EL CERRITO CITY COUNCIL

MINUTES

REGULAR CITY COUNCIL MEETING
Tuesday, September 15, 2015 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Mark Friedman – Mayor

Mayor Pro Tem Greg Lyman
Councilmember Jan Bridges
Councilmember Janet Abelson
Councilmember Gabriel Quinto

ROLL CALL
Councilmembers Abelson, Bridges, Lyman, Quinto and Mayor Friedman.

7:00 p.m. **CONVENE REGULAR CITY COUNCIL MEETING**

Mayor Friedman convened the regular City Council meeting at 7:00 p.m.

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE was led by Councilmember Gabriel Quinto.

2. COUNCIL / STAFF COMMUNICATIONS

Lance Maples, Fire Chief, provided an update on El Cerrito's participation in the various fires that have occurred throughout the state this summer. Chief Maples reported that the Fire Department is happy to participate in fire-fighting efforts during this extreme fire season and support other agencies throughout the state. El Cerrito firefighters have returned safely without injuries or equipment damage. El Cerrito Fire currently has several personnel deployed at the Butte Fire and the Rough Fire. Chief Maples thanked the City Manager and the City Council for giving the Fire Department the flexibility it needs to assist other agencies throughout the state.

Councilmember Quinto invited all to participate in Constitution Day: A Talk with Christine Pelosi. The event is sponsored by Contra Costa College and the League of Women Voters on September 17. Ms. Pelosi, an attorney with a long and varied history of public service, will speak on the importance of the Constitution, grassroots organizing and public policy.

Mayor Pro Tem Lyman invited all to participate in the following events: 1) El Cerrito Green Team and Friends of Five Creeks Clean-up of Cerrito Creek and Albany Hill on September 19; 2) Music for Madera Open Space on September 20; 3) an Environmental Quality Committee sponsored event on a plant pathogen that threatens native plants on September 30; and 4) the Citywide Garage Sale on October 25, 2015. More information is available on

the City's website www.el-cerrito.org.

Mayor Friedman announced that there will be a public forum on the minimum wage increase on September 21 in the Council Chambers. The forum is sponsored by the Economic Development Committee and the Chamber of Commerce. Mayor Friedman also reported on the August 25 unveiling of the Anza Expedition banners and commemoration plaque.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Cordell Hindler, Richmond, announced the following events in Richmond: 1) Spirit and Soul Festival & Fundraiser on September 19; and 2) EdFund's Getting Ready for College Conference on September 26. Mr. Hindler also expressed appreciation for the City Council and stated that he hoped the Richmond City Council could take a lesson from them.

Tom Panas, El Cerrito, thanked the City Council for its discussion of a minimum wage ordinance last month. Mr. Panas also stated that the comment on the business model of Kevin and Jenny on Stockton Avenue involving exploiting employees was one of the lowest points in public discussion that the City has experienced. Mr. Panas stated that he was surprised that no one on the Council set the record straight. Mr. Panas suggested that there ought to be a provision for small employers, perhaps based on the wages reported on the state DE-9 form, and stated that if Council wants to encourage small business in town then it should direct staff to craft such a provision.

Avash Shrestha, El Cerrito, stated that his rent has been raised by 50% and that he received a 30 day notice. His apartment is located at 511 Oak Street. Mr. Shrestha asked if there were rent control laws in El Cerrito and said the landlord does not fix problems at the apartment.

Al Miller, El Cerrito, announced that the El Cerrito Library Foundation is coordinating a voter registration drive on September 22 in conjunction with National Voter Registration Day at the Library. Mr. Miller also invited all to attend the 2015 Annual Rotary Sip and Savor fundraising event on November 11, 2015 at Mira Vista Golf and Country Club. Tickets are available by contacting amil@sonic.net. Additionally, on September 22, two Bay Area Rapid Transit Directors (BART) will be attending the El Cerrito Democratic Club meeting. The public is invited to voice its opinions about BART. Mr. Miller stated that he supports the Council intention to join the East Bay Municipal Utility District's (EBMUD) pledge to conserve water and encouraged all to visit the NEBIA website at www.nebia.com for information regarding innovation in a water saving shower nozzle that uses 70 per cent less water.

4. PRESENTATIONS

Presentation and Report on the 2015 EC Stars Program – *Presentation by Suzanne Iarla, Assistant to the City Manager and Corey Mason, West Contra Costa Unified School District.*

Receive a presentation regarding the 2015 El Cerrito Students Training and Ready for Success ("EC STARS") Internship Program.

Presenters: Suzanne Iarla, Assistant to the City Manager, Corey Mason, West ContraCosta Unified School District. Interns Danielle Garnett, Wei Cheng Chen, Manuel Espinoza, Katushka Aburto, Chelsea Martinez, Andres Montes Clemens, each highlighted knowledge and skills learned and projects completed while working at the City.

Speakers: Cordell Hindler, Richmond, expressed appreciation for the EC Stars program.

Action: Received presentation.

5. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 5A through 5E

Moved, seconded (Bridges/Abelson) and carried unanimously to approve Consent Calendar Item Nos. 5A through 5E in one motion as indicated below.

CITY COUNCIL ITEMS

A. Minutes for Approval

Approve the August 18, 2015 Regular City Council meeting minutes. *Joint Special Meetings of Planning Commission, Design Review Board and City Council were convened on August 18 and August 25, 2015 for the limited purpose of touring the Ohlone Gardens Apartments, 6495 Portola Drive, however no quorum of the City Council was present at either special meeting therefore no minutes were prepared.*

Action: Approved minutes.

B. Proclamation Pledging Partnership with the East Bay Municipal Utility District to Save Water

Approve a proclamation pledging to partner with EBMUD to work together to reduce 2015 water use in the EBMUD service area by twenty percent compared to use in 2013. Together the City and EBMUD can meet local and state water conservation mandates.

Action: Approved proclamation.

C. Contract for Summit K2 High School Environmental Review

Adopt a resolution authorizing the City Manager to execute a contract with Lamphier-Gregory in an amount not to exceed $73,650 and approving up to $7,400 in contingency tasks to perform environmental review services for the Summit K2 High School project.

Action: Adopted Resolution No. 2015–61.

D. Economic Development Committee Appointment

Approve an Economic Development Committee recommendation to appoint Shanti Corrigan to the Economic Development Committee, effective September 16, 2015.

Action: Approved recommendation.

SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY ITEM

E. Review and Authorization to Submit the Draft Recognized Obligations Payment Schedule 15-16B (January – June 2016)

Adopt a Successor Agency resolution reviewing and authorizing submittal of the draft Recognized Obligations Payment Schedule 15-16B covering the period January to June 2016.

Action: Approved Successor Agency Resolution No. 2015–02.

6. PUBLIC HEARINGS

A. Abatement of Fire Hazard Public Nuisances on Eight Properties Pursuant to El Cerrito Municipal Code Chapter 16.26

Conduct a public hearing and upon conclusion adopt a resolution confirming the cost of abatement of public nuisance conditions resulting from the presence of weeds, rubbish, litter and other flammable material on private property designated in Exhibit A to the resolution as authorized by El Cerrito Municipal Code Chapter 16.26.

Presenter: Christopher Renshaw, Fire Prevention Officer.

Mayor Friedman opened the public hearing. No speakers.

Moved, seconded (Lyman/Quinto) to close the public hearing.

Action: Moved, seconded (Lyman/Bridges) and carried unanimously to adopt Resolution No. 2015–62.

B. Ordinance Establishing a Tobacco Retailer License Program

Conduct a public hearing and upon conclusion, introduce by title, waive any further reading, and approve an ordinance amending El Cerrito Municipal Code (ECMC) Title 6 "Business Permits and Regulations" by adding a new Chapter 6.100 "Tobacco Retailer License Program," repealing Section 19.20.210, amending Section 19.46.060(D) and Table 19.07-A.

Presenter: Suzanne Iarla, Assistant to the City Manager.

Mayor Friedman opened the public hearing. 9 speakers.

Speakers: Cordell Hindler, Richmond, stated that cigarettes are bad for adults and encouraged the City Council to think the ordinance through.

Sarah & Alejandra, El Cerrito, stated that they support the ban on the sale of all tobacco products including little cigars and e-cigarettes. Sarah and Alejandra said they are concerned about the availability of low cost, cheap, candy and fruit flavored tobacco products and e-cigarettes in their neighborhoods and near their school. Low cost cigar brands like "Good Times" and "Swisher Sweets" are especially harmful and enticing to youth. Sarah and Alejandra asked that El Cerrito be a safe and healthy community for kids and adults to live and shop and urged the City Council to establish a tobacco licensing program that reduces access to harmful products.

Brian Davis, Tri-City Health Center, Fremont. Mr. Davis stated Hayward and Union City have passed ordinances similar to what the City Council is considering. Hayward and Union City require the Police Department to conduct youth decoy operations, that are funded by tobacco retailer licenses, to prevent the sale of tobacco to underage youth. Higher tobacco prices result in lower youth smoking rates. Cities and Counties all over California that have passed tobacco retail licenses and used these funds to conduct youth decoy operations often see dramatic drops in illegal sales to youth.

Janna Katz, Albany, American Cancer Society Network, commended the students who spoke previously. Ms. Katz stated that young people, once addicted [to tobacco], become tomorrow's public health problem. Strong enforcement will show better statistics of retailers who are selling tobacco products to youth. Ms. Katz stated that she commends the City for looking to public health, thinking about future smokers and saving lives. Ms. Katz pointed out that ten years is a long time for retailers to come to terms with the fact that they have some restrictions. Laws should be strengthened and loopholes should not be allowed. There are many things that can be done with development rather than balancing budgets on the backs of those who are addicted or who will be a future addict of tobacco. Ms. Katz said 80% of smokers started to smoke before they were 18.

Mary Jaccodine, El Cerrito, Co-chair, Contra Costa Tobacco Prevention Coalition, thanked the City Council for taking on this issue. Ms. Jaccodine stated that the tobacco industry spends over $1 billion each year promoting its products in California. Research has shown that advertising has a greater effect on teen tobacco use than peer pressure. The Tobacco Prevention Coalition supports tobacco retailer licensing laws, density restrictions and a 1000 foot buffer zone around schools, parks and places where young people gather. This needs to be put in place without exception and without long implementation periods. The Coalition also supports laws restricting the sale of tobacco products and e-cigarettes that appeal to kids. There has been an alarming growth in the use of flavored products. Ms. Jaccodine asked the Council to refrain from letting the interests of businesses trump the health of youth in El

Cerrito.

Denice Dennis, Contra Costa Health Services Tobacco Prevention Project, informed the City Council that the Contra Costa Board of Supervisors and the City of Berkeley is considering policies similar to what the City Council is considering. Ms. Dennis stated that a tobacco retailers licensing ordinance is the most effective tool available to address illegal sales to minors and monitor compliance with sales laws. Ms. Dennis suggested that the fee that it is set for licensing be sufficient to fund enforcement of the ordinance, including annual decoy operations conducted by law enforcement. It is important that if there is a violation of law that the retailer license be suspended. A fine has not been proven to reduce tobacco sales to minors or to bring retailers into compliance with tobacco laws.

Bill Kuhlman, El Cerrito, encouraged the City Council to delete the restrictions on the sale of flavored tobacco and single and small cigar packs because it will also ban the sale of these products to adults. Mr. Kuhlman stated that everyone agrees on prohibiting the sale of tobacco to minors. We can be tough on tobacco and help kids make better choices without forcing adult citizens of the City into illegal transactions.

Al Miller, El Cerrito, spoke about his experience at a recent Parent Teacher Student Association (PTSA) meeting. The tobacco industry has gone out of its way to design products that circumvent existing constraints. The retailers are presented with an industry that does not care about people and just wants to make money. Mr. Miller stated that he supports the regulations and asked that the ordinance be enforced after it is passed, and that data be gathered to determine how [the program] is working and whether the ordinance needs revision in the future to make it as tough as it can be.

Moved, seconded (Bridges/Abelson) and carried unanimously to close the public hearing.

Action: Moved, seconded (Lyman/Abelson) and carried unanimously to approve Ordinance No. 2015–08 as amended on the floor to include the following changes:

1) Add subsection 6.100.320(7) to read 7. The tobacco retailer is required to post signs restricting the age of customers to the state mandated minimum age for purchasing tobacco;

2) Amend subsection 6.100.340(2) to read, 2. The tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days~~;~~, unless required to close or suspend tobacco retailing to comply with other laws in which case the sixty (60) day period shall be tolled until the tobacco retailer is legally allowed to re-open or resume tobacco sales; and

3) Delete Section 6.100.700 ("Agreed Penalty In Lieu of Hearing") from the ordinance.

Additionally, text references for Footnotes 3 and 4 which did not appear in the version of the ordinance included in the Council packet were added administratively by staff to the ordinance that the City Council will consider for adoption at its October 6, 2015 meeting.

7. POLICY MATTERS - *None*

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

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

Mayor Pro Tem Lyman reported on several items from his attendance at Marin Clean Energy (MCE) Board meetings. MCE is the City Community Choice Aggregation provider for electricity. Pacific Gas & Electric Company (PG&E) is petitioning the California Public Utilities Commission to increase rates which will have the following three effects on El

Cerrito residents: 1) A request to increase the Power Charge Indifference Adjustment (PCIA) rate fee for residents; 2) A request to change the rates to reduce peak pricing benefits for solar photovoltaic systems; and 3) A request to reduce energy discounts to CARE Program customers. CARE customers are low income customers that receive discounted rate structures as a result of their fixed income.

Additionally, the MCE Board authorized the filing of MCE's business and implementation plans with the PUC. MCE is hoping that the business plan will lock in some of the community choice aggregation choices that PG&E and some of the other companies are opposing. Councilmember Quinto will be attending MCE's annual all-day meeting on behalf of Mayor Pro Tem Lyman. Topics will include how to add new communities and the shape and look of the decision body.

The West County Integrated Waste Management Authority (WCIWMA) Board is in the process of evaluating the future of the WCIWMA including establishing policies on reserves. A portion of the reserve, approximately $500,000 or more, is due back to El Cerrito and will be dispersed back to El Cerrito at some point.

The Financial Advisory Board (FAB) received a presentation regarding the local housing program and staffing reductions. The Environmental Quality Committee (EQC) met last week and is going through its annual workplan. Mayor Pro Tem Lyman also attended an event with Tony Thurmond related to the State of the Estuary Conference. Three reports are being released about the state of the estuary and the state of San Francisco Bay. One report advised that the water quality of San Francisco Bay is improving. Mercury and PCB is slowly improving however individuals should not eat fish from the Bay. Another report discusses the future of tide rims around the Bay. With sea level rise there will be a reduction in tidal marshes around the Bay but there are actions that decision-makers can take to reverse the trend. A third report on the State of Estuary, which includes the Delta, includes terms such as "crises," "dire," and "ecosystem crash" due to significant alterations in the Bay-Delta ecosystem. Scientists have documented that the Delta is suffering and is in need of the same type of attention that has been given to Bay water quality. The report says that Delta water quality is in the same state that the San Francisco Bay water quality was in thirty years ago prior to enacting efforts such as stormwater management, to clean it up.

Councilmember Abelson attended the September Contra Costa Mayors Conference in Orinda. The presenter, who had been trained by the Al Gore program, spoke about Climate Change.

Councilmember Quinto reported that he attended a panel at the City of San Pablo's Senior Center with Congressman DeSaulnier, Assemblymember Thurmond and Supervisor Gioia regarding senior issues. Councilmember Quinto stated that it is his hope that the Congressman, Assemblymember and Supervisor Gioia will come to El Cerrito to inform the public about programs that are threatened and need to be renewed.

Mayor Friedman reported that he hosted a meeting with Assemblymember Thurmond, former School Director Glen Price, and others to look at reforming the Alliance for Public Education. Mayor Friedman helped start the Alliance over twenty years ago to support quality public education.

9. ADJOURNED REGULAR CITY COUNCIL MEETING at 9:21 p.m. in memory of Dr. Joel Fort, a long-time stalwart member of the community and national leader in public health.

SUPPLEMENTAL REPORTS AND COMMUNICATIONS

Item No. 4 Presentation and Report on the 2015 EC Stars Program

1. Powerpoint Presentation – *Submitted by Suzanne Iarla, Assistant to the City Manager.*

Item No. 6(B) Ordinance Establishing a Tobacco Retailer License Program

2. Comments on Tobacco Retailer Licensing Program – Submitted by Steven J. Duffy for National Association of Tobacco Outlets, Inc.

3. Urging adoption of a strong local tobacco retailer licensing ordinance to protect youth – Submitted by Kimberly Amazeen, Vice President, Programs & Advocacy, American Lung Association.

4. Concerns about the proposed tobacco retail license ordinance – Submitted by Saud Sous, Owner, San Pablo Discount Cigarette, El Cerrito.

5. Request that the ban on flavored tobacco and single cigars be deleted from the tobacco license ordinance or exempt stores already in operation – Submitted by Amrik Johal, Super Stop Gas and Mart, El Cerrito.

6. Request to exempt current retailers entirely from the tobacco sales restrictions – Submitted by Del Norte Liquor, El Cerrito.

7. Opposition to revised draft ordinance. Request to remove the ban on flavors and single cigars on existing businesses – Submitted by Omar Esmatyar, Co-Owner, Tobacco Outlet, El Cerrito.

8. Comments opposing the proposed ordinance which include a request to delete the provisions restricting flavored tobacco products and the sale of single and small pack cigars – Submitted by J.P. Sethi, Chairman, American Petroleum and Convenience Store Association.

9. Comments on the Proposed Tobacco Retailers Licensure Ordinance including a request to remove Sections 6.100.160 and 6.100.180 from the ordinance – Submitted by James C. Jack, IV on behalf of The Cigar Association of American.

10. Support for the e-cigarette language included in the Tobacco Retail License ordinance and comments regarding advertising restrictions and the omission of menthol cigarettes – Submitted by Lynda Barbour, MPH, Southern California Government Relations Director, American Cancer Society Cancer Action Network, Inc.

10. Opposition to proposed tobacco ordinance – Submitted by Angie Manetti, Director, Government Affairs, California Retailers Association.

11. Powerpoint presentation – *Submitted by Suzanne Iarla, Assistant to the City Manager.*

12. Benefits of tobacco retailer licensing – *Submitted by Daniel Peddycord, Public Health Director, Contra Costa Health Services.*

Other:

13. Contra Costa College, Law Club, Pathway to Law School & the League of Women Voters Announcement: Constitution Day: A Talk with Christine Pelosi – *Submitted by Councilmember Quinto.*

14. Comments on minimum wage – *Submitted by Tom Panas, El Cerrito.*

15. edFUND "Getting Ready for College Conference" postcard – *Submitted by Cordell Hindler.*

16. 7th Annual Spirit & Soul Festival postcard – *Submitted by Cordell Hindler.*

THIS IS TO CERTIFY that the foregoing is a true and correct copy of the minutes of the regular meeting of September 15, 2015 as approved by the El Cerrito City Council.

Cheryl Morse, City Clerk

Mark Friedman, Mayor