



AGENDA

SPECIAL CITY COUNCIL MEETING
Tuesday, July 17, 2018 – 6:30 p.m.
Hillside Conference Room

CITY COUNCIL MEETING
Tuesday, July 17, 2018 – 7:00 p.m.
City Council Chambers

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

Gabriel Quinto – Mayor

Mayor Pro Tem Rochelle Pardue-Okimoto
Councilmember Paul Fadelli

Councilmember Janet Abelson
Councilmember Greg Lyman

6:30 p.m. ROLL CALL

CONVENE SPECIAL CITY COUNCIL MEETING

ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person and to items on the special meeting agenda only.

COMMISSION INTERVIEWS, STATUS, AND APPOINTMENTS

Conduct an interview of a candidate for City Boards and Commissions. The interview may result in an announcement of appointment at the meeting.

ADJOURN SPECIAL CITY COUNCIL MEETING

7:00 p.m. ROLL CALL

CONVENE REGULAR CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – *Mayor Pro Tem Pardue-Okimoto.*

2. COUNCIL / STAFF COMMUNICATIONS *(Reports on Closed Session, commission appointments and matters of general interest which are announced by the City Council and City Staff.)*

3. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. 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 are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. ADOPTION OF THE CONSENT CALENDAR

A. 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, 2018.

B. Environmental Quality Committee Appointment

Approve an Environmental Quality Committee recommendation to appoint Gisele Verrier to the Environmental Quality Committee, effective July 17, 2018.

C. Resolution in Support of AB 1884

At the request of Councilmember Fadelli, adopt a resolution in support of Assembly Bill 1884, which would prohibit specified food facilities from providing single-use plastic straws to customers except upon request.

5. PRESENTATION

Human Trafficking Prevention and Awareness Proclamation

At the request of Councilmember Abelson, approve a proclamation commending Soroptimist International for its tireless efforts in increasing awareness and education in an effort to end human trafficking; supporting the Soroptimist International Club of El Cerrito as they raise awareness, through education and other efforts; and calling upon El Cerrito residents to recognize the vital role that everyone can play in ending all forms of slavery and protecting people from human trafficking.

6. PUBLIC HEARINGS

Fire Hazard Abatement

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

7. POLICY MATTERS

Direction on November 2018 City Charter Ballot Measure and associated Real Property Transfer Tax for Maintenance and Improvement of City Services and Facilities

Adopt a resolution of the City Council of the City of El Cerrito:

1. Submitting to the El Cerrito electorate a measure to approve a City Charter and the proposed Real Property Transfer Tax to develop a locally generated and controlled funding source to be used to maintain and/or increase the current level of services and facilities provided by the City, which would become effective only if adopted by 50 percent plus one vote of the El Cerrito electorate. If voters approve the measure, the City would be converted from a General Law City to a Charter City, and the Real Property Transfer Tax would be approved.
2. Approving an ordinance authorizing a Real Property Transfer Tax to maintain and/or increase the current level of services and facilities provided by the City.
3. Requesting that the Contra Costa Board of Supervisors consent to the consolidation of this election with the statewide general election to be held on November 6, 2018 and direct the Registrar of Voters to provide all services necessary to conduct the election and print a measure on the ballot as described in Section 3 of the resolution.

8. CITY COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENTS

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

9. ADJOURN CITY COUNCIL MEETING

The next City Council meeting is Tuesday, August 21, 2018 at 7:00 p.m. in the City Council Chambers, 10890 San Pablo Avenue, El Cerrito.

- 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 and AT&T Uverse Channel 99. 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/streamingmedia>. 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: 215-4305 Fax: 215-4379, email cmorse@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 10:30 p.m., unless extended to a specific time determined by a majority of the Council.



Date: July 17, 2018
To: Honorable Mayor and Members of the City Council
From: Cheryl Morse, City Clerk
Subject: Commission Interviews

JULY 17 INTERVIEW SCHEDULE

6:30 p.m.	Ashley James	[DRB]
6:45 p.m.	Amei Papitto	[Arts]
6:55 p.m.	Council Deliberation	

BACKGROUND

Staff began publicizing vacancies on all the Boards, Commissions and Committees in September 2017. Vacancies were published on the City's website and in the West County Times, posted at City Hall, the Community Center and Library. The City Council conducted numerous interviews over the past four months and has appointed 15 individuals to fill existing vacancies.

VACANCIES

Existing vacancies on each board, commission and committee are listed on the attached matrix and are also listed below for ease of reference.

EL CERRITO BOARDS AND COMMISSIONS

Arts and Culture Commission	2 Vacancies
Citizens Street Oversight Committee	1 Vacancy
Design Review Board	1 Vacancy
Human Relations Commission	1 Vacancy

Attachments:

1. Applicant Matrix
2. Candidate Applications
3. Interview questions for consideration

2018 Board and Commission Applicant Matrix (Updated: 7/5/2018)

Attachment 1

	<i>Arts & Culture (2)</i>	<i>Citizens Street Oversight (1)</i>	<i>Civil Service Commission (0)</i>	<i>Committee on Aging (2)</i>	<i>Crime Prevention (8)</i>	<i>Design Review Board (1)</i>	<i>Economic Devt. Cmte (7)</i>	<i>Environmental Quality (1)</i>	<i>Financial Advisory Board (0)</i>	<i>Human Relations (1)</i>	<i>Park and Recreation (0)</i>	<i>Planning Commission (0)</i>	<i>Urban Forest Committee (9)</i>	<i>CC Library Alternate (0)</i>	<i>CCTA Citizens Advisory (0)</i>	<i>Interview Date</i>	<i>Appointed?</i>
Keith Alexander¹							1					2					
Paul Allen		1				3					2					2/20	STREET
Ben Chuaqui						1					1	2				2/6	DRB
Allison Cooper	1															5/1	ARTS
Greg Crump												1				2/6	PLN
Richard Fernandez	1															4/17	
Vanessa Hill		1														5/15	STREET
Derik Hilliard							1			2						2/20	
Douglas Hund						2						1				2/20	
Ashley James						1		2								7/17	
John “Barry” Koops														1		2/20	LIB-Alt
Jessica Laird										1						2/20	HRC
Art Machado											1					2/20	PARKS
Eva Jo Meyers	1															4/17	
Alison H. Moreno²								1			2						EQC
Joy Navarrete						2						1				2/6	PLN
Amei Papitto	1						2									7/17	
Margo Parisi										1						2/20	HRC
Tenzin Rangdol							3		2	1						2/20	FAB
Christopher Sterba	1																ARTS

¹ Will pursue appointment to EDC first.

² Will pursue appointment to EQC first.

2018 Board and Commission Applicant Matrix (Updated: 7/5/2018)

Attachment 1

Jun Sunseri											1					2/6	PRKS
John Thompson						1										1/16	DRB
Bruce L. Yow			1								2				3	1/16	CSC, CCTA



**July 17, 2018
Special City Council Meeting**

Commission Interviews

Attachment 2 Applications

is available for review in hardcopy format at the following
locations:

Office of the City Clerk
10940 San Pablo Avenue
El Cerrito
(510) 215-4305

and

The El Cerrito Library
El Cerrito
6510 Stockton Avenue

City of El Cerrito
BOARD/COMMISSION INTERVIEW QUESTIONS

1. Will you give us a quick summary of why you chose to apply or how you selected the _____ commission/board?
2. Briefly outline what in your professional background, work experience, education, or volunteer work would be relevant to the commission/board and highlight any special or unique qualifications or qualities you feel would contribute to the commission?
3. Are you aware of any issues that this commission addressed recently? Have you attended any commission or council meetings?
4. Do you have any thoughts or ideas on how this commission might contribute to the quality of life in El Cerrito?
5. In the few minutes remaining do you have any questions for us?

***EL CERRITO CITY COUNCIL PROCLAMATION
National Night Out 2018***

WHEREAS, the National Association of Town Watch (NATW) is sponsoring a unique, nationwide crime, drug and violence prevention program on August 7, 2018 entitled National Night Out; and

WHEREAS, National Night Out has been an annual event in El Cerrito for the past fifteen years. The event provides a unique opportunity for the City of El Cerrito to join forces with thousands of other communities across the country in promoting cooperative police-community crime prevention efforts; and

WHEREAS, it is essential that all residents of the City of El Cerrito are aware of the importance of crime prevention programs and recognize the impact that their participation can have on reducing crime, drugs and violence in El Cerrito; and

WHEREAS, the City of El Cerrito and the El Cerrito Police Department is committed to enhancing the public trust through partnerships with the residents they serve through programs like National Night Out; and

WHEREAS, police-community partnerships, neighborhood safety, awareness and cooperation are important themes of the National Night Out program.

NOW THEREFORE, the City Council of the City of El Cerrito, does hereby call upon all residents of the City of El Cerrito to participate in National Night Out on Tuesday, August 7, 2018 in the City of El Cerrito.

Dated: July 17, 2018

Gabriel Quinto, Mayor



AGENDA BILL

Agenda Item No. 4B

Date: July 17, 2018
To: El Cerrito City Council
From: Will Provost, Environmental Analyst
Maria Sanders, Operations + Environmental Services Manager
Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Environmental Quality Committee Appointment

ACTION REQUESTED

Approve an Environmental Quality Committee recommendation to appoint Gisele Verrier to the Environmental Quality Committee, effective July 17, 2018.

BACKGROUND AND ANALYSIS

In March 2018, the City received an application to serve on the Environmental Quality Committee (EQC) from Gisele Verrier. After submitting her application, Ms. Verrier attended three regular meetings of the EQC, in April, May, and June 2018. Before the July 10, 2018 meeting of the EQC, an ad-hoc subcommittee of the EQC interviewed Ms. Verrier and agreed that she should be considered for membership recommendation. During the EQC's Regular Meeting, which immediately followed the interview, the Committee voted to recommend to the City Council that Ms. Verrier be appointed to the Environmental Quality Committee.

Ms. Verrier is a resident of El Cerrito who is deeply passionate about community, safety, and the environment. She is interested in public service and is interested in helping shape more sustainable and environmental friendly practices in El Cerrito, as well as in her own life. Ms. Verrier brings professional experience, project management skills, and strategic thinking that will help support the EQC in implementing projects and reviewing and developing environmental policies. She has attended at least three consecutive regular Committee meetings, as required by the enabling resolution (Resolution 2008-13) for the EQC.

If the Council approves this recommendation, the number of Committee members will be 15 out of a possible membership total of 15, as established by Resolution 2008-13.

STRATEGIC PLAN CONSIDERATIONS

The work of the members on the EQC is instrumental in helping the City achieve Goal F of the El Cerrito Strategic Plan, which is to "Foster environmental sustainability citywide." The EQC initiates and supports a variety of activities that advance all the strategies under Goal F:

- Be a leader in setting policies and providing innovative programs that promote environmental sustainability;

- Promote environmental education to facilitate behavioral changes;
- Implement policies to promote waste diversion;
- Encourage alternative modes of transportation; and
- Implement the Climate Action Plan.

Reviewed by:



Karen Pinkos
Assistant City Manager

Attachments:

1. Verrier Application



**July 17, 2018
Regular City Council Meeting**

Agenda 4B

Environmental Quality Committee Appointment

Attachment 1 Application

is available for review in hardcopy format at the following
locations:

Office of the City Clerk
10940 San Pablo Avenue
El Cerrito
(510) 215-4305

and

The El Cerrito Library
El Cerrito
6510 Stockton Avenue

RESOLUTION 2018-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO IN SUPPORT OF ASSEMBLY BILL 1884, WHICH WOULD PROHIBIT SPECIFIED FOOD FACILITIES FROM PROVIDING SINGLE-USE PLASTIC STRAWS TO CUSTOMERS EXCEPT UPON REQUEST

WHEREAS, plastics, and plastic straws in particular, pose serious threats to the health and welfare of humans, marine wildlife, including sea birds, turtles, and mammals such as dolphins and whales, and has significant financial and aesthetic costs associated with the litter; and

WHEREAS, plastic material lasts forever, yet 33 percent of all plastics are used just once and thrown away. Ninety-one percent of all plastics and no straws are recycled. After their one-time use, non-biodegradable plastic straws get broken down into smaller, micro size pieces that are discarded into our environment and often into the marine food chain; and

WHEREAS, according to the US EPA, in 2014 Americans disposed of more than 33 million tons of plastic, most of which was not recycled. It is estimated that more than 500 million single-use plastic straws are used and thrown away every day in the U.S. alone as Americans use them at an average rate of 1.6 straws per person per day; and

WHEREAS, in 2016, California voters approved Proposition 67, the statewide Single-Use Carryout Bag Ban, and now most grocery and retail stores no longer provide free single-use plastic carry-out bags to their customers. Since then, the number of plastic bags collected from state beaches during the annual Coastal Cleanup Days has dropped significantly; and

WHEREAS, the movement to specifically ban straws and other single-use plastics is growing with many other cities and countries already enacting their own bans. In California, Alameda, Carmel, San Luis Obispo, Davis, Malibu, Manhattan Beach, Oakland, Richmond, and Berkeley have their own straw bans; and

WHEREAS, beginning July 2018, the City of Seattle now requires all food service businesses to find recyclable alternatives to all disposable food service items such as containers, straws, utensils, and other products at any food service business; and

WHEREAS, plastic straws continue to be a major litter problem in El Cerrito and neighboring East Bay cities requiring city employees, Green Team and Earth Day Clean up volunteers to respond on an ongoing basis; and

WHEREAS, AB 1884 (Calderon), introduced in 2018 would mandate statewide that specific food facilities providing food and drink consumed on their premises cannot provide single-use plastic straws to consumers unless requested; and

WHEREAS, AB 1884 would importantly focus on one key aspect of plastic waste and its passage into law would be an important first step toward reducing plastic straw litter statewide.

Agenda Item No. 4C

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito supports the passage of AB 1884 which would ban the automatic distribution of plastic straws at specific restaurants without a request from customers.

I CERTIFY that at a regular meeting on July 17, 2018 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 July XX, 2018.

Sherry Kelly, Acting City Clerk

APPROVED:

Gabriel Quinto, Mayor

AMENDED IN SENATE JUNE 27, 2018

AMENDED IN ASSEMBLY APRIL 30, 2018

AMENDED IN ASSEMBLY APRIL 16, 2018

AMENDED IN ASSEMBLY FEBRUARY 5, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1884

Introduced by Assembly Members Calderon and Bloom
(Coauthor: Senator Stern)

January 17, 2018

An act to add ~~Section 114082 to the Health and Safety Code, Chapter 5.2 (commencing with Section 42270) to Part 3 of Division 30 of the Public Resources Code,~~ relating to food facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1884, as amended, Calderon. Food facilities: single-use plastic straws.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities, as ~~defined, and requires local health agencies to enforce these provisions. Existing law requires, except as otherwise provided, a person who violates any provision of the code to be guilty of a misdemeanor, punishable as specified.~~ *defined. Existing law defines "enforcement officer," for purposes of enforcing these provisions, to mean certain appointees of the State Public Health Officer, and all local health officers, directors of environmental health, and their duly authorized registered*

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environmental health specialists and environmental health specialist trainees.

Existing law prohibits certain stores from providing a single-use carryout bag to a customer at the point of sale.

This bill would prohibit a food facility, as specified, where food may be consumed on the premises, from providing single-use plastic ~~straws~~ *straws, as defined*, to consumers unless requested by the consumer. The bill would specify that the first and 2nd violations of these provisions would result in a warning and any subsequent violation would be an infraction punishable by a fine of \$25 for each day the food facility is in violation, but not to exceed an annual total of \$300. *The provisions would be enforced by the same officers authorized to enforce the California Retail Food Code.* By creating a new crime and imposing additional enforcement duties on local health agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 114082 is added to the Health and Safety~~
- 2 ~~Code, to read:~~
- 3 ~~114082. (a) A food facility where food may be consumed on~~
- 4 ~~the premises shall not provide single-use plastic straws to~~
- 5 ~~consumers unless requested by the consumer. For purposes of this~~
- 6 ~~section, a food facility shall not include a facility listed in~~
- 7 ~~paragraphs (1) through (11), inclusive, of subdivision (b) of Section~~
- 8 ~~113789, nor a food facility with a self-service beverage station.~~
- 9 ~~(b) Notwithstanding Section 114395, the first and second~~
- 10 ~~violations of subdivision (a) shall result in a warning, and any~~
- 11 ~~subsequent violation shall constitute an infraction punishable by~~

1 a fine of twenty-five dollars (\$25) for each day the food facility is
2 in violation, but not to exceed three hundred dollars (\$300)
3 annually.

4 SECTION 1. Chapter 5.2 (commencing with Section 42270)
5 is added to Part 3 of Division 30 of the Public Resources Code,
6 to read:

7
8 CHAPTER 5.2. SINGLE-USE PLASTIC STRAWS
9

10 42270. For purposes of this chapter, the following definitions
11 shall apply:

12 (a) "Consumer" has the same meaning as in Section 113757
13 of the Health and Safety Code.

14 (b) "Enforcement officer" has the same meaning as in Section
15 113774 of the Health and Safety Code.

16 (c) "Food facility" has the same meaning as in Section 113789
17 of the Health and Safety Code.

18 (d) "Single-use plastic straw" means a single-use, disposable
19 tube made predominantly of plastic derived from either petroleum
20 or a biologically based polymer, such as corn or other plant
21 sources, used to transfer a beverage from a container to the mouth
22 of the person drinking the beverage. "Single-use plastic straw"
23 does not include a straw made from non-plastic materials,
24 including, but not limited to, paper, pasta, sugar cane, wood, or
25 bamboo.

26 42271. (a) A food facility where food may be consumed on the
27 premises shall not provide a single-use plastic straw to a consumer
28 unless requested by the consumer. For purposes of this section, a
29 food facility shall not include a facility listed in paragraphs (1)
30 through (11), inclusive, of subdivision (b) of Section 113789 of the
31 Health and Safety Code, and shall not include a food facility with
32 a self-service beverage station.

33 (b) This section shall be enforced by an enforcement officer.
34 The first and second violations of subdivision (a) shall result in a
35 warning, and any subsequent violation shall constitute an
36 infraction punishable by a fine of twenty-five dollars (\$25) for
37 each day the food facility is in violation, but not to exceed three
38 hundred dollars (\$300) annually.

39 (c) Nothing in this section shall prevent a city, county, or other
40 local public agency from adopting and implementing an ordinance

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1 *or rule that would further restrict a food facility from providing*
2 *a single-use plastic straw to a consumer.*

3 SEC. 2. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution for certain
5 costs that may be incurred by a local agency or school district
6 because, in that regard, this act creates a new crime or infraction,
7 eliminates a crime or infraction, or changes the penalty for a crime
8 or infraction, within the meaning of Section 17556 of the
9 Government Code, or changes the definition of a crime within the
10 meaning of Section 6 of Article XIII B of the California
11 Constitution.

12 However, if the Commission on State Mandates determines that
13 this act contains other costs mandated by the state, reimbursement
14 to local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.

O

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Wieckowski, Chair

2017 - 2018 Regular

Bill No: AB 1884
Author: Calderon and Bloom
Version: 4/30/2018
Urgency: No
Consultant: Genevieve Wong

Hearing Date: June 20, 2018
Fiscal: Yes

SUBJECT: Food facilities: single-use plastic straws

ANALYSIS:

Existing federal law:

- 1) Under the federal Marine Plastic Pollution Research and Control Act of 1987, prohibits the at-sea disposal of plastic and other solid materials for all navigable waters within the United States (Public Law 100-220, Title II, 1987, 101 Stat. 1460).
- 2) Requires the National Oceanic and Atmospheric Administration (NOAA) to develop a National Marine Debris Monitoring Program designed to assess the effectiveness of the current national marine debris legislation. Monitoring under this program takes place at designated beaches every 28 days (33 U.S.C. §1951 et seq.).

Existing state law:

- 1) Under the California Retail Food Code (CRFC), generally regulates the structural, equipment, and operational requirements of all California retail food facilities.
 - a) Defines “food facility” as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level including, but not limited to, public and private school cafeterias, restricted food service facilities, licensed health care facilities, commissaries, mobile food facilities, mobile support units, temporary food facilities, vending machines, certified farmers’ markets, farm stands, and fishermen’s markets.
- 2) Under the California Beverage Container Recycling and Litter Reduction Act of 1986, provides funding for beverage container recycling, litter prevention,

AB 1884 (Calderon)

and cleanup (PRC §14500 et seq.).

- 3) Under the Integrated Waste Management Act of 1989 (IWMA), establishes a state recycling goal of 75% of solid waste generated to be diverted from landfill disposal through source reduction, recycling, and composting by 2020. Requires each state agency and each large state facility to divert at least 50% of all solid waste through source reduction, recycling, and composting activities. IWMA also requires a state agency and large stage facility, for each office building of the state agency or large state facility, to provide adequate receptacles, signage, education, and staffing, and arrange for recycling services, as specified (PRC §§ 41780.01, 42921, 42924.5).
- 4) Prohibits a person from selling a plastic bag or a plastic food or beverage container that is labeled as “compostable” or “marine degradable” unless that plastic bag or container meets American Society for Testing and Materials (ASTM) standards or a standard adopted by the Department of Resources Recycling and Recovery (PRC §§42357, 42359.6).

This bill:

- 1) Prohibits a food facility where food may be consumed on the premises from providing a single-use plastic straw to a consumer unless requested by the consumer.
 - a) Exempts public and private school cafeterias, restricted food service facilities, licensed health care facilities, commissaries, mobile food facilities, mobile support units, temporary food facilities, vending machines, certified farmers’ markets, farm stands, fishermen’s markets, and food facilities with a self-service beverage station from this prohibition.
- 2) Subjects the first and second violation to a warning and each subsequent violation to an infraction and a fine of \$25 for each day the food facility is in violation. Limits the fine to no than \$300 annually.

Background

- 1) *Ocean pollution.* According to the US EPA, Americans disposed of more than 33 million tons of plastic in 2014, most of which was not recycled. A 2014 study estimated that there are 270,000 metric tons — and more than 5 trillion particles — of plastic in the world's oceans. It is estimated that more than 500 million single-use plastic straws are used and thrown away every day in the

AB 1884 (Calderon)

U.S. alone as Americans use them at an average rate of 1.6 straws per person per day, according to the National Park Service. That translates into 175 billion straws a year. According Better Alternatives Now, or BAN 2.0, an analysis done by several pollution research groups, straws and stirrers make up more than 7 percent of plastic products found in the environment. Scientists estimate that by 2050, there will be more volume of plastic than fish in the oceans.

According to the Ocean Protection Council (OPC), ocean litter, also commonly referred to as “marine debris,” is a persistent and growing problem worldwide that significantly impacts the health and beauty of our oceans and beaches. It poses serious threats to marine wildlife, including sea birds, turtles, and mammals such as dolphins and whales, as well as human health and welfare. Scientific research demonstrates that debris in oceans is increasing at an alarming rate. Researchers estimate that 80% of marine debris comes from land-based sources, particularly trash and plastic litter in urban runoff, and the generation of trash and waste is increasing.

In 2007, OPC adopted a resolution that called for a plan of action to reduce and prevent marine debris, including specific actions to reduce single-use plastics. In 2008, OPC, in conjunction with NOAA, developed “An Implementation Strategy to Reduce and Prevent Ocean Litter,” which offered 16 recommendations aimed to prompt a change in how California generates, handles, and disposes items that frequently land in our ocean. The main focus of the initiative was the goal of reducing the amount of litter that accumulates in the ocean, particularly the 60-80% that is lightweight and buoyant plastic material. This type of litter kills marine life, including endangered species, transports invasive species and toxic pollutants, and damages the aesthetics of our beaches and the sea. The strategy also included three “priority actions for measurable success:” 1) Implement a take-back program for convenience food packaging, 2) Prohibit single-use products that pose significant ocean litter impacts where a feasible alternative is available, and 3) Assess fees on commonly littered items.

In 2016, OPC, in partnership with the NOAA Marine Debris program, began updating its 2008 initiative. On April 24, 2018, OPC adopted the *California Ocean Litter Prevention Strategy: Addressing Marine Debris from Source to Sea*. The updated Strategy includes several actions that are carryover items from the 2008 effort and include a producer take-back program for convenience food packaging (the second largest source of ocean litter behind cigarette butts), expanding the local bans on polystyrene food packaging, and supporting local efforts to impose fees on littering. The plan also focuses on three main priorities: land-based ocean litter, microplastics, and fishing and aquaculture

AB 1884 (Calderon)

gear. Source reduction is an important component in these goals and action items and is considered the most preferred way to reduce ocean litter because it decreases the amount of trash there is to control, clean up, and dispose. At the time this analysis was written, the final version was expected to be published shortly.

According to NOAA, approximately 80% of marine debris comes from land based sources, with food and beverage packaging making up the largest component of that debris. These food and beverage containers can enter the marine environment in a number of ways: through inefficient or improper waste management, intentional or accidental littering, and through stormwater runoff. Once in the marine environment, litter is not just an eyesore, but can damage habitats, harm wildlife through entanglement and ingestion, and have negative economic impacts on coastal communities.

- 2) *Fish with a side of plastic.* Microplastics consumed by marine organisms make their way into animals' tissues and are beginning to show up in the fish that humans eat. In a recent study by UC Davis and Hasanuddin University of Indonesia, researchers sampled fish from markets in Makassar, Indonesia, Half Moon Bay, California, and Princeton, New Jersey. One-quarter of the fish sampled in all locations contained plastic.
- 3) *Microplastics in tap water.* Plastic is also prevalent in tap water. Researchers at the State University of New York and the University of Minnesota tested 159 drinking water samples from cities and towns across five continents. Eighty-three percent of those samples worldwide contained microplastics. In the United States, 94% of the samples contained microplastics, including a sample collected from the United States Environmental Protection Agency headquarters. People, therefore, are ingesting the microplastics when they drink and eat foods prepared by using tap water.
- 4) *Plastic Bag Ban.* In 2016, California voters approved Proposition 67, the statewide Single-Use Carryout Bag Ban (SB 270, Padilla, de Leon, Lara, Chapter 850, Statutes of 2014). As a result, most grocery stores, retail stores with a pharmacy, convenience stores, food marts, and liquor stores are no longer able to provide single-use plastic carry-out bags to their customers. Instead, these stores may provide a reusable grocery bag or recycled paper bag to a customer at the point of sale for a charge of at least 10 cents. Since the bag ban went into effect, the number of plastic bags collected from state beaches during the annual Coastal Cleanup Days has dropped significantly from about 65,000 bags in 2010 to about 26,000 bags 2017.

AB 1884 (Calderon)

- 5) *A growing movement:* The movement to ban straws and other single-use plastics is growing with many other cities and countries already enacting their own bans. In California, Alameda, Carmel, San Luis Obispo, Davis, Malibu, Manhattan Beach, Oakland, Richmond, and Berkeley have their own straw bans. While some ordinances are similar to AB 1884's provisions of only providing a straw upon request, others are a flat out ban. In April of this year, the City of Manhattan Beach City Council voted unanimously to enact an ordinance that prohibited food providers from using or distributing plastic beverage straws, plastic stirrers or plastic utensils, whether for use on-site, to-go, or delivery. Under the ordinance, food providers are also prohibited from providing non-plastic, single-use straws, utensils, or stirrers, except upon request from the customer, and requires disposable straws, stirrers, and utensils to be non-plastic, made from non-plastic materials, such as paper, pasta, sugar cane, wood, or bamboo.

Beginning July 2018, the City of Seattle will require all food service businesses to find recyclable or compostable packaging serviceware alternatives to all disposable food service items such as containers, straws, utensils, and other products. Seattle's ban applies to all food service businesses, including restaurants, grocery stores, delis, coffee shops, food trucks, and institutional cafeterias.

The movement is gaining momentum in other countries as well. In Fall 2019, Vancouver is set to ban plastic straws. The ban, which is part of the city's plan to go waste free by 2040, will also cover single-use Styrofoam takeout containers and cups. Under the ban, businesses will have to eliminate the disposables entirely, charge customers for the disposable, or arrive at an alternative solution which must be pre-approved by the Vancouver City Council. Those who do not comply with the ordinance may face a fine of \$250. In Europe, Starbucks has recently agreed to phase out all plastic straws and cutlery.

Additionally, many businesses have taken the initiative by providing straws that are made of paper as an alternative to plastic straws. In the U.K., McDonalds as began experimenting using paper straws in its U.K. restaurants or making plastic straws available only upon request. On June 8 of this year, SeaWorld Entertainment announced that it will be removing all drinking straws at its 12 parks, along with plastic shopping bags. SeaWorld said that in lieu of plastic straws, it will offer guests the option of using paper versions or they can purchase reusable cups with attached straws. That same day, Royal Caribbean Cruises announced that by 2019, its fleet of 50 ships will not have plastic straws. Guests will receive wood stirrers for coffee and bamboo garnish picks

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as a part of the drive to reduce trash. Until then, the ships have implemented a straws upon request policy.

In May of this year, Bon Appétit, a large food-service company that serves major U.S. college campuses, museums and other specialty venues, said it would be phasing out plastic straws and stirrers at all of its more than 1,000 locations. Alaska Airlines also announced last month it is getting rid of plastic straws on its flights.

Comments

1) *Purpose of Bill.* According to the author,

“We need to create awareness around the issue of one-time use plastic straws and its detrimental effects on our landfills, waterways, and oceans. AB 1884 is not a ban on plastic straws but simply a way for consumers to change their behavior regarding the use of single-use plastic straws.

Plastic is a material that lasts forever, yet 33 percent of all plastics are used just once and thrown away. 91% of all plastics are not recycled, but no straws are recycled. After their one-time use, non-biodegradable plastic straws get broken down into smaller, micro size pieces that are discarded into our environment. They are oftentimes mistaken as food by marine life.

California’s Coastal Cleanup Day, which started in 1989, was declared “the largest garbage collection ever organized” by Guinness Book of World Records in 1993. In a summary of all trash collected between 1989 and 2014, straws and stirrers rank as the 6th most common item collected.”

2) *Available alternatives.* There are many options available to food facilities that wish to continue to provide a straw to its customers. Such alternatives include bamboo straws, metal straws, straws made out of straw, and reusable straws. Many restaurants looking for an alternative to single-use plastic straws have turned to paper straws.

3) *Water upon request.* In March 2015, in response to the state entering its fourth year of being in a severe drought, the State Water Resources Control Board (SWRCB) adopted various emergency regulations to safeguard the state’s remaining water supplies. Among those regulations was a prohibition on restaurants and other food service establishments from serving water to customers unless requested. This year, the prohibition has been modified to only apply during a drought emergency issued by the Governor. Enforcement

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of the water conservation regulations is compliant-based where a person can report the water waste through an online form submitted directly to the SWRCB.

- 4) *What exactly is a single-use plastic straw?* Currently, there is no definition for a “single-use plastic straw” in code, nor does AB 1884 define the term for its purposes. To provide clear direction to food facilities as to the type of straws that could be distributed without customer request, it is important define this term.

Manhattan Beach’s city ordinance defines a “plastic beverage straw” as a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, used to transfer a beverage from its container to the mouth of the drinker. Under the ordinance, plastic beverage straw does not include straws that are made from non-plastic materials, including, but not limited to paper, pasta, sugar cane, wood, or bamboo. The ordinance also defines “disposables” as single-use disposable product used for serving, consuming, or transporting prepared or raw food, including but not limited to, straws.

The bill should be amended to define “single-use plastic straw” to be consistent with the definitions provided for by the Manhattan Beach ordinance.

- 5) *Plastic straws as a food safety issue?* The CRFC establishes uniform health and sanitation standards for retail food facilities. The purpose of the CRFC is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented through adoption of science-based standards (HSC § 113703). The issue of whether a single-use plastic straw is only provided to a consumer upon request is not a public health issue. It is a waste management issue because, as the author stated in his author’s statement, “[w]e need to create awareness around the issue of one-time use plastic straws and its detrimental effects on our landfills, waterways, and oceans.” The Public Resources Code, among other things, houses code sections relating pollution, recycling, waste management, and the reduction of solid waste in our state. Therefore, a law whose purpose is to reduce the amount of single-use plastic straws used in our state is more appropriately suited in the Public Resources Code.

The bill should be amended move its provisions to the Public Resources Code.

- 6) *Enforcement.* Enforcement of the CRFC is primarily handled by 62 local environmental health regulatory agencies through site inspections. The

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California Department of Public Health, Food and Drug Branch, plays a supporting role in the enforcement of the CRFC by providing technical expertise to evaluate processes and procedures. Current practices of enforcement officers include things such as making sure all staff have obtained the proper food server certification, making sure food prep areas are sanitary, ensuring the facility is clean and fit as an area for human consumption, and making sure food is stored properly – generally making sure food facility operations protect the public health. For most items, it is easy for an enforcement officer to determine compliance.

According to the California Department of Public Health,

“The local Environmental Health Services (EHS) agencies have authority to enforce the California Retail Food Code (CRFC). The ‘purpose of the CRFC is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly represented through the adoption of science-based standards.’ The local agencies have the primary responsibility to enforce this part.

In enforcing the CRFC at a retail food facility, the local EHS inspector focuses on making observations related to the safe preparation and handling of food, safety of water, and adequate disposal of waste. Most of their observations are made during the preparation, handling, and safe storage of food in the kitchen or prep areas.”

It may not be as easy, however, for an enforcement officer to determine if a food facility is only providing single-use plastic straws to consumers upon request. How would an enforcement officer go about doing this? Would the officer ask the employee or operator of the facility whether they are compliant? Would the enforcement officer ask customers if they had requested the use of the single-use plastic straw? Or would the officer simply observe the normal operations of the food facility while conducting its annual inspection? Are any of these practical ways to test true compliance? Therefore, it would seem that people who would be best situated to measure true compliance with AB 1884 are the patrons of the food facility itself.

SB 270’s plastic bag ban prohibits grocery stores from distributing a single-use plastic bag and requires grocery stores to charge for a reusable paper that meets certain durability requirements. Under the bag ban, local jurisdictions or the state may impose civil liability on a person that knowingly or reasonably should have known it violated the bag ban’s provisions. Enforcement by either the local or state is done on a complaint basis. Similar provisions may be more

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appropriate to enforce AB 1884.

The bill should be amended make AB 1884's enforcement provisions similar to SB 270's enforcement provisions, removing enforcement authority from local environmental health officials and instead allowing for either locals or the state to enforce its provisions.

- 7) *Actual deterrence.* As currently written, AB 1884 imposes minimal penalties on a food facility that violates its provisions. Specifically, the first and second violations result in a warning, and any subsequent violation is an infraction punishable by a fine of \$25 for each day the food facility is in violation, not to exceed \$300. **If this bill is to have a meaningful impact on the standard operations of food facilities and discourage the use of single-use plastic straws, a penalty that would deter food facilities from violations should be included. A \$25 penalty would not even cover the cost of having government enforce this law.**

The state has enacted various other programs geared changing consumer behavior and reducing the amount of plastic that is disposed of. SB 270's plastic bag ban imposes civil liability on a person or entity in the amount of \$1,000 per day for the first violation, \$2,000 per day for the second violation, and \$5,000 per day for the third and subsequent violations. In the case of plastic ring devices, the state imposes an infraction and a fine not to exceed \$1,000 on any person who sells at wholesale or distributes to a retailer containers that are connected to each other by means of a plastic ring or similar plastic device that is not degradable.

In 2015, the Legislature enacted AB 888 (Bloom, Chapter 594, Statutes of 2015) which prohibited, after January 1, 2020, a person from selling a personal care product that contained microplastic beads. A violation of this prohibition carried with it a civil penalty not to exceed \$2,500 per day. And finally, under the state's CRV deposit program, commonly referred to as Bottle Bill, a violation of the program can be punishable by a fine of \$100 for each initial separate violation and not more than \$1,000 for each subsequent violation per day.

The enforcement mechanisms for the state programs relating to the management of plastic are varied and depend on each programs unique circumstances and potential violators involved.

The bill should be amended to increase the civil penalties to be a warning for the first violation, \$500 dollars for the second violation, and \$1000 dollars for

each subsequent violation per day. This is less than the plastic bag ban but enough to create the enforcement and hopefully a deterrent.

- 8) *Local ordinances.* A number of local governments throughout California have adopted ordinances implementing some variation of prohibiting restaurants from distributing plastic straws. This bill does not contain any language to address those local ordinances, which may be more restrictive than what is required under AB 1884.

The bill should be amended to include language that would preserve the authority of local ordinances that are more restrictive than AB 1884's provisions.

- 9) *Biggest contributors of plastic.* As more and more people begin to realize the harmful impact that plastic pollution has on our environment, the decreased reliability on single-use plastic items is inevitable. For many, AB 1884 is the first step. AB 1884, as a starting place, captures a small percentage of the establishments that contribute to our state's single-use plastic products problem. Plastic, especially single-use plastic food items, surrounds us. It is in our to-go food packaging, our morning coffee, our grocery stores – even our single-use plastic utensils are wrapped in plastic packaging. AB 1884 is a small step, but for many, it is a step in the right direction. The bill is viewed as a way to facilitate discussion.

However, if the state truly wants to cut down on the amount of plastic straws that are consumed and disposed of, AB 1884 in its current form is not the answer. If anything, it sets the stage to make it more difficult to ban single-use plastic items. To cut down in the amount of single-use plastic straw pollution, two things should be considered: (1) Does requiring a consumer to request a straw actually change consumer behavior and get people to rely less on the use of plastic straws? (2) Who are the biggest contributors to the problem? Those who are the biggest contributors to single-use plastic straw pollution are excluded from the bill, most notably the “food facilities with a self-service beverage station,” aka fast food restaurants. But for this bill to have any impact, they need to be included. Without including these types of food facilities, it will only make the battle against single-use plastic items that much more difficult. If an exemption is given to these types of facilities for single-use plastic straws now, an exemption will be argued for all further restrictions on single-use plastic items. Additionally, it should be noted that some of these companies that are otherwise exempt from AB 1884 already comply with the plastic straw bans of other jurisdictions. If they can do it those areas, why not here? As outlined earlier in this analysis, there are plenty of alternatives

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available to food facilities who wish to still provide a straw to their consumer. The question is, why don't they want to?

The bill should be amended to prohibit food facilities from providing a single-use plastic straw to its consumers and expand the prohibition to include all food facilities.

- 10) *An actual impact.* As written, AB 1884 would do little to curb the amount of plastic that is disposed of on a daily basis. Requiring a consumer to ask for a straw is not going to change consumer behavior. The low penalty amounts will do nothing to discourage food facilities from providing single-use plastic straws to its consumers. And, the large number of facilities exempt from its provisions, many of which are the largest contributors of plastic pollution, leaves behind such a small category of food facilities that it becomes questionable exactly what level of impact this bill would have. If the state wants to truly reduce plastic pollution from straws, legislation should have an actual impact – and that means implementing an actual ban on single-use plastic straws and having penalties and enforcement provisions in place that will actually motivate people to comply. As written, AB 1884 does so little that it is not likely to provide significant environmental protection.

Related/Prior Legislation

SB 1335 (Allen) would prohibit a food service facility located in a state-owned facility, acting as a concessionaire on state property, or under contract to provide food service to a state agency from dispensing prepared food using a certain type of food service packaging that is not reusable, recyclable, or compostable and is not on a CalRecycle-approved list.

AB 2921 (Low, 2017) would enact the Expanded Polystyrene Food Service Packaging Recovery and Recycling Act, which would create an extended producer responsibility program for expanded polystyrene food service packaging manufacturers and polystyrene resin producers. AB 2921 is currently referred to the Assembly Committee on Natural Resources.

SB 705 (Dodd, 2017) would have banned certain food providers, by January 1, 2020, and all food vendors by January 1, 2022, from dispensing prepared food in expanded polystyrene food service containers. SB 705 proposed to authorize a city or county to grant exemptions to this prohibition due to economic hardship and to authorize a city or county to impose civil liability if an entity knowingly violated the prohibition. SB 705 failed on the Senate floor.

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AB 2812 (Gordon, Chapter 530, Statutes of 2015) required CalRecycle, on or before July 1, 2017, to develop guidelines for adequate receptacles and staffing for collecting and recycling recyclable materials in state office buildings. AB 2812 also requires state agencies to provide and maintain recycling receptacles in state buildings and large state facilities based on standards adopted by CalRecycle.

SB 529 (Leno, 2013) would have required fast food facilities to only distribute food in recyclable or compostable packaging. SB 529 was held in Senate Appropriations Committee.

AB 341 (Chesbro, Chapter 476, Statutes of 2011) established the statewide 75% recycling goal by 2020, requires local jurisdictions to implement commercial recycling programs to divert recyclable material away from landfills and requires commercial generators and multi-family residences to arrange for recycling services.

AB 2138 (Chesbro, 2010) would have prohibited a food provider from distributing disposable food service packaging, including bags, to a consumer unless it is either compostable or recyclable, as defined. AB 2138 would have also prohibited a food provider from distributing disposable food service packaging, including bags, to a consumer, unless the Department of Resources Recycling and Recover determines the disposable food service packaging is recovered for composting or recycling at a rate of 25% or more. This bill died in the Assembly Appropriations Committee.

AB 1358 (Hill, 2009) would have prohibited a food vendor from dispensing prepared food to a customer in a disposable polystyrene food container, a disposable nonrecyclable plastic food container, or a disposable nonrecycled content paper container. It would have allowed a food vendor to distribute prepared food in a compostable plastic container in a jurisdiction where organic waste is collected curbside for composting. This bill was amended on the Assembly Floor to address another policy matter.

AB 904 (Feuer, 2008) would have prohibited a takeout food provider from distributing single-use food service packaging to a consumer after July 1, 2012, unless the single-use food service packaging is either compostable or recyclable packaging, as defined. AB 904 failed in the Senate Appropriations Committee.

SOURCE: Author.

SUPPORT:

5 Individuals

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Algalita Marine Research and Education
Azul
California Association of Zoos and Aquariums
California Coastkeeper Alliance
California League of Conservation Voters
Californians Against Waste
CALPIRG
Center for Biological Diversity
Center for Oceanic Awareness, Research, and Education
Chico Bag
City and County of San Francisco
City of Berkley
City of Dana Point
City of Encinitas
City of Hayward
City of West Hollywood
Clean Water Action
County of Santa Clara
Defenders of Wildlife
Environment California
Environmental Working Group
Friends Committee on Legislation of California
Heal the Bay
Jr Ocean Guardians
Los Angeles City Council
Monterey Bay Aquarium
National Parks Conservation Association
National Resources Defense Council
Plastic Pollution Coalition
RecycleSmart
Ridley the Seal
San Luis Obispo County Integrated Waste Management Authority
Save Our Shores
Save the Bay
SeaWorld
Seventh Generation Advisors
Sierra Club California
Surfrider Foundation
StopWaste
The 5 Gyres Institute
The Last Plastic Straw
The Story of Stuff Project

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The Trust for Public Land
UPSTREAM Policy
WILDCOAST
Wishtoyo Chumash Foundation
Zero Waste USA

OPPOSITION:

California Right to Life Committee

-- END --

EL CERRITO CITY COUNCIL PROCLAMATION
Human Trafficking Prevention & Awareness

WHEREAS, human trafficking is a form of modern day slavery in which victims are forced to work in various forms of labor exploitation including, but not limited to commercial sex acts and other services induced through force, fraud or coercion; and

WHEREAS, due to its isolating nature, many individuals across the globe are unaware that trafficking exists in their neighborhoods; and

WHEREAS, it is estimated that more than 20 million men, women and children around the world are victims of human trafficking; and

WHEREAS, victims are compelled to perform labor or commercial sex acts through the use of fraud, force or coercion, reducing the value of human lives to that of mere commodities; and

WHEREAS, Soroptimist International, including Soroptimists International Club of El Cerrito has declared Raising Awareness of Human Trafficking as a platform of their work and is working to abolish all forms of human trafficking through education, volunteerism, advocacy and collaboration.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby commend Soroptimist International for its tireless efforts in increasing awareness and education in an effort to end human trafficking, supporting the Soroptimist International Club of El Cerrito as they raise awareness, through education and other efforts, and calling upon El Cerrito residents to recognize the vital role that everyone can play in ending all forms of slavery and protecting people from human trafficking.

Dated: July 17, 2018

Gabriel Quinto, Mayor



AGENDA BILL

Agenda Item No. 6

Date: July 17, 2018
To: El Cerrito City Council
From: David R. Gibson, Fire Marshal
Lance J. Maples, Fire Chief
Subject: Public Hearing for Fire Hazard Abatement

ACTION REQUESTED

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

BACKGROUND

One of the lessons learned from the nearby Oakland/Berkeley Hills Fire in October 1991 was that El Cerrito needed a comprehensive Citywide program to reduce hill area fire hazards. The "fire storm" in the Oakland/Berkeley Hills was in fact an urban conflagration, fueled by vegetation among homes and large acreage properties that was driven by seasonally strong dry winds from the east. The fire destroyed over 3,000 dwellings. At the time of the Oakland/Berkeley Hills Fire, El Cerrito faced similar fire hazard conditions in its hill area. The City Council was determined to reduce those fire hazards by all reasonable means.

El Cerrito's comprehensive fire hazard reduction program focused upon reducing fire hazards in four areas: (1) on City property, (2) on property owned by other agencies (3) large landowners, and (4) on residential property. The City began a comprehensive planning process to reduce fire hazards on City property, other agencies' properties and large landholders. These property owners were approached about reducing fire hazards on their properties. Prior efforts at fire hazard reduction on private residential property relied on voluntary compliance by the owners. The City Council concluded that stronger measures were necessary to enforce the laws regarding abatement of fire hazards on residential private property.

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.

Agenda Item No. 6

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. What started in 1992 as a program with over \$40,000 worth of abatement actions has been transformed into a program that required one (1) abatement action in 2017. All but one of the property owners voluntarily complied and cleared their own fire hazards. Indeed, this program has become a model program which other fire jurisdictions have borrowed from.

ANALYSIS

In May and June 2018, the Fire Department conducted Citywide fire hazard inspections of all properties. The inspections began May 28 and were conducted through June 8. As a result of the primary inspections, a list of properties containing public nuisances was generated, which continues to be amended as additional properties are identified. On June 11, 2018, 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 and to abate hazardous conditions and the El Cerrito vegetation management standards were included (Attachments 1, 2, & 3). In addition, these property owners were sent a letter informing them 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 (Attachment 4). A second round of inspections was conducted July 9 through July 16, 2018 and 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.

This public hearing is the next step in the process to eliminate hazards on the 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 should declare the properties to be a public nuisance and direct the City Manager or his 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.

Agenda Item No. 6

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 his designee to perform abatement.
3. At the July 17, 2018 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 5).
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 His Designee to Abate Certain Public Nuisances Pursuant to Chapter 16.26 (Attachment 6).
5. At the conclusion of the July 17, 2018 hearing, a second and final notice shall be sent to each property owner prior to abatement (Attachment 7). 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 between July 18, 2018 and August 13, 2018, 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.
7. At the September 17, 2018 City Council Meeting the City Manager or his 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 September 17, 2018, 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

The Fire Hazard Abatement program fulfills Strategic Plan Goal E: Ensure the public's health and safety.

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. 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.

Reviewed by:



Karen Pinkos, Assistant City Manager

Attachments:

1. June 11, 2018 Letter from Fire Marshal
2. Notice of Non-Compliant (Inspection Form)
3. Vegetation Management Standards

Agenda Item No. 6

4. June 11, 2018 Notice to Destroy Weeds and Remove Rubbish, Refuse, and Other Flammable Material
5. Resolution Declaring that Weeds, Rubbish, Litter, or Other Flammable Material on Certain Real Property Constitutes a Public Nuisance
6. Resolution Overriding Objections by Property Owners and Ordering the City Manager or his Designee to Abate Certain Public Nuisances Pursuant to Chapter 16.26
7. July 18, 2018 Notice to Destroy Weeds and Remove Rubbish, Refuse, and Other Flammable Material
8. Exhibit A- Property List

EL CERRITO FIRE DEPARTMENT

**10900 San Pablo Avenue
El Cerrito, CA 94530
(510) 215-4450
FAX (510) 232-4917**

June 02, 2018

Dear El Cerrito Property Owner:

We are approaching the season of our highest fire danger when the grass, weeds, refuse, brush and other vegetation dry out and become highly flammable. After a wet winter, the grass and brush is abundant and will create a severe fire hazard. To reduce the fire danger on private property, the Fire Department is beginning its annual Fire Hazard Abatement Program. We have inspected your property and found that it does not comply with the Vegetation Management Standards set forth in the El Cerrito Municipal Code 8.020. You are being contacted now so that you may remove those fire hazard conditions found on your property.

Beginning **July 2, 2018**, the Fire Department will be conducting a re-inspection of your property to evaluate if it meets our vegetation management standards. If your property meets the standards you will be removed from our list of non-compliant properties and will not be subject to further abatement actions.

Please find the enclosed legal notice explaining the City's fire hazard abatement program and advising you of the upcoming public hearing. **Please read this notice carefully.** In general, the Fire Department is concerned with removing refuse, dry and/or dead vegetation that is easily ignitable and capable of burning structures and endangering lives.

The enclosed guidelines provide a general explanation of the vegetation clearing and maintenance standards to be followed. For most private lots and yards these guidelines provide straightforward instructions on what actions you, the property owner, should take to remove the fire hazards. On the other hand, certain lots and yards are more difficult to assess. If you would like your property inspected by our Fire Prevention Officer, Captain Joe Gagne, at no cost, he can identify your specific fire hazards and provide you with the information needed to meet our standards. We urge you to call the Fire Prevention office at (510) 215-4457 with any questions about clearing or maintaining your property or to schedule an inspection.

Thank you for your cooperation in making El Cerrito a fire safe community.

Sincerely,

David Gibson

David Gibson
Fire Marshal



EL CERRITO FIRE DEPARTMENT

KENSINGTON FIRE PROTECTION DISTRICT



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

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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YOUR PROPERTY IS NOT IN COMPLIANCE WITH THE FIRE CODE.
YOU MUST COMPLETE THE FOLLOWING REQUIREMENTS:

FIRE BREAK (ELIMINATE)

Within 30' of a structure

- _____ 1. Eliminate hazardous vegetation
- _____ 2. Maintain ornamental landscaping
- _____ 3. Remove dead wood overhanging structures
- _____ 4. Mature Trees: Remove limbs 10' from ground
- _____ 5. Small Trees: Remove limbs 1/3 distance from ground
- _____ 6. Provide 10' clearance from chimney
- _____ 7. Clear Roof of combustibile debris

COMMENTS:

FUEL BREAK (REDUCE)

30' - 100' from structure

- _____ 8. Cut and maintain dry grass/weeds - 6"
- _____ 9. Clean and maintain haz. vegetation - 18"
- _____ 10. Clear 10' from roadside

Both Fire Break & Fuel Break Requirements:

- _____ 11. Dispose of cut vegetation and debris
- _____ 12. Remove vines, loose papery bark, and dead branches
- _____ 13. Install 1/2" screen covering on chimney and stovepipes

FIELD			
OFFICE			
OFFICE			
TOTAL			

Inspector

Date

City of El Cerrito Fire Hazard Reduction Program

I. INTRODUCTION

A. Purpose of Vegetation Management Standards

Along with California's growth of population and expanding development, urban housing has intermixed with wildland areas. California communities have experienced devastating fire loss because of the severity of fires which occur in this intermix area. In these areas the risk of conflagration is increased further by homeowners who create uncontrolled landscaping of native and non-native plants on their properties. Thousands of homes are threatened by fire every year in California largely because of this heavy vegetation fuel load very near structures.

The City of El Cerrito contains wildland intermix areas which increase the community's risk of loss from devastating fire. These areas have been identified by the California Department of Forestry (CDF) and the El Cerrito Fire Department as Very High Fire Hazard Severity (VHFHS) Zones. As specified by State Law AB 337, property owners within these zones must take special precautions with their property, including vegetation management, to reduce the risk of fire.

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 such as occurred in the Oakland/Berkeley Hills Fire of October 1991. 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 local community fire protection planning is to reduce the level of fire hazards in El Cerrito's wildland intermix areas, designated as VHFHS Zones. 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" El Cerrito.

Vegetation management planning in the VHFHS Zone focuses on areas where fire poses the greatest risk to life and property. There are three specific goals of the program:

1. Keep all fires small. Small fires generally are cooler than large fires and are more easily extinguished.
2. Limit the speed with which any fire will grow. Fires need fuel to burn; if fuel is available, fires will continue to grow rapidly. Fuel must be limited or made unavailable to spreading fire.
3. Make it more difficult for fires to ignite and spread. Small fires can ignite progressively larger fuels. Small fuels are like kindling and are easily ignited. Reducing and separating kindling fuels from larger fuels reduces sources for ignition and the potential for fire spread.

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 involving one or more structures. The primary method of stopping fire spread is by increasing separation distances between combustible fuels. An important component of reducing the community's fire risk requires vegetation management to be practiced by property owners.

B. Fire Safe Vegetation Management Concepts

There are three basic methods employed to manage vegetation fuels: firebreaks, fuel breaks and ornamental landscaping. A firebreak eliminates all flammable vegetation and combustible growth.

Appropriate ornamental landscaping is acceptable in this area. A fuel break reduces the fuel mass of flammable vegetation and combustible growth, thereby limiting the intensity of fire and slowing its rate of spread. Ornamental landscaping provides a yard or garden with decorative fire resistive plants that are irrigated, maintained and arranged to be aesthetically pleasing, functionally useful and enhance fire safety. Refer to the definitions listed for these terms.

Within VHFHS Zones, structures are to be protected from wildfire by creating firebreaks immediately surrounding structures and fuel breaks further out from structures. Within 30 feet of a structure a firebreak should be created which contains well-irrigated, maintained and appropriately spaced ornamental landscaping with fire resistant plants. All flammable vegetation and combustible growth in this area immediately surrounding a structure should be eliminated. This creates a safety margin of defensible space so that wildfire can be stopped before it reaches a structure.

A fuel break should be created from 30 feet to 100 feet from structures located within the VHFHS Zones. The heightened risk of wildfire within the VHFHS Zones makes it necessary to provide an added safety margin of defensible space for all structures and a fuel break will provide this extra protection. Fuel breaks are meant to reduce fire hazardous vegetation and maintain it to specified heights and arrangements, limiting fire intensity and impeding fire spread. The purpose of the fuel break is to deny any fire entering it sufficient fuel to sustain fire intensity and speed. By the time it reaches the firebreak area containing ornamental landscaping nearer the structure, the now low-intensity fire should be stopped easily by the firebreak surrounding the structure.

Ornamental landscaping with fire resistant plants is encouraged as a long term approach to maintain yard and garden vegetation in a fire safe manner. Landscaping with healthy, appropriately irrigated plants and ground cover provides a permanent reduction of the fire hazard adjacent to structures when such landscaping is maintained at regular intervals. Ornamental landscaping can enhance a firebreak by inhibiting the growth of weeds, grass, brush and similar fire hazardous vegetation. A list of fire resistant and highly flammable plants is available from the Fire Department.

C. Process

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 meet with City staff to discuss this matter 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. Please read these guidelines along with the accompanying glossary. If you are still unsure of how to proceed please call the Fire Department and we will work with you to develop a fire hazard reduction plan for your property.

A. Hazard Zones

Portions of the City of El Cerrito lie adjacent or near to large wildland areas containing steep slopes and naturally growing trees, brush and grasses. 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. 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:

1. Property owners must ensure that all vegetation, native or non-native, shall be maintained so as not to constitute a fire hazard.
2. Property owners must maintain their property either by ornamental landscaping or by establishing a fuel break along the property line and adjacent to structures. For properties within the VHFHS Zones, there are additional requirements for firebreaks within 30 feet of structures and fuel breaks from 30 to 100 feet.
3. Property owners are responsible for clearance and maintenance of their own property only. Property owners will be required, however, to create fuel breaks on their property to protect neighboring structures. Dimensions of fuel breaks will depend on the proximity of neighboring structures and on whether the properties are within VHFHS Zones.
4. All brush, weeds, grass and fire hazardous vegetation within 10 feet of any usable road surface, public way or combustible fence shall be maintained in a non-hazardous condition with a fuel break.
5. Property owners must maintain their property free from all nuisances, including debris, garbage, rubbish and trash, hazardous materials, junk and noxious growth.

B. Ornamental Landscaping

Ornamental landscaping is encouraged throughout the City of El Cerrito to enhance fire safety. Ornamental landscaping consists of decorative plants growing within a tended garden or yard which are well watered, maintained and located to provide aesthetic decoration and functional utility, such as privacy screening, shade, weed suppression and erosion control.

With the VHFHS Zones, ornamental landscaping in the 30 foot firebreak adjacent to structures must meet the following requirements:

1. Ornamental landscaping shall be maintained free of dead wood and litter, and trimmed of small twigs and branches at least two (2) feet or 1/3 of their height from the ground, whichever is less.
2. Ornamental landscaping must be healthy, pruned, adequately irrigated and regularly maintained so that plants and the area beneath them are free from dead or dying material.
3. Single specimen trees must be trimmed and maintained.
4. Ground cover may be used as part of ornamental landscaping provided it is kept green, free of dead wood and litter, and at a height so that they do not form a means of rapidly transmitting fire from native growth (located outside the firebreak) to any building or structure.

C. Vegetation Management Standards

Vegetation management standards exist for the entire City, including areas designated as VHFHS Zones. Refer to the glossary (Section III) for a definition of terms used in these standards.

1. **Properties within VHFHS Zones:**

- a. Firebreaks must be created and maintained in areas within 30 feet of any occupied dwelling.
- b. Fuel Breaks must be created and maintained in areas extending from 30 to 100 feet surrounding any structure.
- c. Fuel Breaks must be created and maintained on vacant lots 30 feet wide along the property line and 100 feet from neighboring structures.

2. Properties outside VHFHS Zones:

- a. Fuel Breaks must be created and maintained in areas within 30 feet of any structure.
- b. Fuel Breaks must be created and maintained on vacant lots to be 10 feet wide along the property line.

3. Vegetation Management Standards for Firebreaks:

- a. All flammable vegetation or combustible growth must be removed and cleared away, thereby eliminating fire hazardous vegetation fuels which can rapidly transmit fire.
- b. Adequately irrigated and maintained ornamental landscaping is not flammable vegetation or combustible growth, and is encouraged within a firebreak.
- c. 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.
- d. Trees shall be maintained so that no portion is closer than 10 feet from any chimney opening.
- e. All roof surfaces shall be maintained free of substantial accumulations of needles, twigs and any other combustible matter.
- f. All cut vegetation and debris must be disposed of either by hauling and dumping in a lawful manner, or by chipping and dispersing over the property in a manner and to a height which will not constitute a fire hazard.
- g. Chipped materials which are spread on the ground shall be of a size no greater than 1 inch by 1 inch by 3 inches.

4. Vegetation Management Standards for Fuel Breaks:

- a. Maintain ornamental landscaping in yards.
- b. All fire hazardous vegetation with the exception of weeds and grass shall be cleared and maintained to a height no greater than 18 inches above the ground.
- c. All weeds and grass shall be cleared and maintained at a height no greater than 6 inches above the ground.
- d. Remove from trees all vines, loose papery bark and dead branches.

- e. All cut vegetation and debris must be disposed of either by hauling and dumping in a lawful manner, or by chipping and dispersing over the property in a manner and to a height which will not constitute a fire hazard.
- f. Chipped materials which are spread on the ground shall be of a size no greater than 1 inch by 1 inch by 3 inches.

5. Additional Considerations for Vegetation Management:

- a. 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.**
- b. 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.
- c. 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 best available plant information is contained in a publication available from EBMUD entitled "Firescape: Landscaping to Reduce Fire Hazard". A list of plants with some fire-resistance and plants considered highly flammable is available from the Fire Department.

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 areas. The roof of a house is most vulnerable to this type of ignition. Spark arresters with a maximum of ½" 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.

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 map of these zones is available from the Fire Department. 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. A partial list of fire resistant and highly flammable plants is available from EBMUD and the El Cerrito Fire Department.

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.

Firebreak: An area in which all flammable vegetation or combustible growth is removed and cleared away, thereby eliminating fire hazardous vegetation fuels which can rapidly transmit fire. Ornamental landscaping is permissible within a firebreak as long as it is adequately irrigated, maintained and spaced so as not to provide a means of rapidly transmitting fire. Compare to **fuel break**.

Fuel break: An area in which all flammable vegetation or combustible growth is reduced and cleared away according to established standards, thereby limiting the mass and arrangement of fire hazardous vegetation fuels which can rapidly transmit fire. Appropriate ornamental landscaping is permissible within a fuel break. Fuel reduction standards for fuel breaks limit the height of certain vegetation (brush, native shrubs, weeds and grasses). Remove from trees any fuels which can ladder fire into the canopies, and provide adequate spacing between remaining plants. Compare to **firebreak**.

EL CERRITO FIRE DEPARTMENT

**10900 San Pablo Avenue
El Cerrito, CA 94530
(510) 215-4450
FAX (510) 232-4917**

June 11, 2018

To: «OWNER_NAME_1»
«OWNER_ADDRESS» «OWNER_CITY», «OWNER_STATE». «OWNER_ZIP»
Re: «SITE_ADDR» «SITE_CITY», «SITE_STATE». «SITE_ZIP»
Parcel Number: «APN»

**NOTICE TO DESTROY WEEDS AND REMOVE
RUBBISH, REFUSE AND OTHER FLAMMABLE MATERIAL**

Notice is hereby given that on the **11th day of June, 2018** the El Cerrito Fire Department has determined your property in the City of El Cerrito, designated above by address and parcel number, is in violation of Chapter 8.020 of the El Cerrito Municipal Code 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.

You are hereby ordered to abate these public nuisance conditions by removing the weeds, rubbish, refuse and other flammable material. Otherwise, the City will abate these nuisance conditions 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 at the time and in the manner of ordinary municipal taxes. Reference is hereby made to the resolution for further particulars.

If you have any objections to a declaration of your property as a public nuisance or to the proposed removal of the weeds, rubbish, refuse and other flammable material from your property by the City, you are hereby notified of and may attend this meeting of the City Council of the City of El Cerrito to be held on **July 17, 2018 at 7:00 p.m. in the Council Chambers located in the El Cerrito City Hall, 10890 San Pablo Avenue**. At this meeting, your objections will be heard and given due consideration.

At the conclusion of this meeting, the City Council may declare the conditions on your property to be a public nuisance and may order the City Manager or designee to abate the public nuisance condition on your property. The City shall perform this removal either through its own staff or through private contract sometime between **August 13, 2018 and August 31, 2018**. 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.

If you have any questions, contact the El Cerrito Fire Prevention Office at 10900 San Pablo Avenue. The phone number is (510) 215-4457.

David Gibson

David Gibson
Fire Marshal

RESOLUTION NO. 2018 - 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 July 17, 2018 at 7:00 p.m. 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 July 17, 2018 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 July __, 2018.

Sherry Kelly, Acting City Clerk

APPROVED:

Gabriel Quinto, Mayor

RESOLUTION NO. 2018 - XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO OVERRIDING OBJECTIONS BY PROPERTY OWNERS AND ORDERING THE CITY MANAGER OR 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 July 17, 2018, pursuant to El Cerrito Municipal Code Section 16.26.160 and Government Code Sections 39560-39588, the City Council adopted Resolution 2018- __ 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 2018-__ 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, on June 11, 2018, 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 that a public nuisance must be removed; informing the owners that if they did not abate the nuisance between June 11 and July 16, 2018, then the City Council would hold a hearing on July 17, 2018 at which the owners could present objections to the declaration of the nuisance or the proposed abatement measures and the City could decide to abate the nuisance and collect the costs as an assessment on the property; and

WHEREAS, on July 17, 2018, the City Council adopted Resolution 2018-XX confirming the nuisance declarations of the City's 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 City 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 2018 - __ (adopted on the same date herewith).

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

Agenda Item No. 6
Attachment 6

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 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, 2018, these abatement costs can be confirmed as a special assessment against those parcels.

I CERTIFY that at a regular meeting on July 17, 2018 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 July ____, 2018.

Sherry Kelly, Acting City Clerk

APPROVED:

Gabriel Quinto, Mayor

CITY OF EL CERRITO
10900 San Pablo Avenue
El Cerrito, CA 94530
(510) 215-4450
FAX (510) 232-4917

July 18, 2018

To: «OWNER_NAME_1»
«OWNER_ADDRESS» «OWNER_CITY», «OWNER_STATE». «OWNER_ZIP»
Re: «SITE_ADDR» «SITE_CITY», «SITE_STATE». «SITE_ZIP»
Parcel Number: «APN»

**NOTICE TO DESTROY WEEDS AND REMOVE
RUBBISH, REFUSE AND OTHER FLAMMABLE MATERIAL**

On **July 18th, 2018** 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 July 17th, 2018 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 **August 13th, 2018 and August 31st, 2018.** 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 **September 17, 2018** to confirm the cost of the abatement work performed on your property. The meeting will be held in the **El Cerrito City Council Chambers at 10890 San Pablo Avenue in El Cerrito at 7:00 p.m.** 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.

David R. Gibson

David R. Gibson
Fire Marshal

EXHIBIT A

Agenda Item No. 6
Attachment 8

#	Street	Owner	Mailing Street	Mailing City	Zip	Parcel
	416 Albemarle St		617 Liberty St	El Cerrito, CA	94530	504-101-019-9
	2317 Alva Ave		2317 Alva Ave	El Cerrito, CA	94530	500-420-012-6
	1101 Arlington Blvd		335 Collingwood St	San Francisco, CA	94114	505-351-018-5
	1335 Arlington Blvd		1335 Arlington Blvd	El Cerrito, CA	94530	505-382-004-8
	901 Ashbury Ave		901 Ashbury Ave	El Cerrito, CA	94530	503-251-013-2
	520 Balra Dr		520 Balra Dr	El Cerrito, CA	94530	504-413-006-9
	608 Balra Dr		608 Balra Dr	El Cerrito, CA	94530	504-395-004-6
	756 Balra Dr		756 Balra Dr	El Cerrito, CA	94530	503-322-054-1
	769 Balra Dr		769 Balra Dr	El Cerrito, CA	94530	503-330-001-2
	812 Balra Dr		620 Jones St	San Francisco, CA	94102	503-311-033-8
	862 Balra Dr		862 Balra Dr	El Cerrito, CA	94530	503-311-001-5
	901 Balra Dr		901 Balra Dr	El Cerrito, CA	94530	503-291-009-2
	905 Balra Dr		905 Balra Dr	El Cerrito, CA	94530	503-291-008-4
	6515 Blake St		6515 Blake St	El Cerrito, CA	94530	502-113-018-1
	1230 Brewster Dr		1230 Brewster Dr	El Cerrito, CA	94530	505-352-009-3
	8455 Buckingham Dr		8455 Buckingham Dr	El Cerrito, CA	94530	505-181-024-9
	217 Carmel Ave		217 Carmel Ave	El Cerrito, CA	94530	504-251-010-6
	2308 Carquinez Ave		2308 Carquinez Ave	El Cerrito, CA	94530	501-082-002-4
	2332 Carquinez Ave		8644 Don Carol Dr	El Cerrito, CA	94530	500-420-017-5
	6327 Conlon Ave		1700 Arlington Blvd	El Cerrito, CA	94530	501-243-008-7
	6356 Conlon Ave		3750 39th Ave	Oakland, CA	94619	501-290-003-0
	Conlon Ave		5129 Rain Cloud Ave	El Sobronite, CA	94803	501-350-019-3
	1224 Contra Costa Dr		1224 Contra Costa Dr	El Cerrito, CA	94530	505-201-009-6
	1305 Contra Costa Dr		1305 Contra Costa Dr	El Cerrito, CA	94530	505-190-003-2
	1364 Contra Costa Dr		6320 Barrett Ave	Richmond, CA	94805	505-181-011-6
	1369 Contra Costa Dr		1369 Contra Costa Dr	El Cerrito, CA	94530	505-182-003-2
	1370 Contra Costa Dr		1085 Lindell Dr	El Sobronite, CA	94530	505-181-010-8
	6719 Cutting Blvd		PO Box 499	Zamora, CA	95698	501-400-015-1
	7120 Cutting Blvd		1319 Sanderling Is	Richmond, CA	94801	501-110-014-5
	7140 Cutting Blvd		1319 Sanderling Is	Richmond, CA	94801	501-110-017-8
	2738 Del Monte Ave		2738 Del Monte Ave	El Cerrito, CA	94530	500-150-006-4
	1325 Devonshire Ct		PO Box 929	El Cerrito, CA	94530	505-383-026-0
	1300 Devonshire Dr		1300 Devonshire Dr	El Cerrito, CA	94530	505-382-008-9

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7770 Earl Ct	325 Via Roasario	Fremont, CA	94539 505-103-026-9
7780 Earl Ct	325 Via Roasario	Fremont, CA	94539 505-103-027-7
2611 Edwards Ave	2611 Edwards Ave	El Cerrito, CA	94530 500-071-010-2
650 Everett St	650 Everett St	El Cerrito, CA	94530 503-374-011-8
810 Everett St	2587 Colusa St	Pinole, CA	94564 503-255-017
814 Everett St	814 Everett St	El Cerrito, CA	94530 503-255-018-7
6770 Glen Mawr Ave	6770 Glen Mawr Ave	El Cerrito, CA	94530 502-130-010-7
6457 Hagen Blvd	6457 Hagen Blvd	El Cerrito, CA	94530 501-330-017-2
6518 Hagen Blvd	325 Laverne Ave	Mill Valley, CA	94941 501-322-014-9
6720 Hagen Blvd	6720 Hagen Blvd	El Cerrito, CA	94530 501-410-006-8
2056 Harper St	2056 Tapscott Ave	El Cerrito, CA	94530 501-340-017-0
5925 Jordon Ave	5925 Jordon Ave	El Cerrito, CA	94530 501-060-012-9
5929 Jordon Ave	5929 Jordon Ave	El Cerrito, CA	94530 501-060-011-1
5930 Jordon Ave	PO Box 1575	Murphys, CA	95247 501-170-005-0
6025 Jordon Ave			501-070-010-1
1626 Julian Dr	2500 Edwards Ave	El Cerrito, CA	94530 505-421-011-6
1638 Julian Dr	7328 Pebble Beach Ct	El Cerrito, CA	94530 505-421-014-0
2101 Junction Ave	2101 Junction Ave	El Cerrito, CA	94530 501-290-018-8
518 Kearney St	518 Kearney St	El Cerrito, CA	94530 504-011-023-0
541 Kearney St	541 Kearney St	El Cerrito, CA	94530 504-012-005-6
609 Kearney St	609 Kearney St	El Cerrito, CA	94530 503-401-005-7
6858 Kenilworth Ave	6858 Keniworth Ave	El Cerrito, CA	94530 501-510-008-3
833 Kensington Rd	833 Kensington Rd	El Cerrito, CA	94530 573-102-004-5
1012 King Dr	1012 King Dr	El Cerrito, CA	94530 505-212-005-1
1143 King Dr	671 Mockingbird Ln	Oakley, CA	94561 505-102-001-3
1220 King Dr	1220 King Dr	El Cerrito, CA	94530 505-203-022-7
965 Leneve Pl	965 Leneve Pl	El Cerrito, CA	94530 573-112-008-4
1532 Madera Cir	515 Norvell St	El Cerrito, CA	94530 505-421-024-9
1509 Madera Ct	1509 Madera Ct	El Cerrito, CA	94530 505-422-003-2
1514 Madera Ct	309 Victoria St	El Cerrito, CA	94530 505-422-009-9
1518 Madera Ct	8 Juniper Wy	Moraga, CA	94556 505-422-008-1
1519 Madera Ct	1519 Madera Ct	El Cerrito, CA	94530 505-422-005-7
1522 Madera Ct	1522 Madera Ct	El Cerrito, CA	94530 505-422-007-3
1523 Madera Ct	1602 Sonoma Ave	Albany, CA	94707 505-422-006-5

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8505 Maiden Ln	8505 Maiden Ln	El Cerrito, CA	94530 505-470-002-5
2404 Mira Vista Dr	2404 Mira Vista Av	El Cerrito, CA	94530 500-410-013-6
2219 Mono Ave	2219 Mono Ave	El Cerrito, CA	94530 501-201-001-2
2630 Monte Vista	2630 Monte Vista Ave	El Cerrito, CA	94530 500-120-017-8
1530 Navallier St	1530 Navallier St	El Cerrito, CA	94530 505-062-021-9
1625 Navallier St	1517 Sacramento St	Berkeley, CA	94702 502-161-014-1
422 Norvell St	422 Norvell St	El Cerrito, CA	94530 504-102-019-8
525 Norvell St	525 Norvell St	El Cerrito, CA	94530 504-061-012-2
739 Norvell St	739 Norvell St	El Cerrito, CA	94530 503-371-007-9
949 Norvell St	949 Norvell St	El Cerrito, CA	94530 503-252-001-6
Ohio Ave	1718 Mission St	San Francisco, CA	94103 501-243-014-5
7419 Potrero Ave	2815 Las Gallinas Ave	San Rafael, CA	94903 505-061-043-4
7620 Potrero Ave	7620 Potrero Ave	El Cerrito, CA	94530 505-403-003-5
1540 Regency Ct	1540 Regency Ct	El Cerrito, CA	94530 505-173-016-7
1550 Regency Ct	2407 Alamo St	Pinole, CA	94564 505-130-015-9
102 San Carlos	20850 Michaels Dr	Saratoga, CA	95070 504-281-007-6
10167 San Pablo Ave	175 Admiral Cochrane Dr Ste 201	Annapolis, MD	21401 510-034-003-2
11965 San Pablo Ave	1606 Juanita Ln Ste A	Tiburon, CA	94920 513-340-059-7
508 Seaview Dr	1028 Miller Ave	Berkeley, CA	94530 504-415-010-9
521 Seaview Dr	521 Seaview Dr	El Cerrito, CA	94530 504-414-015-9
822 Seaview Dr	822 Seaview Dr	El Cerrito, CA	94530 505-230-025-7
846 Seaview Dr	1421 Arlington Blvd	El Cerrito, CA	94530 505-230-020-8
850 Seaview Dr	850 Seaview Dr	El Cerrito, CA	94530 505-230-019-0
966 Seaview Dr	915 Clark Pl	El Cerrito, CA	94530 505-221-041-5
886 Shevlin Dr	886 Shevlin Dr	El Cerrito, CA	94530 505-261-003-6
1107 Shevlin Dr	1107 Shevlin Dr	El Cerrito, CA	94530 505-103-018-6
7830 Shevlin Pl	7830 Shevlin Pl	El Cerrito, CA	94530 505-101-003-0
7418 Stockton Ave	7418 Stockton Ave	El Cerrito, CA	94530 503-292-037-2
1361 Summit Park Ct	1361 Summit Park Ct	El Cerrito, CA	94530 505-371-013-2
2616 Tamalpais Ave	2616 Tamalpais Ave	El Cerrito, CA	94530 500-170-015-1
2632 Tamalpais Ave	2632 Tamalpais Ave	El Cerrito, CA	94530 500-170-017-7
2675 Tamalpais Ave	2675 Tamalpais Ave	El Cerrito, CA	94530 500-132-014-1
2073 Tapscott Ave	2073 Tapscott Ave	El Cerrito, CA	94530 501-340-034-5
2095 Tapscott Ave	2095 Tapscott Ave	El Cerrito, CA	94530 501-340-028-7

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7573 Terrace Dr	7573 Terrace Dr	El Cerrito, CA	94530 503-311-023-9
8049 Terrace Dr	1335 Arlington Blvd	El Cerrito, CA	94530 505-230-036-4
8640 Thors Bay Rd	8640 Thors Bay Rd	El Cerrito, CA	94530 505-361-077-9
8643 Thors Bay Rd	8643 Thors Bay Rd	El Cerrito, CA	94530 505-361-055-5
2500 Tulare Ave	2500 Tulare Ave	El Cerrito, CA	94530 500-260-012-9
2504 Tulare Ave	2504 Tulare Ave	El Cerrito, CA	94530 500-260-013-7
2601 Tuller Ave	1049 Amarillo Ave	Palo Alto, CA	94303 500-301-004-7
420 Village Dr	420 Village Dr	El Cerrito, CA	94530 504-424-003-3
1455 Vista Rd	1455 Vista Rd	El Cerrito, CA	94530 505-390-011-3
8407 Wildcat Dr	13 Cascade Ln	Orinda, CA	94563 573-132-023-9
8411 Wildcat Dr	13 Cascade Ln	Orinda, CA	94563 573-132-024-7
8415 Wildcat Dr	1455 Vista Rd	El Cerrito, CA	94530 573-132-024-7
8421 Wildcat Dr	3300 Paumanok Way	Sacramento, CA	95835 573-132-026-2
2644 Yuba Ave	2644 Yuba Ave	El Cerrito, CA	94530 500-050-029-7
1637 Arlington Blvd			94583 505-163-004
1818 Arlington Blvd	PO Box 8416	Berkeley, CA	94707 505-031-006-8
812 Contra Costa Dr	812 Contra Costa Dr	El Cerrito, CA	94530 505-262-043-1
8441 Wildcat Dr	3253 Colusa St	Pinole, CA	94564 573-132-030-4
10919 San Pablo Ave	1795 Solano Ave	Berkeley, CA	94707 509-120-015-3
8440 Wildcat Dr	8425 Bel View Ct	El Cerrito, CA	94530 573-132-002-3
6901 Central Ave	6901 Central Ave	El Cerrito, CA	94530 504-061-021-3
602 Liberty St	2818 Cornelius Dr	San Pablo, CA	94806 503-411-006-3
Kearney St	175 Admiral Cochrane Dr Ste 201	Annapolis, MD	21401 503-233-032-5



AGENDA BILL

Agenda Item No. 7

Date: July 17, 2018
To: El Cerrito City Council
From: Scott Hanin, City Manager
Sky Woodruff, City Attorney
Subject: Direction on November 2018 City Charter Ballot Measure and associated Real Property Transfer Tax for Maintenance and Improvement of City Services and Facilities

ACTION REQUESTED

Adopt a resolution (Attachment 1) of the City Council of the City of El Cerrito:

- a) Submitting to the El Cerrito electorate a measure to approve a City Charter (Exhibit A to the resolution) and the proposed Real Property Transfer Tax to develop a locally generated and controlled funding source to be used to maintain and/or increase the current level of services and facilities provided by the City, which would become effective only if adopted by 50 percent plus one vote of the El Cerrito electorate. If voters approve the measure, the City would be converted from a General Law City to a Charter City, and the Real Property Transfer Tax would be approved.
- b) Approving an ordinance (Exhibit B to the resolution) authorizing a Real Property Transfer Tax to maintain and/or increase the current level of services and facilities provided by the City.
- c) Requesting that the Contra Costa Board of Supervisors consent to the consolidation of this election with the statewide general election to be held on November 6, 2018 and direct the Registrar of Voters to provide all services necessary to conduct the election and print a measure on the ballot as described in Section 3 of the resolution.

BACKGROUND

Initially, the issue of El Cerrito becoming a Charter City had been brought up by Councilmember Greg Lyman during both the last Strategic Planning Session in February 2017 and consideration of the City's adopted Affordable Housing Strategy in August 2017 as something that should be considered in Fiscal Year 2017-18 as part of a long-term funding strategy for the City's many services and facility needs. The City Council had received a presentation about becoming a Charter City in 2011 at the request of former Mayor William Jones, but decided not to proceed at that time.

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Currently in California, there are 361 General Law and 121 Charter cities. In the area, local charter cities include Albany, Emeryville, Berkeley, Richmond, Oakland, Alameda, Piedmont, San Francisco, San Leandro, and San Rafael. Common reasons cited for considering a charter include:

- Allows for more options for funding local operations or capital projects (e.g., emergency reserves, maintenance of necessary levels of police and fire services, parks and recreation facilities, affordable housing, library services, senior services, financial stability). General law cities currently split the “Documentary Transfer Tax” with the county (each receives 55¢ for each \$1,000 of the purchase price of real property). Charter cities may adopt—with voter approval—a “Real Property Transfer Tax” at any rate. The revenue is not split with the county.
- Providing more flexibility in elections if desired.
- It may provide more local control, particularly on land use issues.

A General Law City has the authority to act locally but its acts must be consistent with the California Constitution, state statutes and state administrative regulations. A Charter City has the additional authority to adopt laws regarding “municipal affairs” that are inconsistent with state statutes, but the charter must still be consistent with U.S. and California Constitutions.

Ultimately, the issue most frequently cited in discussions of whether to become a Charter City is local control over municipal affairs pursuant to the concept of “home rule”:

- The home rule provision in the California Constitution allows cities to adopt a charter and ordinances that replace state laws in areas related to municipal affairs, subject only to the limitations within the charter, the U.S. Constitution, federal laws, the California Constitution, and state laws regarding matters of statewide concern.
- The decision to become a Charter City therefore turns on the question of which legislative body should make decisions regarding municipal affairs: The State Legislature or the City Council.

There is no constitutional or statutory list of municipal affairs. The legislature may not determine what is a municipal affair nor transform a municipal affair into a matter of statewide concern. The Courts decide on a case-by-case basis, which results in a concept that is fluid and changes over time. Areas that the courts have said constitute municipal affairs include:

- The form of city government.
- Procedural aspects of resolution and ordinance adoption.
- Local elections, including qualifications for office and public funding of campaigns.
- Some aspects of zoning and land use.
- The process of contracting for public works.

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- Scope of authority related to taxes and assessments.

Potentially, the biggest impact for the City would be the revenue associated with the implementation of a Real Property Transfer Tax (RPTT):

- El Cerrito had a RPTT until 2003, when it was repealed because of changes in law.
- Rate was set at \$7.00 per \$1,000 of sale price on property.
- In FY 2003, the RPTT generated \$1.2 million in revenue.
- In FY 2016, the RPTT would have brought in approximately \$1.7 million.
- If set at \$12.00 per \$1,000 of sale price, approximately \$2.7 million would be generated.
- The RPTT would be a general tax that could be used for operations, capital, reserves, or debt service.
- A portion could be rebated for seismic and energy conservation upgrades.
- There has been no noticeable impact on home prices in neighboring communities with RPTTs.

Charter City Rate Comparison	
	Per \$1,000
Alameda	\$ 12.00
Richmond	\$ 7.00
Oakland	\$ 15.00
Emeryville	\$ 12.00
Berkeley	\$ 15.00
Albany	\$ 11.50
Piedmont	\$ 13.00
AVG	\$ 12.21
Median	\$ 12.00

Charter Committee

The California Constitution authorizes the voters of a city to adopt a charter. The California Government Code sets forth the procedures for the preparation and adoption of a charter. A city council may, on its own motion, propose a charter to its voters. Pursuant to that authority, the City Council may create a committee to prepare a draft charter to be considered by the City Council. The council may use the draft prepared by the committee as the basis for a charter to be proposed to the City's voters.

In November 2017, the City Council created a committee to prepare a charter to propose to City voters and provided direction to the committee regarding components that the charter should include. The directed the committee to draft a charter that generally provides that the City will follow California law in all areas except those stated in the charter; that the Municipal Code not be changed and that the City will in particular follow California law regarding the payment of prevailing wages for public works projects and collective bargaining with represented employee groups; and that the charter would authorize the City to consider the use of all available tools for generating revenue, including but not limited to a real property transfer tax.

The Charter Committee was made up as follows:

- Seven Members
 - o Two City Council Members

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- o Member of Financial Advisory Board (FAB) (Chair)
 - o Labor Representative (Local 1230)
 - o Local realtor (Vice Chair)
 - o Two members of public (FAB Member and Former Mayor)
- Committee selected Chair and Vice Chair, approved minutes, and followed Brown Act and standard meeting rules of order
- Committee voted unanimously on draft Charter for City Council consideration

As part of its work, the Charter Committee undertook the following:

- Committee met publicly on five separate occasions
- Meetings were noticed and advertised widely
- Public given opportunity to speak during public comment and specific items
- Committee reviewed other relevant charters and gave direction to staff
- Staff developed draft Charter based on comments
- Committee reviewed, commented, and provided direction on three versions
- Final version recommended unanimously to City Council

The major components of the draft Charter (Attachment 2) included:

- Statement of Purpose
- Establishment of Home Rule, Power over Municipal Affairs
- Continuation of Boundaries, Form of Government, and Existing Law
- Municipal Revenue
- Prevailing Wages for Public Works and Public Contracting
- Labor Relations
- Elections
- Interpretation, Severability, and Amendment

Among the many issues discussed by the committee, a small group were the primary areas of focus:

- **Form of Government** – The Committee spent a fair amount of time understanding the current form of the City's government and decided it was important that it be reiterated in the Charter to affirm it would not change.
- **Municipal Revenue** – A fair amount of discussion occurred related to revenues in general and specifically the Real Property Transfer Tax. Based on the discussions, the Committee recommended flexible revenue language but also specifically called out the RPTT for transparency, leaving the rate to the City Council.
- **Prevailing Wages, Labor Relations, and Elections** – These were items directed by the City Council to not be changed. The Committee debated whether they should be included at all since they would remain unchanged if left out of Charter. However, the Committee decided to include them to strengthen the City Council priorities and make very clear these items would not change with passage of the Charter.

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As required by state law, the City held public hearings on May 1 and June 18 to discuss becoming a Charter City and hear community input from members of the public. The presentation from that meeting is included as Attachment 4 and the draft of the recommended City Charter as developed by the Charter Committee is included as Attachment 2.

ANALYSIS

In March 2018, the City of El Cerrito commissioned Godbe Research to conduct one or more surveys of local voters with the following research objectives:

- Assess potential voter support for a Charter City measure and a Real Property Transfer Tax measure to expand local control over funding essential City services and facilities with funds that cannot be taken by the State;
- Prioritize projects and programs;
- Test the influence of informational and critical statements;
- Identify the rate at which respondents will support the real estate property transfer tax measure; and
- Use demographic and/or voter behavioral characteristics to ensure the sample is representative.

The research strategy was to perform an initial survey prior to the three City Council meetings and any public education efforts conducted by the City. Subsequently a second more targeted survey was performed in late June and early July after the two public City Council meetings and after the City had initiated public education efforts utilizing direct mail, email lists and social media.

The initial survey demonstrated a majority of support (52%) for a single measure that included both a Charter and a RPTT. When surveyed separately, ballot questions for the Charter and the RPTT had much less support (33% and 43% respectively). Staff and consultants believe that the split ballot questions led to confusion as to the purpose of the Charter and its connection to the RPTT and potential uses. Staff has always felt that including the Charter, RPTT, and potential uses of the RPTT in one ballot question was more transparent and understandable to voters. Additionally, there was not a material difference in support between the proposed \$12 per \$1,000 rate and lower amounts.

As is typical in City surveys, public safety services such as maintaining 9-1-1 emergency response times and fire and medical services remained the highest priorities. Respondents also stated a strong desire for programs that enhance quality of life, such as community events, library programs, senior services, after-school programs for children and teens, and maintaining parks, playfields, and open space.

In the second survey, the level of support increased to 58% which shows that support increased by approximately 6% as more information about the purpose of the Charter and the potential uses for the RPTT are better understood. As in the first survey, public safety garners the most support for the use of funds,

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followed by maintenance of parks, paths, playfields, and open space and after-school and library programs. Because the margin of error is +/- 4%, the City will need to continue to provide residents with educational information about the nature of the Charter and RPTT and how they would support the community priorities identified in the survey. Bryan Godbe will present an overview of the findings at the City Council meeting.

The City recently passed a two-year budget for all its operating funds. Although the City's primary operating fund, the General Fund, is in balance, the City still relies on public safety vacancies to help balance the budget with no increased services or maintenance. Additionally, staff is projecting that reserves will further decline to approximately 3.4% with no funds currently dedicated solely for emergencies, unanticipated one-time expenses, or natural disasters. Further, because most of the Parks and Recreation facilities (i.e., senior center, Community Center, clubhouses, playfields) were built more than five decades ago, these facilities need considerable upgrades or replacement to provide a high level of accessible services to its users. The City's parks, playfields, open space, and playgrounds also continually need to be upgraded due to increased usage. As the City's population continues to get younger with more families, the demands for services such as camps, sports, and after school programs continue to grow.

Measure Overview

The ballot measure under consideration has the following key components:

- New City Charter, maintaining the current municipal code.
- Inclusion of a Real Property Transfer Tax at a rate of \$12 per \$1,000 of cost.
- Provide greater local control in municipal affairs and to maintain and/or increase the current level of services and facilities provided by the City.
- Allowing for up to one-third of the amount of the RPTT to be rebated for seismic upgrades, Electric Vehicle Charging, and energy and water conservation improvements as part of a standard City permit process.
- Independent audits of revenues generated would be required as part of the City's annual outside audit.
- The Financial Advisory Board would review the use of the funds as part of its annual budget review.
- All revenues would be kept local.

The ballot question describes both the Charter and the RPTT and potential uses of funds as to not confuse the voters and ensure they understand that approval of the Charter is also an approval of the RPTT.

Next Steps

The ordinance (Exhibit B to the resolution) would be subject to voter approval and contains the details of the RPTT collection. The proposed resolution would approve the ordinance as written and calls for the measure to be submitted to the voters of the City at an election to be consolidated with the City Council and statewide election to be held on November 6, 2018. The proposed resolution also

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directs the City Attorney to prepare the impartial analysis and authorizes the Mayor to prepare the argument in favor of the measure.

STRATEGIC PLAN CONSIDERATIONS

Implementing a City Charter and a Real Property Transfer Tax serves to fulfill Strategic Plan Goal B: Achieve long-term financial sustainability, including the following strategies:

- Continue to pursue and support opportunities for new funding, including outside grants and ballot measures
- Develop a financial plan to address ongoing and deferred maintenance of facilities and infrastructure
- Develop a plan to ensure that Citywide revenue meets the cost of providing Citywide services, including adequate reserves for unanticipated revenue shortfalls.

ENVIRONMENTAL CONSIDERATIONS

This proposed action is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq., ("CEQA Guidelines")). The tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to approval of the project, consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

FINANCIAL CONSIDERATIONS

If the measure as presented is passed by the voters, General Fund revenues would increase by approximately \$2.7 million annually. These funds could go to core City services such as Police, Fire, Recreation, increasing emergency reserves, capital projects, and maintenance of parks, playfields, open space, and facilities.

Election Costs

Contra Costa County has estimated that the actual cost of the election to the City will be approximately \$45,000. This amount was included in the adopted Fiscal Year 2018-19 budget.

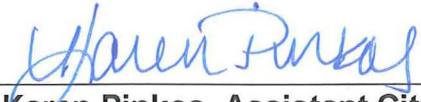
LEGAL CONSIDERATIONS

The City Attorney has reviewed and approved all of the documentation with respect to this measure, including all public information and outreach materials as well as the attached resolution and ordinance. Staff will continue to work with the City Attorney to ensure that all activities of the City and its employees are strictly

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limited to providing accurate, fair, and impartial information about the ballot measure and the election process.

Reviewed by:



Karen Pinkos, Assistant City Manager

Attachments:

1. Resolution
2. Draft Charter as recommended by Charter Committee (Exhibit A to Resolution)
3. RPTT Ordinance (Exhibit B to Resolution)
4. City Council Presentation from June 16 meeting

RESOLUTION 2018–XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO CALLING AND GIVING NOTICE OF THE HOLDING OF THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018; SUBMITTING TO THE VOTERS OF THE CITY A MEASURE BOTH TO ADOPT A CITY CHARTER AND TO AUTHORIZE A REAL PROPERTY TRANSFER TAX; APPROVING AN ORDINANCE ENACTING A REAL PROPERTY TRANSFER TAX; ORDERING THE SUBMITTAL OF THE CHARTER AND ORDINANCE TO THE VOTERS AT THE ELECTION; AND REQUESTING THAT THE CONTRA COSTA COUNTY BOARD OF SUPERVISORS CONSENT TO THE CONSOLIDATION OF THIS ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE AND DIRECT THE REGISTRAR OF VOTERS TO CONDUCT THE ELECTION

WHEREAS, the City of El Cerrito was incorporated as a general law city in 1917 by residents seeking to manage local affairs; and

WHEREAS, since then, the authority of general law cities has been diminished through State mandates and State law regarding use of local resources: and

WHEREAS, the power of home rule granted by the California Constitution makes available to charter cities a variety of tools to construct local policy and address local concerns; and

WHEREAS, becoming a Charter City would allow El Cerrito to reclaim more local autonomy and expand the economic and fiscal independence of our City to promote the health, safety, and welfare of all residents; and

WHEREAS, establishing El Cerrito as a Charter City like Oakland, Alameda, Richmond, Emeryville, Albany, and Berkeley gives us more local control over City affairs and local funding needs, money that cannot be taken by the State; and

WHEREAS, the voters of each Charter City get to decide which tools to put in their tool box. Being a Charter City allows for more options for funding important local services or capital projects. Potentially, the biggest impact for El Cerrito would be the ability to implement a real property transfer tax like its neighboring cities; and

WHEREAS, El Cerrito does not have the authority to institute a property transfer tax on commercial property owners, so our residents lose out on millions of dollars in funds that could be used for City services. By becoming a Charter City, El Cerrito can collect its fair share; and

WHEREAS, because we do not have a real estate property transfer tax, in 2017 El Cerrito lost more than half a million dollars in potential revenue from commercial sales; and

WHEREAS, to address these issues, in November 2017, the City Council created and provided direction to a volunteer Charter Committee to prepare a draft charter for the City Council to consider submitting to the voters of El Cerrito to change El Cerrito to a charter city, which would also empower the voters to approve a real property transfer tax; and

WHEREAS, after five well-noticed public meetings, the Charter Committee recommended to the City Council a draft El Cerrito City Charter; and

WHEREAS, the City Council held two noticed public hearings to receive comments from the public and to consider the proposed draft El Cerrito City Charter; and

WHEREAS, at the conclusion of the hearing process, after considering all testimony, evidence, and comments from the public, the City Council directed the preparation of a ballot measure to submit to the voters of El Cerrito the approval of the El Cerrito City Charter and an ordinance that would authorized a real property transfer tax; and

WHEREAS, the measure provides a protected and reliable source of local revenue to maintain critical resident services; and

WHEREAS, revenue from the measure could be used to maintain police, fire protection and emergency medical services, city parks, paths, playfields, and open space, rapid 9-1-1 emergency response times, programs for children, adults, and families, library programs, earthquake and disaster preparedness programs, and create an emergency reserve for natural disasters and emergencies like the recent North Bay fires; and

WHEREAS, the measure requires independent citizen oversight, annual independent financial audits, and yearly reports to the community to ensure that all funds are spent as directed; and

WHEREAS, the proposed Charter would authorize the City to levy a real property transfer tax and exercise the other powers of a Charter City to raise revenue. It would authorize the City to exercise the powers of a Charter City but retains the existing form of government and the existing Municipal Code, and directs that the City will follow State law in a number of areas, including the payment of prevailing wages for public works projects and relations with represented bargaining units of City employees; and

WHEREAS, the tax to be submitted to the voters, if approved, would authorize a tax on the sale of property. Payment of the tax could be negotiated between buyer and

seller. The tax would not be an annual tax on property, only a tax on the sale of property. The tax rate would be twelve dollars (\$12.00) per each one thousand dollars (\$1,000.00), or fraction thereof, of the consideration paid for real property. The tax would be owed at the time of sale of real property. The tax would be collected by the City. Both the El Cerrito City Charter and the tax would be approved if the measure receives at least a simple majority vote of affirmative votes; and

WHEREAS, the City Council has the authority to submit this measure to the voters of the City of El Cerrito pursuant to Article XI, Sections 3 and 5 of the California Constitution and Elections Code Section 9255.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito as follows:

Section 1. Declaration of Findings. The foregoing recitals are true and correct and incorporated by reference.

Section 2. Election Called. Pursuant to the requirements of the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of El Cerrito, California, on Tuesday, November 6, 2018, an election for submitting to the voters the El Cerrito a measure that would make El Cerrito a Charter City and approve a real property transfer tax.

Section 3. Measure To Be Submitted To Voters. The full text of the measure, attached to this Resolution as Exhibit A and Exhibit B, including the proposed Charter of the City of El Cerrito and an ordinance authorizing a Real Property Transfer Tax, shall be completely printed in the voter pamphlet. The measure shall not take effect unless and until it is approved by a vote of at least a simple majority of affirmative votes of the voters voting on the question at the election. If the measure is approved, both the Charter and the Real Property Transfer Tax shall be approved. The City Council, pursuant to its right and authority, does order the following measure to be submitted to the voters which shall appear and be printed on the ballot as follows:

CITY OF EL CERRITO	
To better maintain emergency 911 fire, medical and police services and response times; city parks, paths, playfields, and open space; programs for children, adults, and families; library programs; earthquake and disaster preparedness programs and reserves; other general services, shall a measure be adopted establishing El Cerrito as a Charter City and an ongoing real estate property transfer tax of \$12 per \$1,000, paid by buyers or sellers of property, providing \$2,700,000 annually, all benefiting El Cerrito?	YES
	NO

Section 4. Approval of Ordinance. The City Council hereby approves the proposed ordinance to be submitted to the voters, attached hereto as Exhibit B. The proposed tax is a general tax and shall not take effect unless and until the proposed measure, including the Charter, is approved by a vote of at least a simple majority of affirmative votes of the voters voting on the question at the election. The ordinance specifies that the rate of the Real Property Transfer Tax shall be twelve dollars (\$12.00) per each one thousand dollars (\$1,000.00), or fraction thereof, of the consideration paid for real property. The tax is owed at the time of sale of real property. The tax shall be collected by the City.

Section 5. Ballot Format. The ballots to be used at the election shall be in the same form and content as required by law.

Section 6. Impartial Analysis. The City Attorney is hereby directed to prepare an impartial analysis of the measure pursuant to Elections Code Section 9280 which shall be filed no later than August 17, 2018.

Section 7. Ballot Argument. The City Council hereby authorizes the Mayor to submit a ballot argument in favor of the measure, pursuant to Elections Code Section 9282. The last day for filing of primary arguments is 4:00 p.m. on August 17, 2018. At the Mayor's discretion, the argument may also be signed by members of the City Council or representatives of bona fide associations or by individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure, the Mayor is also authorized to submit a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or

representatives of bona fide associations or by individual voters who are eligible to vote on the measure, which may be different from those who signed the primary argument.

Section 8. Requesting the Consolidation of Elections. Pursuant to Elections Code Section 10400 *et seq.*, the City Council of the City of El Cerrito hereby requests that the Contra Costa County Board of Supervisors consent and agree to the consolidation of the municipal election with the general election to be held on November 6, 2018 and provide all services necessary to conduct the election and print a measure on the ballot as described in Section 3 of this resolution. The county election department is authorized to canvass the returns of the special municipal election. Within the City of El Cerrito, the election precincts, election officers, hours of voting, polling places and voting booths shall in every case be the same as those selected and designated by the Contra Costa County Registrar of Voters; provided that no person not a qualified elector of the City of El Cerrito shall be permitted to vote for the measure placed on the ballot by the City Council. The City Council recognizes that the County will incur additional costs in conducting the election called by this resolution, agrees to reimburse the County for those costs, and authorizes and directs the City Manager or his designee to expend the funds necessary to pay for the costs of conducting the election.

Section 9. Provisions For Rebuttal Arguments. The provisions of Elections Code Section 9285 shall apply to this election. The last day for filing of rebuttal arguments is 4:00 p.m. on August 27, 2018.

Section 10. Hours of Polling. The polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed except as provided in Elections Code Section 14401.

Section 11. Other Procedures. In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections. The City Council acknowledges that the consolidated election will be conducted in the manner prescribed in Elections Code section 10418.

Section 12. Notice. The City Clerk is authorized and directed to give notice of the election as required by law. The City Clerk shall file a copy of this resolution with the County Elections Official and the Clerk of the Board of Supervisors forthwith.

Section 13. Compliance with the California Environmental Quality Act. Approval of this resolution is exempt from review under the California Environmental Quality Act (Public Resources Code §§ 21000 *et seq.* ("CEQA") and 14 Cal. Code Reg. §§ 15000 *et seq.* ("CEQA Guidelines")). The tax to be submitted to the voters by this resolution is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a

government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to approval of the project, consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

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

I CERTIFY that at the regular meeting on July 17, 2018 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 July ____, 2018.

Sherry Kelly, Acting City Clerk

APPROVED:

Gabriel Quinto, Mayor

EXHIBIT A

CHARTER OF THE CITY OF EL CERRITO

STATEMENT OF PURPOSE

The City of El Cerrito was incorporated as a general law city in 1917 by residents seeking the right to manage local affairs. Since then, the authority of general law cities over local affairs has diminished. Furthermore, the State has continually added mandates for cities that require local resources to address State concerns, increased its control over local matters, and redirected much needed local revenue for its own purposes. Changes in State law have limited the ability of El Cerrito to decide how to use local dollars for local needs. The power of home rule, granted by the California Constitution, makes available to charter cities a variety of tools to use to construct local policy and address local concerns. The voters of each charter city get to decide which tools to put in their tool box. With this Charter, El Cerrito will reclaim more local autonomy and expand the economic and fiscal independence of our City government to promote the health, safety, and welfare of all its residents. Therefore, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this Charter for the City of El Cerrito.

ARTICLE I. ESTABLISHMENT OF HOME RULE, POWER OVER MUNICIPAL AFFAIRS, GENERAL LAW POWERS

Section 100. Powers of the City. The City of El Cerrito (the "City") shall have full power and authority to adopt, make, exercise, and enforce all legislation, laws, ordinance, resolutions, and regulations with respect to municipal affairs, subject only to the limitations and restrictions imposed on that power by this Charter, the Constitution of the State of California, and the laws of the United States.

Section 101. Municipal Affairs. Municipal affairs encompass all matters of local concern as determined by the City Council consistent with the meaning of "municipal affairs" under the constitutional, statutory, and judicially defined law of the State of California. Each of the matters set forth in this Charter are declared to be municipal affairs, consistent with the laws of the State of California. The municipal affairs set forth in this Charter are not intended to be an exclusive list of municipal affairs over which the City Council may govern. The exercise of home rule over each matter set forth in this Charter uniquely benefits the residents of the City and addresses local concerns within the City.

Section 102. Powers under State Law.

- (a) In addition to the power and authority granted by this Charter and the Constitution of the State of California, the City shall have the power and authority to adopt, make, exercise, and enforce all legislation, laws, ordinances, resolutions, and regulations and to take all actions and to exercise any and all

EXHIBIT A

rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority. In the event of any conflict between this Charter and the general laws of the State of California related to a municipal affair, this Charter shall control.

- (b) Nothing in this Charter is intended to restrict the City in exercising any right, power or authority granted under the general laws of the State of California. However, the provisions of this Charter shall prevail in the event of any conflict with the general laws of the State of California, unless preempted by state law on matters of statewide concern.

ARTICLE II. CONTINUATION OF BOUNDARIES, FORM OF GOVERNMENT, AND EXISTING LAW

Section 200. Incorporation and Succession. The City shall continue to be a municipal corporation known as the City of El Cerrito. The boundaries of the City shall continue as established prior to this Charter taking effect until changed in the manner authorized by law. The City shall remain vested with and shall continue to own, have, possess, control, and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled, or enjoyed by it at the time this Charter takes effect. The City shall be subject to all debts, obligations, and liabilities of the City at the time this Charter takes effect.

Section 201. Form of Government. The government of the City shall continue to be the Council-Manager form of government as established by the El Cerrito Municipal Code at the time that this Charter takes effect and by the laws of the State of California. The Council-Manager form of government of the City may be changed in the same ways and using the same procedures as a general law city.

Section 202. City Council, City Manager, and City Attorney.

- (a) The City Council shall establish the policy of the City. The City Manager shall carry out that policy.
- (b) The City Council shall appoint the City Manager.
- (c) The City Manager, as the chief administrative officer of the City, shall appoint all department heads other than the City Attorney. Involvement in administrative matters by the City Council or by any individual Councilmember shall occur only through the City Manager or pursuant to direction by the City Manager to members of the administrative staff.

EXHIBIT A

- (d) The City Council shall appoint the City Attorney. The City Attorney may be an employee of the City or an independent contractor providing legal services pursuant to a contract.

Section 203. Continuation of Existing Local Laws. All ordinances, codes, resolutions, regulations, rules, and portions thereof, in force at the time this Charter takes effect, and not in conflict or inconsistent herewith, shall continue in force until repealed, amended, changed, or superseded in the manner provided by this Charter and any other applicable laws.

Section 204. General State Laws. Except as provided in this Charter and in any ordinance, code, resolution, or other law adopted by the City Council regarding a matter that is a municipal affair, the City shall be governed by the general laws of the State of California.

ARTICLE III. MUNICIPAL REVENUE

Section 300. Revenue Raising Power. The City may exercise all powers of a charter city to generate revenue, including but not limited to taxes, fees, assessments, and other charges.

Section 301. Real Property Transfer Tax. Without limiting the general power of the City, as expressed in Section 300 above, to generate revenue, the City may impose a tax on the conveyance of real property, based upon the price paid for the real property ("real property transfer tax"). Any real property transfer tax imposed by the City shall be in addition to any similar tax authorized by the general laws of the State of California.

ARTICLE IV. PREVAILING WAGES FOR PUBLIC WORKS AND PUBLIC CONTRACTING

Section 400. State Prevailing Wage Law. The City shall comply with the laws of the State of California applicable to general law cities regarding the payment of prevailing wages for public works projects.

Section 401. Contracting for Public Works. The City shall comply with the laws of the State of California applicable to general law cities regarding contracting for public works. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding contracting for public works shall continue to apply when this Charter takes effect and may be amended thereafter.

ARTICLE V. LABOR RELATIONS

Section 500. State Labor Relations Law. The City shall comply with the laws of the State of California applicable to general law cities regarding labor relations. The City's

EXHIBIT A

laws, ordinances, codes, resolutions, and policies implementing State laws regarding labor relations shall continue to apply when this Charter takes effect and may be amended thereafter.

ARTICLE VI. ELECTIONS

Section 600. State Elections Law. The City shall comply with the laws of the State of California applicable to general law cities regarding elections. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding elections shall continue to apply when this Charter takes effect and may be amended thereafter.

Section 601. Initiative, Referendum, and Recall. Without limiting the general applicability of Section 600 of this Charter, the City shall comply with the laws of the State of California applicable to general law cities regarding initiative, referendum, and recall.

ARTICLE VII. INTERPRETATION, SEVERABILITY, AND AMENDMENT

Section 700. Construction and Interpretation. The language of this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter that is a municipal affair. Every reference in this Charter to state or federal law shall mean that law as it exists when this Charter takes effect or as it may thereafter be amended.

Section 701. Severability. If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

Section 702. Amendment of Charter. As provided by state law, this Charter, and any of its provisions, may be amended by a majority vote of the electors voting on the question. Amendment or repeal may be proposed by initiative or by the City Council.

2941945.2

EXHIBIT B

ORDINANCE NO. 2018-XX

**AN ORDINANCE OF THE CITY OF EL CERRITO
AUTHORIZING A TAX ON THE TRANSFER OF REAL PROPERTY LOCATED IN EL
CERRITO AND ADDING CHAPTER 4.64 – REAL PROPERTY TRANSFER TAX TO
THE EL CERRITO MUNICIPAL CODE**

WHEREAS, the City of El Cerrito was incorporated as a general law city in 1917 by residents seeking to manage local affairs; and

WHEREAS, since then, the authority of general law cities has been diminished through State mandates and State law regarding use of local resources; and

WHEREAS, the power of home rule granted by the California Constitution makes available to charter cities a variety of tools to construct local policy and address local concerns; and

WHEREAS, becoming a Charter City would allow El Cerrito to reclaim more local autonomy and expand the economic and fiscal independence of our city to promote the health, safety, and welfare of all residents; and

WHEREAS, establishing El Cerrito as a Charter City like Oakland, Alameda, Richmond, Emeryville, Albany, and Berkeley gives us more local control over City affairs and local funding needs, money that cannot be taken by the State; and

WHEREAS, the voters of each Charter City get to decide which tools to put in their tool box. Being a charter city allows for more options for funding important local services or capital projects. Potentially, the biggest impact for El Cerrito would be the ability to implement a real property transfer tax like its neighboring cities; and

WHEREAS, El Cerrito does not have the authority to institute a property transfer tax on commercial property owners, so our residents lose out on millions of dollars in funds that could be used for city services. By becoming a Charter City, El Cerrito can collect its fair share; and

WHEREAS, because we do not have a real estate property transfer tax, in 2017 El Cerrito lost more than half a million dollars in potential revenue from commercial sales; and

WHEREAS, to address these issues, in November 2017, the City Council created and provided direction to a volunteer Charter Committee to prepare a draft charter for the City Council to consider submitting to the voters of El Cerrito to change El Cerrito to a Charter City, which would also empower the voters to approve a real property transfer tax; and

EXHIBIT B

WHEREAS, after five well-noticed public meetings, the Charter Committee recommended to the City Council a draft El Cerrito City Charter; and

WHEREAS, the City Council held two noticed public hearings to receive comments from the public and to consider the proposed draft El Cerrito City Charter; and

WHEREAS, at the conclusion of the hearing process, after considering all testimony, evidence, and comments from the public, the City Council directed the preparation of a ballot measure to submit to the voters of El Cerrito the approval of the El Cerrito City Charter and an ordinance that would authorized a real property transfer tax; and

WHEREAS, the measure provides a protected and reliable source of local revenue to maintain critical resident services; and

WHEREAS, revenue from the measure could be used to maintain police, fire protection and emergency medical services, city parks, paths, playfields, and open space, rapid 9-1-1 emergency response times, programs for children, adults, and families, library programs, earthquake and disaster preparedness programs, and create an emergency reserve for natural disasters and emergencies like the recent North Bay fires; and

WHEREAS, the measure requires independent citizen oversight, annual independent financial audits, and yearly reports to the community to ensure that all funds are spent as directed; and

WHEREAS, the proposed Charter would authorize the City to levy a real property transfer tax; and

WHEREAS, the tax to be submitted to the voters, if approved, would authorize a tax on the sale of property. Payment of the tax could be negotiated between buyer and seller. The tax would not be an annual tax on property, only a tax on the sale of property. The tax rate would be twelve dollars (\$12.00) per each one thousand dollars (\$1,000.00), or fraction thereof, of the consideration paid for real property. The tax would be owed at the time of sale of real property. The tax would collected by the City. Both the El Cerrito City Charter and the tax would be approved if the measure receives at least a simple majority vote of affirmative votes.

THE PEOPLE OF THE CITY OF EL CERRITO DO ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The foregoing recitals are true and correct and made a part of this Ordinance.

EXHIBIT B

SECTION 2. Amendment of Municipal Code. Chapter 4.64 is hereby added to the El Cerrito Municipal Code to read as follows:

Chapter 4.64 – REAL PROPERTY TRANSFER TAX

4.64.010 Title.

This chapter may be cited as the “Real Property Transfer Tax Ordinance of the City of El Cerrito.”

4.64.020 Purpose and Authority.

A. The tax imposed by this chapter is solely for the purpose of raising revenues for the general governmental purposes of the City. All of the proceeds from the tax imposed by this chapter shall be placed in the City’s general fund. This chapter is not enacted for regulatory purposes.

B. This ordinance is adopted pursuant to the City’s authority under Article XI, section 5 of the Constitution of the State of California and Section 301 of the El Cerrito City Charter.

4.64.030 Definitions.

“Changes in control and ownership of legal entities” means any direct or indirect acquisition or transfer of ownership interest or control in a legal entity that constitutes a change in ownership or transfer of the real property of the entity under California Revenue and Taxation Code section 64, as such statute reads and is interpreted by the California Department of Tax and Fee Administration.

“County Assessor” means the County Assessor of the County of Contra Costa.

“County Recorder” means the Office of the Clerk-Recorder of the County of Contra Costa.

“Person” and “persons” mean any natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, limited liability company, municipal corporation, political subdivision of the State of California, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof. “Person” and “persons” also mean any natural person, who as an individual or with a spouse, owns 51 percent or more of the capital stock of a corporation obligated to file a declaration and pay tax pursuant to this chapter; and in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations under the provisions of this chapter. A person who is also an officer or director of a

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corporation obligated to file declarations and pay tax pursuant to this chapter shall be presumed to be a person with the power to control the fiscal decision-making process. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to association shall mean the owners or part owners thereof, and as applied to corporation, the officers thereof.

"Qualifying work" means the seismic upgrades and energy and water conservation projects listed in section 4.64.080.

"Real property" and "realty" mean real property as defined by and under the laws of the state of California.

"Tax" means the tax authorized and imposed by this chapter.

"Tax administrator" means the Finance Director or other City official designated by the City Manager to administer the tax.

"Transfer of real property" means a sale, grant, assignment, transfer, or other conveyance of any lands, tenements, or other real property by deed, instrument, or other writing from a transferor to a transferee, or to a third person at or by the direction of transferee. "Transfer of real property" includes a change in control and ownership of a legal entity that results in a transfer of real property.

"Transferee" means a person to whom a transfer of real property is made.

"Transferor" means a person who makes a transfer of real property.

"Value of consideration" means the total consideration, valued in money of the United States, paid or delivered, or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness existing immediately prior to the transfer which is secured by a lien, deed of trust or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust or encumbrances after such transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of transfer. "Value of the consideration" also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where such special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after such transfer, shall not be included in determining the value of the consideration. If the "value of the consideration" cannot be definitely determined, or is left open to be fixed by future contingencies, "value of the consideration" shall be

EXHIBIT B

deemed to mean the fair market value of the property at the time of transfer, after deducting the amount of any lien or encumbrance, if any, of a type which would be excluded in determining the "value of the consideration" pursuant to the above provisions of this section. In the event that the asserted "value of consideration" for a transfer of real property is less than the fair market value, the Tax Administrator may assume that the "value of consideration" is the fair market value of the property but shall consider evidence submitted by the persons responsible for the paying the tax that the lower amount represents the price agreed upon as part of a valid arms-length transaction. By way of example only and without limiting the generality of the foregoing, a transfer of real property that is a gift, with the transferor transferring the real property to the transferee with no compensation and free and clear of liens and encumbrances, is a form of transfer of real property for which the value of consideration is less than the fair market value.

4.64.040 Tax Imposed.

A tax is hereby imposed on each transfer of real property located in the City of El Cerrito, when the value of the consideration exceeds one hundred dollars (\$100.00)

4.64.050 Tax Rate.

The rate of the tax imposed pursuant this chapter shall be twelve dollars (\$12.00) for each one thousand dollars (\$1,000.00) of the value of consideration paid for a transfer of real property, or fractional part of each one thousand dollars (\$1,000.00) of the value of consideration.

4.64.060 Persons Liable for Tax.

Any person who makes a transfer of real property subject to the tax imposed by this chapter and any person to whom such a transfer is made shall be jointly and severally liable for payment of the tax. The transferor and transferee may apportion the tax among themselves.

4.64.070 Exceptions and Exemptions.

A. Government Entities. A transfer of real property shall be exempt from any tax imposed pursuant to this chapter if the transferor or transferee is the United States or any political subdivision thereof, the State of California, any city, county, city and county, district or any other political subdivision of the State of California.

B. Writings That Secure a Debt. Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt.

EXHIBIT B

C. Transfers of Real Property to Effectuate a Plan of Reorganization. Any tax imposed pursuant to this chapter shall not apply to the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;
2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in Section 101 of Title 11 of the United States Code, as amended;
3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 101 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form, or place of organization is effected.

Subsections (1) to (4), above, shall only apply if the making, delivery, or filing of instruments of transfer or conveyance occurs within five (5) years from the date of such confirmation, approval, or change.

D. Orders of the Securities and Exchange Commission. Any tax imposed pursuant to this article shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

1. The order of the Securities and Exchange Commission in obedience to which such conveyance is made is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
2. Such order specifies the property which is ordered to be conveyed; and
3. Such conveyance is made in obedience to such order.

E. Transfer of Certain Partnership Property.

1. In the case of any realty held by a partnership or other entity treated as a partnership for federal income tax purposes, no tax shall be imposed pursuant to this chapter by reason of any transfer of an interest in the partnership or other entity or otherwise, if both of the following occur:
 - a. The partnership or other entity treated as a partnership is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1986.

EXHIBIT B

- b. The continuing partnership or other entity treated as a partnership continues to hold the realty concerned.
 - 2. If there is a termination of any partnership or other entity treated as a partnership for federal income tax purposes, within the meaning of Section 708 of the Internal Revenue Code of 1986, for purposes of this chapter, the partnership or other entity shall be treated as having executed an instrument whereby there was conveyed, for fair market value (including the value of any lien or encumbrance remaining thereon), all realty held by the partnership or other entity at the time of the termination.
 - 3. Not more than one (1) tax shall be imposed pursuant to this chapter by reason of a termination described in subsection (b) of this section, and any transfer pursuant thereto, with respect to the realty held by a partnership or other entity treated as a partnership at the time of the termination.
 - 4. No tax shall be imposed pursuant to this chapter by reason of any transfer between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership interests in the realty, whether represented by stock, membership interest, partnership interest, co-tenancy interest, or otherwise, directly or indirectly, remain the same immediately after the transfer.
- F. Deed in Lieu of Foreclosure. Any tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost of foreclosure. Consideration, unpaid debt amount, and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument, or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.
- G. Transfer of Restricted Affordable Units. The tax imposed pursuant to this chapter shall not apply to transfers of real property if the real property is encumbered by a recorded and enforceable covenant executed in favor of the City restricting the ownership and occupancy of the real property, for a period of no less than thirty (30) years following the date of transfer, to "persons and families of low or moderate income" as defined in California Health and Safety Code Section 50093.
- H. Transfers between Spouses and Domestic Partners.
- 1. Any transfer made during the term of a marriage or domestic partnership between spouses or domestic partners shall be exempt from the tax imposed pursuant to this chapter.

EXHIBIT B

2. Any transfer of property from one spouse or domestic partner to the other in accordance with the terms of a decree of dissolution or legal separation or in fulfillment of a property settlement incident thereto shall be exempt from the tax imposed pursuant to this chapter. This exemption shall apply only to property that was acquired by the spouses or domestic partners prior to the final decree of dissolution. This exemption shall not apply to a transfer of property to a third party, despite the existence of a valid court order or settlement agreement.
 - a. For domestic partners, the two parties to the transfer must have on file a valid domestic partnership registration (a) under existing law and procedures for the state of California domestic partnership registry, or (b) with a governmental agency of a jurisdiction that recognizes domestic partnership registration.
 - b. If domestic partners do not own, as joint tenants, the property that is the subject of their dissolution agreement, they must demonstrate that they were living together at the location of the real property in question either at least six months prior to the dissolution of the domestic partners relationship or the entire period of ownership of the transferring partner, whichever is more.
 - c. To qualify for this exemption, domestic partners must provide that portion of their dissolution and property settlement agreement pertaining to the division or transfer of property, which shall be filed with the Office of the City Clerk. The copy of the settlement agreement shall be accompanied by an affidavit with verifiable signatures or proof of identity, that the copy is an accurate and authentic reproduction of the final settlement agreement between the parties.
 - I. Transfers That Confirm or Correct a Recorded Deed. A transfer of real property without consideration that confirms or corrects a deed shall be exempt from the tax imposed pursuant to this chapter. The correcting or confirming transfer must be recorded no later than ninety (90) days after the recordation of the transfer requiring correction or confirmation.
- 4.64.080 Rebate Program for Seismic Upgrades and Energy and Water Conservation Projects.
- A. For any transfer of real property subject to the tax imposed pursuant to this chapter, a portion of the tax paid may be rebated, upon an application showing that transferor or transferee made qualifying seismic upgrades to or implemented qualifying energy or water conservation projects on the transferred real property within the timeframes specified in this section.

EXHIBIT B

B. The maximum rebate shall be one-third of the tax paid for a transfer of real property. Multiple applications may be submitted for a rebate of the tax paid for a transfer of real property, but the total rebate for all applications shall not exceed the maximum.

C. Seismic upgrades to transferred real property that may qualify for a partial rebate of the tax paid pursuant to this chapter include any of the following:

1. Work on residential structures that would qualify for the California Earthquake Bolt and Brace program, or other similar programs that the City Council may identify by resolution.
2. Corrective work on buildings that are listed on the City of El Cerrito inventory of potentially hazardous, unreinforced masonry buildings, if the work is necessary to meet City standards or requirements applicable to such buildings. Qualifying work must be performed pursuant to a plan prepared by a structural engineer and approved by the Building Official or designee.
3. Any other work found by the building official to substantially increase the capability of structures on the property to withstand destruction or damage in the event of an earthquake, including but not limited such work on buildings that use soft-story construction. Qualifying work must be performed pursuant to a plan prepared by a structural engineer and approved by the Building Official or designee.

D. Energy and water conservation projects that may qualify for a partial rebate the tax paid pursuant to this chapter include the following:

1. Installation of electric vehicle supply equipment ("EVSE") or electric vehicle charging stations.
2. Installation of rooftop solar energy systems.
3. Voluntary measures listed in Appendix A4 or Appendix A5 of the California Green Building Standards Code for Energy Efficiency, Water Efficiency and Conservation, or Water Reuse.
4. Upgrades to residential, multifamily, and commercial properties that would qualify for the Bay Area Regional Energy Network program ("BayREN"), or other similar programs that the City Council may identify by resolution.
5. Installation of stormwater retention systems that comply with the California Plumbing Code.

EXHIBIT B

E. Qualifying seismic upgrades or energy or water conservation projects shall be completed either up to one year prior to the transfer of real property or within one year after the transfer. If the work qualifying for a rebate is completed prior to the transfer of the real property, the transferor and transferee may decide who may apply for and receive the rebate.

F. Rebate applications shall be submitted with applications for permits from the Building Division for qualifying seismic upgrades and energy and water conservation projects, if the work is to be performed after the transfer of real property. If the rebate is for work performed prior to the transfer of real property, the applicant shall submit records identified on the application form sufficient to inform the Building Official of the nature and cost of the work. The Building Official shall review the cost of the qualifying work and that the work will be completed within one year of the transfer of the real property or was completed no more than a year before the transfer of the real property. Upon completion of the work or a determination that the work was performed and certification by the Building Official as to the cost of the work, the City Manager or designee may issue a rebate to the applicant, up to the maximum specified in subsection B of this section. Any remaining tax shall be retained by the City.

G. If the qualifying work is not completed at the end of one year from the date of the transfer of the real property, the applicant may qualify for a rebate based upon the cost of that portion of the work that has been completed. The applicant must submit a verification form and substantiating documentation, as required by the Building Division, showing the dollar value of work completed up to that date. Any remaining tax shall be retained by the City.

H. Prior to the expiration of the one-year period to apply for a rebate under this section, an applicant may request, and the City Manager or designee may approve, an extension of up to one year. The City Manager or designee may grant such an extension only for good cause. The decision of the City Manager or designee shall be entirely within his or her discretion and shall be final.

1. "Good cause" includes (a) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor, or other service provider whose services are necessary for the qualifying work; (b) unforeseen and unforeseeable circumstances such as a significant change in the scope of the qualifying work as a result of circumstances in the field that could not reasonably have been known earlier; or (c) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the qualifying work.
2. "Good cause" does not include (a) ignorance of the applicable City ordinances or regulations concerning the rebate provided in this chapter or state or local laws relating to the standards with which qualifying work

EXHIBIT B

must comply; or (b) any delays that were within the control or responsibility of the applicant.

4.64.090 Administration of Tax.

The Tax Administrator shall collect the tax imposed pursuant to this chapter and shall otherwise administer this chapter. The Tax Administrator may make such rules and regulations, not inconsistent with this chapter, as they may deem reasonably necessary or desirable to administer this article, as well as necessary forms and receipts.

4.64.100 Due Dates, Delinquencies, Penalties, Interest, Administrative Charges, and Lien Release Recordation Fees.

The tax imposed pursuant to this chapter is due and payable at the time the deed, instrument, or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid ninety (90) days later. If a transfer of real property is effected but not recorded with the County Recorder within ninety (90) days of the date on which the deed, instrument, or writing was delivered, all statutes of limitations regarding liability for the tax imposed pursuant to this chapter shall be tolled until the City has actual knowledge of the transfer, at which time the tax on the unrecorded transfer shall relate back to the date on which the deed, instrument, or writing was delivered. Penalties and interest shall be deemed to have begun accruing on the date the deed, instrument, or writing was delivered, and shall be the joint and several liability of the persons referred to in Section 4.64.060. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent (10%) of the amount of the tax due shall accrue. In the event only a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the unpaid portion. An additional penalty of fifteen percent (15%) of the amount of tax due shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one percent (1%) per month or fraction thereof, on the amount of the tax, inclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalties shall become part of the tax. An administrative charge and a release of lien filing fee equal to the amount charged by the County Recorder shall be added to the amount owed for each property approved for a tax lien by the City Council.

4.64.110 Declaration May Be Required.

EXHIBIT B

A. The tax imposed by this chapter shall be paid to the Tax Administrator by the persons referred to in Section 4.64.060. The Tax Administrator shall have the authority, pursuant to this chapter and any promulgated rules and regulations, to require that the payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by their duly authorized agent. If a declaration is required, it shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deeds of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also includes all special assessments on the property which a purchaser or transferee agrees to pay or which remains a lien on the property at the time of transfer. The declaration shall identify the deed, instrument, or writing effecting the transfer for which the tax is being paid. The Tax Administrator may require delivery of a copy of such deed, instrument, or writing whenever they deem such to be reasonably necessary to adequately identify such writing or to administer the provisions of this chapter. The Tax Administrator may but is not required to rely on the declaration as to the amount of the tax due.

B. Whenever the Tax Administrator has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, they may, by notice served upon any person liable for the tax, require them to furnish a true copy of their records relevant to the value of the consideration or fair market value of the property transferred. Such notice may be served at any time within three (3) years after recordation of the deed, instrument, or writing which transfers such property.

6.64.120 Determination of Deficiency; Petition for Redetermination.

A. If on the basis of such information as the Tax Administrator receives pursuant to Section 6.64.110, or on the basis of such other relevant information that comes into their possession, they determine that the amount of tax due as set forth in the declaration, or as paid, is insufficient, he or she may re-compute the tax due on the basis of such information.

B. If the declaration referenced in Section 6.64.110 is not submitted, the Tax Administrator may make an estimate of the value of the consideration for the property transferred and determine the amount of tax to be paid on the basis of any information in their possession or that may come into his or her possession.

C. More than one deficiency determinations may be made of the amount due with respect to any single transfer of real property.

D. The Tax Administrator shall give written notice to a person liable for payment of the tax imposed pursuant this chapter of a deficiency determination made under this section. Such notice shall be given within three (3) years after the recordation of the deed, instrument, or writing effecting the transfer on which the tax deficiency determination was made.

EXHIBIT B

E. Any notice required to be given by the Tax Administrator under this chapter may be served personally or by mail. If service is made by mail, it shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid, addressed to the person on whom it is to be served at the address as it appears in the records of the City or as ascertained by the Tax Administrator. The service is complete at the time of the deposit of the notice in the United States mail, without extension of time for any reason.

F. Any person against whom a deficiency determination is made under this chapter or any person directly interested may petition the Tax Administrator for a redetermination within sixty (60) days after service upon the person of notice thereof. If a petition for redetermination is not filed in writing with the Tax Administrator within the sixty (60) day period, the determination becomes final at the expiration of the period.

G. If a petition for redetermination is filed within the sixty (60) day period, the Tax Administrator shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing, and shall give them ten (10) days' notice of the time and place of the hearing. The Tax Administrator may designate a hearing officer for the purpose of conducting hearings. A hearing on a tax deficiency redetermination may be continued from time to time as may be necessary.

H. As part of a redetermination hearing, the Tax Administrator may decrease or increase the amount of the tax owed before a redetermination decision becomes final, but the amount may be increased only if the Tax Administrator asserts a claim for the increase at or before the hearing.

I. The order or decision of the Tax Administrator upon a petition for redetermination becomes final thirty (30) days after service of notice thereof upon the petitioner or at the time of hearing of redetermination. There is no administrative appeal to the City Council of the Tax Administrator's decision on a petition for redetermination. Writs challenging the Tax Administrator's decision must be filed with the appropriate court within ninety (90) days of the final date of such redetermination. (California Code of Civil Procedure Section 1094.6.)

6.64.130 Tax a Debt.

The amount of any tax, penalty, and interest imposed under the provisions of this chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this chapter shall be liable in an action brought in the name of the City for the recovery of such amount, plus the City's costs of bringing the action, including attorneys' fees and litigation costs. The provisions of this section shall not be deemed a limitation upon the right of the City to bring any other action, whether criminal, legal, or equitable, based upon the failure to pay the tax, penalty, or interest imposed by this chapter or the failure to comply with any of the provisions hereof.

EXHIBIT B

6.64.140 Refunds.

Whenever the amount of any tax, penalty, or interest has been overpaid, or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in this section. The person who paid the tax must file with the Tax Administrator a written claim stating under penalty of perjury the specific grounds on which the refund is claimed. A refund claim must be filed within one (1) year of the date of payment. The claim shall be submitted on forms furnished by the Tax Administrator. The Tax Administrator may make such refund if they are satisfied that the claimant is entitled to the refund under the provisions of this chapter. No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto.

6.64.150 Tax a Lien or Assessment against Transferred Real Property.

A. The amount of tax, penalty, and interest imposed under the provisions of this chapter is assessed against the real property upon the transfer of which the tax is imposed. If the tax, penalties, or interest are not paid when due, they may be recorded as a lien against or a special assessment on the real property transferred. Any lien against the transferred real property shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

B. The Tax Administrator shall file with the City Manager a written notice of liens and special assessments that the Tax Administrator believes should be recorded to collect the tax, penalties, or interest owed pursuant to this chapter. Upon the receipt of such notice, the City Manager shall present the same to the City Council, and the City Council shall forthwith, by resolution, fix a time and place for a public hearing on such notice.

C. The Tax Administrator shall cause a copy of such resolution and notice to be served upon the persons responsible for the tax, penalties, or interest owed. Notice shall be provided not less than ten (10) days prior to the time fixed for the hearing. Service shall be made by mailing a copy of the resolution and notice to the transferor and transferee of real property at their last known addresses. Service shall be deemed complete at the time of deposit in the United States mail.

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D. Following the hearing, if the City Council determines that tax, penalties, or interest are owed pursuant to this chapter, it may authorize the imposition of a lien against the transferred real property and may order that any delinquent taxes, penalties, or interest that remain unpaid by the transferor or transferee shall constitute a special assessment against the transferred real property. If the City Council orders the imposition of a special assessment against the transferred real property, the special assessment shall be collected at such time as is established by the County Assessor for inclusion in the next property tax assessment.

E. The Tax Administrator shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent charges consisting of the delinquent taxes, penalties, and interest at the rate of twelve percent (12%) per annum from the date of recordation to the date of lien.

F. Thereafter, the authorized special assessment may be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and the same procedure of sale as provided for delinquent property taxes. The assessment lien previously imposed upon the property is paramount to all other liens except for those of State, county, and municipal taxes with which it shall be upon parity. The lien shall continue until the special assessment and all interest and charges due and payable thereon are paid. All taxes applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to said special assessments.

6.64.160 Amendments. The following amendments to this ordinance must be approved by the voters of the City: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; imposing the tax on persons not previously subject to the tax; or extending the tax. The City Council may otherwise amend this Chapter without submitting the amendment to the voters for approval. The City Council may establish rules that are necessary and desirable for implementation of this ordinance.

Section 3. Adjustment of Appropriations Limit. Pursuant to Article XIIB of the Constitution of the State of California and applicable laws, the appropriations limit for the City is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2018-19 and each year thereafter.

Section 4. Compliance with the California Environmental Quality Act. Approval of this ordinance is exempt from review under the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines")). The tax authorized by this ordinance is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result

EXHIBIT B

in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to approval of the project, consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

Section 5. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

Section 6. Effective Date and Publication. This Ordinance shall take effect and be enforced thirty days after the date of its adoption. Prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

The foregoing ordinance was approved by the following vote of the People of the City of El Cerrito at the General Municipal Election on November 6, 2018:

YESES:

NOES:

The foregoing ordinance was adopted by the Declaration of the vote at the November 6, 2018 General Municipal Election, which the City Council of the City of El Cerrito declared on December XX, 2018 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Gabriel Quinto, Mayor

EXHIBIT B

ATTEST:

Sherry Kelly, Acting City Clerk

EL CERRITO PROPOSED CITY CHARTER AND REAL PROPERTY TRANSFER TAX

JUNE 18, 2018



OVERVIEW

Why do this now?

Review of City Charter Issues

City Council Direction

Charter Committee Overview

Review Draft Charter

Specific Items for Ballot Initiative

Real Property Transfer Tax

Questions and Discussion

Next Steps

WHY CONSIDER A CHARTER NOW?

Being a charter city enhances local authority, including control over local funds for local needs

The list of unfunded needs continues to grow

Only charter cities, NOT general law cities, may levy a Real Property Transfer Tax (RPTT)

RPTT provides critical and sustained funding for Albany, Berkeley, Richmond, Emeryville and Oakland

Larger commercial development on SPA should pay their fair share, which they would through a RPTT

Much of the revenue from a RPTT would be paid by corporations that benefit from low property taxes

RPTT can help build an emergency reserve for natural disaster preparedness

WHAT ARE THE ISSUES?

- Residents tell us that they want:
 - To continue the responsiveness and quality of our 9-1-1, fire protection, and emergency medical services
 - To maintain our parks and playfields
 - To preserve our library programs for all ages in a safe and energy-efficient library
 - To offer after-school programs for children and teens
 - To provide for seniors in our own senior center
- Capital funding is well below necessary levels for facilities, parks and playfields
- Budget will likely maintain police vacancies
- City has no emergency reserves for natural disaster preparedness
- El Cerrito like most cities has long term significant pension liabilities
- Another source of revenue is necessary to meet community needs

REAL PROPERTY TRANSFER TAXES

- A “real property transfer tax” (RPTT) is a tax on the purchase/sale of real estate, both residential and commercial
- It’s a one-time tax on the sale, not an annual tax on property
- Buyers and sellers typically work out between themselves who will pay the tax
- If you own property and never sell it, you won’t pay the tax
- Would be paid as part of the purchase and sale of new development, including by developers of commercial projects
- A typical feature of the tax is a partial rebate to purchasers who use the money to pay for seismic upgrades or energy efficiency improvements
- The tax is generally rolled into the loans for a residential purchase

WHAT COULD RPTT REVENUE BE USED FOR?

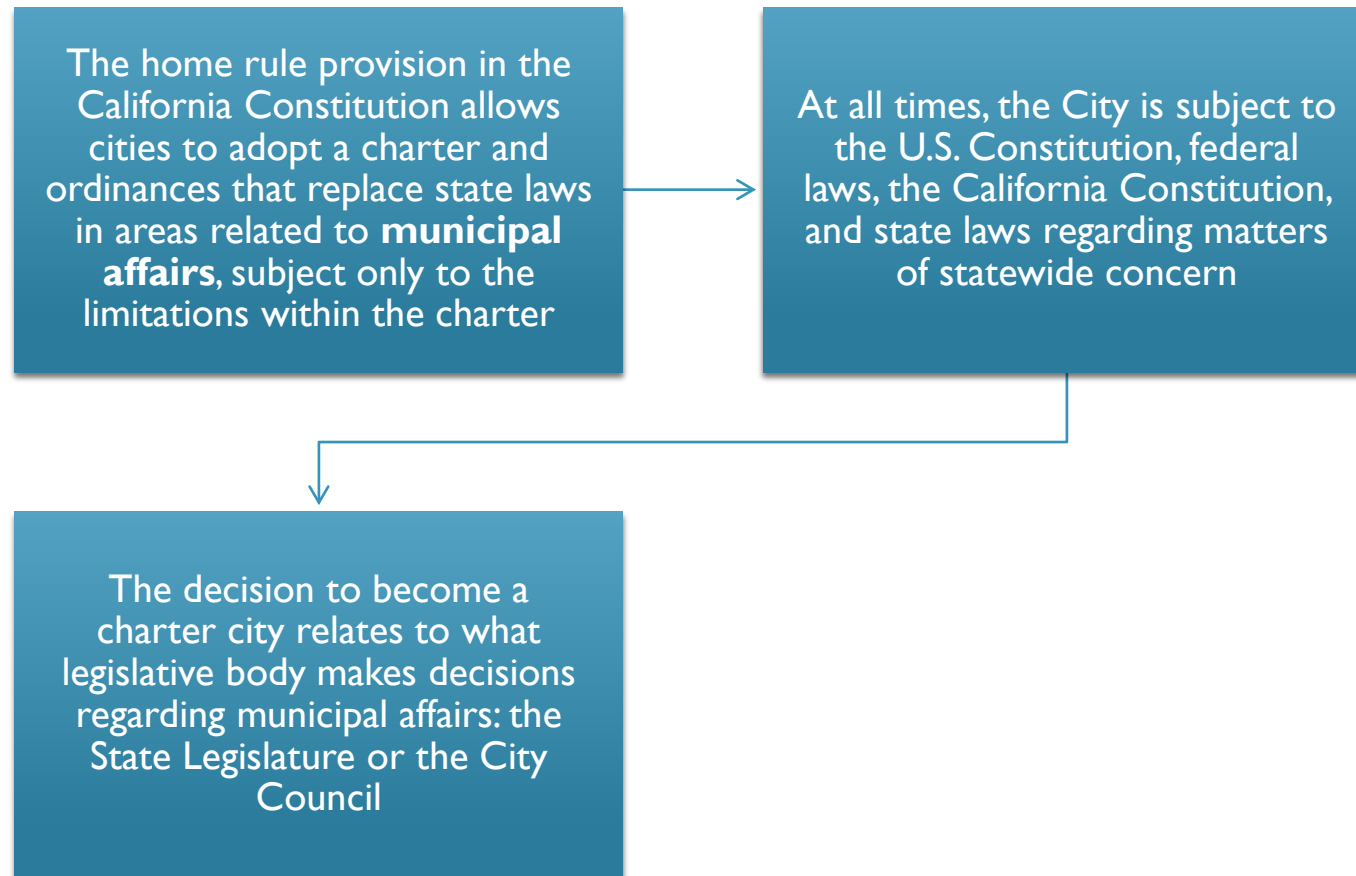
- RPTT would generate approximately \$ 2.7 million annually
- RPTT is a general tax that could be used for all aspects of city operations
- Current unfunded needs include:
 - Park, clubhouses, playgrounds, fields and facility deferred maintenance
 - 2-4 sworn officer positions (depending on SRO funding)
 - Emergency reserves – currently zero
 - Affordable housing assistance
 - Public Safety Building
 - Senior Center
 - Library Hours/Operations and facility
 - Pension liabilities

AUTHORITY IN GENERAL LAW VS. CHARTER CITY

A **General Law** City has the authority to act locally but its acts must be consistent with: the California Constitution, state statutes, state administrative regulations

A **Charter City** has the additional authority to adopt laws regarding "municipal affairs" that are inconsistent with state statutes. Must still be consistent with US and California Constitutions and with the charter

UNDERSTANDING HOME RULE



CALIFORNIA CHARTER CITIES

361 General Law Cities



Currently 121 Charter Cities



Local Charter cities include Albany, Emeryville, Berkeley, Richmond, Oakland, Alameda, Piedmont, San Francisco, San Leandro and San Rafael

CITY COUNCIL DIRECTION TO COMMITTEE

The Charter Committee shall prepare a draft charter for the City of El Cerrito to be submitted to the City Council for consideration and potential proposal to the City's voters.

The draft charter shall contain at least the following elements:

- It shall reserve to the City Council the power to adopt local rules in all matters of municipal affairs.
- It shall require the City to follow California law regarding the payment of prevailing wages for public works projects and collective bargaining with represented employee groups.
- It shall authorize the City Council to consider the use of all available tools for generating revenue, including but not limited to a real property transfer tax.
- The El Cerrito Municipal Code shall not be altered by the proposed charter.

ROLE OF CHARTER COMMITTEE

Review and understand	Review and understand options
Evaluate	Evaluate alternatives within City Council Direction
Develop	Develop Draft Charter for City Council Consideration

CHARTER COMMITTEE

- Charter Committee made up of Seven Members
 - Two Council Members
 - Member of Financial Advisory Board (FAB)(Chair)
 - Labor Representative (Local 1230)
 - Local realtor (Vice Chair)
 - Two members of Public (FAB Member and Former Mayor)
- Committee selected Chair and Vice Chair, approved minutes and followed Brown Act and standard meeting rules of order
- Committee voted unanimously on Draft Charter

CHARTER COMMITTEE OVERVIEW

- Committee met on five separate occasions
- Meetings were noticed and advertised widely
- Public given opportunity to speak during public comment and specific items
- Committee reviewed other relevant charters and gave direction to staff
- Staff developed draft charter based on comments
- Committee reviewed, commented and provided direction on three versions
- Final version recommended unanimously to City Council

DRAFT CHARTER COMPONENTS (DRAFT CHARTER ATTACHED)

Statement of
Purpose

Establishment of
Home Rule,
Power over
Municipal Affairs

Continuation of
Boundaries, Form
of Government,
and Existing Law

Municipal
Revenue

Prevailing Wages
for Public Works
and Public
Contracting

Labor Relations

Elections

Interpretation,
Severability, and
Amendment

STATEMENT OF PURPOSE

The City of El Cerrito was incorporated as a general law city in 1917 by residents seeking the right to manage local affairs. Since then, the authority of general law cities over local affairs has diminished. Furthermore, the State has continually added mandates for cities that require local resources to address State concerns, increased its control over local matters, and redirected much needed local revenue for its own purposes. Changes in State law have limited the ability of El Cerrito to decide how to use local dollars for local needs. The power of home rule, granted by the California Constitution, makes available to charter cities a variety of tools to use to construct local policy and address local concerns. The voters of each charter city get to decide which tools to put in their tool box. With this Charter, El Cerrito will reclaim more local autonomy and expand the economic and fiscal independence of our City government to promote the health, safety, and welfare of all its residents. Therefore, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this Charter for the City of El Cerrito.

KEY AREAS OF COMMITTEE FOCUS

Form of Government – The Committee spent a fair amount of time understanding the current form of government and decided it was important that it be reiterated in Charter to affirm it would not change.

Municipal Revenue – A fair amount of discussion occurred related to revenues in general and specifically the Real Property Transfer Tax. Based on the discussions, the Committee recommended flexible revenue language but also specifically called out the RPTT for transparency leaving the rate to the City Council.

Prevailing Wages, Labor Relations and Elections – These were items directed by the City Council to not be changed. The Committee debated whether they should be included at all since they would remain unchanged if left out of Charter. However, Committee decided to include to strengthen the City Council priorities and make very clear these items would not change with passage of the Charter.

TOPICS THAT THE COMMITTEE WANTED COMMUNICATED TO COUNCIL

Public information about the Charter should describe the full range of powers as a charter city, including financial powers.



Explain why the form of government was addressed in the Charter even though the Council didn't provide direction on the topic.



The residents of El Cerrito would have the ability to change the Charter in the future should the need or desire arise.

REAL PROPERTY TRANSFER TAX RECOMMENDATION

- El Cerrito had a RPTT until 2003 Rate was set at \$7.00 per \$1,000
- In FY2003, RPPT generated \$1.2m in revenue
- In FY 2016, would have brought in ~\$1.7m
- \$12.00 per \$1,000 brings in ~\$2.7m
- In 2017, would have brought in \$500,000 from sales of commercial property on San Pablo Avenue alone
- No noticeable impact on home prices in other cities
- City Council will set rate in July
- Staff plans to recommend **\$12.00 per \$1,000**

	<u>Per \$1,000</u>
Alameda	\$ 12.00
Richmond	\$ 7.00
Oakland	\$ 15.00
Emeryville	\$ 12.00
Berkeley	\$ 15.00
Albany	\$ 11.50
Piedmont	\$ 13.00
AVG	<u>\$ 12.21</u>
Median	\$ 12.00

POTENTIAL REBATE OPPORTUNITIES

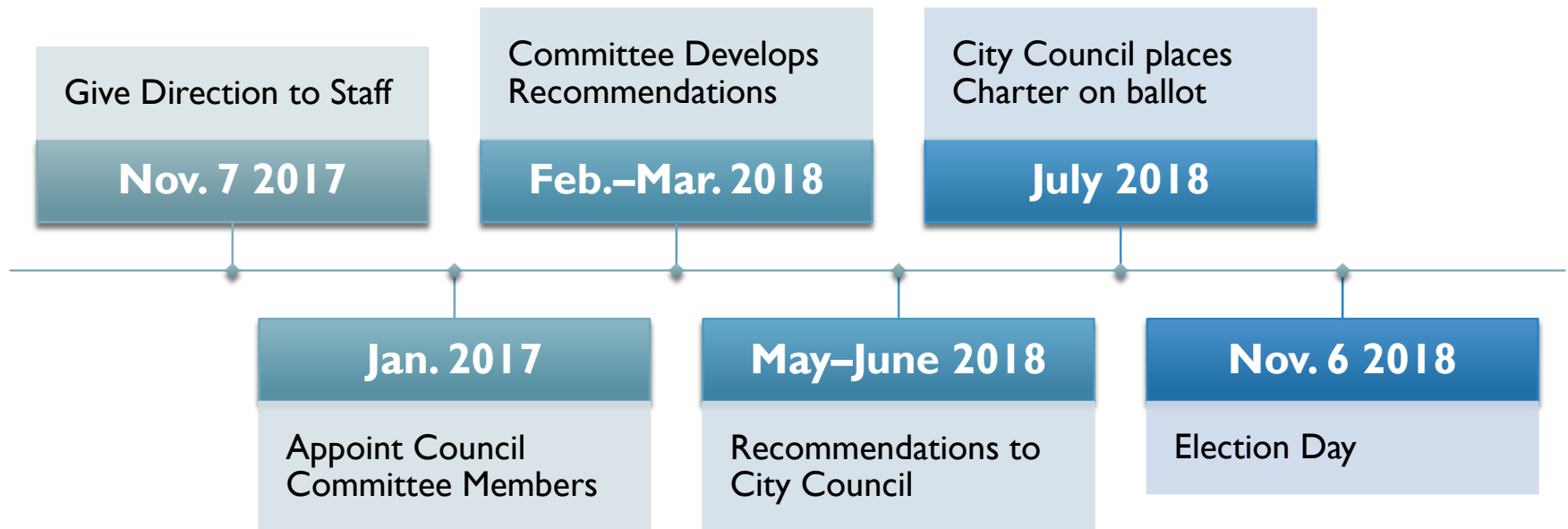
Of the local Charter Cities,
Berkeley and Oakland offer rebate

- Seismic upgrades
- Berkeley: up to 1/3 of RPTT;
Oakland: 0.5% of price or \$5,000,
whichever is lower
- Part of regular permit process

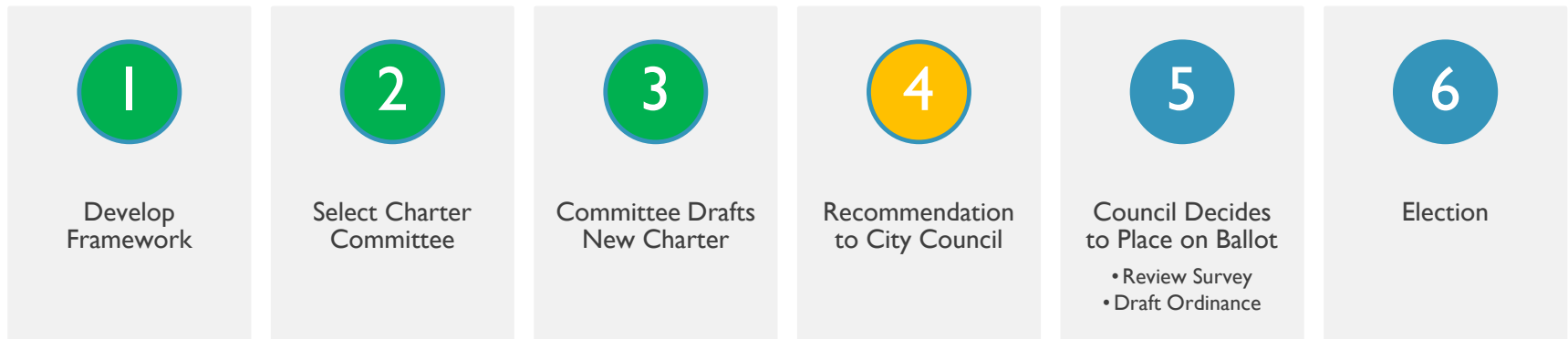
Staff would recommend a similar
rebate process in El Cerrito but
expand qualifying improvements

- Seismic Upgrades, Solar Panel Installation, Energy Efficiency Improvements and EV charging
- Not to exceed 1/3 value of RPTT
- Must be part of regular permit process
- Must be done within one year
- Separate application to be considered with regular permit approvals

CURRENT TIMELINE



CHARTER PROCESS



CITY CHARTER PROCESS

QUESTIONS, COMMENTS AND CONCERNS?