standard 5: Heading cuts shall not be used when pruning mature trees, except in very limited cases with approval from the City Arborist. Whenever possible, use reduction cuts to reduce height and branch removal cuts (thinning cuts) to reduce branch end weights. When reduction and branch removal cuts are not possible (such as when interior lateral branches are not present) and tree hazard potential is high, then heading cuts may be permitted with approval from the City Arborist.

Standard 6: Clearance pruning shall be defined as to provide the following distances:

- i. Roadway- not less than 14' from road surfaces
- ii. Sidewalk- not less than 7' from sidewalk surfaces
- iii. Building- not less than 8' from vertical building surfaces
- iv. Roofs and streetlights- not less than 10' from building roof surfaces or streetlights.

- v. Utility and telecom drop lines- not less than 2' or sufficient clearance to prevent service interruption and vascular tree growth onto wires.

Standard 7: Wildlife Protection: Prior to the commencement of any work in the vicinity of any tree, in coordination with the City a biological survey shall be performed by the City's qualified biologist. In addition, the contractors shall survey each tree visually, from all sides, for the sole purpose of detecting the presence of bird nests or wildlife of any type. If a nest is found and is determined to be active, there shall be no work of any type in the tree in which the nest is found without the written permission of the City's designated representative. At no time shall any nest or wildlife be removed from its location. In the event that wildlife is accidentally displaced, the Contractor shall take care to protect it and notify the City representative immediately.

A PLUS INC. PROPOSAL FORM FOR SELECTED ITEMS
NATURAL AREAS 2021 FIRE FUEL REDUCTION PROJECT

Bid Item #	BUNDLE A – Navellier to Regency Location / Work Description	Qty.	Price
1.	City property abutting 1440 Navellier St. and Gladys Ave. North of fire road (remove, chip, haul away) a) <i>Remove all ground fuels within specified area from service road to fence lines. (Tree boles, stumps, & logs.)</i> b) <i>Prune all trees abutting properties for 14' vertical clearance, remove stub cuts.</i> c) <i>Prune Willows for road clearance, remove dead oak & dead Willow</i> d) <i>Raise Oaks, etc. to 8'-14' from ground</i> e) <i>Remove 3 limbs ($\leq 18''$) upper limbs of big Euc. Fallen into Oak tree.</i>	Approx. 16,000 SF	\$8,550
3.	East of 1406 Navellier (remove debris $\leq 4''$ through property that is located within 30' of fence line, all larger wood buck-up and condense to minimize air > 15' from remaining tree canopies) a) <i>Removals: $\leq 8''$ Pittosporum (1 multi), Pine (3)</i> b) <i>Removals: 20'' - 30'' Dead Pines (2) (Leave standing boles 10-12')</i> c) <i>Removals: 24'' Live pine (1) (Leave standing boles 10-12')</i> d) <i>Removals: 10 - 15'' Standing Dead Oaks (12)</i> e) <i>Limb up Oaks to 8' (9)</i> f) <i>Remove all existing small brush piles within 30' of fence line, chip/haul away</i> g) <i>Buck-up fallen Oaks and ground fuels slash > 15' from tree canopies</i>	4 trees 2 trees 1 tree 12 trees 9 trees	\$15,000
6.	X Roads: a) <i>Remove, chip and broadcast 25'' + 10'' dead Oaks (2)</i>	2 trees	\$3,035
7.	Fire Road to Regency Ct. (Chip and broadcast) a) <i>Remove (1) $\leq 25''$ Oak north of fire road</i> b) <i>Remove (10) Bay trees (1''-10'' dbh)</i> c) <i>Remove (4) $\leq 20''$ Oaks (south of fire road)</i>	1 tree 10 trees 4 trees	\$9,000

	d) Remove Mayten multi clump and dead Oak stems at corner, limb up remaining Oak stem to 8' e) Prune/ remove for road clearance to 14' vertical f) Remove two stemmed Mayten and suckers (6", 9" stems) g) Prune Big Bay tree- remove included limb over road h) Remove 2 existing brush piles on roadside i) Remove painted Coyote Bush (multi) for road clearance j) Remove $\leq 15"$ Blue Acacia tree (<i>haul chips</i>) k) Remove $\leq 8"$ Green Acacia (2) (<i>haul chips</i>) l) Remove Ceanothus tree shrub m) Remove dead Elderberry stems (2 trees, marked)	1 tree 1 tree 1 tree 1 tree 1 tree 2 trees 2 trees	
8.	a) Hourly for extra work (Bundle A)		\$85
Bid Item #	BUNDLE B - Wildwood Creek Fire Road to Douglas Ct.		
	a) Location / Work Description	QTY	Price
1.	Creekside Eucalyptus mostly west of X roads (<i>all removals cut stumps 4" to 6" above grade and cover in 12 mil black plastic stapled to cover over sides of stump</i>) a) Remove 5, $\leq 18"$ Blue Gum Eucalyptus b) Prune BIG Blue Gum Eucalyptus for Condo and trail hazard and hanger removal. c) Limb up 2, $\leq 12"$ Cypress to 14' d) Remove (6-8) fallen Eucalyptus limbs 4-10" e) Remove Eucalyptus duff	5 trees 2 trees 2 trees	\$12,000
4.	a) Hourly for extra work (Bundle B)		\$95 (no mastication) \$465 w mastication
Bid Item #	BUNDLE C- Madera Property to Julian Steps		
	a) Location / Work Description	Qty.	Price
2.	Madera Creek to Julian Steps (<i>remove debris $\leq 4"$ through easement, all larger wood buck-up into piles and condense < 3' tall X 15' wide, > 15' from tree canopies</i>)		\$24,000

	a) <i>Reduce and condense dead Coyote brush</i> ground fuels within 5' of trail b) <i>Remove standing Dead Pines < 15" (cut to grade, buck-up into piles and condense < 3' tall X 15' wide staged > 15' from tree canopies)</i> c) <i>Remove 10 existing brush piles</i> to Potrero Easement (7628 Potrero Ave) Condense remaining into piles <3' tall X 15' W, >15' from tree canopies. d) <i>Prune to raise</i> 5 Oaks (< 25") to 8' e) <i>Remove</i> 7 Live Pines < 18" f) <i>Remove</i> Live pines 18-20" (2-3) g) <i>Prune ~ 26" Plum</i> to remove 10" failed limb, prune to raise to 8' l) <i>Remove same ~26" Plum tree</i> h) <i>Remove all plum stems < 8"</i> i) <i>Prune big Oak (> 25") on fence</i> to raise to 10' on uphill side (haul debris and chip) j) <i>Prune 2 Oaks in easement</i> for clearance & structure (haul debris and chip) k) <i>Remove same two Oaks</i> (haul debris and chip) treat stumps l) <i>Prune Oak (> 20")</i> for clearance over downhill property (haul debris and chip) (7704 Potrero Ave) m) <i>Prune Willow (< 20")</i> for clearance over downhill property (buck up debris), (7704 Potrero Ave) n) <i>Prune for dead wood</i> and raise to 8' , 1 Willow, 1 Oak (7704 Potrero Ave) o) <i>Prune to raise to 8' (18") Oak</i> by path (west) p) <i>Prune to raise to 8' (> 25") Oak</i> down slope q) <i>Remove 2 (< 8") Pine</i> West of path r) <i>Remove 1 (> 8") Pine</i> East of path s) <i>Remove (< 6") Acacia</i> East of path and condense ground fuels	2 trees 10 brush piles 5 trees 7 trees Per tree 1 tree 1 tree 2 trees 2 trees 1 tree 1 tree 2 trees 1 tree 1 tree 2 trees 1 tree +	
3.	Hourly for extra work (Bundle C)		\$95 (no mastication) \$465 w mastication



AGENDA BILL

Agenda Item No. 7.A.

Date: September 21, 2021
To: El Cerrito City Council
From: David Yun, Fire Prevention Officer; Michael Pigoni, Fire Chief, Fire Department
Subject: Fire Hazard Abatement

ACTION PROPOSED

1) Adopt a resolution declaring weeds, rubbish, litter, or other flammable material on certain real property identified in the resolution constitutes a public nuisance; and 2) Conduct a public hearing and upon conclusion, adopt a resolution overriding objections by property owners and ordering the City Manager or their designee to abate certain public nuisances pursuant to El Cerrito Municipal Code Chapter 16.26.

BACKGROUND

The Fire Hazard Abatement Program is designed to reduce fire hazards on a large number of private properties during the spring and early summer months. A process of advance notice and hearings for property owners is coupled with a public education program involving the promulgation of standards for vegetation management in residents' yards and vacant lots. This program seeks to remove weeds, rubbish, litter or other flammable material from private properties where such flammable material endangers the public safety by creating a public nuisance and a fire hazard. Most property owners voluntarily abate these hazards without Fire Department involvement. Ideally, 100% of the property owners would do so. We anticipate that a small number of owners are content to have the City do the work and place the costs on their tax bill. For over 20 years, the City's annual Fire Hazard Abatement Program has been very successful in reducing fire hazards throughout the hill neighborhoods of El Cerrito. Indeed, this program has become a model program which other fire jurisdictions have borrowed from.

The City Council held a public hearing on July 20, 2021 and adopted resolutions that 1) declared weeds, rubbish, litter, or other flammable material on certain real property identified in the resolution constituted a public nuisance; and 2) overrode objections by property owners and ordered the City Manager or their designee to abate certain public nuisances pursuant to El Cerrito Municipal Code Chapter 16.26. This public hearing requests that the City Council conduct the same public hearing process for additional identified properties as shown in Attachment 2.

ANALYSIS

Since May of this year, the Fire Department conducted citywide fire hazard inspections of all properties. Inspections began May 10, 2021 and were conducted through August. As a result of these inspections, a list of properties containing public nuisances was generated which continues to be amended as additional properties are identified, as

with this public hearing. Between May 14, 2021 and August 27, 2021 the properties determined to be in violation of El Cerrito Municipal Code Chapter 16.26 were notified in writing of the hazards on their property to abate hazardous conditions, and the El Cerrito Vegetation Management Standards Checklist was included with the notification (Attachments 4, 5, & 6). Additionally, these property owners were informed in the Letter from the Fire Marshal (Attachment 4) of the time, date and location of the upcoming City Council meeting where their properties would be declared a public nuisance and abatement would be ordered. Property owners were directed to complete the necessary measures to bring their property into compliance prior to the re-inspection process done on a rotating basis dependent upon the initial notice. Those properties found to be in compliance at the time of re-inspection were sent a Correction postcard (Attachment 7) which indicated the property had met the El Cerrito Vegetation Management Standards. Only those properties that were not voluntarily abated with the first notice are contained within the Master Abatement List, Exhibit A to the proposed Resolution (Declaring Public Nuisance.)

This public hearing is the next step in the process to eliminate hazards on the additional private properties that were identified as a public nuisance and have not voluntarily abated said violations. In order to achieve full compliance, the City Council is asked to declare the properties to be a public nuisance and direct the City Manager or their designee to abate such public nuisance conditions. Actual City-ordered abatement of fire hazards occurs only after all efforts at providing notice, information, and a public hearing have failed to induce voluntary compliance by the property owner.

The Fire Hazard Abatement process, under the direction of the Fire Department, should proceed according to El Cerrito Municipal Code Chapter 16.26, which specifies the following:

1. The Fire Department determines that hazards must be abated. Pursuant to these code sections, "hazards" are defined as weeds, rubbish, litter, or other flammable materials which create a fire hazard or are otherwise noxious or dangerous and which exist on specific parcels of property within the City.
2. The Fire Department shall post notice on each property or send notice by mail that the El Cerrito Fire Department has determined the existence of a public nuisance which must be abated and that a hearing will be held to consider any objections prior to the City Council declaring the properties to be a public nuisance and ordering the City Manager or their designee to perform abatement.
3. At the September 21, 2021 City Council meeting, the City Council shall first adopt a resolution Declaring that Weeds, Rubbish, Litter, or Other Flammable Material on Certain Real Property Constitutes a Public Nuisance (Attachment 1 and 2).
4. At the same hearing, but after adoption of the first resolution, the City Council shall hear and consider all objections to declaration of public nuisances or the procedures proposed for abatement of the same. After the hearing, the Council shall adopt a

resolution Overriding Objections by Property Owners and Ordering the City Manager or their Designee to Abate Certain Public Nuisances Pursuant to Chapter 16.26 (Attachment 3).

5. At the conclusion of the September 21, 2021 hearing, a second and final notice shall be sent to each property owner prior to abatement (Attachment 8). This notice will order the immediate abatement of nuisance conditions. This notice will clearly state that if nuisance conditions are ignored, the City shall cause abatement and costs for removal will be assessed against the property as a lien and special assessment. It will also indicate that if the conditions are voluntarily abated, the property shall be removed from the process.

6. If the nuisance is not abated by October 4, 2021, and October 8, 2021 prior to the arrival of the hazard abatement crew, the City of El Cerrito shall cause the weeds, rubbish, refuse, and other flammable material to be removed and shall keep an account of the cost of abatement for each parcel of land where such work is performed according to the City Council adopted Fire Department Master Fee Schedule.

7. At the October 19, 2021 City Council Meeting the City Manager or their designee shall submit to the City Council for confirmation an itemized written report showing the cost of abatement work performed. A copy of this report shall be posted for at least ten (10) days prior to its submission to the City Council. Each property owner upon whose property abatement work was performed shall be sent written notice by mail of a hearing by the City Council to consider the cost of abatement work performed on their property.

8. At the City Council Meeting on October 19, 2021, the City Council shall receive and consider the written staff report on abatement actions taken by the City and shall hear any objections from the property owners liable to be assessed for the abatement. The City Council may modify the staff report if deemed appropriate and then confirm the report by motion or resolution.

9. After City Council confirmation of the report, a certified copy of the report shall be filed with the county auditor who shall add the amount of the assessment to the next regular tax bill levied against the parcel.

STRATEGIC PLAN CONSIDERATIONS

This section is not applicable to this agenda item.

ENVIRONMENTAL CONSIDERATIONS

The Fire Hazard Abatement Program is exempt from California Environmental Quality Act (CEQA) pursuant to Sections 15304 and 15308 of the CEQA Guidelines. Therefore, no further CEQA review is required.

FINANCIAL CONSIDERATIONS

The abatement program will be administered by Fire Department staff with minimum costs expended for printing and mailing. Abatement work will be completed by City maintenance staff or private contract labor as appropriate. Program costs will be recovered through the special assessment and lien process.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and approved the process.

Reviewed by:

A handwritten signature in blue ink, appearing to read "Karen Pinkos".

Karen Pinkos, City Manager

Attachments:

1. Resolution (Declaring Public Nuisance)
2. Exhibit A to Resolution (List of Properties)
3. Resolution (Overriding Objections)
4. 1st Letter - Fire Marshal (El Cerrito)
5. Abatement Inspection Form
6. Vegetation Management Standards Checklist EC
7. Correction Letter - El Cerrito
8. 2nd Letter - Fire Marshal's Letter of Declared Fire Hazard
9. Vegetation Management Standards El Cerrito

RESOLUTION NO. 2021 - XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO DECLARING THAT WEEDS, RUBBISH, LITTER OR OTHER FLAMMABLE MATERIAL ON CERTAIN REAL PROPERTY CONSTITUTES A PUBLIC NUISANCE

WHEREAS, El Cerrito Municipal Code Chapter 16.26 provides a method by which a local legislative body may abate on private property public nuisance conditions relating to weeds, rubbish, litter or other flammable material that creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous; and

WHEREAS, the City of El Cerrito Fire Marshal has identified certain real property, by street name, lot and block number, on which the presence of weeds, rubbish, litter or other flammable material creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous as defined in Chapter 16.26 of the El Cerrito Municipal Code and therefore constitutes a public nuisance; and

WHEREAS, pursuant to El Cerrito Municipal Code Section 16.26.160 and Government Code Section 39560-39588, the City Council shall adopt this resolution declaring that certain real property within the City constitutes a public nuisance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that the following properties identified on Exhibit A, attached hereto, are declared to be public nuisances pursuant to El Cerrito Municipal Code Section 16.26.160.

BE IT FURTHER RESOLVED that on this same date of September 21, 2021 at 7:00 in the City of El Cerrito, the City Council shall hold a hearing at which owners of the real property identified in Exhibit A hereto may object to the designation of their properties as public nuisances and object to the abatement actions proposed by the City.

I CERTIFY that at a regular meeting on September 21, 2021 the El Cerrito City Council passed this resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September _____, 2021.

Holly M. Charléty, City Clerk

APPROVED:

Paul Fadelli, Mayor

EXHIBIT A

El Cerrito Fire Protection District
List of Real Property Constituting Public Nuisances

APN	Street Address
505-383-026-0	1325 Devonshire Ct.
505-040-006-7	Fairview Dr. (Vacant)
505-153-024	1740 Julian Ct.

RESOLUTION NO. 2021 - XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO OVERRIDING OBJECTIONS BY PROPERTY OWNERS AND ORDERING THE CITY MANAGER OR HIS DESIGNEE TO ABATE CERTAIN PUBLIC NUISANCES PURSUANT TO CHAPTER 16.26

WHEREAS, El Cerrito Municipal Code Chapter 16.26 provides a method by which a local legislative body may abate on private property public nuisance conditions relating to weeds, rubbish, litter or other flammable material that creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous; and

WHEREAS, the City of El Cerrito Fire Marshal has identified certain real property, by street name, lot and block number, on which the presence of weeds, rubbish, litter or other flammable material creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous as defined in Chapter 16.26 of the El Cerrito Municipal Code and therefore constitutes a public nuisance; and

WHEREAS, on September 21, 2021, pursuant to El Cerrito Municipal Code Section 16.26.160 and Government Code Sections 39560-39588, the City Council adopted Resolution 2021-XX declaring that certain real property within the City constitutes a public nuisance; and

WHEREAS, El Cerrito Municipal Code Chapter 16.26 provides that notice shall be sent to owners of the real property declared a nuisance pursuant to Resolution 2021-XX providing those owners with the following: description of the nuisance; explanation of how the nuisance must be abated; explanation that if the nuisance is not abated; the City shall abate the public nuisance and the cost of abatement shall be assessed against the property as a special assessment; and informing the owners that the City Council shall hold a hearing at a certain date, time, and place at which the owners may present objections to the designation of their properties as public nuisances or to the proposed abatement of the nuisance; and

WHEREAS, between May 14th and August 27th 2021, the City Fire Department sent written notice to those property owners describing the weeds, rubbish, refuse, or other flammable material that presented a fire hazard and public nuisance; explaining that the Fire Department had determined a public nuisance that must be removed; informing the owners that if they did not abate by September 15, 2021, the City Council would hold a hearing on September 21, 2021 at which the owners could present objections to the declaration of the nuisance or the proposed abatement measures and further explained the City could abate the nuisance and collect the costs as an assessment on the property; and

WHEREAS, on September 21, 2021, the City Council adopted Resolution 2021-XX confirming the nuisance declarations of the City Fire Department and declaring a public nuisance on certain real property pursuant to Chapter 16.26; and

WHEREAS, El Cerrito Municipal Code Section 16.26.160 and Government Code Sections 39560-39588 provide that after adoption of a resolution declaring a public nuisance and notice to affected property owners of the Council's hearing of objections,

the Council may overrule any objections and order the City Manager or his designee to abate the public nuisances.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it overrides any objections by owners of that certain real property on which public nuisances were declared in Exhibit A to Resolution 2021-XX (adopted on the same date herewith).

BE IT FURTHER RESOLVED that the City Manager and his or her designee is hereby ordered to abate the public nuisances by having the weeds, rubbish, refuse, dirt, or other fire hazard or noxious or dangerous materials removed.

BE IT FURTHER RESOLVED that pursuant to El Cerrito Municipal Code Section 16.26.160 and Government Code Section 39574, the City Manager or his designee shall keep an account of the cost of abatement for each parcel of land on which work is performed. The City Manager or designee shall then prepare an itemized written report to be presented to the City Council so that, after the notice and hearing during the City Council meeting of October 19, 2021 these abatement costs can be confirmed as a special assessment against those parcels.

I CERTIFY that at a regular meeting on September 21, 2021 the El Cerrito City Council passed this resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September _____, 2021.

Holly M. Charl  ty, City Clerk

APPROVED:

Paul Fadelli, Mayor



EL CERRITO-KENSINGTON FIRE DEPARTMENT
Fire Prevention Office
10900 San Pablo Avenue, El Cerrito, CA 94530
(510) 215-4457 FAX (510) 232-4917 fpo@ci.el-cerrito.ca.us



_____, 2021

Parcel Number:

Property Address: _____ El Cerrito, CA 94530

Property Owner:

Property Owner's Address:

Dear El Cerrito Property Owner:

With the minimal rainfall the last two years, the community is facing its peak fire danger earlier than normal. To reduce the fire danger on private property and provide greater community safety, the Fire Department has been inspecting properties and checking for fire hazards. Recently your property listed above was found that it **does not comply** with the Vegetation Management Guidelines set forth in the City of El Cerrito Vegetation Management Standards. You are being notified now so that you may, if you have not already done so, take steps to remove those fire hazard conditions found on your property.

Enclosed is a copy of the Fire Hazard Reduction Inspection form specifying those areas that are not in compliance as well as the Fire Hazard Reduction Guidelines and Fire Hazard Reductions Checklist that can assist you in bringing your property into compliance. More information on the Vegetation Management Standards and Guidelines may be found on the City's website at: www.el-cerrito.org under Vegetation Management Standards. Additional information is also available at www.readyforwildfire.org or www.cafiresafecouncil.org as well as many others.

If you have recently completed the work to meet these standards, no further action is required. If not, your property is required to be brought into compliance no later than XXXXX, 2021. There is no need to contact Fire Department upon completion as we will be re-inspecting all properties. When the Fire Department has cleared your property, you will receive a follow up letter to inform you that your property is currently in compliance.

On September 21, 2021 at 7:00PM the El Cerrito City Council will hold a public hearing to declare those properties still not in compliance as a public nuisance. Your property is at risk of being declared a public nuisance and subject to further abatement actions. In accordance with the Government Code, you may appear before the Board at this public hearing to dispute this declaration.

If you have not done so already, please take immediate action to remove those fire hazard conditions and we thank you for your cooperation helping us make El Cerrito a more fire safe community.

Sincerely,

Michael Piloni

Michael Piloni

Fire Chief / Fire Marshal



EL CERRITO FIRE DEPARTMENT
KENSINGTON FIRE PROTECTION DISTRICT



10900 San Pablo Avenue, El Cerrito, Ca. 94530 (510)215-4450

Fire Hazard Reduction Inspection

Agenda Item No. 7.A.
Attachment 5

Owner/Tenant	Site Address	City	State	Zip Code
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Legal Propety Owner	Mailing Address	City	State	Zip Code
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APN #

YOUR PROPERTY IS NOT IN COMPLIANCE WITH THE FIRE CODE.

YOU MUST COMPLETE THE FOLLOWING REQUIREMENTS:

ZONE 1

Zero to 30 feet from buildings, structures, decks,etc. in all portions within El Cerrito and Kensington

- ☐ 1. Remove all dead plants, grass and weeds.
- ☐ 2. Remove dead or dying leaves and pine needles from your yard, roof and rain gutters.
- ☐ 3. Trees shall be maintained so that no portion is closer than 10 feet from any chimney opening.
- ☐ 4. Trees, shrubs, bushes or other vegetation adjacent to or overhanging any structure shall be maintained free of dead limbs and other combustible matter.
- ☐ 5. On mature trees, limbs should be removed up to 10' above the ground. Smaller trees should be limbed to 1/3 of their height up to 6' above the ground, but in no case less than 18" from the ground.
- ☐ 6. Relocate wood piles to Zone 2 if applicable.
- ☐ 7. Remove or prune flammable plants and shrubs near windows.
- ☐ 8. Remove vegetation and items that could catch fire from around and under decks.
- ☐ 9. Create a minimum 6-foot separation between trees, shrubs or vegetation and combustible materials.
- ☐ 10. Vacant lots in Zone 1 shall be maintained to be 10 feet wide along the property line.

ZONE 2

Thirty to 100 feet from buildings, structures, decks, etc. for all parcels within the Very High Fire Hazard Severity Zone. Zone 1 requirements shall be followed in addition to Zone 2 requirements.

- ☐ 1. Cut or mow weeds and grass to a maximum height of 6 inches.
- ☐ 2. All fire hazardous vegetation except for weeds and grass shall be cleared and maintained to a height no greater than 18 inches above the ground.
- ☐ 3. Vacant lots in Zone 2 shall be maintained to be 30 feet wide along the property line.

COMMENTS:

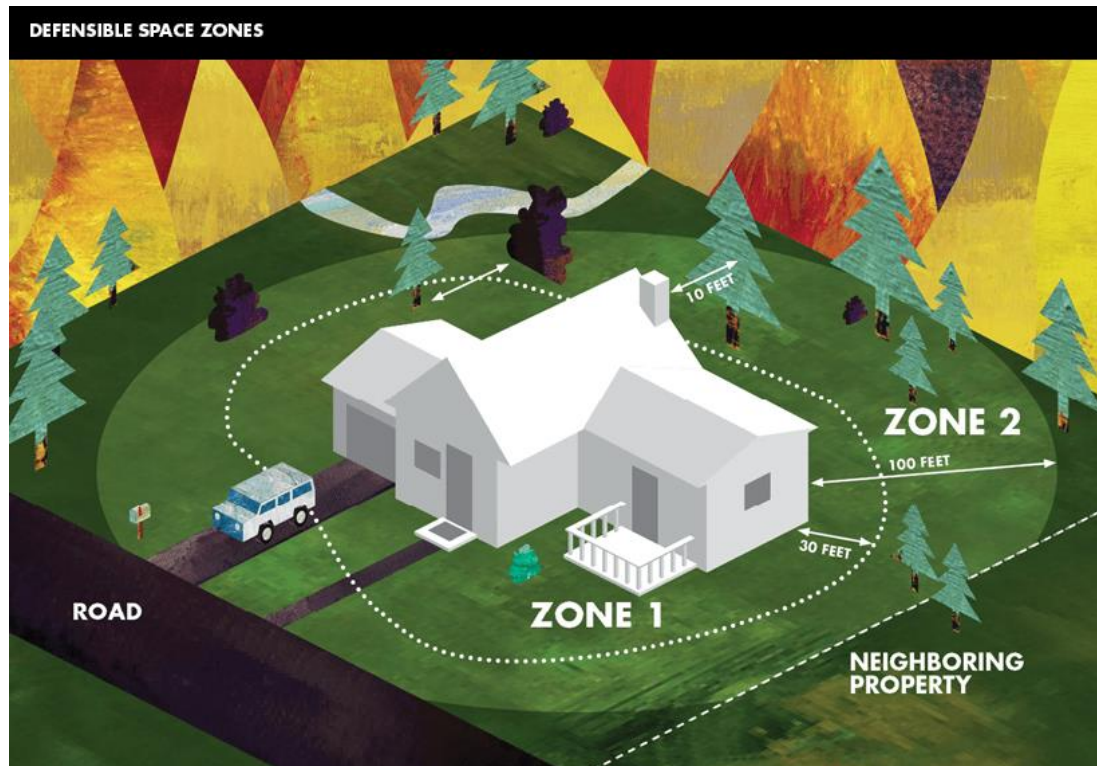
Inspected by

Inspection #

Date

Time

City of El Cerrito Fire Hazard Reduction Guidelines



Zone 1

Zone 1 extends 30 feet from buildings, structures, decks, etc. in all portions within the City of El Cerrito including the designated Very High Fire Hazard Severity (VHFHS) Zones. Vacant lots in Zone 1 shall be maintained to be 10 feet wide along the property line.

- Remove all dead plants, grass and weeds (vegetation).
- Remove dead or dry leaves and pine needles from your yard, roof and rain gutters.
- Trees shall be maintained so that no portion is closer than 10 feet from any chimney opening.
- Trees, shrubs, bushes or other vegetation adjacent to or overhanging any structure shall be maintained free of dead limbs and other combustible matter such as vines and loose papery bark.
- On mature trees, limbs should be removed up to 10' above the ground. Smaller trees should be limbed to 1/3rd of their height up to 6' above the ground, but in no case less than 18 inches from the ground.
- Relocate wood piles to Zone 2 if applicable.
- Remove or prune flammable plants and shrubs near windows.
- Remove vegetation and items that could catch fire from around and under decks.
- Create a minimum 6-foot separation between trees, shrubs or vegetation and combustible materials.

Zone 2

Zone 2 extends from 30 feet to 100 feet out from buildings, structures, decks, etc. in only those areas within the City of El Cerrito designated as the Very High Fire Hazard Severity (VHFHS) Zones. Vacant lots in Zone 2 shall be maintained to be 30 feet wide along the property line. NOTE: All Zone 1 requirements shall be followed in addition to the following Zone 2 requirements:

- Cut or mow weeds and grass shall be cleared to a maximum height of 6 inches.
- All fire hazardous vegetation except for weeds and grass shall be cleared and maintained to a height no greater than 18 inches above the ground.



Fire Hazard Reduction Checklist



Zone 1 Requirements

Definition: Zone 1 extends 30 feet from buildings, structures, decks, etc. in all portions within the City of El Cerrito including the designated Very High Fire Hazard Severity (VHFHS) Zones

- ☐ Remove all dead plants, grass and weeds within 30 feet of buildings, structures, decks, etc.
- ☐ Remove dead or dry leaves and pine needles from your yard, roof and rain gutters
- ☐ Trees shall be maintained so that no portion is closer than 10 feet from any chimney opening
- ☐ Trees, shrubs, bushes or other vegetation adjacent to or overhanging any structure shall be maintained free of dead limbs and other combustible matter such as vines and loose papery bark
- ☐ On mature trees, limbs should be removed up to 10' above the ground. Smaller trees should be limbed to 1/3rd of their height up to 6' above the ground, but in no case less than 18" from the ground
- ☐ Relocate wood piles to Zone 2 if applicable
- ☐ Remove or prune flammable plants and shrubs near windows
- ☐ Remove vegetation and items that could catch fire from around and under decks
- ☐ Create a minimum 6-foot separation between trees, shrubs or vegetation and combustible materials
- ☐ Vacant lots in Zone 1 shall be maintained to be 10 feet wide along the property line

Zone 2 Requirements

Definition: Zone 2 extends from 30 feet to 100 feet out from buildings, structures, decks, etc. in only those areas within the City of El Cerrito designated as the Very High Fire Hazard Severity (VHFHS) Zones. NOTE: All Zone 1 requirements shall be followed in addition to the following Zone 2 requirements

- ☐ Cut or mow weeds and grass shall be cleared to a maximum height of 6 inches
- ☐ All fire hazardous vegetation except for weeds and grass shall be cleared and maintained to a height no greater than 18 inches above the ground
- ☐ Vacant lots in Zone 2 shall be maintained to be 30 feet wide along the property line

To find out if your property is located within the Very High Fire Hazard Severity Zone, go to : <https://egis.fire.ca.gov/FHSZ/> On the upper left hand side, click on the bottom icon for Address Search.



EL CERRITO-KENSINGTON FIRE DEPARTMENT

10900 San Pablo Avenue ▪ El Cerrito ▪ CA ▪ 94530
(510) 215-4457 ▪ FAX (510) 232-4917 ▪ fpo@ci.el-cerrito.ca.us



XXXXXX, 2021

Parcel Number:
Property Address: _____, El Cerrito, CA 94530
Property Owner:
Property Owner's Address:

Dear El Cerrito Property Owner:

We are pleased to inform you that we have completed re-inspection of your property and your property was found to now be in compliance with the Vegetation Management Guidelines set forth in the City of El Cerrito Vegetation Management Standards. We very much appreciate your efforts in taking immediate action to bring your property into compliance and we thank you for helping us make El Cerrito a more fire safe community. Your property **has been removed** from our list of non-compliant properties and there will be no further abatement action based on the initial inspection.

We ask that you continue your fire hazard reduction efforts and maintain your property year-round in compliance with the Vegetation Management Guidelines set forth in the City of El Cerrito Vegetation Management Standards, particularly as we move further into the fire season. Again, your efforts are very much appreciated by the Fire Department and the community of El Cerrito for your cooperation in helping us make El Cerrito a more fire safe community.

With Appreciation,

David Yun
Fire Prevention Officer



CITY OF EL CERRITO
10900 San Pablo Avenue • El Cerrito • CA • 94530
(510) 215-4457 • FAX (510) 232-4917 • fpo@ci.el-cerrito.ca.us

September 22, 2021

Parcel Number: **«APN»**
Property Address: «Site_Address», «Site_City», «Site_State» «Site_Zip»
Property Owner: «OwnerTenant», «Legal_Property_Owner»
Property Owner's Address: «Mailing_Address», «Mailing_City», «Mailing_State»
«Mailing_Zip»

**NOTICE TO DESTROY WEEDS AND REMOVE
RUBBISH, REFUSE AND OTHER FLAMMABLE MATERIAL**

On **September 21, 2021** the El Cerrito City Council declared that your property in the City of El Cerrito, designated above by address and parcel number, constitutes a public nuisance because of the presence of weeds, rubbish, litter or other flammable material which creates a fire hazard, a menace to the public health, or is otherwise noxious or dangerous.

A previous notice was sent to you informing you of the September 21, 2021 hearing and further informing you of your obligation to remove the weeds, rubbish, refuse and other flammable material from your property. **If you do not immediately abate these nuisance conditions, the City will do so and the costs for removal of the weeds, rubbish, refuse and other flammable material will be assessed against your property as a lien and special assessment.** These removal costs shall then be collected in the time and in the manner of ordinary municipal taxes.

You will not receive any further notices from the City prior to this removal. The City shall perform this removal either through its own staff or through private contract sometime between the dates of **October 4, 2021 to October 8, 2021**. It is impossible to predict what it will cost the City to remove these nuisance conditions from your property. The costs depend on the severity of those conditions. In past years these abatement costs have sometimes exceeded \$5,000 per parcel for those parcels with severe nuisance conditions

The City Council will conduct a public hearing on **October 19, 2021** to confirm the cost of the abatement work performed on your property. The meeting will be held via teleconference or in the **El Cerrito City Council Chambers at 10890 San Pablo Avenue in El Cerrito at 7:00 p.m.** Please refer to the agenda for meeting information at www.el-cerrito.org/CouncilMeetingMaterials. During this public hearing you will be given the opportunity to voice objections regarding the report and the assessment of the abatement costs for your property. At this hearing you will also be given the opportunity to object, protest and/or present evidence to support your arguments.

If you have any questions, contact the El Cerrito Fire Department at 10900 San Pablo Avenue. The phone number is (510) 215-4450.

Michael Pígoni

Michael Pígoni
Fire Chief/Fire Marshal

City of El Cerrito Fire Hazard Reduction Program

I. INTRODUCTION

A. Purpose of Vegetation Management Standards

California communities have experienced devastating fire loss because of the severity of fires which occur in the wildland interface areas. These areas exist in the community of El Cerrito. In these areas the risk of conflagration is increased further by homeowners who create or do not maintain landscaping on their properties. Homes are threatened by fire every year in California largely because of heavy vegetation fuel load very near structures.

Very High Fire Hazard Severity Zones (VHFHSZ) have been identified within the El Cerrito community by the El Cerrito Fire Department and CAL Fire. As specified by State Law AB 337, property owners within the VHFHSZ must take special precautions with their property, including vegetation management, to reduce the risk of fire. All El Cerrito property owners must comply with the City's Fire Hazard Reduction standards.

The buildup of unmanaged vegetation, whether native or non-native, steep hillsides with canyons, draws, and periods of extremely hot, dry weather all combine to create in El Cerrito the potential for catastrophic fire behavior. Catastrophic fires can destroy large numbers of homes, threaten public safety and severely damage the natural areas which contribute to our high quality of living.

A key goal of El Cerrito's community fire protection planning is to reduce the level of fire hazards throughout the community and particularly in the VHFHSZ. While it is not possible to eliminate all threats of catastrophic wildfire, fire hazards can be reduced to acceptable levels and still allow a "green" community.

Vegetation management planning in the VHFHS Zone focuses on areas where fire poses the greatest risk to life and property. Fires will continue to be a part of California urban living. By implementing vegetation management standards, El Cerrito residents can significantly reduce the potential a small fire will grow into a catastrophic event. An important component of reducing the community's fire risk requires vegetation management to be practiced by all property owners.

No person shall be prosecuted criminally under the provisions of Section 8.30.040 of the El Cerrito Municipal Code until that person has received written notice of how that property violates these standards and until that person has had the reasonable opportunity to meet with City staff concerning the procedures set forth in Chapter 8.34 or Chapter 16.26 of the El Cerrito Municipal Code. Civil procedures for fire hazard abatement include providing the property owner with (1) written notice on how the property violates these guidelines, (2) reasonable opportunity to comply with the guidelines and (3) opportunity to be heard before the City Council.

II. FIRE HAZARD REDUCTION GUIDELINES

Many factors combine to create a fire hazard on any specific property. It is difficult to single out a specific vegetation species or configuration to declare it either fire hazardous or completely fire safe in all situations. The Fire Department has developed guidelines conforming to State Law and National Fire Protection Standards which address most situations found on private property within El Cerrito.

A. Hazard Zones

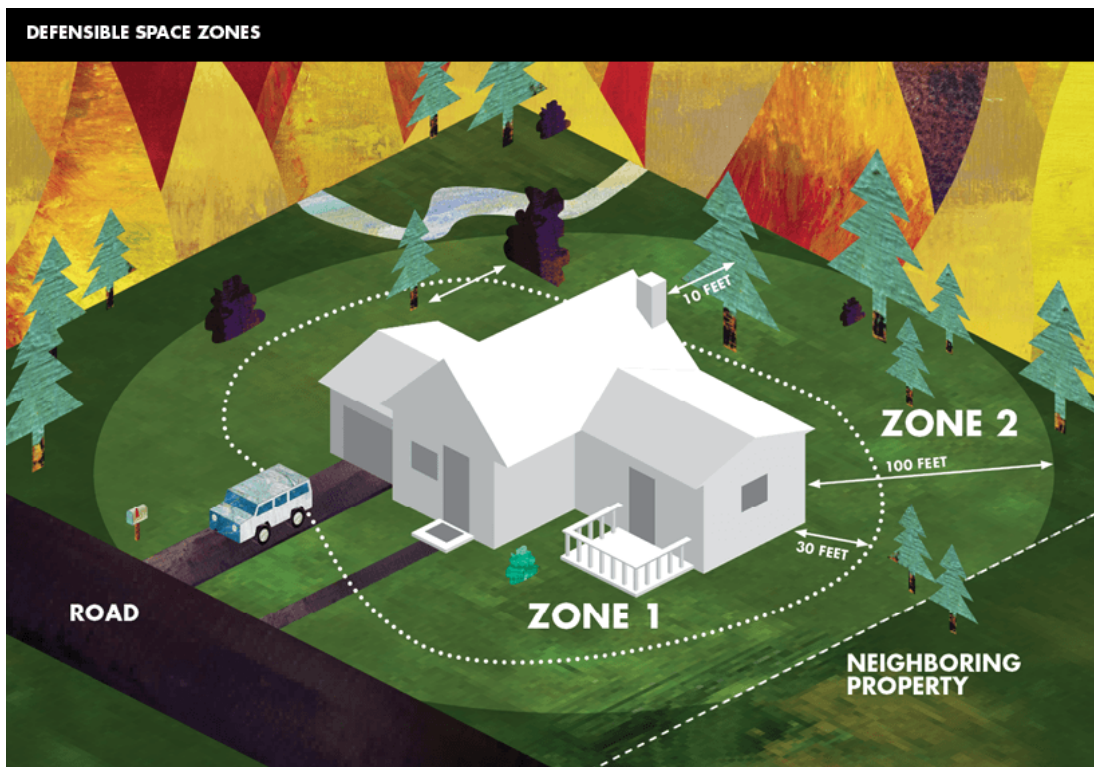
Portions of the City of El Cerrito lie adjacent or near to large wildland areas containing steep slopes and naturally growing vegetation. Every year under certain critical weather conditions, the neighborhoods near these wildland areas are at heightened risk of seasonal wildfire sweeping into the City and burning homes. These areas at heightened risk of wildfire have been designated as Very High Fire Hazard Severity (VHFHS) Zones as designated by CalFire. The rest of the City faces a lesser risk of wildfire. Fire hazard reduction measures common to the entire City are required on both vacant and developed lots.

B. Defensible Space

Defensible space is essential to improve your home's chance of surviving a wildfire. It is the buffer you create between a building on your property and the grass, trees, shrubs, or any wildland area that surround it. This space is needed to slow or stop the spread of wildfire and it helps protect your home from catching fire—either from direct flame contact or radiant heat. Defensible space is also important for the protection of the firefighters defending your home.

Defensible Space Zones

Two zones make up the required 100 feet of defensible space.



Zone 1

Zone 1 extends 30 feet from buildings, structures, decks, etc. in all portions within the City of El Cerrito including the designated Very High Fire Hazard Severity (VHFHS) Zones. Vacant lots in Zone 1 shall be maintained to be 10 feet wide along the property line.

- Remove all dead plants, grass and weeds (vegetation).
- Remove dead or dry leaves and pine needles from your yard, roof and rain gutters.
- Trees shall be maintained so that no portion is closer than 10 feet from any chimney opening.
- Trees, shrubs, bushes or other vegetation adjacent to or overhanging any structure shall be maintained free of dead limbs and other combustible matter such as vines and loose papery bark.
- On mature trees, limbs should be removed up to 10' above the ground. Smaller trees should be limbed to 1/3rd of their height up to 6' above the ground, but in no case less than 18 inches from the ground.
- Relocate wood piles to Zone 2 if applicable.
- Remove or prune flammable plants and shrubs near windows.
- Remove vegetation and items that could catch fire from around and under decks.
- Create a minimum 6-foot separation between trees, shrubs or vegetation and combustible materials.

Zone 2

Zone 2 extends from 30 feet to 100 feet out from buildings, structures, decks, etc. in only those areas within the City of El Cerrito designated as the Very High Fire Hazard Severity (VHFHS) Zones. Vacant lots in Zone 2 shall be maintained to be 30 feet wide along the property line. NOTE: All Zone 1 requirements shall be followed in addition to the following Zone 2 requirements:

- Cut or mow weeds and grass shall be cleared to a maximum height of 6 inches.
- All fire hazardous vegetation except for weeds and grass shall be cleared and maintained to a height no greater than 18 inches above the ground.

C. Additional Considerations for Vegetation Management

1. The Fire Hazard Abatement Program is intended to promote community fire safety by reducing the combustible vegetation fuel mass on private properties. Clearing vegetation by heavy construction methods, such as grading, discing, trenching or dozing shall require special permits from the City. **Disposal by burning is not permitted.**
2. Any parcel where slope stability will be threatened by removal of plants may be exempt from treatment requirements or subject to alternate treatments. The property owner must submit a report documenting the probability of slope failure due to vegetation removal, prepared by a licensed civil, geotechnical or soils engineer. The report shall propose alternative treatment methods to address fire hazards. The report will be reviewed by city staff. Review and acceptance by the City of alternative treatment will supersede other requirements.
3. Any parcel or lot which includes plant or animal species that are rare, endangered or of special concern may qualify for alternative plant treatment and spacing requirements. The property owner must submit a report from a qualified resource biologist or landscape architect describing the species, actions required to preserve its environmental value, and proposed alternative measures to address fire hazards. The report will be reviewed by the City. Review and acceptance by the City of alternative treatment will supersede other requirements.

D. Planting Considerations

Any plant will burn if the conditions are right. Some plants are considered to be extremely flammable while other plants are considered to have some resistance to fire. Verifiable tests of fire exposure characteristics for all specific ornamental landscaping plants are not available.

The Vegetation Management Standards for El Cerrito utilizes available information from the Diablo Firesafe Council at <http://diablofiresafe.org/tolerance.html> under Table 1 Plants with a Favorable Fire performance Rating in 3 or More References.

At the base of trees and shrubs, replace flammable vegetation with bark, mulch, rock, gravel or low-growing or more fire-resistant ground covers. This cover reduces the fire danger and minimizes weeds.

Avoid placing medium-sized shrubs beneath trees or taller shrubs. By breaking up the available fuel mass in ornamental landscaping, a fire will be kept at lower intensity, flame lengths will be shorter and fire will be less likely to form a continuous line or front.

E. Structural Fire Safety

The City's roofing and vegetation management standards are designed to reduce the amount of airborne burning material, limiting fire spread. Once a fire starts, it is often accelerated by wind-borne burning material. Burning embers or brands are the main source of fire spread in mixed urban-wildland fires. The roof of a house is most vulnerable to this type of ignition followed by openings such as vents. Spark arresters

with a maximum of ½ inch openings in the mesh are required over the outlet of every chimney. Class A is the top rating for fire resistive roofing, followed by Classes B and C. The City of El Cerrito requires that all roofing be Class B or better, and wood shake shingle roofing materials are prohibited in new construction or replacement of more than 50% of the roof. It is recommended to cover vent openings with ¼ inch openings in the mesh to prevent flying embers from entering the structure.

III. GLOSSARY OF TERMS

The following terms are used to describe the vegetation management standards in California State Law and in the City of El Cerrito's Fire Hazard Reduction Program.

Very High Fire Hazard Severity (VHFHS) Zones: Any geographic area designated per Government Code Section 51178 to contain the type and condition of vegetation, topography, weather and structure density to potentially increase the possibility of wildland conflagration fires. As a community adjacent to extensive wildland areas, the City of El Cerrito contains several VHFHS zones. A CAL Fire interactive map of these zones is available at <https://egis.fire.ca.gov/FHSZ/>. Fire hazard reduction standards are more extensive for properties located within VHFHS zones.

Defensible Space: A concept in landscape design for homes which provides a band of managed vegetation around a home that slows movement of fire by reducing or denying fuel and provides a space for firefighters to take a stand to protect the house.

Fire Resistant Plants: A relative term used to describe plants that are "more resistant: or "less resistant" than other plants to fire. Given enough heat, all vegetation will burn. Yet plants in fact differ in how fast they burn, how high a flame they produce and their ability to survive fire. Fire resistance is enhanced by higher amounts of moisture within twigs and foliage. Fire-resistant plants can lose this quality altogether if not properly maintained and irrigated. The Vegetation Management Standards for El Cerrito utilizes available information from the Diablo Firesafe Council at <http://diablofiresafe.org/tolerance.html> under Table 1 Plants with a Favorable Fire performance Rating in 3 or More References.

Fire Hazardous Vegetation: Plants which can burn easily because they generate dry undergrowth, contain flammable oils or produce significant quantities of dead or dying material. Hazardous vegetation is fuel which must be removed or strictly maintained so as not to constitute a fire hazard by igniting easily and then contributing to rapid fire spread. Seasonally dry grass, weeds, brush, and unmaintained and unirrigated trees and ornamental vegetation are examples of fire hazardous vegetation. Properly chipped, mulched and disbursed material does not constitute fire hazardous vegetation. Fire hazardous vegetation is also known as **flammable vegetation and combustible growth.**

Ornamental Landscaping: Decorative plants growing within a tended garden or yard which are appropriately irrigated, maintained and located to provide aesthetic decoration and functional utility, such as privacy screening, shade, weed suppression and erosion control. The use of fire-resistant plants and the removal of fire hazardous vegetation will enhance fire safety.

Zone 1: Extends 30 feet from buildings, structures, decks, etc.in all portions within the City of El Cerrito including the designated Very High Fire Hazard Severity (VHFHS) Zones. In Zone 1 vacant lots shall be maintained to be 10 feet wide along the property line.

Zone 2: Extends from 30 feet to 100 feet out from buildings, structures, decks, etc. in only those areas within the City of El Cerrito designated as the Very High Fire Hazard Severity (VHFHS) Zones. In Zone 2 vacant lots shall be maintained to be 30 feet wide along the property line. For properties within Zone 2, all Zone 1 requirements shall be enforced in addition to Zone 2 requirements.



Fire Hazard Reduction Checklist



Zone 1 Requirements

Definition: Zone 1 extends 30 feet from buildings, structures, decks, etc. in all portions within the City of El Cerrito including the designated Very High Fire Hazard Severity (VHFHS) Zones

- ☐ Remove all dead plants, grass and weeds within 30 feet of buildings, structures, decks, etc.
- ☐ Remove dead or dry leaves and pine needles from your yard, roof and rain gutters
- ☐ Trees shall be maintained so that no portion is closer than 10 feet from any chimney opening
- ☐ Trees, shrubs, bushes or other vegetation adjacent to or overhanging any structure shall be maintained free of dead limbs and other combustible matter such as vines and loose papery bark
- ☐ On mature trees, limbs should be removed up to 10' above the ground. Smaller trees should be limbed to 1/3rd of their height up to 6' above the ground, but in no case less than 18" from the ground
- ☐ Relocate wood piles to Zone 2 if applicable
- ☐ Remove or prune flammable plants and shrubs near windows
- ☐ Remove vegetation and items that could catch fire from around and under decks
- ☐ Create a minimum 6-foot separation between trees, shrubs or vegetation and combustible materials
- ☐ Vacant lots in Zone 1 shall be maintained to be 10 feet wide along the property line

Zone 2 Requirements

Definition: Zone 2 extends from 30 feet to 100 feet out from buildings, structures, decks, etc. in only those areas within the City of El Cerrito designated as the Very High Fire Hazard Severity (VHFHS) Zones. NOTE: All Zone 1 requirements shall be followed in addition to the following Zone 2 requirements

- ☐ Cut or mow weeds and grass shall be cleared to a maximum height of 6 inches
- ☐ All fire hazardous vegetation except for weeds and grass shall be cleared and maintained to a height no greater than 18 inches above the ground
- ☐ Vacant lots in Zone 2 shall be maintained to be 30 feet wide along the property line

To find out if your property is located within the Very High Fire Hazard Severity Zone, go to <https://egis.fire.ca.gov/FHSZ/> On the upper left hand side, click on the bottom icon for Address Search.



AGENDA BILL

Agenda Item No. 8.A.

Date: September 21, 2021
To: El Cerrito City Council
From: Karen Pinkos, City Manager, City Management
Subject: Equity Considerations and Equity and Inclusion Workplan

ACTION PROPOSED

At the request of Mayor Fadelli, pass a motion directing the Human Relations Commission to work with staff to develop an Equity and Inclusion workplan for the community.

BACKGROUND/ANALYSIS

Recently, with racial and social justice issues at the forefront of many news events and government decisions, local governments have explored ways to assist efforts to address long-delayed corrections in Equity for housing, environmental justice, and safety programs. Organizations, like the California League of Cities (CalCities), the International City/County Management Association (ICMA), and the Government Alliance on Race and Equity (GARE) have also focused on how local governments can best approach issues of Equity and have begun exploring ways to assist cities in better representing the needs and concerns of all local residents.

The City of El Cerrito has prided itself on being an inclusive and welcoming community throughout its history. The City adopted its most recent Strategic Plan in 2013, and the Plan serves as a road map to guide the City in fulfilling its goals through its vision, mission, and values. The City is committed to achieving a shared vision for the organization and its community. The vision, mission and values are the result of a thoughtful and inclusive process designed to set the City on a course that meets the challenges of today and tomorrow. One of the key values identified in the Strategic Plan is that of *Inclusiveness and Respect for Diversity*. The associated and expected behaviors of this value as noted in the Strategic Plan are:

- Treats others with dignity and respect
- Demonstrates a welcoming attitude at all times
- Demonstrates sensitivity to the needs, concerns and opinions of others
- Incorporates inclusiveness into programs and services
- Cultivates a broad and diverse network to exchange ideas and make decisions
- Models inclusive behavior when interacting with staff and the community
- Values and promotes full utilization of workforce diversity
- Successfully manages differences in primary language and culture
- Encourages and promotes a work environment in which all individual differences are valued, respected and welcomed

- Seeks or provides resources to promote and support inclusiveness
- Resolves complex issues by balancing needs of diverse groups
- Demonstrates compassion

In accordance with the Strategic Plan, it is fitting during these times to ensure that the City is incorporating this value and its associated behaviors in all of its endeavors. Over the years, El Cerrito has responded to support racial Equity issues in symbolic public ways, such as conducting the annual Martin Luther King Day March, establishing Loving Day, conducting virtual conversations about racism, responding to a hate crime with the "Not In Our Town" campaign, and participating in the Bay Area United Against Hate movement including the "El Cerrito Stands United Against Hate" sign campaign. Most recently, the City assisted efforts to paint "Black Lives Matter" along the Ohlone Greenway and raise a flag to support this effort at City Hall.

Accordingly, it is beneficial to have the City determine how the value of *Inclusiveness and Respect for Diversity* is incorporated into how the City does business and makes policy decisions. For example, the El Cerrito City Council votes on a variety of issues and this process is guided by Council agendas which are public documents. Staff reports contain various considerations to be reviewed by the Council in order to assist in deciding how to vote, including Strategic Plan Considerations, Environmental Considerations, Financial Considerations, and Legal Considerations. The Mayor has proposed that Equity should be included as a consideration, so that City Council decisions as well as staff recommendations view policies, programs, and services through an equity lens. In order to ensure that the City Council, City staff, and the community are in agreement as to how Equity should be considered within the internal City organization as well as externally throughout the City, it is the proposal of the Mayor and the City Manager that an Equity and Inclusion Workplan be developed to define, frame, and provide guidance on Equity issues and our shared vision and value of *Inclusiveness and Respect for Diversity*.

The City's Human Relations Commission (HRC) is a dynamic group of City volunteers that develops positive human relations through education, encouragement of greater respect and understanding between people, their equal opportunity rights under the law, and the recognition of the racial, ethnic, religious and cultural diversity of the El Cerrito community. The purpose of the HRC is to initiate educational and cultural programs and promote tolerance and mutual respect between all people. The HRC has been deeply involved in the previously mentioned public events and over the past year has engaged with the community on racial and social justice issues, including hosting listening sessions for various groups to share their truth and to unite against racially based violence and hate. The HRC is ideally positioned to be able to lead the community in defining and creating an Equity framework, and to serve as the lead group to provide a public forum for this work to be accomplished. It is the Mayor's goal, if this item is supported by the full City Council, that the City's Human Relations Commission would take on the responsibility of working with staff to create an Equity and Inclusion Workplan and engage the community in this important initiative.

STRATEGIC PLAN CONSIDERATIONS

Creating an Equity and Inclusion Workplan promotes the City's value of Inclusiveness and Respect for Diversity, and directly correlates to Strategic Plan Goal A: Deliver exemplary government services and Goal C: Deepen a sense of place and community identity.

ENVIRONMENTAL CONSIDERATIONS

This section is not applicable to this agenda item.

FINANCIAL CONSIDERATIONS

This section is not applicable to this agenda item.

LEGAL CONSIDERATIONS

This section is not applicable to this agenda item.

Reviewed by:

A handwritten signature in blue ink, appearing to read "Alexandra Orologas".

Alexandra Orologas, Assistant City Manager

Attachments:



AGENDA BILL

Agenda Item No. 8.B.

Date: September 21, 2021
To: El Cerrito City Council
From: Holly M. Charléty, City Clerk, City Management
Subject: Study Session on Boards, Commissions, and Committees

ACTION PROPOSED

Conduct a study session on City Boards, Commissions, and Committees (Advisory Bodies) and provide staff direction regarding committee term length and limits, appointment and removal process for advisory bodies, and adopt a resolution authorizing conditions for automatic removal.

BACKGROUND

The City of El Cerrito currently has a total of 13 Boards, Commissions, and Committees (Advisory Bodies). Each type of Advisory Body has a different function. Boards and Commissions are directly responsible to the City Council and fill advisory and/or quasi-judicial roles. Commissions are composed of lay citizens while members for boards are selected for their special expertise.

Committees sponsored by the City are intended to be working groups and do not fill quasi-judicial roles. The City Council has conducted several reviews of Advisory Body rules and procedures throughout the years. The most recent review was conducted between 2010 – 2013 which focused on improving City Council Liaison roles, Advisory Body member selection process, and distribution of terms for Advisory Bodies. Prior to that a comprehensive review was conducted between 2003-2007 for all Advisory Bodies.

At a City Council meeting on February 2, 2021, during a discussion on term limits for the Urban Forest Committee, staff was requested to return with a discussion item on rules regarding City Committees. Members of City Council have expressed a desire to discuss both the appointment and approval process for all Advisory Body members. In addition, staff is requesting clarification on language for certain regulations previously adopted. This study session is focused on the following three topics:

1. Remedy inequity of term lengths/limits applied to City Committees
2. Appointment process for advisory body members
3. Removal process for advisory body members

For the purposes of the following analysis, the Citizen Streets Oversight Committee (CSOC) is excluded. This committee was formed as part of the "Pothole Repair and Local Street Improvement and Maintenance Transactions and Use Tax". The CSOC is governed by El Cerrito Municipal Code (ECMC) section 2.04.320 rather than under general provisions applicable to other City Committees.

ANALYSIS

CURRENT COMMITTEE REGULATIONS

City Committees are established by City Council resolution and comprised of no less than five and not more than 15 members. Residents interested in joining a Committee shall be nominated by the committee prior to being considered for appointment by the City Council (Resolution 2005-14.)

ECMC section 2.04.220 provides general requirements and restrictions for all Boards, Commissions and Committees, unless otherwise specified in a City Council adopted resolution. These provisions include the following:

Term length and limits

Terms are set at 4 years, commencing on March 1st. Members are limited to two consecutive full terms on each advisory body. The term of each individual seat is fixed. Therefore, if a seat is vacated before the end of the term, the new member would serve the remainder of the current term. This is considered a “partial term” and does not count towards the two term limits.

Exceptions: Crime Prevention Committee (no term limits, Resolution 2001-105), and Urban Forest Committee (three 4-year term limits, Resolution 2021-04).

Removal of Members/Attendance

Members may be removed at any time for any reason by a majority vote of the City Council. In addition, the following will trigger removal of a member from continuing to serve on a City Advisory Body if a member:

- Moves out of the City limits (except where residence is not required)
- Misses three consecutive regularly scheduled meetings without cause, or half the regular meetings in a calendar year
- Definitions of circumstances for medical, excused and unexcused absences are included in this section

Quorum

The rules for determining if a committee has a quorum of members to meet is defined as a simple majority of the members then serving. In addition:

- Two members may conduct a meeting for the purpose of doing the work of a committee and allowing persons interested in becoming members to attend
- Formal action requires at least three members to be present at a meeting and a simple majority of affirmative votes of a quorum

The general rules go further to identify the annual election of a chair and vice chair; conducting business based on Rosenberg’s rules of Order; requirements for minutes prepared, staff assistance and meeting monthly; and requiring all board, commission, and committee meetings adhere to the Brown Act.

#1 – REMEDY TERM LENGTHS/LIMITS APPLIED TO CITY COMMITTEES

ECMC section 2.04.220(B)(2), states that membership is limited to two consecutive full terms on each Advisory Body. Section 2.04.220(B)(3) further specifies that a full term shall be 4 years.

While these rules are applicable to all City committees unless otherwise adopted by City Council resolution (section 2.04.220(C)), the criteria has not been equally applied. As a result, certain committees have members who have served as long as 30 years, while other committees have members who are being termed out after 8 years.

In addition, while the Crime Prevention Committee has no term limits, it is subject to 4-year terms. Current members have not been appointed to a fixed term, therefore the required re-appointment process is not correctly being applied.

Proposed Action

As these rules have been applied inequitably for decades, staff is requesting City Council take action on one of the following options:

1. Pass a motion authorizing City staff to remedy administration of the current rules adopted by making the following changes:
 - a. Committee on Aging - Set an initial term for all current members to begin 3/1/2022 with an end date of 1, 2 or 3 years (to stagger terms.) Initial term length will be assigned based on longevity, with those serving longer assigned to the shorter initial term. At the conclusion of the initial term, members can reapply and would be eligible to serve up to two additional 4-year terms.
 - b. Crime Prevention Committee - Set an initial term for all current members to begin 3/1/2022 with an end date of 1, 2 or 3 years (to stagger terms.) Initial term length will be assigned based on longevity, with those serving longer assigned to the shorter initial term. At the conclusion of the initial term, members can reapply and would be eligible to serve additional 4-year terms without limit.
 - c. Environmental Quality Committee - Set an initial term for all current members to begin 3/1/2022 with an end date of 1, 2 or 3 years (to stagger terms.) Initial term length will be assigned based on longevity, with those serving longer assigned to the shorter initial term. At the conclusion of the initial term, members can reapply and would be eligible to serve up to two additional 4-year terms.
2. Provide staff direction to return with resolution(s) modifying the rules for certain committees in order to reflect the current practice utilized for term length and term limits:
 - a. Committee on Aging - specify no term length and no term limits
 - b. Crime Prevention Committee – specify no term length
 - c. Environmental Quality Committee – specify no term length and no term limits

#2 - APPOINTMENT PROCESS FOR ADVISORY BODY MEMBERS

ECMC section 2.04.220(A) states that appointments to Boards and Commissions shall be made only after advertising the vacancy in the newspaper, holding a public interview, and appointment by a majority of Council. Resolution 2005-14 specifies that members of Advisory Bodies are not automatically re-appointed, shall re-apply and be interviewed with other applicants.

Committees are governed by these criteria unless otherwise prescribed by Council resolution. Resolution 2005-14 specifies that prospective members to all Committees will be nominated by the Committee and approved by the City Council. Resolution 2009-35 requires Crime Prevention Committee applicants to have regularly attended meetings or events in the past 6 months. No other Committee has criteria adopted for their appointment process. The standardization of the Committee appointment process is requested in Resolution 2005-14, however a formal process has not been adopted by the City Council.

Based on adopted regulations and general direction provided by the City Council, the following appointment process is currently being followed.

Boards, Commissions, and Citizens Street Oversight Committee:

1. Application received by City Clerk and forwarded to staff liaison
 - a. Verification of eligibility includes review of any prior service, indication of an El Cerrito residence where required (not confirmed).
2. A special City Council meeting is scheduled to conduct interviews
 - a. Annual term appointment includes a deadline to apply, unexpected vacancies on an as-needed basis
 - b. Interviews open to the public and historically conducted in Hillside conference room, currently held via zoom.
3. Applicants are interviewed, council discusses and makes appointment(s)
 - a. Standard questions asked, not provided to applicants in advance
4. City Clerk notifies new member and liaison of appointment(s)

Committee on Aging, Crime Prevention Committee, Economic Development Committee, and Urban Forest Committee:

1. Application received by City Clerk and forwarded to staff liaison
 - a. Verification of eligibility includes review of any prior service, indication of an El Cerrito residence where required (not confirmed).
2. Liaison contacts applicant and starts tracking attendance
3. Once 3 meetings (some require consecutive, some within 6 months) have been attended:
 - a. Committee agendaizes discussion item on appointment
 - b. Committee discusses and votes on appointment
4. If approved, liaison schedules consent item for council approval

5. Council approves appointment
6. City Clerk notifies new member and liaison of appointment

Environmental Quality Committee:

1. Application received by City Clerk and forwarded to staff liaison
 - a. Verification of eligibility includes review of any prior service, indication of an El Cerrito residence where required (not confirmed).
2. Liaison contacts applicant and starts tracking attendance
3. Once 3 consecutive meetings have been attended:
 - a. Subcommittee of members interview the applicant
 - b. Committee agendaizes discussion item on appointment
 - c. Subcommittee members provide a recommendation and committee votes on appointment
4. If approved, liaison schedules consent item for council approval
5. Council approves appointment
6. City Clerk notifies new member and liaison of appointment

Process Considerations

Depending on the will of the City Council, the following are some considerations regarding the appointment process:

- The appointment process for unexpected vacancies to Boards and Commissions currently occur on an on-going basis. If interested applicants are required to attend a certain number of meetings in advance of being eligible for interview/appointment, it could lengthen the appointment process. This could affect a Board or Commission's ability to meet due to a lack of quorum.
- A quarterly schedule for interviewing applicants for unexpected vacancies (with a deadline to apply) could provide time for attendance at meetings and potentially reduce the length of the appointment process.
- If meeting attendance is required prior to applying, consideration should be given to how recent the meetings attended should be, and if meetings attended should be consecutive or within a set period of time. Consideration should also be given to how long an application on file should be held before an applicant would need to reapply.
- The staff liaison is well informed of the membership composition regarding experience and expertise. Their involvement and/or recommendation in the interview process could better inform the council if a given applicant is a good fit for appointment.
- The application could be modified to request additional information, such as dates of meetings attended, or require supplemental questions for certain bodies.
- Advisory Body specific interview questions could be re-developed and re-implemented for each Advisory Body. The current practice is using a standard set of questions for all interviews.

- A City Council subcommittee could be formed to perform some or all duties in the appointment process such as review of applications, selection for interview, conducting interviews, and/or making recommendations to the full City Council.

For reference, the following are sample appointment processes followed by some cities in Contra Costa and Alameda Counties:

- Albany – Majority of appointments are by an individual Councilmember
- Berkeley – Each Councilmember makes one appointment to each body
- Emeryville – Interviewed and appointed by the full City Council
- Lafayette – Council liaison, staff liaison and chair conduct interviews and provide recommendations to the full City Council for appointment
- Pinole – Interview by City Council subcommittee and recommendations are submitted to the City Council for formal appointment
- Pleasant Hill - Interviewed by City Council subcommittee and recommendations are submitted to the City Council for formal appointment
- Richmond – Recommendations for appointment are made by the mayor and approved by the City Council

Proposed Action

Staff requests that the City Council provide direction on modifications to the current process, if any, and direct staff to return with a resolution formally documenting the appointment process for Boards, Commissions, and Committees. The following is offered as a potential process:

1. All persons interested in appointment to a City Advisory Body shall attend three consecutive meetings of the Advisory Body within six months of submitting an application of interest to the City Clerk.
2. Applications are accepted on an on-going basis and shall be valid for a period of one year from the date received.
3. Applications for Committees:
 - a. Are sent to staff liaison to agendize committee discussion on an appointment recommendation for City Council.
 - b. If appointment is recommended, City Council consent item is scheduled for consideration of appointment.
4. Applications for Boards, Commission and Citizens Street Oversight Committee:
 - a. OPTION 1 (current practice)
 - i. Scheduled to interview with the full city council
 - ii. City Council discusses and considers appointment
 - b. OPTION 2
 - i. Scheduled to interview at publicly noticed meeting by panel consisting of council liaison, staff liaison, and advisory body chair.
 - ii. Interview panel provides a recommendation on appointment
 - iii. City Council consent item scheduled for consideration of appointment

3 - REMOVAL PROCESS FOR ADVISORY BODY MEMBERS

ECMC section 2.04.220(B)(4)(a) states that members of Boards and Commissions serve at the pleasure of the City Council and may be removed by a majority vote of the entire City Council.

A formal administrative removal process is not required as the City Council has full rights of removal. Any member of the City Council may request an item be scheduled at a noticed Council meeting, consistent with the City Council's adopted Rules of Order. Any Councilmember may be prompted to begin this process by any means, including a request from a member of the public, a chair/vice-chair or individual Advisory Body member, or a recommendation received from an Advisory Body.

Similar to the appointment process, a special meeting could be scheduled to discuss removal, consistent with the practice for holding Advisory Body interviews and discussing membership.

In addition to the broad removal provision, the municipal code states that a member is presumed to have resigned if they fail to attend three consecutive regular meetings without cause, or half of the regular meetings in a calendar year, or if they no longer reside in the City (when residency is required).

Resolution 2020-47 specifies if a designated Advisory Bdy member does not file the required Statement of Economic Interests (Form 700) within 30 days of specific written notice of non-filing from the City Clerk, their term on the commission shall expire.

Current adopted regulations for additional filing requirements including execution of the Oath of Office, Sexual Harassment Prevention training, and Ethics training do not contain provisions for removal due to non-compliance.

Proposed Action

Staff recommends adoption of the attached resolution implementing an automatic removal process for all members of Advisory Bodies for failure to meet the required filing and training obligations.

STRATEGIC PLAN CONSIDERATIONS

This action aligns with Strategic Plan Goal A: Deliver Exemplary Government Services by maintaining an emphasis on providing excellent customer service.

ENVIRONMENTAL CONSIDERATIONS

This section is not applicable to this agenda item.

FINANCIAL CONSIDERATIONS

Any modifications to the municipal code would require publication at a cost covered under the City Clerk's approved FY 2021-22 budget.

LEGAL CONSIDERATIONS

This section is not applicable to this agenda item.

Reviewed by:

A handwritten signature in blue ink, appearing to read "Karen Pinkos".

Karen Pinkos, City Manager

Attachments:

1. Resolution
2. Advisory Bodies At-A-Glance
3. Presentation

RESOLUTION 2021-XX

A RESOLUTION OF THE CITY COUNCIL IMPLEMENTING TERMS OF REMOVAL FOR CITY BOARD, COMMISSION AND COMMITTEE MEMBERS FOR NON- COMPLIANCE OF FILING AND TRAINING REQUIREMENTS

WHEREAS, the City of El Cerrito currently has 13 City Boards, Commissions, and Committees (Advisory Bodies) totaling over 90 appointments; and

WHEREAS, the City of El Cerrito considers all Advisory Body members to fall under the definition of a “public Officer” and therefore requires all members to subscribe to the Oath of Office pursuant to Article XX of the California Constitution, and California Government Code (GC) §36507; and

WHEREAS, the City of El Cerrito has determined that all Advisory Body member are required to complete one hour of Sexual Harassment Prevention training pursuant to GC §12950.1(a)(1); and

WHEREAS, on November 19, 2013 the City Council adopted Resolution 2013-67 specifying certain Advisory Body members be required to complete ethics training pursuant to GC §53234; and

WHEREAS, on September 6, 1977 and biennially thereafter, the City Council has adopted a resolution approving a Conflict of Interest Code specifying certain Advisory Body members be required to complete the Statement of Economic Interests (Form 700); and

WHEREAS, certain regulations do not contain language pertaining to action(s) as a result of non-compliance.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that the following deadlines are applied:

1. The Oath of Office shall be due for each term of appointment prior to participating as an appointed member of the Advisory Body.
2. Sexual Harassment Prevention training shall be due within 30 days of appointment and thereafter every two years for the duration of service.
3. For designated Advisory Body members, Ethics training shall be due within 30 days of appointment and thereafter every two years for the duration of service.
4. For designated Advisory Body members, the Form 700 shall be due within 30 days of appointment, annually thereafter by April 1st, and within 30 days of ending service.

BE IT FURTHER RESOLVED that if within 30 days of specific written notice of non-compliance provided by the City Clerk or designee, the required action has not been completed, the members' term on the Advisory Body shall expire.

BE IT FURTHER RESOLVED that if a member is removed for non-compliance, they shall be eligible to apply for any future vacancy after a period of one year and shall be subject to the applicable appointment process established by the City Council.

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on September 21, 2021 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on September _____, 2021.

Holly M. Charléty, City Clerk

APPROVED:

Paul Fadelli, Mayor

Advisory Body Name	Enabling Documents	# of Members	Term Length (years)	Term Limits	Quorum	Affirmative Vote for Action	SHP Training	Ethics	Form 700	Appointment Process	Appointment Requirements
Arts & Culture Commission	ECMC 2.04.310	7	4	2	Majority of then appointed, but not less than 3	Simple majority of quorum	Y	Y	Y	Council Interview/Appointment	
Citizens Street Oversight Committee	ECMC 2.04.320	5	4	2	Majority of then appointed	simple majority of at least 3 members	Y	N	N	Council Interview/Appointment	Cannot be employees, officials, contractors or vendors of the City
Civil Service Commission	ECMC 2.04.250 ECMC 3.10.030	5	4	2	Majority of then appointed	Simple majority of quorum	Y	N	N	Council Interview/Appointment	
Committee on Aging	Reso 1973-3559 Reso 2005-14	5/15	4	2	Majority of then appointed	simple majority of at least 3 members	Y	N	N	regular attendance in past 6 months, background check/Recommendation by Committee/Appointment	
Crime Prevention Committee	Reso 2009-35 Reso 2001-105 Reso 1975-3701	5/15	4	None	Majority of then appointed	simple majority of at least 3 members	Y	N	N	3 Mtg Attendance/Recommendation by Committee/Appointment	
Design Review Board	ECMC 2.04.280	5	4	2	Majority of then appointed, but not less than 3	Simple majority of quorum	Y	Y	Y	Council Interview/Appointment	at least 3 design professionals, no more than 2 members also on planning commission
Economic Development Committee	Reso 2013-66 Reso 2005-14	5/15	4	2	Majority of then appointed	simple majority of at least 3 members	Y	N	N	3 Mtg Attendance/Recommendation by Committee/Appointment	one member is the serving president of Chamber of Commerce; Residency is NOT REQUIRED
Environmental Quality Committee	Reso 2008-13 Reso 2005-15	5/15	4	2	Majority of then appointed	simple majority of at least 3 members	Y	N	N	3 Mtg Attendance/Recommendation by Committee/Appointment	
Financial Advisory Board	ECMC 2.04.300	5	4	2	Majority of then appointed	Simple majority of quorum	Y	Y	Y	Council Interview/Appointment	demonstrated expertise in financial management, accounting, fiscal analysis, computer applications, economic analysis or related skill
Human Relations Commission	ECMC 2.04.270	7	4	2	Majority of then appointed	Simple majority of quorum	Y	N	N	Council Interview/Appointment	
Parks & Recreation Commission	ECMC 2.04.240	7	4	2	Majority of then appointed	Simple majority of quorum	Y	Y	N	Council Interview/Appointment	
Planning Commission	ECMC 2.04.230	7	4	2	Majority of then appointed, but not less than 3	3	Y	Y	Y	Council Interview/Appointment	
Urban Forest Committee	Reso 2021-04 Reso 2017-69 Reso 2007-96 Reso 2005-14	5/15	4	3	Majority of then appointed	simple majority of at least 3 members	Y	N	N	3 Mtg Attendance/Recommendation by Committee/Appointment	

ORD 2013-06/2.04.220 ECMC

BOARDS, COMMISSIONS, AND COMMITTEES STUDY SESSION

CITY COUNCIL | SEPTEMBER 21, 2021



STUDY SESSION FOCUS

Brief Review of Committee Regulations

1. Remedy Inequity of
Term Lengths/Limits
2. Appointment Process
3. Removal Process



CURRENT COMMITTEE REGULATIONS

- Established by council resolution
- 5-15 members
- Hold monthly meetings
- Residency required
 - Exception: Economic Development*
- 4-year term/2 term limit
 - Exceptions: Urban Forest (3 terms), Crime Prevention (no limits)*
- Quorum:
 - Majority of then appointed
 - Min. of 2 for committee work/interested member attendance
 - Min. of 3 for formal action
- Annual selection of Chair/Vice Chair
- Ralph M. Brown Act Compliance



CURRENT COMMITTEE REGULATIONS

○ Appointment requires:

- Three meetings attended
- Committee recommendation
- Majority vote of City Council

○ Removal by:

- Majority vote of City Council

○ Considered resigned if:

- Moving out of the city limits
- Excessive absences
 - 3 consecutive regular meetings
 - ½ of regular meetings in calendar year
 - Medical absences exceeding 120 days



#1 REMEDY INEQUITY OF TERM LENGTHS AND LIMITS

Current Regulations

Municipal Code states **unless otherwise specified by Council Resolution:**

- 2 term limits (per advisory body)
- 4-year term

Variations (*set by resolution*):

- Crime Prevention (no term limits)
- Urban Forest (3 term limits)



#1 REMEDY INEQUITY OF TERM LENGTHS AND LIMITS

Inequities:

1. Committee on Aging
No term length or term limits applied
2. Crime Prevention Committee
No term length applied
3. Environmental Quality Committee
No term length or term limits applied



#1 REMEDY INEQUITY OF TERM LENGTHS AND LIMITS

Proposed Action:

Option 1 – Correct terms to align with adopted regulations

- Set staggered initial terms effective 3/1/2022 for all members (longer service = shorter initial term)
- Subsequently eligible to serve 2 full 4-year terms (no limit for Crime Prevention)

Option 2 – Modify rules to match current practice or apply alternate rules

- Direct staff to draft resolutions adopting the current practices, or alternative rules for applicable committees



Current Regulations:

Boards, Commissions & Citizens Street Oversight Committee (*set by ordinance*)

- Application submitted to City Clerk
- Interview/Appointment (special council meeting)

Committees (*set by resolution*)

- Application submitted to City Clerk
- Attend 3 committee meetings*
- Recommendation (committee vote)
- Appointment (council vote)

*Not formally adopted and applied inequitably as 3 consecutive, total of 3, or total of 3 within 6 months

#2 APPOINTMENT PROCESS FOR ADVISORY BODY MEMBERS



Variations:

- Crime Prevention Committee (*set by resolution*)
 - Regular attendance at meeting/events in the past 6 months and criminal records check
- Environmental Quality Committee (*adopted by committee*)
 - Subcommittee of members interview and provide recommendation to full committee

#2 APPOINTMENT PROCESS FOR ADVISORY BODY MEMBERS



Proposed Action:

- Provide staff direction on modification(s) to the current process (if any) and return with a resolution to formally adopt the process

Considerations:

- Expand meeting attendance requirements
- Application modifications
- Staff liaison/Chair involvement
- Establish subcommittee for part of process

#2 APPOINTMENT PROCESS FOR ADVISORY BODY MEMBERS



#3 REMOVAL PROCESS FOR ADVISORY BODY MEMBERS

Current Regulations:

- Removal by Majority Vote of the City Council (*set by ordinance*)
 - Consent item at a regular meeting
 - Agenda item at a special meeting consistent with interview/appointment process
- Automatic removal (*set by ordinance and resolution*)
 - Excessive absence, residency, failure to file Form 700



#3 REMOVAL PROCESS FOR ADVISORY BODY MEMBERS

Proposed Action:

- Consider a resolution authorizing automatic removal for failure to meet applicable training and filing requirements

NEXT STEPS

- Public Comments
- Council Discussion
- Provide Staff Direction



PROPOSED ACTION(S)

#1 – Committee Terms

- Option 1 – Correct terms to align with adopted regulations.
- Option 2 - Modify rules to match current practice or provide direction on alternate rules

#2 – Appointments

- Provide staff direction on modifications (if any)
- Clarify intent of 3 meeting rule for committees

#3 –Removals

- Authorize automatic removal for non-compliance

#4 – Additional Direction

- Provide staff direction on any other modifications (if any) related to advisory bodies





SUPPLEMENTAL AGENDA MATERIALS PUBLIC COMMENT INDEX

REGULAR CITY COUNCIL MEETING September 21, 2021

The following Public Comments were **received by 4:00 p.m. 9/21/2021**, were provided directly to City Councilmembers in advance of the meeting, and were posted online as supplemental materials at www.el-cerrito.org/CouncilMeetingMaterials

Public Comments – Items Not on the Agenda

1. Neil Tsutsui
2. Cordell Hindler
3. Robin Mitchell
4. John C. Stashik
5. Theresa Parini

Agenda Item 8A – Equity Considerations and Equity and Inclusion Workplan

1. Al Miller
2. Rochelle Pardue-Okimoto
3. Michael Fischer

Agenda Item 5G – Agreement with A Plus Tree Inc. for Tree Removal and Fire Hazard Reduction Work in the El Cerrito Hillside Natural Area

1. Gary Prost
2. Sue and Paul Duncan

From: [Neil Tsutsui](#)
To: [Holly Charléty](#)
Cc: [Will H. Provost](#)
Subject: EQC letter on Climate Action
Date: Tuesday, September 14, 2021 2:53:51 PM
Attachments: [EOCclimateReccAug2021.pdf](#)

Dear Ms. Charléty,

Please find attached a letter from the El Cerrito Environmental Quality Committee (EQC) to the City Council's *ad hoc* Subcommittee on Climate Action. The EQC passed a motion to send this letter to the Subcommittee (and ultimately, the City Council) at our August 10, 2021 regular meeting. Could you pass this letter on to the Subcommittee and include as a public comment at the Council meeting?

Please feel free to contact me if you have any questions or require any additional information.

Thank you!
Neil Tsutsui

Chair, El Cerrito Environmental Quality Committee



Climate Action Recommendations from EQC to City Council 8/10/2021

Two years have passed since the Council adopted a Climate Emergency Declaration and formed a Council Subcommittee with the intention to swiftly bring recommendations back to Council for prompt climate action. The August 2021 IPCC report states in the [Summary for Policymakers](#): “Human-induced climate change is already affecting many weather and climate extremes in every region across the globe.” and “Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO₂ and other greenhouse gas emissions occur in the coming decades.”

The following recommendations from the EQC are made to the Council Climate Subcommittee, as well as the full Council, to help fulfill crucial climate action. Serious financial and public health emergencies have taken resources and attention from this topic, but the climate emergency has not gone away and remains as important as ever. The EQC urges expedient climate action.

The EQC supports the goal of revising the city’s GHG emissions target goals and the Climate Action Plan (CAP); however, we also suggest the Council consider, and explicitly identify, both near-term incremental climate actions (independent of the wider planning process), as well as pursuing a more comprehensive planning process. There is no time to waste waiting for the completion of a CAP. In the spirit of the Climate Emergency Declaration, there are many meaningful steps that can be taken immediately, and independently of the CAP update, that must be moved forward with urgency. ([link to previous two EQC letters](#))

Updated GHG emissions target recommendation (based on BAAQMD/CARB/CA):

1. At a minimum, consistency with the most recent draft of the [AB 32 Scoping Plan by the California Air Resources Board \(CARB\)](#), and the [2030 GHG targets established in SB 32](#)
2. Consistency with the State’s long-term climate goals of reaching carbon neutrality by 2045 and achieving GHG emissions reductions equivalent to 80 percent below 1990 levels by 2050
3. Incorporate the GHG emissions targets above into the San Pablo Specific Plan supplemental EIR and update (GHG threshold of significance), as well as integration of these targets into an upcoming CAP, if not superseded by updated state targets before the CAP is adopted

Near-term climate actions:

1. The EQC’s highest priority recommendation for immediate action is to enact a City-wide electric only ordinance (no gas, or minimal exceptions) for new construction (or at least integrate electric only construction into San Pablo Ave Specific Plan update)
2. Implement expanded EV charging readiness fractions in the San Pablo Specific Plan update, minimum 50% Level 2, with the rest at least Level 1 (currently 10% Level 2)
3. Require on-site solar or 100% renewable “Deep Green” electricity for projects in the San Pablo Specific Plan update

Climate Action Plan update or longer-term actions:

Arranged by categories without an intended priority order. Any item can be moved up for more immediate action. All CAP policy and program development is expected to apply an equity lens, including asking the questions: Who benefits, who is impacted, who is left behind? *Items marked with an asterisk identify particular actions that can advance equity in important areas*

- **Transportation**

- a. *Planning and building out the “last mile” bicycle/ped network* (including bike and e-bikeshare)
- b. *Plan and build out off-street and protected bikeways*
- c. *Establish temporary and permanent car-free areas*
- d. Incentivize electric bike and bike stations/infrastructure at BART stations
 - i. Incentive E-mobility for income qualified (e.g. Justin Dawe at [FreeBike](#) is working with the City of Oakland on a 500 e-bike lending library program for low income neighborhoods. To be launched hopefully late this year.)
 - ii. Comprehensive [list of e-bike incentives](#)
- e. Do not sacrifice bikeway space in the road to accommodate increased reliance on street parking with coming Plaza BART parking reductions.
- f. *Enhanced local recreation and local businesses/services*
- g. Require EVSE ready construction in all new construction and major remodels
 - i. Minimum fraction of Level 2 capacity (minimum 50%, round up)
 - ii. Minimum Level 1 charging capacity for all parking spaces - Palo Alto has pilot
- h. EVSE options for reduced off street parking situations (curbside charging)
 - i. [Seattle's cord cover guidance](#)
 - ii. [Vancouver's cord cover program](#)

- **Green Energy and Buildings**

- a. Expand scope of building electrification ordinance from initially adopted version
 - i. See [examples from a City of Berkeley presentation](#) for this and other items below
- b. Provide funding/incentives to support energy efficiency and electrification upgrades at time of sale, time of replacement, time of (major) renovation
 - i. Expand code requirements for EV charging readiness and other electric readiness at time of other work
- c. *Include indoor air quality range hood requirements/program*
- d. *Incentives for storage and other resiliency measures (community resource centers for power, clean air, etc.)*
- e. Programs for grid-interactive efficient buildings (electrical and thermal storage and grid signals interacting with appliances)
- f. Incentives/requirements for electric landscaping tools city wide

- g. Incentives/requirements to reduce embodied carbon in building materials (concrete, etc.)
 - i. reduce cement in concrete mix by at least 25%; using cement alternatives such as fly ash, slag, silica fume, rice hull ash
 - h. Reduction of construction waste (single use plastic and other materials)
 - i. Implement programs to encourage salvage and material recycling/reuse from deconstruction
 - i. Enable easier permitting (appendix Q) for tiny houses (less than 400 sq ft)
 - j. Develop community funded loan funds (public banking?) to finance efficiency and renewable energy upgrades/projects
- **Waste**
 - a. Expand single use plastic ordinance
 - b. Actively promote/require reusable foodware and reusable goods in favor of disposable
 - c. *Support the reuse and repair economy with a community reuse and repair program and tool lending library*
 - d. Implement policies to minimize and prevent refrigerant pollution
 - e. *Strengthen infrastructure and partnerships for edible food recovery*
 - f. Eliminate disposal of compostable organic materials to landfills
 - g. Implement a local worm compost facility (at RERC) using commercial waste food stream for local high quality short cycling compost, rather than export
 - **Water**
 - a. “Future proofing” water systems in new construction (drought resiliency)
 - i. Separate greywater drains (on-site reuse)
 - ii. Non-potable plumbing (re-used water for toilet flushing, etc.)
 - b. Enable easier permitting of graywater, non-potable water re-use and composting toilet installations
 - **Greenspace**
 - a. *Maintain and expand green open spaces (small and large) to support carbon sequestration, water infiltration, local recreation and resilient biodiverse ecosystems, including (both private and public): tree planting, green infrastructure, and mitigation of tree and greenspace removal at other sites within the city, with special attention to equitable distribution of greenspace*
 - **Municipal Leadership**
 - a. Aggressively move to an EV Fleet and do not replace with fossil fuel vehicles
 - b. Reduce GHG employee commutes (workplace EV charging, e-bikes and more) [find resources here](#)
 - c. Municipal building/facility electrification
 - d. Move pool heat from gas to solar thermal and/or heat pump
 - e. All-electric appliances/equipment (forklifts, mowers, blowers, etc.)

From: [Cordell Hindler](#)
To: [City Clerk](#)
Subject: Public Comments- Not on the Agenda
Date: Thursday, September 16, 2021 3:47:37 PM

good Evening Mayor Fadelli, council members, and City Staff, I have a couple of comments for the Record

1. I would like to Invite the Council to a performance of Our Town at Contra Costa Civic Theater on October 1st-31st

Adults 35.00 dollars, Youth 15.00 dollars

2. for a Future Agenda, the Council should Direct the City Manager to consider having Koff & associates to work on the Class & Comp Study

Sincerely
Cordell

Mayor Fadelli, Mayor Pro Tem Quinto and Council Members Rudnick, Abelson, and Motoyama:

Last night at the Albany City Council, they passed, with a unanimous vote, a truly historic resolution for the city entitled:

Resolution No. 2021-95: Rematriation in Albany

The resolution was introduced by Mayor Gary, and here is the text of the resolution:

- 1. Recognize the Confederated Villages of Lisjan (Ohlone) as one of the Original people of this land**
- 2. Direct the Parks, Recreation & Open Space Commission to work with the Sogorea Te' Land Trust to analyze parcels within City boundaries and develop a joint plan to rematriate appropriate public lands and open spaces back to the Confederated Villages of Lisjan in perpetuity through the Sogorea Te' Land Trust**
- 3. Urge the Albany School District and the Albany Library to create a committee to undertake a thorough evaluation of their curriculum, programs and events to ensure that they are accurate and inclusive of the history and resiliency of the Lisjan people**
- 4. Direct the creation of signage on Solano Avenue and other City signs that acknowledge that Albany is on Ohlone land**
- 5. Direct City staff to draft, in consultation with the Confederated Villages of Lisjan, a land acknowledgement to be formally adopted and read at the beginning of City Council meetings and all other City board and commission meetings**
- 6. Establish a two member subcommittee, in consultation with the Sogorea Te' Land Trust, to prepare a budget proposal for the City to formally incorporate annual payment of the Shuumi Land Tax**

Before the resolution vote, they had an excellent presentation by Corrina Gould from Sogorea Te Land Trust (<https://sogoreate-landtrust.org/>)

The presentation, discussion and passage of the resolution can be found on the video of the meeting, starting at 3:48:15. The first section is Corrina's presentation, which you should watch even if you don't watch the rest of the discussion and passage of the resolution. Here is the link to the video of the meeting: <https://www.youtube.com/watch?v=M307e58-uwI>

I think it is time for El Cerrito to pass a similar resolution, in collaboration with Sogorea Te.

In particular, I think that Sogorea Te could have a cultural easement on some or all of the Hillside Natural Area and help restore the Hillside Natural Area, if they are interested.

Robin Mitchell
El Cerrito Resident

From: [John Stashik](#)
To: [City Clerk](#)
Subject: public comments – not on the agenda
Date: Tuesday, September 21, 2021 2:12:31 PM

First of all, credit and thanks go to City management and staff for cleaning out the filthy encampments along the BART path behind residences on the 1700 block of Lexington Avenue.

When I heard from my neighbors of the frustration they were having on that block dealing with fire and trash by and over their backyard fences, I sent our City Manager (and also the Mayor and Mayor Pro Tem) an email requesting a cleanup. That was on September 11th. Not surprisingly, I received an *immediate* reply from our City Manager stating such an action was already on the calendar and a cleanup would take place the following week; which it did.

Of course, I quickly relayed that response to those concerned neighbors with the message that City staff listens and gets the job done. They always do.

In the real life game of whack-a-mole, a new encampment has sprung up on the 1500 block of Lexington. These only grow, and get worse. We residents do not want trash, fires, rats, or piles of debris on our block. An email sent to the City Manager (along with the Mayor and Mayor Pro Tem) on September 16th should get the process in motion for staff to quickly abate this encampment.

One of El Cerrito's largest employers, El Cerrito Royale, is located at Lexington & Gladys and management there has stated these encampments adversely affect their business. Fewer people are interested in moving into a facility like El Cerrito Royale next to trash strewn lots.

It's difficult to get a handle on these encampments but the City needs to do all possible to quickly remove them. Taxpaying residents—constituents of City Council members—don't appreciate living next to illegal camps. Quality of life is important to El Cerritans.

With new revenue from Proposition X, it seems like the County ought to be assisting. Or maybe even the state since the Governor recently succeeded in saving his job. It's a problem too large for the City of El Cerrito to handle alone.

But the purpose of this public comment is to put the issue on the City Council's radar and into the public record. City staff gets the job done, but the Council has been kind of silent on the matter. Hopefully, our local elected representatives will begin pay attention to this problem.

John C. Stashik

My HOME in El Cerrito

9/21/21

From Theresa Parini

To : The City of El Cerrito

Regarding: Homeless encampments on the Ohlone Greenway trail between Blake and Hill Street.

Dear Mayor Fadelli, The City of El Cerrito Management and City Council,

I am writing to express my concerns regarding the homeless encampments on the Ohlone Greenway trail directly behind **my home** between Blake and Hill Street.

I intend to attend tonight's city council meeting to present my concerns as described below:

I have lived in El Cerrito for 25+ years and the incidents of homeless individuals have increased exponentially within the last 24 months specifically behind **my home**. I have lived in El Cerrito for the past 25 years and have never felt unsafe or uncomfortable in **my own home**, backyard or walking through my neighborhood until the last several months. I have reached out to the City, the police, and neighbors regarding my concerns in the form of emails and phone calls. I spoke to the Assistant City Manager 3 weeks ago and confirmed with her that the main spot for the explosion of encampments is right behind **my home**.

I have sent several emails in the past to all of the city council members, the city manager and the city mayor. The lack of response feels personal as I am a long time resident of this town, my husband's family have lived in this house since the 1930. The messages I receive from the City are that you don't care.

*Fadelli: "As you know, homelessness is a regional problem and we have been working with the county for ways to deal with encampments. **The City has been speaking with Lexington residents** and there will be a cleanup of this encampment scheduled this week. We need to adhere to specific protocols (including noticing the people in the encampment) in doing so. I understand also our city staff has responded back to those who have written to us and details have been relayed to neighbors with a posting on Nextdoor.*

*You may also know, cities are not allowed to move individuals against their will, **and cannot suggest a change of venue unless the city has specific lodging for that purpose.***

This is the one and only correspondence I have ever received from Fadelli.

I will make my case to you in bullet points to make my plight clear:

- The police department has been responsive to my calls for assistance but have stated they are powerless and their "hands are tied" to address the issue.
- I have been told by several police that the only thing they can do is ask the people to "please lower your voice." Screaming at midnight is okay and unenforceable. Police say *"Our hands are tied."* Noise levels are not enforced
- The police generally believe they have no support or help.
- These encampments are an encroachment on public land. The city does not enforce.
- The County CORE and a small group of El Cerrito residents who do not live on Lexington Avenue push back on any efforts by the City clean up crews or the police to try to mitigate the conditions of the area. But they do not want to move these encampments into their own neighborhoods.
- The City has NO policy or plan to set guidance about people inhabiting public areas.
- The City has set a tone that homeless are welcome in El Cerrito with no regard to homeowners privacy, safety or loss of their homes value.
- I email and call the City with little or no response.
- The City's office hours should shift to one day a week in the afternoon to allow working people to contact the City.
- Summit Middle School students use the Ohlone Trail daily to walk to Safeway for afternoon snacks. If there is an incident regarding minors being attacked or harassed the City will be legally responsible.
- Money is spent in some areas in El Cerrito for beautification, while other areas are ignored. Why?
- There is a serious and growing problem with homeless encampments right up against my back fence and **my home**.
- As a homeowner and taxpayer I have no power to have a say about the quality and safety of the back side of my fence to **my home**. I have been told by the police, the city and the county everyone's hands are "tied."
- There are several citizen groups that have different perspectives about how to help or support the encampments with no one wanting to invite the encampments into their area of El Cerrito.
- The area the encampments are located are a swale for rainwater. This poses a real threat when the easement fills with rain water and will cause a back up of water into private properties adjacent to the drain area.
- How would the situation be perceived if it was in Mr. Fadelli's or Ms. Pinko's backyard ? Consider walking a step or two in my shoes in my home: Your back fence is over inundated with
 - BBQ's fires, campfires and explosive propane canisters.
 - Wet and rotting trash, cardboard, food containers, a boot, a plastic baseball bat, a backpack, water bottles, meat trays, plastic wrappers, cans of food, used paper plates, a BBQ grill, a hoodie, etc.
 - Wet blankets, wet clothing on your fence into your yard.

- Defecation and urination smells.
- Foul smells from smoking right in my backyard.
- Screaming and fighting at all times of the morning, day or night.
- Banging on your fence while you mow your lawn because you are making too much noise while doing yard work.
- Breaking the neighbor's fence.
- Constant presence of homeless individuals on the street digging through recycling cans. (DAILY).

Making An Impact:

Since the City Clean up last week on September 16, 2021, no encampments for the time being have returned. A few weeks ago I spoke on the phone with Alex Oralogas the Assistant City Manager who stated that the City does not feel that the city clean ups have an impact.

I want to confirm that it does indeed have an impact.

Individuals that do not want be disturbed by the City will move on. Leaving only the more persistent few encampments.

Regular City clean ups decrease the overall costs for larger clean ups.

The more regularly you clean, the less trash you will have to remove and less personal property you will have to store at the City yard.

The police can focus their time and resources more effectively.

Residents on Lexington Avenue as well as the hundreds of public who share the use of the trail are more safe.

All Stakeholders mean ALL:

The City has stated that they meet with all City departments including the County to address the issue. The City does not include ALL stakeholders.

- Residents on Lexington Avenue between Hill and Blake. (The people on the other side of the fence.)
- Summit Middle School Administrators and students.
- BART riders who use the Ohlone Greenway to exit the station.
- Security officers at Safeway who are diverted from their primary job to support Safeway to intercept frequent interactions with individuals from the homeless encampments nearby.
- The local businesses within a block of the encampments.

Some possible solutions:

Weekly trash clean ups. garbage, chairs, BBQ's, hazardous materials, drug paraphernalia, human waste material (feces and urine). Wet clothing, blankets, etc.

Installation of riprap (small concrete chunks) making the area less attractive for habitation.

The City installed plants and other beautification projects in these high areas of contact.

Designating a public place in El Cerrito, not up against residents' homes, for a City sanctioned homeless compound. Example: The City of Martinez .

Thank you for your time.

Theresa Parini

[REDACTED]

El Cerrito.

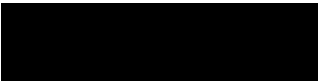
From: [Gary Prost](#)
To: [City Clerk](#)
Cc: [Paul Fadelli](#); [Michael Piloni](#)
Subject: Public Comments - Agenda Item 5G - Regular Council Meeting 9/21/2021
Date: Tuesday, September 21, 2021 11:20:44 AM

Honorable Mayor Fadelli and City Council,

I am writing to support your efforts to clean up the dead and dying vegetation in the Hillside Natural Area. Whereas much needs to be done, your efforts to at least get started are being noticed and are much appreciated by the neighbors living in the vicinity of the park. Any and all efforts to reduce fuel loads, especially during the autumn red flag and Diablo Wind days, are a benefit to the entire community.

Thank you,

Gary Prost
Make El Cerrito Fire Safe



Virus-free. www.avg.com

From: [REDACTED]
To: [City Clerk](#)
Subject: Agenda Item 5G
Date: Tuesday, September 21, 2021 1:13:50 PM

City Council Members,

We are encouraged to see that some of Measure H funds are being used to reduce the hazardous fuel load in HNA as identified by both the ECFD and Public Works. However, it is discouraging to note that the full scale of what they had hoped to remove during this project had to be reduced due to the higher-than-expected bids. It is clear that the city needs to hire a grant specialist soon to obtain more funds through grants to continue the very important job of further reducing the fuel load in HNA. It is critical to the entire city to have this work done soon. As you are all aware, we just finished another Red Flag Warning period and mostly likely more are to come in October and November before it starts to rain.

May we all be safe from wildfires, earthquakes and Covid-19

Sue and Paul Duncan

Make El Cerrito Fire Safe

Sent from my iPhone

From: [Al Miller](#)
To: [City Clerk](#)
Subject: Public Comment Agenda Item 8.A. 09/21/2021
Date: Sunday, September 19, 2021 2:22:33 PM

Public Comment on Agenda Item 8.A., 09/21/2021

Mayor Fadelli, Mayor Pro Tem Quinto, and Councilmembers Abelson, Motoyama & Rudnick:

I strongly support your “directing the Human Relations Commission to work with staff to develop an Equity and Inclusion workplan for the community” as recommended in the Agenda Bill for Agenda Item No. 8.A.

I believe the resulting plan will have a strong influence on the quality of life in El Cerrito.

I also believe it is important that all City employees model the desired outcomes of this plan in their day-to-day performance of their work not only with their colleagues, but also with any members of the public with whom they interact.

To facilitate this desired performance, I recommend that all City Department Directors, as part of their annual performance evaluations, be evaluated on how effectively they and the employees in their Department “model the desired outcomes of this plan in their day-to-day performance of their work not only with their colleagues, but also with any members of the public with whom they interact.”

I believe this requirement, similar to recent increased responsibility for managing their Department Budgets assigned to all Department heads, would help ensure the desired results of the *Equity and Inclusion Workplan*.

Thank you.

Al Miller

, El Cerrito, CA 94530

To the Honorable Mayor Fadelli and City Council:

I am currently reading a book called “Black Women in White”. It describes the difficulties that Black Women had in becoming nurses in the early days circa 1890-1950. The white schools would not accept them and there were not many black schools in which to get trained. If a black nurse was lucky enough to get into a program, once out of the program she was unlikely to be able to care for white patients. If, by chance, they were lucky enough to get a job in a hospital, they would watch as year after year, less experienced white women would get promoted to leadership positions as they would stay in the same place and often for less pay than their white colleagues.

This sort of institutionalized racism may sound like ancient history, but I couldn't help but to realize the way in ways in which this institutionalized racism had been passed down over the generations all across America and landed in the hospital unit that I used to work in Berkeley, California. For the majority of my career at the bedside, the leadership was white, the charge nurses, the managers, and of course the CEO. Fortunately, a couple of women of color were promoted into management positions, but I have yet to see any black leadership on the unit. Which makes me wonder, have things changed that much or are black women still being told by their institutions that they work for that they are not smart enough, not good enough or not worthy of leadership positions.

I point all of this out to show how institutional racism still exists. It may not be legal or as in your face as it used to be, but it is still there. The façade of equality leaves the sting felt by the individual.

This is where equity comes in. No one group can change all of the wrongs of the past, but taking a look at how we as a society can do better can only help the situation. As a city, we can ensure we are doing our best to become a more equitable institution. We can right the wrongs that are happening in real time and put forward a plan to be as inclusive as possible. It is within the purview of the Human Relations Commission to set forth on such a project. I ask the council to pass a motion to develop an Equity and Inclusion workplan for the community.

Sincerely,

Rochelle Pardue-Okimoto
Former Mayor and Councilmember

From: [Michael Fischer](#)
To: [City Clerk](#)
Cc: [Karen Pinkos](#); [Paul Fadelli](#)
Subject: Public Comments - Agenda Item #8-A: Equity and Inclusion Workplan
Date: Monday, September 20, 2021 8:42:17 PM

Mayor Fadelli, Council Members, and City Manager Pinkos:

I am thrilled to see Item 8-A on tonight's agenda, the Equity and Inclusion Workplan. I know the Mayor has been talking about this item for some time and can see he and city staff have been working on it. This item is terribly important and the events of the past few years has emphasized how necessary this is. The council and staff should consider the equity issues of any item that the council or staff is considering. I support the proposal and the referral to the Human Relations Commission to prepare a report and recommendation for the council.

The opinion I'm expressing today is that of an El Cerritan but also as your Library Commissioner. Last year the Contra Costa County Library Administration created an "Equity, Diversity and Inclusivity Committee" to address these issues. The County Library Commission added to its annual work plan Goal 3 to "work on those important global and national issues that affect the library system or that can be assisted by the resources that the library system can provide to the community." Specifically, but by no means exclusively, the Commission is to "seek, with appropriate private, county and state partners, methods to help overcome the digital divide." The Library Administration, with the strong support of the Commission and members of this City Council has already stepped up on this issue by urging the Measure X Advisory Committee to recommend the use of some Measure X funds to increase library hours countywide. Whatever recommendations the Advisory Committee may make, I will be urging this council later this year to support this funding by the Board of Supervisors.

Many library issues are equity issues as I'm sure the council has heard me state many times. So it should not be a surprise that in my role as Library Commissioner I am supporting item 8-A. In addition to those resources mentioned in the staff report tonight, I would note the following website on what are called "Racial Impact Statements." (<https://www.sentencingproject.org/publications/racial-impact-statements/>). While this article talks about racial impact statements, equity goes much further than race and I hope the recommendation by the Humans Relations Commission will address equity broadly.

Kind regards,

Michael

Michael Fischer (he him)


El Cerrito City Designated Library Commissioner
Vice Chair, Contra Costa County Library Commission

El Cerrito Needs an Affordable and Appropriate 21st Century Library