EL CERRITO CITY COUNCIL

MINUTES

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION
Tuesday, July 17, 2012 – 6:15 p.m.
Hillside Conference Room

CONCURRENT CITY COUNCIL/PUBLIC FINANCING AUTHORITY/SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY MEETING
Tuesday, July 17, 2012 – 7:00 p.m.
City Council Chambers

SPECIAL CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY MEETING
Tuesday, July 17, 2012 – Immediately following the Concurrent City Council/Public Financing Authority/Successor Agency Meeting
Hillside Conference Room

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

Bill Jones – Mayor

Mayor Pro Tem Greg Lyman
Councilmember Rebecca Benassini
Councilmember Ann Cheng
Councilmember Janet Abelson

6:15 p.m. **ROLL CALL**

Councilmembers Abelson, Benassini, Cheng, Lyman and Mayor Jones all present.

CONVENE SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Mayor Jones convened the Special City Council meeting – closed session at 6:17 p.m.

ANNOUNCEMENT OF CLOSED SESSION

Conference with Labor Negotiators *(Pursuant to Government Code Section 54957.6)*

Agency designated representatives: Scott Hanin, City Manager, Sky Woodruff, City Attorney, Glenn Berkheimer, IEDA, Sukari Beshears, Employee Services Manager
Employee organizations: Service Employees International Union, Local 1021

ORAL COMMUNICATIONS FROM THE PUBLIC – No speakers.

RECESSED INTO CLOSED SESSION at 6:17 p.m.

POSSIBLE REPORT OUT OF CLOSED SESSION

ADJOURNED SPECIAL CITY COUNCIL MEETING – CLOSED SESSION at 6:48 p.m.

ROLL CALL

Councilmembers Abelson, Benassini, Cheng, Lyman and Mayor Jones all present.

7:00 p.m. **CONVENE CONCURRENT CITY COUNCIL/PUBLIC FINANCING AUTHORITY / SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY MEETING**

Mayor Jones convened the Special Concurrent City Council/Public Financing Authority/Successor Agency to the Former Redevelopment Agency meeting at 7:02 p.m.

1. **PLEDGE OF ALLEGIANCE TO THE FLAG** was led by Mayor Jones.

2. **COUNCIL / STAFF COMMUNICATIONS**

Mayor Jones reported that the City Council had just met in closed session pursuant to Government Code Section 54957.6 regarding labor negotiations and provided direction to staff.

Mayor Pro Tem Lyman announced the Police Department's hosting of the Pixar film, CARS 2, on August 6 at 5:00 p.m. at the Rialto Cerrito Theater. Admission and a small popcorn are free. Mayor Pro Tem Lyman reminded all that National Night Out follows on August 7, 2012.

Councilmember Abelson reported that the City is moving forward on its Climate Action Plan. The Environmental Quality Committee convened a study session last week. Many opinions were submitted. The Climate Action Plan will be coming to the Council soon for consideration.

Report on July 3, 2012 Successor Agency Closed Session and Update on Impacts Associated with Assembly Bill 1484 – Mayor Jones

OVERVIEW

Mayor Jones reported that the Council, acting as the Successor Agency to the Former Redevelopment Agency, with very little time to consider recent State action, met in closed session on July 3, 2012 and gave the following direction to staff : if the State would not give relief to the Successor Agency related to AB 1484 then the City should file a lawsuit against the State and all pertinent parties. On July 12, consistent with Council/Successor Agency direction, the City's legal team filed suit in Sacramento and the City refused to pay the $1.7 million state demand. On July 10 city staff met with the State Department of Finance to meet and confer on issues pertaining to AB 1484. The State dismissed the Successor Agency's and City's concerns outright and without serious consideration. The City is challenging the constitutional legality of the "clean up bill, AB 1484" which followed the statute to dissolve Redevelopment Agencies. Specifically, the City maintains that the methodology and resulting "true up" payment ($1.7 million) demanded by the State is flawed, improper and unlawful. Legal action is being taken to protect and shield the City's general fund, assets of the city, the rights of the community to develop such assets and secure local designated sales tax revenues needed to keep employees at current levels of service for the residents of El Cerrito. The legal team and city staff have put together a very solid and compelling case and everyone is confident in the mission to succeed on behalf of the City and its residents.

COUNCIL COMMENTS

Mayor Jones stated that it does not appear the city can turn to its state representatives to support and protect the city at the state legislative level. In his opinion, the city's state representatives

have sided with the Governor and the State Department of Finance against cities on this issue. The Council feels that there is no alternative way to redress legitimate grievances other than to turn toward the judicial system to enforce proper constitutional law of the state. This is a pure and simple money grab by the state legislature and the Department of Finance and it oversteps the original Redevelopment Dissolution Act. AB 1484 is called a "clean-up bill." Mayor Jones stated that he calls it a "clean-out cities and counties bill." During the last year California cities and successor agencies have been following the law of the Dissolution Act and dismantling the redevelopment agencies.

The Successor Agencies, in accordance with the letter of the law were able to save many of their projects and assets that were already developed or under contract. The Dissolution Act was so poorly presented and ignorant of subject matter on several levels that predictably it did not deliver the revenue that the Governor and the Department of Finance promised. The Legislature and the Department of Finance had to introduce AB 1484 in order to change the rules and procedures, redefine the definition of "city," blocking the lawful efforts of Successor Agencies and then back dating all the new procedures to the original Dissolution Act thus trying to increase the collection of revenues and negate most of the successor agencies efforts. In addition, AB 1484 established a $22 million war chest to administer and defend the Department of Finance in administration of this program. At roughly the same time, the state legislature had shut down a $14 million health program which primarily helps children and turned around and gave $22 million to the Department of Finance. Two million of the $22 million dollars is earmarked for the judicial system. The legislation also sets up the Department of Finance as judge, jury and executioner without due process or transparency to unilaterally carry out AB1484.

Mayor Jones stated that it is his opinion that if the City had paid the $1.7 million demanded then it would have no leverage in negotiating change. Even if the City had won its arguments, Mayor Jones has no confidence that the city would be refunded the money by the state. The State would have found some other excuse to keep it in the state coffers. Mayor Jones said it should also be noted that the demand for payment was issued on July 9th with payment due three days later on July 12. There was very little time, by design, for cities to review the demand and make decisions going forward. AB 1484 may be setting precedent for taking sales tax revenue from cities general funds.

Since the inception of redevelopment in 1952 cities have never been responsible for the debts of a redevelopment agency. In AB 1484 the State, through unilateral actions of the Department of Finance, can take money from the cities. This action has transferred the responsibility and liability of the bond indebtedness away from any responsibility of the state and sets it squarely on the shoulders of the cities and counties. With one swift and unprecedented action of the legislature, cities and counties are now responsible for something they were never involved in and responsible for in over sixty years. If this action is allowed it opens up the gate for more actions in the future which are unrelated to redevelopment and allows the state to grab more money from the cities and counties general funds. The Council views it as illegal and unconstitutional by state law. This cannot go unchecked. What should be disheartening to the residents of El Cerrito and the State of California, is that this secretive and non-transparent action that the Department of Finance, State Legislature and Governor took to ramrod this law through the so called legislative process. There was very little, if any, public notification, public review or comment for this legislation. The total process from introduction of legislation to the Governor's signature took approximately 36 hours. Very few, if any, people in city and county government knew the details of the legislation until after it was passed into law. This far

reaching bill was passed without legitimate review and consideration. Several cities in the State are at or near bankruptcy as they struggle to save their cities while the State hits them with this type of illegal action. El Cerrito has asked for and received support from its residents and employees as the City tries to get through these tough economic times and maintain current service levels. Residents and employees have delivered, only to have the State, year after year, continue to take away parts of its funding. Now the state wants city sales tax money and to declare cities liable for bonds and debt for which cities had no involvement. Local governments have a much higher approval rate with the residents of California than State government. This would have been an excellent opportunity for State and local government to interact together during these rough times. However, the punitive action of AB 1484 indicates the State has an unapologetic disregard for its cities. The supportive partnership between cities and the state is rapidly disappearing and this issue is only one example of this. Mayor Jones stated the line has been drawn in the sand and the City must fight for its rights. Sadly and very disappointingly, El Cerrito must sue its own government in order to protect and defend its residents' rights and local government funding.

Mayor Pro Tem Lyman stated that he echoes Mayor Jones statements and emphasized that one aspect of the lawsuit that he wished to highlight is that the State's demand was not calculated properly, and that the State is asking the City to make two payments on its bond payments which total approximately $1.7 million each. The State wants the City to pay $3.4 million but has only provided $1.7 million to pay it with. The City is trying to protect its general fund, because the payment would have to come out of the general fund and not any other fund. The City is telling the State and the Department of Finance that its demand is an unacceptable request and that the State should be giving the City $1.7 million to make the second payment with.

Councilmember Abelson stated that she agrees with what has been said and at some point you have to say enough is enough. The City doesn't have the resources to keep paying the demands. The City has several responsibilities; the most important is public safety. Sales tax and property tax pay for safety. The City needs to continue to rely on these funds to pay for safety and expenses. The $1.7 million that the State wants to take out of the general fund is over half of the city's reserves. Councilmember Abelson stated that this is the most egregious issue she has seen since she has been on the City Council. The action taken by the State destroys local government. When residents have a medical emergency or if there is someone trying to break down a door, the residents need to know that the City can send someone in a reasonable amount of time. Filing the lawsuit is telling the State that enough is enough and that the City is drawing the line.

Councilmember Benassini stated that the City Council undertook the decision to file the lawsuit against the state government very seriously. There are two things that were promised by state legislators during the dissolution of redevelopment: 1) Bond obligations of the redevelopment agency would not be imperiled by the dissolution process; and 2) Dissolution will not damage cities' general fund. Redevelopment Agencies were separate legal entities. If the Successor Agency is unable to make bond payments it will send a very poor message to the investment community and will also make it difficult to function and plan in terms of the budget process. If the general fund is imperiled the City is not able to function and plan in terms of its budget process. This is something that could not go without pushback. Additionally, there are miscalculation problems. Councilmember Benassini said the City thinks it has a good case and she believes the City Council is making a good decision to protect the City by refusing to make the payment and leaving it up to a Judge.

Councilmember Cheng stated that although she has been out with a back injury, she appreciates the Council's decision to assert the City's position. This is one element of the public trust between councilmembers, community and city staff. The City Council is exercising its fiduciary responsibility to say "No." Councilmember Cheng stated that the State legislature dissolved redevelopment without knowing how much they could count on and are now clawing back funding. Councilmember Cheng stated that the public trusts the City to spend taxes on what the City says it will do and when the City can't do that everything breaks down. Councilmember Cheng thanked the Council for weathering through the last month.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Peter Loubal, El Cerrito, stated that El Cerrito is up the wall with this lawsuit, does not have the money and may have to default. If the City loses even parts of the lawsuit, city services will have to be cut. Mr. Loubal asked whether default means bankruptcy and what this would cost. Mr. Loubal also requested information regarding risks. The City Council should deal with the issue in open rather than in closed session. Mr. Loubal said that he has an been outspoken person about the City living beyond its means including the City Hall building and purchase of the Tradeway site. Redevelopment debt has turned into city debt. Mr. Loubal asked the City Council to be more open and ensure that all voices are heard.

4. PRESENTATIONS – None.

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

Moved, seconded (Lyman/Abelson) and carried unanimously to approve Consent Calendar Item Nos. 5A through 5D in one motion as indicated below. Item No. 5E was removed from the Consent Calendar and voted on separately at the request of Mayor Jones.

JOINT CITY COUNCIL/PUBLIC FINANCING AUTHORITY ITEM

CITY COUNCIIL ACTING AS SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY ITEM

A. Minutes for Approval

1) Approve the June 19, 2012 Special City Council meeting, Special Concurrent City Council/Public Financing Authority meeting and Special City Council Acting as Successor Agency to the Former Redevelopment Agency Closed Session meeting minutes; and

2) Approve the July 3, 2012 Special City Council Acting as Successor Agency to the Former Redevelopment Agency Closed Session meeting minutes.

Action: Approved minutes.

CITY COUNCIL ITEMS

B. National Night Out Proclamation

Approve a proclamation calling upon all residents of the City of El Cerrito to participate in "National Night Out" on Tuesday, August 7, 2012.

Action: Approved proclamation.

C. Direct Update of the Conflict of Interest Code

Adopt a resolution, directing the City Clerk to review the Conflict of Interest Code and if any

changes are necessary to submit a revised Code to the City Council for approval, or if no changes are necessary to so notify the Council.

Action: Adopted Resolution No. 2012–51.

D. Revision to Equipment Lease Refinancing Resolution

Adopt a revised resolution authorizing the City Manager to enter into an agreement with JP Morgan Chase Bank (Chase) for the refinancing of six equipment leases and amending Resolution No. 2012–40 to add the lease with option to purchase agreement dated June 15, 2007.

Action: Adopted Resolution No. 2012–52.

E. El Cerrito New Priorities Campaign Working Group

At the request of Mayor Jones and Mayor Pro Tem Lyman, adopt a resolution expressing concerns about how the national defense budget and spending impacts not only our nation but also the residents of the City of El Cerrito. The City Council supports public discussion and dialogue about the costs of excessive military spending within the context of national and local priorities, what each resident must pay and the permanent disability and loss of life experienced by local residents who willingly serve in the armed forces for the safety and welfare of our County. The City Council calls upon Senators Boxer and Feinstein and Congressional Representative Garamendi to oppose further funding of the war in Afghanistan, except as needed to affect the safe rapid withdrawal of all military forces and contractors, and urges them to take leadership position in Congress to bring our troops safely home, substantially reduce overall military spending, and redirect federal tax dollars to the pressing educational, employment, health, housing, nutritional, infrastructure, energy and environmental needs of our city, state and county, and support federal funding for Iraq and Afghanistan war veterans to ensure they receive health care, housing, jobs, education and other supportive services they deserve.

Speakers: Al Miller, El Cerrito, stated that the working group, as part of a nationwide grassroots effort, is trying to encourage elected officials who represent El Cerrito to influence federal legislators to bring war dollars home for services, create new priorities and invest in the future. Mr. Miller stated that staff members have brought over $4 million in federal grants to El Cerrito for a variety of projects.

Jean Rabovsky, El Cerrito, stated that money that is spent on war is money that is not available for local services and urged the City Council to support the resolution. Ms. Rabovsky also spoke about the rising cost of the Senior Center hiking program registration fee.

Joanna Pearlman, El Cerrito, urged the City Council to support the resolution.

Michael Eisenscher, Oakland, Coordinator of Bay Area New Priorities Campaign, stated that Contra Costa County taxpayers contributed about $2.3 billion in 2012 toward the Department of Defense base budget. The El Cerrito share of this contribution is $51.5 million dollars. Mr. Eisenscher stated that El Cerrito wouldn't have a budget deficit if taxpayers were giving the City money instead of money going to the Pentagon and corrupt Afghan war lords. Mr. Eisenscher spoke in support of passage of the resolution and stated that the American people want a change in priorities.

Peter Loubal, El Cerrito, said that it is easy to agree with the sentiment of the New Priorities resolution and stated that in the past the United States has used its military might to bully other countries but that people must remember that when the United States was pacifist and isolationist then other nations became the bully resulting in 60-80 million lives lost in World War II. Military spending during the Reagan Administration led to the Soviet collapse, a free Eastern Europe and prevented the cold war from dragging on and becoming a hot war. Mr. Loubal said the New Priorities resolution is naïve and counterproductive. Saying that passage of the resolution will solve fiscal problems is misleading.

Helen Dickey, El Cerrito, stated that the antidote to despair is action and that she has put her energy into [the Campaign for New Priorities] because something must be done.

Mildred Dandridge, El Cerrito, stated that domestic needs are great. Reducing military spending and using federal tax dollars to support domestic needs should be a priority for all.

Action: Removed from the Consent Calendar and placed for comment after the Pledge of Allegiance at the request of Mayor Jones. Moved, seconded (Lyman/Abelson) and carried unanimously to adopt Resolution No. 2012–53.

6. PUBLIC HEARINGS

Fire Hazard Abatement

Staff requests that the City Council take the following actions:

1) Adopt a resolution declaring that weeds, rubbish, litter or other flammable material on certain real property as identified in the resolution constitutes a public nuisance; and

2) Conduct a public hearing an upon conclusion, adopt a resolution overriding objections by property owners and direct the City Manager or his designee to abate certain public nuisances pursuant to El Cerrito Municipal Code Chapter 16.26.

Presenter: Michael Bond, Battalion Chief.

Action: Moved, seconded (Lyman/Abelson) and carried unanimously to adopt Resolution No. 2012–54, including a revised Exhibit A, declaring that weeds, rubbish, litter or other flammable material on certain real property as identified in the revised Exhibit A attached to the resolution constitutes a public nuisance.

Mayor Jones opened the public hearing. One speaker.

Speakers: James Richardson, M.D., El Cerrito, expressed concerns over the timely removal of dry, tall grass and weeds on the City of El Cerrito's own property and on three vacant lots which are adjacent to his property. Dr. Richardson stated that he has asked that the weeds be removed and they are still standing. There has been a significant fire on one of the lots during the time Dr. Richardson has owned the adjacent property. Dr. Richardson said he is frustrated about having to contact the weed abatement officer who then contacts the property owner every year. Dr. Richardson stated that July 4th is a critical hazard time and properties need to be cleared before this date. Dr. Richardson suggested that a regulation should be put into place that

directs a single notice to be sent to property owners to clear weeds by June 29 if someone has been cited three years or more in a row. Dr. Richardson complained that the current procedure is too long and too cumbersome.

Moved, seconded (Benassini/Lyman) and carried unanimously to close the public hearing.

Action: Moved, seconded (Benassini/Cheng) and carried unanimously to adopt Resolution No. 2012–55, including a revised Exhibit A, overriding objections by property owners and ordering the City Manager or his designee to abate the public nuisances, by having the weeds, rubbish, refuse, dirt or other fire hazard or noxious or dangerous materials removed pursuant to El Cerrito Municipal Code Chapter 16.26 and Government Code 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 September 18, 2012, these abatement costs can be confirmed as a special assessment against those parcels.

7. POLICY MATTERS

A. CalPERS Service Credits

Review the attached report regarding costs and implementation of two years additional PERS Service Credit and direct the City Manager to submit a resolution for the City Council's consideration at its August 21, 2012 meeting that designates a two-year service credit retirement period from August 22, 2012 through November 27, 2012 for eligible miscellaneous and public safety employees.

Presenter: Sukari Beshears, Employee Services Manager.

Action: Moved, seconded (Abelson/Lyman) and carried unanimously to direct the City Manager to return to the City Council on August 21, 2012 with an item for consideration which designates a two year window period from August 22, 2012 through November 27, 2012 for eligible miscellaneous and public safety employees.

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

A. Mayor Jones reported that the Contra Costa Mayors Conference members discussed what cities are doing to meet the obligations imposed by the State. It was a spirited discussion with lots of emotion and good healthy debate. Mayor Jones also said that he read in the newspaper that El Cerrito is not the only city filing suit. Each of the cities have a different situation to handle and the law applies in different ways. It will be interesting to see how the judicial system handles this. Mayor Jones also reported on his attendance at the Gilman Sports Field Joint Powers Authority (JPA) meeting in which the group received an update and discussed where to go with fields in terms of improvements that are needed, finishing up the master plan and funding. For the third year in a row revenues are greater than expenses and the five cities that make up the JPA will not have to contribute any funds to support the project. Mayor Jones said that the JPA is fortunate to have a good management group for that project.

B. Mayor Pro Tem Lyman – No report.

C. Councilmember Abelson – No report.

D. Councilmember Benassini – No report.

E. Councilmember Cheng thanked the City Council for recognizing June as Lesbian, Gay, Bi-Sexual, and Transgender (LBGBT) month on behalf of the Human Relations Commission.

SUPPLEMENTAL REPORTS AND COMMUNICATIONS

Item No. 2 Council Communications – Report on July 3, 2012 Successor Agency Closed Session and Update on Impacts Associated with Assembly Bill 1484

1. Comments on lawsuit and redevelopment – *Submitted by Peter Loubal.*

Item No. 5(E) El Cerrito New Priorities Campaign Working Group

2. Listing of Relevant Facts, Redefining "National Security," Pentagon Spending and Social Need in Contra Costa County, Correspondence to Mayor Jones with sample resolution, Information specific to El Cerrito, and U.S. Conference of Mayors Resolution regarding elimination of nuclear weapons and redirection of nuclear weapons spending to meet urgent needs of cities – *Submitted by Michael Eisencher, Coordinator, New Priorities Campaign.*

3. Emails in support of the New Priorities Resolution – *Submitted by Joan Bartulovich and Dorothy Kemp.*

Item No. 6 Fire Hazard Abatement

4. Revised Exhibit A to Resolutions submitted as Attachments 5 and 6 to the Fire Abatement Staff Report – Revised List of Real Property Constituting Public Nuisances – *Submitted by Battalion Chief Bond.*

5. Written comments on the weed abatement process and five photographs – *Submitted by James M. Richardson, M.D., El Cerrito.*

9. ADJOURNED CONCURRENT CITY COUNCIL/PUBLIC FINANCING AUTHORITY / SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY MEETING at 8:48 p.m.

ROLL CALL

10. CONVENED SPECIAL CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY MEETING at 8:49 p.m.

Successor Agency Chair Jones convened the Special Successor Agency meeting at 8:49 p.m.

ANNOUNCEMENT OF CLOSED SESSION

Conference with Legal Counsel – Anticipated Litigation *(Pursuant to Government Code Section 54956.9(b))*: One potential case

ORAL COMMUNICATIONS FROM THE PUBLIC *(Comments are limited to three minutes and to items on this Special Closed Session agenda only.)*

RECESSED INTO CLOSED SESSION at 8:52 p.m.

POSSIBLE REPORT OUT OF CLOSED SESSION

ADJOURNED SPECIAL CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY MEETING at 9:38 p.m.

THIS IS TO CERTIFY that the foregoing is a true and correct copy of the minutes of the Special City Council Closed Session, Concurrent City Council/Public Financing Authority/Successor Agency to the former Redevelopment Agency Meeting, and Special City Council Acting as Successor Agency to the Former Redevelopment Agency Meeting – Closed Session meetings of July 17, 2012 as approved by the El Cerrito City Council.

Cheryl Morse, City Clerk

William C. Jones III, Mayor