



AGENDA

REGULAR CITY COUNCIL MEETING
Tuesday, November 7, 2017 – 7:00 p.m.
City Council Chambers

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

Janet Abelson – Mayor

Mayor Pro Tem Gabriel Quinto
Councilmember Greg Lyman

Councilmember Paul Fadelli
Councilmember Rochelle Pardue-Okimoto

ROLL CALL

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

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – *Mayor Pro Tem Gabriel Quinto.*

2. COUNCIL / STAFF COMMUNICATIONS *(Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & 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 – Item No. 4(A) through 4(C)

A. Approval of Minutes

Approve the October 3, 2017 Regular City Council meeting and October 3, 2017 Special City Council Closed Session meeting minutes.

B. Support Prohibition of Industrial Clearcutting in California Forests

At the request of Councilmember Quinto, adopt a resolution calling on the state legislature and Governor Brown to prohibit the practice of industrial clearcutting in the forests of California and require forest management methods that maximize carbon sequestration and forest health.

C. Crime Prevention Committee Appointment

Approve a Crime Prevention Committee recommendation to appoint Jim Dolgonas to the Crime Prevention Committee, effective November 7, 2017.

5. PRESENTATION

Presentation regarding El Cerrito's emergency mutual aid assistance in and response to recent Northern California wildfire incidents – *Presentation by Michael Pigoni, Battalion Chief.*

6. PUBLIC HEARINGS – None

7. POLICY MATTERS

A. Service Employees Union Local 1021 Memorandum of Understanding

Adopt a resolution approving an agreement between the City of El Cerrito and the Service Employees International Union (SEIU), Local 1021 modifying salaries and creating a new Memorandum of Understanding.

B. Charter City Discussion and Possible Direction

Adopt a resolution creating the El Cerrito Charter Committee to prepare a recommended charter for the City of El Cerrito and directing the City Manager and City Attorney to work with the Charter Review Committee.

C. Repeal of Local Campaign Literature Disclosure Ordinance to Achieve Consistency with State Law

Introduce by title and waive any further reading, an ordinance repealing El Cerrito Municipal Code Chapter 2.32 – Campaign Literature Disclosure for Local Candidacies and Measures (Ordinance No. 92-2) to achieve consistency with State Law.

8. CITY COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENTS

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

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regularly scheduled City Council meeting is Tuesday, November 21, 2017 at 7:00 p.m. in the City Council Chambers, 10890 San Pablo Avenue, El Cerrito.

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

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT-Channel 28 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.

EL CERRITO CITY COUNCIL

MINUTES

REGULAR CITY COUNCIL MEETING
Tuesday, October 3, 2017 – 7:00 p.m.
City Council Chambers

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION
Tuesday, October 3, 2017 – Immediately following the regular City Council meeting
Hillside Conference Room

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

Janet Abelson – Mayor

Mayor Pro Tem Gabriel Quinto
Councilmember Greg Lyman

Councilmember Paul Fadelli
Councilmember Rochelle Pardue-Okimoto

7:00 p.m. ROLL CALL

Councilmembers Fadelli, Lyman, Pardue-Okimoto, Quinto and Mayor Abelson all present.

CONVENE REGULAR CITY COUNCIL MEETING

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

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE was led by Councilmember Rochelle Pardue-Okimoto.

2. COUNCIL / STAFF COMMUNICATIONS

Councilmember Pardue-Okimoto reminded all that October is Arts Month in El Cerrito and announced all of the cultural programs and celebrations that will occur during the month. Councilmember Pardue-Okimoto also provided an update regarding the “Keep Alta Bates Open Subcommittee” that she serves on. Senate Bill 687 (Skinner) passed both the House and Senate and is awaiting Governor Brown’s signature. The legislation would make it more difficult for an emergency room in an acute care hospital to be closed by requiring the California Attorney General to approve the closure. The Subcommittee is also looking at a health impact assessment which is looking at how the closure of Alta Bates would affect Berkeley and the surrounding areas, including West Contra Costa County. The Berkeley Fire Department (BFD) reported that Summit Hospital is the second busiest hospital in Alameda County and has estimated that it would take an additional twelve minutes to get to or from Summit Hospital and that there would be longer wait times at the hospital. This would cost the City of Berkeley a lot of extra money due to extended wait periods for BFD staff. Councilmember Pardue-Okimoto stated that it is likely

that this would also translate into longer wait periods and impacts transporting patients for El Cerrito Fire Department staff and that she is hoping to have a community forum in West Contra Costa County to ascertain how the community feels about closure of Alta Bates Hospital.

Mayor Pro Tem Quinto reported on his attendance with Mayor Abelson, the City Council and Bay Area Rapid Transit (BART) Directors Saltzman and Simon at the groundbreaking for the El Cerrito Del Norte BART Station Modernization project and said he is looking forward to a better, safer and more modern BART station in 2019. Mayor Pro Tem Quinto also stated that he attended the September League of California Cities East Bay Division meeting with Mayor Abelson on implicit bias training and thanked the 500 block Norvell Street neighbors for inviting him to their block party. Mayor Pro Tem Quinto said that unfortunately a senior was injured after the block party and expressed sincere wishes for a speedy recovery. He also expressed pride in the City's public safety team who arrived on scene in less than five minutes.

Councilmember Lyman stated that he attended the Rotary Club's Sip N Savor event with other Councilmembers. It was a great event which raised funds for great causes. Councilmember Lyman called special attention to the proper disposal of household hazardous waste which will occur on Tuesdays at the El Cerrito Recycling Center. More information is contained in the City's News and Views Newsletter.

Councilmember Fadelli said he was pleased to join members of the Council at the BART groundbreaking and at the West Contra Costa Unified School District Superintendent's annual report and breakfast. As Council Liaison to the Economic Development Committee, Councilmember Fadelli reminded all that October 16th begins Restaurant Week in El Cerrito and encouraged all to participate. Councilmember Fadelli also attended a recent Stege Sanitary District Board Meeting regarding sewer expansion needs along San Pablo Avenue which are critical for future economic growth in the City.

Mayor Abelson reported that she attended the first weekend of the Contra Costa Theatre's production, "Cabaret." It is nice to live in a city with a diversity of theatrical and film offerings. Mayor Abelson also attended senior programs at the Senior Center on fall prevention which includes exercises on how to prepare one's body for a fall to lessen injuries. Mayor Abelson also attended the Institute for Local Government's training workshop, "Building Trust in Local Governments: Community Engagement, Implicit Bias and Procedural Justice." The training would be of benefit to all elected officials and staff. At the last West Contra Costa Transportation Advisory Committee meeting, the Board authorized funds for the Del Norte BART Station modernization project. It takes many funding sources and a lot of work to put together a project. The modernization project will improve lives. For example, the elevators and elevator access will be improved and will be safer. Crowding will also be reduced. It is a fantastic project. Mayor Abelson also attended the September West County Mayors Association meeting and received a presentation from the Pacific Gas and Electric (PG&E) Public Affairs team on services and resources for local government, including public works coordination.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Melanie Proctor, El Cerrito, stated that she was happy to hear that Mayor Abelson and Mayor Pro Tem Quinto attended implicit bias training, noted its importance, and

suggested that it be incorporated into annual training for government employees. Ms. Proctor said she was concerned about the 6500 Stockton Avenue item on the City Council's closed session agenda, expressed concerns about the overcrowding of Fairmont School and stated that she hopes the city will work to find alternative space for senior programs.

Al Miller, El Cerrito, thanked the Centennial Planning Committee for their work on the outstanding Centennial Parade. Friends and staff of the Library walked together during the parade. The Centennial Parade differed from the Martin Luther King, Jr. parade in that it marched through the community which was great. Mr. Miller also reminded all that the El Cerrito Senior Resources Fair is tomorrow from 9 a.m. to 1 p.m. at the Community Center.

Mike Cunningham, El Cerrito, stated in regard to the 6500 Stockton Avenue item on the closed session agenda, that there is no known negotiation that the West Contra Costa Unified School District is aware of. Mr. Cunningham said severe overcrowding at Fairmount School is directly impacting students in a negative way. The School District has no intention of selling the property. Mr. Cunningham also expressed concerns that there have been no community conversations about how to prepare for a move and accommodate senior programs.

4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4(A) through 4(F)

Moved, seconded (Lyman/Quinto) and carried unanimously to approve Consent Calendar Item Nos. 4(B) through 4(F) as indicated below. Item No. 4(A) was removed from the Consent Calendar at the request of Councilmember Pardue-Okimoto for the purpose of making a typographical correction to the minutes.

A. Approval of Minutes

Approve the September 19, 2017 Regular City Council meeting minutes.

Action: Moved, seconded (Pardue-Okimoto/Fadelli) and carried unanimously to approve the minutes as corrected to change SB 87 to SB 687 in Item No. 2 Council communications.

B. National Arts and Humanities Month Proclamation

Approve a proclamation declaring October 2017 as National Arts and Humanities Month in the City of El Cerrito and calling upon community members to celebrate and take part in arts and culture opportunities in El Cerrito and elsewhere.

Action: Approved proclamation.

C. Freedom from Bullies Week Proclamation

Approve a proclamation declaring October 15-21, 2017 as "Freedom from Bullies Week," in the City of El Cerrito.

Action: Approved proclamation.

D. Unity and Bullying Prevention Awareness Day Proclamation

Approve a proclamation declaring October 25, 2017 as Unity Day in the City of El Cerrito and encouraging all schools, students, parents, recreation programs, religious institutions, and community organizations to engage in a variety of awareness and prevention activities designed to make our community safer for all children and adolescents and encouraging El Cerrito residents to wear orange on Unity Day to demonstrate the City's commitment to the prevention of bullying.

Action: Approved proclamation.

E. Amend the Fiscal Year 2017-18 Budget and Capital Improvement Program to Incorporate a List of Projects and Appropriate Funding from Senate Bill 1 – The Road Repair and Accountability Act

Adopt a resolution amending the Adopted Fiscal Year 2017-18 Budget and Capital Improvement Plan to incorporate a list of projects for funding from California Senate Bill 1 – The Road Repair and Accountability Act and appropriate funding in the amount of \$137,738.

Action: Adopted Resolution No. 2017-71.

F. Increase of City Manager Spending Authority

Adopt a resolution authorizing an increase in the City Manager expense authorization limit from the current \$15,000 to \$45,000 and the Department Director limit from \$15,000 to \$25,000 and rescinding Resolution No. 2001-81.

Action: Adopted Resolution No. 2017-72.

5. PRESENTATIONS - None

6. PUBLIC HEARINGS – None

7. POLICY MATTERS

Review Draft Cannabis Businesses Ordinance

Review the draft Cannabis Businesses Ordinance and provide direction to staff to finalize the ordinance for consideration of a first reading on November 21, 2017.

Presenter: Sean Moss, Senior Planner and Margaret Kavanaugh-Lynch, Development Services Manager.

Speakers: Delfina Lin-Sau Fung, El Cerrito, emphasized that under federal law, marijuana is still illegal to sell, cultivate and use marijuana. Ms. Fung referenced a petition submitted by individuals opposed to marijuana in the city and stated that under California Proposition 64 the City Council has the power to authorize deliveries rather than allowing dispensary storefronts and outlined suggested clarifications and changes to the ordinance.

Chris Jasinski, Oakland, identified himself as a privacy advocate, expressed concerns about the video surveillance provision in the proposed ordinance and encouraged drafters of the ordinance to think about the broader implications of the constant surveillance requirements and invasiveness across the industry and other municipalities.

Jeff Ghidella, Zenia, advocated for the addition of licensed delivery services along with brick and mortar cannabis businesses in El Cerrito.

Chris Gray, Fremont, commended staff on their work and suggested improvements such as altering business hours to close at 10:00 p.m.; allow the City Council to select the location; and allow for a cash transaction.

Karl Mulligan, El Cerrito, expressed concerns about staff responsiveness, and stated the ordinance is dystopian. Mr. Mulligan stated that it is his belief that staff has ignored public input.

Howdy Goudey, El Cerrito, stated that the City needs to be clear about its expectations with the ordinance and that it should not be left to a closed administrative process. Expanding delivery in a responsible way may minimize impacts.

Arya Campbell, El Sobrante, Secretary of National Organization for the Reform of Marijuana Laws (NORML) expressed support for the proposed ordinance with a small amount of tweaking and noted that some additional suggestions may be submitted from other supporters by email. Ms. Campbell urged onsite consumption and said the people of El Cerrito are ready to move forward and reap the benefits of legal, regulated cannabis.

Skyler Turtle, Kensington, asked the City Council to think about providing opportunities for the people that live in the community but don't have investors and advocated for small-time operators will be more likely to listen and be responsive to the community.

Action: The City Council received staff's presentation, discussed the draft cannabis businesses ordinance and provided direction to staff regarding preparation of the ordinance.

8. CITY COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENTS

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

Held over to the October 17, 2017 City Council meeting.

9. ADJOURNED REGULAR CITY COUNCIL MEETING at 9:57 p.m.

10. CONVENE SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Mayor Abelson convened the special City Council meeting at 9:58 p.m.

ANNOUNCEMENT OF CLOSED SESSION

Conference with Real Property Negotiators (*Pursuant to Government Code Section 54956.8*)

1) Property: 10848 San Pablo Avenue, El Cerrito, CA 94530

Agency Negotiators: Scott Hanin, City Manager and Sky Woodruff, City Attorney

Negotiating Parties: Eden Housing, Inc.

Under Negotiation: Price and Terms of Payment

2) Property: 6500 Stockton Avenue

Agency Negotiators: Scott Hanin, City Manager and Sky Woodruff, City Attorney

Negotiating Parties: West Contra Costa Unified School District (WCCUSD)

Under Negotiation: Price and Terms of Payment

ORAL COMMUNICATIONS FROM THE PUBLIC (*See Agenda Item No. 3 above*)

RECESS INTO CLOSED SESSION (*Hillside Conference Room*) at 10:00 p.m.

POSSIBLE REPORT OUT OF CLOSED SESSION

Mayor Abelson announced that the City Council provided direction to staff.

ADJOURNED SPECIAL CITY COUNCIL MEETING – CLOSED SESSION at 10:53 p.m.

SUPPLEMENTAL REPORTS AND COMMUNICATIONS

Item No. 7 Review Draft Cannabis Businesses Ordinance

1. Comments on the proposed ordinance – *Submitted by Delfina Lin-Sau Fung, El Cerrito.*

2. Comments on proposed ordinance – *Submitted by Chris Gray, John Oram Ph.D, CEO, El Cerrito Wellness Center.*
3. Comments on proposed cannabis ordinance – *Submitted by Howdy Goudey, El Cerrito.*
4. Powerpoint presentation – *Submitted by Sean Moss, Senior Planner.*

Closed Session

5. Comments on 6500 Stockton Avenue – *Submitted by Rebecca Goldfarb, El Cerrito.*
6. Comments on 6500 Stockton Avenue – *Submitted by Amalia Lorentz Cunningham, El Cerrito.*

RESOLUTION 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO SUPPORTING
THE PROHIBITION OF INDUSTRIAL CLEARCUTTING IN CALIFORNIA FORESTS

WHEREAS, our forests provide 75% of California's clean water supply by capturing snow, rain and fog and then storing, filtering, and gradually releasing water throughout the year; and this process increases humidity and rainfall, cools temperatures, and helps protect us from extreme weather; and

WHEREAS, our forests continuously remove carbon dioxide from the air and store it in trees, roots, and forest soil, and this natural process is significant in the fight to reverse the climate crisis; with intact forests absorbing up to 30% ¹ of human caused carbon dioxide releases; and, conversely deforestation causing 15% ² of all greenhouse gas emissions, and

WHEREAS, our forests provide other essential environmental services as they release oxygen, prevent flooding and siltation, and support a wide diversity of plant and wildlife; and

WHEREAS The forests of California generate tremendous social, cultural and economic value from recreation, tourism, sport and commercial fishing, and wood products; and

WHEREAS, the widespread industrial logging method called clearcutting commonly involves the removal of virtually all trees and vegetation on large tracts, that are then cultivated with crop-like plantations of even-aged trees of limited species (usually only one species), with the repeated broad application of toxic herbicides used to prevent other tree and plant species from growing; and

WHEREAS, clearcutting destroys many benefits of forests as it contaminates our water supply with herbicides and sediment, greatly increases greenhouse gas emissions for many decades, and promotes drought, catastrophic wildfires, soil erosion, landslides, pest invasion, and other tree diseases; and

WHEREAS, within the counties of Santa Clara, Santa Cruz, San Mateo, San Francisco, and Marin, and in most public forests, the outmoded practice of clearcutting is prohibited; and

WHEREAS, selective logging and modern forest management methods that promote fire-resilient, productive forests with trees of multiple ages and species can produce a sustainable supply of wood and forest products, and stable long term jobs.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby calls on the state legislature and Governor of California to prohibit the

¹ Rasmussen, Carol. (2014, Dec. 29). NASA Finds Good News on Forests and Carbon Dioxide. *NASA Earth Science News Team*, Retrieved from: <https://www.nasa.gov/jpl/nasa-finds-good-news-on-forests-and-carbon-dioxide>

² Scheer, R., & Moss, D. (2012, Nov. 13). Deforestation and its extreme effect on global warming. *Scientific American*, Retrieved from: <https://www.scientificamerican.com/article/deforestation-and-global-warming/#>

Agenda Item No. 4(B)

practice of industrial clearcutting in the forests of California and require forest management methods that maximize carbon sequestration and forest health.

BE IT FURTHER RESOLVED that copies of the resolution are sent to [Governor Jerry Brown, State Senator Jerry Hill, and Assemblymember Kevin Mullin.

Figure 1 –Selective Logging. Note the difference between this practice and clear-



Figure 2 –Industrial Clear-cut Logging



Agenda Item No. 4(B)

I CERTIFY that at a regular meeting on November __, 2017 the City Council of the City of El Cerrito 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 November __, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



STOP CLEARCUTTING CALIFORNIA

SAVE OUR FORESTS, WATER AND CLIMATE

To improve water security, reduce forest fire risk and fight climate change, California must ban clearcutting on state and private lands.



CALIFORNIA'S FORESTS ARE IN CRISIS

Catastrophic drought and bark beetle infestations are decimating California forests. Industrial logging harms forests further by clearcutting instead of using selective harvesting.

Since 1999 more than 1 million acres of private forests have been clearcut in California.

What is clearcutting?

Clearcut logging removes profitable trees and bulldozes remaining small trees and plants. Debris is usually piled and burned. Herbicides are applied to prevent native plants from returning. Conifer seedlings are planted to create even-aged plantations.

Clearcutting makes it harder to fight drought and climate change. Clearcut sites capture and retain less water and increase erosion. Most of the carbon stored in forest trees and soil is released through clearcutting. Even after replanting clearcut forestlands, decades pass before the site stores more than carbon than it emits.



CLEARCUTTING THREATENS CALIFORNIA'S WATER AND CLIMATE SECURITY

HEALTHY RESILIENT FORESTS:

- Include a diverse mix of trees and native vegetation of various ages and sizes.
- Are better able to survive a disturbance such as fire and changes in climate and rainfall.
- Build soils that retain moisture, carbon, and nutrients.
- Guarantee that watersheds capture, filter, and slowly release water and snowmelt.
- Remove carbon dioxide from the air and store it in trees as well as soil.



Can forests be logged without destroying them?

Selective logging provides for the removal of a portion of the trees with minimum of disruption to the soil and the forest, and is already used in some California forests where profits are balanced with environmental protection.



CLEARCUT PLANTATIONS:

- Feature trees of the same age with generally only one or two species of trees.
- Face increased vulnerability to fire and insect infestation.
- Have degraded soils that contain less water, carbon, and nutrients.
- Emit carbon for 20-40 years after a clearcutting operation.
- Impair water quality through erosion and heavy herbicide use.
- Capture and retain less water than do healthy forests.

IT'S TIME TO BAN CLEARCUTTING IN CALIFORNIA.

For more information, see StopClearcuttingCA.org, Sierraclub.org/clearcutting, Facebook.com/StopClearcuttingCA or contact forests@lomaprieta.sierraclub.org.



AGENDA BILL

Agenda Item No. 4(C)

Date: November 7, 2017
To: El Cerrito City Council
From: Brian Elder, Detective Corporal, Police Department
Subject: Crime Prevention Committee Membership Recommendation

ACTION REQUESTED

Approve the Crime Prevention Committee recommendation to appoint Jim Dolgonas to the Crime Prevention Committee, effective November 7, 2017.

BACKGROUND

At its September 13, 2017 regular meeting, the Crime Prevention Committee voted unanimously to recommend to the City Council that it appoint Mr. Dolgonas.

Mr. Dolgonas has lived in El Cerrito for eleven years and has lived in Contra Costa County for 40 years. Mr. Dolgonas has an undergraduate degree from U.C. Davis and a graduate degree from UCLA in addition to having served on the committees and boards of several university and professional organizations.

Mr. Dolgonas would like to improve the El Cerrito community by helping to add to the existing crime prevention efforts that are taking place as well as improving crime prevention communication. Mr. Dolgonas has attended three regularly scheduled Crime Prevention Committee meetings; July 12, August 9, and September 13, 2017.

STRATEGIC PLAN CONSIDERATIONS

Appointing Mr. Dolgonas will help to move the Crime Prevention Committee towards filling the 7 current membership vacancies. The recruiting of new Crime Prevention Committee members is necessary to successfully complete the committee goals for 2017-2018.

Reviewed by:

Scott Hanin
City Manager

Attachments:

1. Application



**November 7, 2017
Regular City Council Meeting**

**Agenda Item No. 4(C)
Crime Prevention Committee Membership Recommendation**

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



AGENDA BILL

Agenda Item No. 7(A)

Date: November 7, 2017
To: El Cerrito City Council
From: Kristen Cunningham, Senior Human Resources Analyst
Karen Pinkos, Assistant City Manager
Subject: Service Employees International Union (SEIU), Local 1021, Memorandum of Understanding

ACTION REQUESTED

Adopt a resolution approving an agreement between the City of El Cerrito and the Service Employees International Union (SEIU), Local 1021 modifying salaries and creating a new Memorandum of Understanding.

BACKGROUND

The City Council adopted a Memorandum of Understanding (MOU) between the City of El Cerrito and SEIU, Local 1021 effective July 1, 2014 to June 30, 2017.

The City's management team negotiated with representatives of SEIU, Local 1021 over the past several months, from April 2017 to September 2017. A tentative agreement was accepted by the members of SEIU, Local 1021 on September 28, 2017.

ANALYSIS

The negotiation process focused on modifying salaries for the represented classifications in line with the City's financial position. The City's management team worked with SEIU, Local 1021 to ensure that the modifications to salaries were in line with the authority provided to the City's management team by the City Council. Discussions also included adjusting language to comply with changes to state and federal laws.

In the interest of time and efficiency, the parties have agreed to present the City Council at this time with a draft MOU modifying salaries, with a further task to finalize this draft that updates language and incorporates any and all agreements.

The following is a summary of the agreement:

- The agreement will be effective between July 1, 2017 and June 30, 2020
- Wages:
 - o Effective the first full pay period in September 2017, the base monthly salary for all represented classifications shall be increased by 3.5%
 - o Effective the first full pay period in July 2018, the base monthly salary for all represented classifications shall be increased by 3.5%
 - o Effective the first full pay period in July 2019, the base monthly salary for all represented classifications shall be increased by 3.5%

- Probationary Period – The probationary period for promotional appointments for all bargaining unit classifications will be reduced from twelve (12) months to six (6) months.
- New Employee Orientation – Language was incorporated to comply with California's Assembly Bill 119, effective July 1, 2017, which requires that public employers allow union representatives to meet with employees during new employee orientation.
- Physician Statement – Bargaining unit employees absent from work due to an illness will be required to present a doctor's note after two consecutive days, reduced from three consecutive days.
- Vacation Cash-Out – Language related to employees cashing out vacation leave was adjusted to comply with the IRS' constructive receipt requirements.
- Out of Class Assignment Pay – All bargaining unit employees will be eligible to receive five percent additional pay when working temporarily in a higher classification after working a minimum of one full day, reduced from a minimum of three full days.

STRATEGIC PLAN CONSIDERATIONS

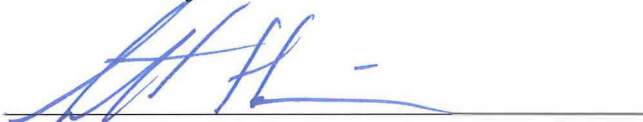
Adoption of this agreement will help fulfill the following City of El Cerrito Strategic Plan Goals:

- Goal A: "Delivering Exemplary Public Services" and the objective of "Recruit and retain a talented and effective workforce"

FINANCIAL CONSIDERATIONS

The agreement for SEIU, Local 1021 is within the initial projections considered for FY 2017-18, therefore funding is available within the adopted budget.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. Agreement (Draft)

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING AN AGREEMENT BETWEEN THE CITY OF EL CERRITO AND THE SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU), LOCAL 1021 MODIFYING SALARIES AND CREATING A NEW MEMORANDUM OF UNDERSTANDING

WHEREAS, the Meyers-Milius-Brown Act allows employee units within the City to represent themselves on matters concerning salaries, hours and working conditions; and

WHEREAS, the Employer-Employee Relations Ordinance of the City of El Cerrito provides the methods and procedures for meeting and conferring in good faith; and

WHEREAS, the Service Employees International Union, Local 1021 is recognized as the majority bargaining unit for full-time and part-time represented general employees; and

WHEREAS, representatives of the City of El Cerrito and the Service Employees International Union, Local 1021, have met and conferred in good faith; and

WHEREAS, the City of El Cerrito and the Service Employees International Union, Local 1021 representatives have reached agreement regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment; and

WHEREAS, upon approval of this agreement, the parties will finalize an updated MOU which incorporates all previous side letters between the City and Service Employees International Union, Local 1021.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it does hereby adopt the Agreement, attached hereto and incorporated by reference as Exhibit A, between the City of El Cerrito and the Service Employees International Union, Local 1021, modifying salaries; directs the parties to finalize an updated Memorandum of Understanding (MOU); and directs the City Manager to execute the agreement.

I CERTIFY that at a regular meeting on November 7, 2017 the El Cerrito City Council passed this resolution by the following vote:

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

Agenda Item No. 7(A)
Attachment 1

ABSTAIN: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

DRAFT 4

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
SERVICE EMPLOYEES INTERNATIONAL
UNION (SEIU) LOCAL 1021



July 1, 2017~~14~~ to June 30, 2020~~17~~

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND**

SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) LOCAL 1021

**ARTICLE I
Preamble**

This Agreement is entered into by and between the City of El Cerrito, hereinafter referred to as the "City," and Service Employees International Union (SEIU) Local 1021, hereinafter referred to as the "Union."

**ARTICLE II
Nondiscrimination and Affirmative Action**

This agreement applies equally to all members of the bargaining unit regardless of race, color, sex, age, creed, physical or mental impairment, political affiliation, national origin, religious affiliation, or sexual preference as provided by law.

The Union and the City will not discriminate in employment relations against any employee because of sex, sexual preference, gender, race, age, national origin, marital status, religion, disability or political affiliation. The City will comply with all State and Federal Laws and Regulations regarding discrimination. The Union and City further agree not to harass or retaliate against any employee on any of the prohibited bases specified above. The Union will support the City in achieving the goals of the City's Affirmative Action Plan. The Union and the City equally share the responsibility for upholding this provision of the agreement.

**ARTICLE III
Term and Scope of Agreement**

3.1 Duration of this Memorandum

The recommendations set forth in the Memorandum of Understanding are final. Except as otherwise provided herein, no changes or modifications shall be offered, urged or otherwise presented by the Union or the City for the duration of this agreement, provided, however, that nothing herein shall prevent the parties to this Memorandum of Understanding from meeting and conferring and making modifications herein by mutual consent. The term of this agreement shall be from July 1, 2017 to June 30, 2017.

3.2 Extension of Agreement

In the event that the City and Union fail to secure a successor agreement prior to the expiration date of this Memorandum of Understanding, the parties may agree mutually in writing to extend the term of this agreement for any period of time.

3.3 Maintenance of Benefits

All rights, privileges and terms and conditions of employment in full force and effect through the duration of the previous Memorandum of Understanding and not in conflict herewith shall become a part hereby and remain thereby until mutually modified by the parties hereto.

3.4 Procedure for Meet and Confer; Meet and Confer in Good Faith; Scope

The City, through its representatives, shall meet and confer in good faith with representatives of the Union regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment in accordance with the Meyers-Milias-Brown Act.

ARTICLE IV

The Union

4.1 Union Recognition

Pursuant to and in accordance with all applicable provisions of the California Government Code 3500 through 3510 as amended, the City hereby recognizes the Union as the sole and exclusive representative for the purpose of meeting and conferring with respect to rates of compensation, hours and other terms and conditions of employment for the term of the Memorandum for all of the job classifications listed. Such groups of employees shall hereinafter be known as "the Unit."

4.2 Union Membership

The following classifications will be considered "the Unit" as represented by the Union:

- Account Clerk
- Account Clerk Technician
- Accountant I
- Administrative Clerk
- Administrative Clerk Specialist
- Assistant Engineer
- Assistant Planner
- Associate Planner
- Building Inspector I
- Building Inspector II
- Building Permit Technician I
- Building Permit Technician II
- Building Permit Technician III
- Building Plan Checker I
- Building Plan Checker II
- Custodian
- Custodian II
- Custodian Leadworker
- Childcare Aide
- Childcare Teacher (licensed)

Childcare Teacher (no license)
Community Services Coordinator
Engineering Technician
Fork-Lift Operator
Information Systems Technician
Maintenance Services Leadworker
Maintenance Worker
Maintenance Worker – Entry
Management Assistant
Nutrition Manager
Open-House Assistant
Preschool Director
Program Registrar
Recycling Maintenance Worker
Recycling Maintenance Worker – Entry
Recreation Registrar/-Assistant
Respite Program Aide
Senior Services Assistant
Van Driver
Waste Prevention Specialist

Incumbents employed by the City in positions designated as on-call are not in the bargaining unit represented by SEIU Local 1021 and are not subject to Section 4.2, 4.6 or 4.8 of the MOU between the City and SEIU Local 1021.

4.3 Definitions

A. Part-time Employees. Part-time Employees are defined as any employees who are regularly scheduled to work less 37.5 hours per week. These classifications shall be paid an hourly wage for hours worked.

Part-time employees shall receive benefits as specified in Article XIX of this Memorandum of Understanding.

B. Temporary/Seasonal Employees. Temporary/Seasonal Employees are not part of the bargaining unit represented by SEIU Local 1021.

If a Temporary/Seasonal Employee works for the City for 365 consecutive days without a break in service they will be eligible to become part-time employees and will receive all the benefits associated with being a part-time employee.

C. Probationary Period. The probationary period for original ~~and promotional appointments~~ shall be twelve (12) months for full and part-time employees. The probationary period for promotional appointments for all bargaining unit classifications shall be six (6) months.

The probationary period is regarded as part of the testing process and is utilized to evaluate closely the employee's work performance. An employee may be rejected without cause during this period. Upon satisfactory completion of the 12-month probationary period, the department manager shall recommend that eligible employees advance to regular permanent status.

4.4 Union Representatives

The Union may appoint a steward from each work area, as follows: recreation & childcare, senior services, integrated waste management, corporation yard, City Hall and a steward from the custodian class series. In addition, an alternate steward in each division may be designated. The Union shall provide to the City a current list of stewards, regularly updated.

If an aggrieved employee desires the assistance of a steward as provided in the grievance procedure, the City shall afford said steward reasonable time off during working hours without loss of compensation or other benefits to investigate and take up such grievance. The grievant or the grievant's steward shall obtain specific approval of the division manager or, in the division manager's absence, another authorized City management official before the steward leaves his or her duties, work situation or assignment for the purpose of investigating and processing a grievance.

4.5 Union Access to Work Locations

Union representatives may visit work locations where bargaining unit members are performing work; provided, however, they shall not interfere with the normal conduct of work or duties of the employees. The Union representative shall contact the Human Resource Manager or his/her designee prior to visiting the employees work location or contacting any represented employees to ensure the visit will not impact the operations of the City. If the visit will impact operations, the City and the Union shall mutually agree to an alternative acceptable date and time.

4.65 Union and Management Meeting

Stewards shall be allowed one hour a month without loss of compensation or other benefits for the express purpose of meeting together to conduct the business of the Union in relationship to its responsibilities for effective labor relations with the City. The Stewards will notify the City prior to the monthly meeting if they need to meet with City management representatives to discuss items of mutual concern. The City will schedule a meeting within one week of the Union's request.

4.76 Dues Deductions

The City shall deduct regular monthly Union membership dues bi-weekly for Union members who have signed an authorization card furnished by Local 1021 and approved by the City. Said deductions shall be forwarded promptly to the Union office. The employees' earnings must be regularly sufficient to cover the amount of the appropriate Union dues after other legal and required deductions are made. When a member in good standing with the Union is in a non-pay status for an entire pay period, no withholding

will be made to cover that pay period from future earnings, nor will the member deposit the amount with the employer which would have been withheld if the member had been in a pay status during that period. In the case of an employee who is in a non-pay status during only part of a pay period and the salary is not sufficient to cover the full withholding, no deductions shall be made. In this connection, all other legal and required deductions have priority over Union dues. The Union shall indemnify, defend and hold harmless the City against any claims made against and any suit instituted against the City on account of said deductions. Dues deductions shall be made only for Service Employees International Union Local 1021 so long as Service Employees International Union Local 1021 is the sole and exclusive bargaining representative.

4.87 Revocation of Union Membership

It is understood that an employee may not revoke his or her authorization for regular monthly Union membership dues deductions except during a period no less than 60 days nor more than 90 days preceding the expiration date of this agreement.

It is understood further that, if an employee does not revoke his or her authorization for membership dues deductions during the time period specified above, said dues shall be deducted from the employee's earnings for the remaining portion of the year without right of further revocation, except in the event of employee's death or termination from the City service, as long as Service Employees International Union Local 1021 is the sole and exclusive bargaining representative.

4.98 Union Security - Agency Shop

A. Positions subject to Agency Shop

The provisions contained herein shall apply to all employees subject to this Memorandum of Understanding.

B Union Dues Deduction

Except as provided otherwise in this Section, all bargaining unit members shall become and remain members of Local 1021 (hereinafter referred to as "Union") or shall pay to the Union a service fee in lieu thereof. The City shall deduct union dues bi-weekly from the salary or wages of bargaining unit member who has executed a written authorization for the deduction of union dues. For those bargaining unit members who have not executed a written authorization for the deduction of union dues, the City shall deduct a service fee bi-weekly from the salary of those bargaining unit members.

C. Service Fee

The Union understands and acknowledges that the mandatory payment of a service fee is subject to certain State and Federal constitutional requirements. The Union shall maintain a plan, which satisfies these constitutional requirements. The Union shall update and modify this plan as required by subsequent court decisions and legislative enactments. The plan will include the following elements:

1. Before a fee is deducted from a City employee's paycheck, each bargaining unit member shall be provided information showing the major categories of Union

expenses, those expenses related to its duty as the exclusive recognized employee organization, the amount of the “fair share” service fee, the method by which the service fee was calculated and verification by an independent auditor on an annual basis.

~~2. — The Union will use its best efforts to insure that a hearing to challenge the service fee filed by any bargaining unit member who is subject to the payment of that fee will be conducted within four months after the date the bargaining unit member notifies the Union of a challenge.~~

~~3. — Bargaining unit member challenges to the service fee shall be heard by an impartial decision maker selected by an independent third party such as the State Conciliation Service or the American Arbitration Association.~~

~~4. — During the pendency of a challenge, the City shall continue to deduct the service fee but will retain the fee and will not submit it to the Union. Upon final adjudication of the challenge, the City shall distribute the retained service fee in accordance with the decision by the impartial decision maker.~~

25. The City shall not be a party to any dispute between the bargaining unit member and the Union regarding the amount of the service fee, nor shall the City participate in the resolution of the fee amount before the independent third party. ~~The City's sole role in any dispute concerning the amount of the service fee shall be to continue to deduct the service fee, retain the fee pending resolution of the dispute between the Union and the bargaining unit member, and distribute the fee in accordance with the decision of the impartial decision maker.~~

D. Religious Exemption

1. Any bargaining unit member of the City subject to this Agency Shop requirement, who is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting a public employee organization shall, upon presentation of verification of active membership in such religion, body or sect, be permitted to make a charitable contribution equal to the service fee in lieu of the payment of dues or a service fee to the Union. Pursuant to this provision, charitable contributions may be made to the American Cancer Society, the American Heart Association or Sickle Cell Anemia Research and Education, Inc. (SCARE).

2. The City shall submit to the Union declarations of religious exemption filed by bargaining unit members. The Union shall have fifteen (15) days from receipt of this information to challenge the claimed exemption. Such challenge shall be heard by an impartial decision maker selected by an independent third party such as the State Conciliation Service or the American Arbitration Association.

3. If the claim of religious exemption is challenged by the Union, the City shall commence deductions of the contribution from the bargaining unit member's

salary. The City will retain the amounts deducted until final adjudication of the Union challenge.

4. The City shall not be a party to any challenge by the Union regarding the claim of religious exemption filed by the bargaining unit member, nor shall the City participate in the resolution of this issue before the independent third party. The City's sole role in any dispute concerning a challenge to a claim of religious exemption shall be to deduct the service fee, retain the fee pending resolution of the dispute between the Union and the bargaining unit member, and distribute the fee in accordance with the decision of the impartial decision maker.

E. Implementation for New Hires

1. Any new employee hired by the City who is subject to the Agency Shop requirement shall be provided with a notice advising that employee that the City has entered into an Agency shop requirement with the Union and the employee must either join the Union, pay a service fee to the Union, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a copy of the plan concerning the service fee prepared by the Union in conformance with Paragraph C above. The notice also shall include a form for the employee's signature authorizing a payroll deduction of union dues or a service fee or a charitable contribution equal to the service fee. Said employee shall have five (5) working days following the initial date of employment to fully execute the authorization form and return it to the Human Resources. If the authorization is not properly completed, or not returned to the Human Resources within five (5) days, the City shall commence and continue a payroll deduction of service fees from the salary or wages of such employee. The City shall commence the deduction of union dues, service fees or charitable contributions beginning with the employee's second biweekly pay period on the month following the employee's date of hire.

2. Payroll deductions for union dues, service fees and charitable contributions shall be done biweekly. Initiation fees shall be deducted in up to four equal installments once each month, from the second biweekly pay check.

3. The employee's earnings must be sufficient after legal and required deductions are made to cover the amount of the dues or service fee. When an employee is in a non-pay status for an entire pay period, no withholding shall be made to cover such pay period from future earnings. If the employee is on non-pay status for only part of the pay period, and the employee's salary is not sufficient to cover the full withholding, no deductions shall be made. For purposes of this paragraph, all legal and required deductions, including health care deductions, have priority over union dues and service fees.

4. The City shall provide notice to the Union of hiring a new bargaining unit employee subject to the agency shop provision within 30 days of hire.

5. New Employee Orientation

- The City will provide the SEIU Steward with 10 days advance notice of any new employee orientation, as defined in AB 119.
- The City will provide the Union with an electronic notification in malleable electronic format, the new employee(s) name, job title, department, work location, work number, home number, cellular number(s); personal email address and home address of any new employee on file with the employer within 30 days of hire or the first pay period of the month following hire.
- The City will provide the SEIU Steward with up to 30 minutes of paid release time to meet with the new employee.
- The new employee will be provided up to 30 minutes of paid time to meet with the SEIU Steward.
- SEIU shall have the right to access and use the employer's facilities to meet with the new employee in accordance with Section 4.5 of the MOU.

F. Payroll deductions and Payments to the Union

1. The City shall not be required to modify the amounts deducted from employee paychecks for union dues or service fees more than once each calendar year. The Union shall provide the City with at least ninety (90) days' notice of any change in the dues or service fee amount.

2. The City shall promptly pay over to the Union all sums deducted from employee paychecks for union dues or service fees except for such funds retained by the City pending the resolution of challenges to the service fee. The City shall periodically provide the Union a list of all city employees subject to this Agency Shop requirement who are making charitable contributions pursuant to Paragraph D above.

G. Programming Costs

The Union shall reimburse the City for all reasonable expenses incurred by the City in implementing changes to the amount of the union dues or service fees deducted by the City.

H. Hold Harmless

The Union shall indemnify and hold the City and its officers, agents and employees harmless from any and all claims, suits, or any other action arising from the Agency Shop provisions contained herein. In no event shall the City be required to pay from its own funds Union dues, service fees or charitable contributions which the employee was obligated to pay but failed to pay, regardless of the reasons. In the event of a claim, demand, suit or other action against the City, the Union agrees that the City may retain the legal counsel of the City's choice and that the Union shall pay all reasonable attorney fees, costs and expenses incurred by the City in the City's defense of the claim, demand suit or action.

4.109 Bulletin Boards

The Union has purchased and installed bulletin boards at the following work areas:

- Recycling Center
- Corporation Yard
- City Hall
- Community Center
- Senior Center

The location of bulletin boards is subject to space limitations and placement at a non-public location approved by the Manager in charge of the location. The Union may use these bulletin boards under the following conditions:

1. All material must be dated and must identify the organization that published it.
2. The Union will do posting. Material shall be removed after the material is no longer relevant to the time or date of issue. Material shall be removed by Union personnel whenever practical.
3. The City, with notice to the Union, has the right to move and to determine where bulletin boards shall be placed.
4. Material, which the City considers objectionable, shall be brought to the attention of the Union representative. Material that is offensive, unprofessional, disrespectful or inappropriate to the mission or values of the City shall be removed from the bulletin board immediately. This requirement shall not infringe in any way upon the Union's rights to organize or to conduct legitimate Union business.

4.1110 Benefits Included in Memorandum of Understanding

All benefits resultant from the meet and confer process are included in this Memorandum of Understanding.

4.1241 Procedure for Meet and Confer

The Union negotiation team may include a representative from recreation and child care, senior services, integrated waste management, corporation yard, city hall, and a representative from the custodian class series. Team members are entitled to a reasonable amount of paid work time to prepare for and participate in meet and confer sessions. They must be responsible to notify their supervisors in advance of meetings so that coverage may be arranged, if necessary.

Both the City and Union shall notify each other in writing in advance as to the members of their respective negotiation teams.

ARTICLE V

Management

5.1 Management Rights

The City management retains all traditional rights and responsibilities for the operation of the City, as defined in existing federal, state and El Cerrito Municipal Code laws.

5.2 Beneficial Practices

The City agrees that as a result of signing this agreement, rules and regulations or practices affecting employees beneficially will not be changed unless consistent with applicable public law.

ARTICLE VI

Union/Management Advisory Team (UMAT)

6.1 Formation

The parties agree to form a Union/Management Advisory Team (UMAT) to meet and develop policies and procedures concerning departmental matters, which may be referred to the team by the City or the Union.

6.2 Composition and Meeting Schedule

The work of the UMAT is to be carried out on a continuing schedule. Meetings will occur as agreed between the parties.

The team will be composed of a steward from each work location:

- Recreation & Childcare
- Senior Services
- Integrated Waste Management
- Corporation Yard
- City Hall
- A representative from the Custodian class series

Division managers and/or their delegates, if assigned, will represent management. The Department managers, the Human Resources ~~Employee Services~~ Manager and Union Field Representatives also may attend as resources to the team.

Division representatives also may meet as a UMAT to discuss matters that are limited to that division; UMAT meetings need not be department-wide. Representation shall be by mutual agreement of the parties.

6.3 Utilization

The UMAT is not a decision-making body and its recommendations are not binding, nor does the UMAT replace other existing processes such as the grievance procedure or meet and confer.

A. The UMAT may advise management in matters of departmental operations and management.

B. The UMAT may develop processes to ensure involvement and participation of appropriate departmental personnel.

C. The UMAT may be utilized to coordinate and refine agreements reached by both the City and the Union during the meet and confer process.

D. The UMAT may review grievances if specifically requested by the Department Manager or Union representatives.

6.4 Reporting

Only issues that are mutually agreed to shall be reported out of the UMAT.

ARTICLE VII **Benefits Plan**

7.1 Flexible Benefits Plan

A. The City has a Flexible Benefits Plan. With the exception of those employees who choose the "no medical plan" option (See C), the City will contribute an amount equivalent to the lesser cost (Kaiser HMO) medical plan rate, according to dependent status, regardless of which medical plan is chosen. "According to dependent status" means that if an employee is single he or she shall receive the equivalent to the single premium in his or her flexible spending account. If an employee and a dependent are enrolled in a City medical plan, the employee shall receive the two-party premium in his or her flexible spending account. If an employee and more than one dependent are enrolled in a City medical plan, the employee shall receive the family premium in his or her flexible spending account.

B. Employees may select one of the following medical plans within their Flexible Benefits Plans:

- Kaiser (S)
- Alternative HMO
- PPO

Those employees selecting an option whose premium exceeds the City's contribution are responsible for the difference.

C. In the event that an employee has alternate comprehensive group medical coverage through a spouse's medical plan or some other group medical plan, the employee may select a "no medical plan" option. (Proof of alternate coverage is required.) In this event, the City shall provide the employee only City contribution which may be received in cash, in which case the amount is treated as taxable income, or the employee may reallocate it toward the purchase of other benefits in the Plan, or a combination of both.

D. Employees may contribute salary of up to the maximum allowed by law on a pre-tax basis in order to purchase the following benefits:

- Medical premiums, co-payments, and deductibles
- Dental premiums, co-payments, and deductibles
- Unreimbursed medical and dental expenses
- Dependent care
- Voluntary Group Life Insurance (aggregate to \$50,000 coverage)

Rules governing the allocation and distribution of such funds shall conform to applicable sections of State and Federal tax codes and the City of El Cerrito's Flexible Benefits Plan.

The employee may salary-contribute to the purchase of benefits on a pre-tax basis if appropriate and consistent with the provisions of the City's "Citiflex" Plan and IRS regulations. The employee may elect to purchase a variety of taxable and tax-exempt benefits with the City's contribution, if any, to the Flexible Benefits Plan.

E. Health plans will become effective the first of the month following the date of hire.

F. The health benefit programs recognize the participation of domestic partners of eligible employees. Please refer to the City's Citiflex document for details.

G. The bargaining unit represented by SEIU shall pay the same office visit and prescription co-pays, up to a maximum of \$15.00 for an office visit co-pay, as the safety personnel bargaining units.

7.2 Dental Plan

The City will contribute an amount equal to 100% of the cost of the employee and dependent coverage under the Delta Dental Plan.

The City reserves the right to select alternate carriers so long as benefit coverage is comparable as determined by the City and no additional cost is required by the employee. Employee participation in the dental plan is mandatory unless and until the carrier agrees to waive its requirement for a one-time employee option to be "in" or "out" of the dental plan.

7.3 Retirement Health Plan

Retirees, survivors of retirees and survivors of deceased employees, if permitted by the carrier, will be permitted to maintain the current level of health plan benefits available to employees. Retirees, survivors of retirees and survivors of deceased employees may maintain such health plan benefits at their discretion and with no cost to the City.

7.4 Retirement Plan

Represented full-time, permanent part-time and other part-time employees who work at least 1,000 hours in a fiscal year are entitled to those benefits of the Public Employees Retirement System (PERS) for local miscellaneous members under the 2.7% @ 55 retirement formula and integrated with Social Security. The City also shall provide the

PERS single highest year option and the service credit for unused sick leave option per Government Code 20965.

7.5 David Hunter Memorial Scholarship Fund

The City agrees to contribute \$5 per year, paid in January of each calendar year, to the David Hunter Memorial Scholarship Fund on behalf of each full-time and permanent part-time represented employee.

7.6 Life Insurance

The City will provide a term life insurance policy with the principal sum equivalent to the employee's annual salary rounded to the nearest \$1,000. Figures will be updated monthly to reflect salary adjustments provided elsewhere in this Memorandum. The Union agrees that the City has full authority to choose carriers or administrators of this plan.

For permanent (3/4) part-time employees, the City will provide a term life insurance policy with the principal sum equivalent to \$18,000.

7.7 Long-Term Disability Insurance

The City shall provide employees with long-term disability insurance with coverage of two-thirds salary up (The maximum benefit of \$6,700 per month) and a thirty-day elimination period. Like regular wages, this benefit is taxable.

7.8 Auto Use and Reimbursement

Employees required to use their own automobiles for City business shall be reimbursed at the Internal Revenue Service allowable rate or a monthly allotment as contained in the City's budget and by department policy. City employees may be allowed to use City vehicles, if available, for City business.

7.9 Benefit Status

A. The salary and benefits provisions contained within this Memorandum of Understanding are granted only to employees who are in a current pay status. The City shall incur no cost nor shall benefits accrue for retirees, survivors or employees in a non-pay status. Family Care and Medical Leave and Military Leave, however, shall be granted in accordance with the applicable provisions of State and Federal law.

B. In the event an employee is in a non-pay status because of a disputed workers' compensation claim, benefits under this article shall be continued upon written agreement of the affected employee to repay to the City the amount of any premiums paid by the City during the non-pay status period if the employee's claim is denied by the Workers' Compensation Appeals Board or withdrawn by the employee prior to a decision by the Board.

ARTICLE VIII **Holidays**

8.1 Holidays

The following holidays are recognized as municipal holidays for pay purposes for all full-time and permanent part-time represented employees:

New Year's Day	Labor Day
Dr. M.L. King Jr. Birthday (3rd Monday in January)	Veterans' Day
President's Day (3rd Monday in February)	Thanksgiving Day
Memorial Day	Day after Thanksgiving
July 4th	Christmas Eve Day
	Christmas Day
	½ Day New Year's Eve

In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday for pay purposes. In the event that any of the aforementioned days falls on a Saturday, the preceding Friday shall be considered a holiday for pay purposes. (Department managers may make changes in the above schedule in accordance with the needs of their department.)

The afternoon of New Year's Eve, commencing at 12:00 noon, shall be considered a holiday for pay purposes. In the event that New Year's Eve fall on a Sunday or a Monday, the preceding Friday afternoon shall be considered a holiday for pay purposes.

For employees on an alternative workweek schedule, if a holiday falls on a normal workday, full-time employees will be granted 7 ½ hours or the normal pro-rated portion for those who are benefited regular part-time employees. The employees may apply vacation or other discretionary hours in order to receive their normal hours for the workweek. If a holiday, a day named in the Memorandum of Understanding, falls on the Friday that City Hall is closed, the employee will be allowed to work equivalently fewer hours in the affected workweek(s) or be given the equivalent number of floating holiday hours at the discretion of the department manager. In no event should this result in fewer hours to serve the public.

8.2 Floating Holidays and Birthday

~~Effective July 2015, if~~ In addition to the recognized municipal holidays listed in Section 8.1, eligible represented employees shall receive annually three (3) floating holidays and a birthday holiday.

Accrual shall be prorated quarterly. For new employees, floating holidays shall be prorated quarterly based upon date of hire. Scheduling shall be determined by the Department Manager with regard for the needs of the City and preferences of the employee. Floating holidays must be taken during the fiscal year they are received and may not be carried over and accumulated.

8.3 Eligibility/Compensation for Municipal Holidays

A. An employee on leave-of-absence without pay shall not receive any compensation for holidays occurring during such leave.

B. Full-time employees must be in a pay status on the workday preceding the holiday

to be eligible to be compensated for the holiday. An exception is made for permanent part-time employees on irregular work schedules.

C. Full-time and permanent part-time benefited employees will receive overtime pay for holiday work as described in Article XIV of this Memorandum, except as provided in D below.

D. Recycling workers (Entry through Leadworker) have agreed to a ~~Monday~~ holiday work schedule. ~~similar to that found in private waste collection companies, to meet the needs of El Cerrito residents. The applicable Monday holidays are Martin Luther King, Jr.'s Birthday, President's Day, Memorial Day, and Labor Day. On these holidays, 2 drivers will be assigned to work on a rotational basis. The City will request that EBCC provide a helper for each driver, but cannot guarantee that helpers will be available. The assigned drivers are responsible for ensuring that the residential collection routes are completed on these holidays. If for any reason, a driver is unable to appear and work the holiday, the driver is responsible for obtaining his/her replacement and will leave a voice mail for the Manager to that effect. If the assigned driver has contacted all other drivers and is unable to find a replacement, the driver will immediately contact the Integrated Waste Services Manager on the Manager's cell phone. In exchange the City agrees to provide t~~The drivers who work the holiday will receive ~~with~~ a minimum guarantee of 7 ½ hours. If both routes are completed before the 7 ½ hours have elapsed, the drivers are allowed to leave work and will still be compensated for 7 ½ hours. The drivers working the holiday will have a choice of receiving minimum of 7 ½ hours at time and ½, plus a floating holiday or regular holiday pay at straight time for the 7 ½ hours (for a total of double time and ½). Helpers, who work a shorter shift on the designated holidays above, will be compensated for the total amount of hours worked at time and ½ plus a floating holiday or will be compensated for 7 ½ hours at their straight time rate of pay. Recycling Workers not assigned to work the holiday will be compensated according to current holiday practice.

Any driver who is unable to complete the holiday routes will follow the City's notification procedure.

8.4 Prorated Holidays - Permanent Part-Time Employees

Permanent part-time employees shall receive 3/4 (75%) of the regular and floating holiday time and accrue the holidays proportionately.

8.5 Holiday Work for Part-Time Employees

Part-time employees may be required to work holidays. If work is required and performed, they will earn overtime rates.

ARTICLE IX

Sick Leave

9.1 Accrual Rate

Regular and probationary employees shall be eligible to accrue sick leave. Permanent part-time employees shall be eligible to accrue sick leave in the same proportion as their scheduled work hours per week relate to the standard work week.

A. Full-time employees shall accrue sick leave at the rate of 8 hours and 45 minutes per calendar month worked, providing the employee has worked or been authorized leave with pay for at least ten working days in the month.

B. Full-time employees with 20 or more years of service shall accrue sick leave at the rate of 11 hours and 25 minutes per calendar month worked, providing the employee has worked or been authorized leave with pay for at least ten working days in the month.

C. Eligible part-time employees shall accrue sick leave after 12 months of continuous service, prorated according to hours actually worked.

9.2 Maximum Accrual

The accrual of sick leave is unlimited.

9.3 Use

Sick leave shall be requested only for cases of actual personal sickness or disability or medical or dental treatment, except as noted in 9.8, 19.7 and 11.2.

Pay for approved sick leave shall be authorized until the employee's accumulated total of hours or shifts has been exhausted, at which time the employee shall receive no further pay for sick leave.

An employee shall have accumulated sick leave reduced by an amount equal to the number of hours of sick leave for which payment has been received.

9.4 Sick Leave Shall Not Be Used for Personal Business

Accumulated compensatory time, vacation or leave without pay must be used for all personal business conducted during the normal work hours, unless otherwise authorized by the City Manager or designee.

9.5 Notification of Supervisor

The employee requesting sick leave shall notify his or her supervisor or department manager prior to the time set for reporting to work. Sick leave with pay shall not be allowed unless the employee has met and complied with the provisions of the regulations, and the department manager and City Manager have approved such payment.

Childcare employees must inform their site coordinators or supervisors of illness at least one hour before their normal work schedule, and preferably the night before if the employee knows he or she will be ill the next day. If the site coordinator is not available, the employee must contact the Youth and Child Care Program Supervisor or the Recreation Director as outlined in staff policies and procedures.

All other employees must inform their supervisors of illness at least one hour before their normal work schedule in the manner prescribed by the Department Head.

9.6 Physician Statement

A. An employee who has been absent from work due to an illness for ~~three (3)~~^{two (2)} or more consecutive workdays the department manager or City Manager may require an employee to submit a written statement from the attending physician or dentist or from a physician or dentist retained by the City stating that the employee is or was unable to perform his or her duties. Where leave abuse or excess is suspected, the employee may be required to furnish a written statement from the attending physician or dentist or other agreed upon form of verification following any absence from work, when the employee has been given prior notice of excessive use of sick leave or the City can show cause to dispute the validity of the sick leave claim.

B. Prior to resumption of duties, the department manager or City Manager may require a written statement from the attending physician or dentist or from a City-retained physician or dentist to the effect that the employee may resume the full duties of his or her position.

9.7 Activity During Sick Leave

No employee who is absent from work on sick leave shall engage in any work or other activity which would interfere with that employee's ability to return to work and perform regular duties.

9.8 Family Sick Leave

Under Labor Code Section 233, employees may utilize accrued sick leave to care for an ill or injured child, spouse, or parent. The City has extended this provision to include domestic partners and their children. There is no requirement that the illness or injury reach the level of seriousness provided for under the Family and Medical Leave Acts (See City Administrative Policy and Procedure on Family and Medical Leave). However, if the illness or injury qualifies under the Family and Medical Leave Act, it also satisfies the "family sick leave" criteria. The maximum "family sick leave" allowed each calendar year that is subject to this provision is one-half (1/2) of the employee's annual accrual of sick leave. In cases where illness or injury has occurred involving someone other than the immediate family, as specified above, the department head shall make the decision as to the qualification for sick leave.

9.9 Accrued Sick Leave as Life Insurance

Upon the death of a represented employee, the value of the employee's accrued sick leave, calculated at the employee's hourly rate, shall be paid to the employee's estate or designated beneficiary.

9.10 Retirement Benefit

Upon retirement from City service, an employee shall be entitled to compensation for one-fourth of the accumulated sick leave on the books at the time of such retirement, with

a maximum payment equivalent to thirty (30) days sick leave pay.

This retirement sick leave pay off provision shall not apply to employees who elect the PERS service credit for unused sick leave option.

9.11 Depletion of Sick Leave Benefits - Medical Leave

In the event of continued illness after expiration of sick leave, absences may be charged to accrued compensatory time, if the employee so desires. The City may require the use of other discretionary accrued leave time in accordance with the administrative policy on Family and Medical Leave.

Upon depletion of accumulated sick leave, an employee may be granted a medical leave-of-absence without pay, subject to the provisions of the City's "Personnel Rules and Regulations" and Family Care and Medical Leave Policy.

If further medical leave is granted, the employee must notify the City of his or her health status every 30 days. If further leave is not granted, the employee's service with the City shall be considered terminated.

9.12 Catastrophic Leave

The City will provide catastrophic Leave in accordance with the City of El Cerrito's Administrative Policy/Procedure No. IIA13 titled Donation of Leave Time for Catastrophic Illness or Injury.

9.13 Accrual Statements - Sick and Vacation Leaves

The City will provide on each paycheck a statement of accumulated sick leave and vacation accrual.

ARTICLE X **Vacation**

10.1 Eligibility

Full-time and permanent part-time employees shall be eligible to take a paid vacation at current pay rate at the end of the first year of continuous service and annually thereafter.

Regular part-time employees shall be eligible to accrue vacation leave after 12 months of continuous service.

10.2 Accrual Rate

Vacation accrual for represented employees shall be as follows:

Service	Vacation Benefit Days	Hours (37.5-hour week)	Number of 8.3-hour Shifts
After 1 yr.	11	82.50	9.90
2	12	90.00	10.80

3	12	90.00	10.80
4	13	97.50	11.70
5	15	112.50	13.50
6	16	120.00	14.40
7	16	120.00	14.40
8	17	127.50	15.30
9	17	127.50	15.30
10	18	135.00	16.20
11	18	135.00	16.20
12	19	142.50	17.10
13	19	142.50	17.10
14	20	150.00	18.00
15	20	150.00	18.00
16	21	157.50	18.90
17	21	157.50	18.90
18	22	165.00	19.80
19	22	165.00	19.80
20	23	172.50	20.70
21	23	172.50	20.70
22	24	180.00	21.60
23	24	180.00	21.60
24	25	187.50	22.50
25	25	187.50	22.50
26	26	195.00	23.40
27	26	195.00	23.40
28	27	202.50	24.30
29	27	202.50	24.30
30	28	210.00	25.20
31	28	210.00	25.20
32	29	217.50	26.10
33	29	217.50	26.10
34	30	225.00	27.00
35	30	225.00	27.00
36	31	232.50	27.90
37	31	232.50	27.90
38	32	240.00	28.80
39	32	240.00	28.80
40	33	247.50	29.70

10.3 Basis for Accrual

Vacation leave will be accrued from the first day of employment when a regular employee is in a pay status and will be credited on a bi-weekly basis. Municipal holidays shall not be counted during vacation.

10.4 Scheduling

The scheduling of annual vacation leave and the amount to be taken at any one time shall be determined by the department manager and the employee's supervisor in accordance with departmental regulations and with regard for the preference of the employee and the needs of the City.

10.5 Vacation Cap and Implementation

A. Vacation Cap Effective January 1, 2015

~~Effective January 1, 2015, t~~The vacation cap shall be two (2) times the employee's annual vacation accrual rate. Thereafter, at any time an employee reaches the maximum accrual, the employee will cease accruing vacation hours until such time as the balance falls below the cap. ~~After January 1, 2015, n~~No employee will be allowed to accrue vacation hours above the cap.

B. Implementation (one time event only)

~~Effective January 1, 2015, any employee who has vacation hours in excess of two (2) times the annual accrual rate, the excess hours will be placed in a separate vacation bank.~~

C. Separate Vacation Bank

Effective January 1, 2015, any accrued vacation in excess of two (2) times the annual vacation accrual rate will be placed in a separate Vacation Bank for each affected employee. This will be a single, one time process. Employees shall be entitled to use or sell the hours in the Bank for vacation in the same manner as regular vacation hours. The hours shall be paid out at the employee's current rate of pay.

D. Vacation Cash-Out

~~Effective August 1, 2014, e~~Employees may annually cash-out up to 12 days (90 hours) of vacation provided that they have taken a minimum of 12 vacation days (90 hours) in the previous twelve month period and maintain a vacation balance of 20 hours at the time of vacation cash out. Employees may elect to cash-out a maximum of two (2) times annually and each cash-out request must be a minimum of 6 days (45 hours). Employees must reduce their separate vacation bank first when cashing out vacation. All requests must be in writing to the Human Resources Manager for initial review with final approval by the City Manager.

If an employee wants to request an irrevocable vacation cash-out, they must provide written notice to the Human Resources Manager, or designee, no later than December 15th of the calendar year before the calendar year in which the employee wishes to cash-out vacation leave. The amount requested cannot exceed the amount stated above. An employee can cash-out during the months of May and December. The notice shall indicate how many vacation leave hours the employee wishes to cash-out the following year.

10.6 Vacation at Termination

Employees leaving the municipal service with accrued vacation leave shall be paid the amount of accrued vacation to the date of termination. Payment for accrued vacation shall be at the employee's current rate of pay.

10.7 Effect of Extended Military Leave

An employee who interrupts his or her service because of extended military leave shall be compensated for accrued vacation at the time the military leave becomes effective.

10.8 Sick Leave During Vacation

Vacation leave may be converted to sick leave, subject to the review and approval of the department manager and the City Manager, if an employee is injured or sick during his or her vacation for a period in excess of 24 hours.

10.9 Permanent Part-Time and Regular Part-Time Accrual

Permanent part-time and regular part-time employees will earn prorated vacation leave benefits based upon the number of hours worked and applying that percentage to the rate listed on the above vacation schedule.

10.10 Service Credit for Vacation

Childcare coordinators and teachers covered by this agreement shall be credited with six (6) months of continuous service for every previous year of part-time work with the City. (This applies only to the employees who filled the positions of Child Care Site Coordinator and Child Care Teacher on July 1, 1989.)

ARTICLE XI **Other Absence**

11.1 Bereavement Leave

Employees are entitled to time off with pay when there is a death or anticipated death in the immediate family. Bereavement leave shall not exceed five (5) consecutive days when death is anticipated. Bereavement leave after death shall not exceed that period of time between death and the day of the funeral, providing the funeral is held within five days following death. Additional time may be granted and charged as sick leave when, in the opinion of the department manager, unusual circumstances identify the need for additional time off.

Immediate family is defined as spouse, domestic partner, child, parent, parent-in-law, sister, brother, sister-in-law, brother-in-law, grandparent, spouse's grandparent, grandchild, son-in-law, daughter-in-law, or any other relative of the employee or employee's spouse residing in the same household, or who has resided with the employee in the same household for three or more years. In cases where death has occurred involving someone other than the immediate family, the department manager shall make the decision as to qualification for bereavement leave.

11.2 Family and Medical Leave

Pursuant to State and Federal law, the City will provide family and medical care leave for eligible employees. The City Family Care and Medical Leave policy sets forth unit members' rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth in the City's policy are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA") and the regulations of the California State Pregnancy Disability Act and the California Fair Employment and Housing Commission implementing the California Family Rights

Act ("CFRA") (Government Code Section 12945.2). Unless otherwise provided by the City's policy or this Memorandum of Understanding, "Leave" under this article shall mean leave pursuant to the FMLA.

11.3 On-the-Job Injury

When an employee is off work as the result of a valid on-the-job injury, the City shall continue to pay the employee in the amount of his or her monthly rate at the time of injury for up to 90 calendar days.

11.4 Workers' Compensation - Disability Payments

An employee receiving disability payments under the Workers Compensation Laws may use accumulated sick leave and vacation leave in order to maintain his or her regular income. Under these circumstances, the employee shall be paid the difference between his or her full salary and the disability payments received. Such sick leave and vacation leave shall be drawn in proportion to the salary payments required to provide the employee with regular income.

ARTICLE XII

Work Schedule

12.1 Workweek

A. The normal workweek for represented employees is 37.5 hours. The workweek begins at 0001 hours (12:01 a.m.) on Sunday and ends at 2400 hours (12 p.m.) on Saturday unless declared otherwise. For those on the alternate schedule of a 9 day 75 hour per pay period, the workweek begins and concludes at the middle of the workday on Friday.

B. The normal workday for represented employees is 7.5 hours per day. Those on alternative work schedules may work different scheduled hours as determined per City operation.

C. Maintenance employees (Maintenance Services Leadworker, Maintenance Worker and Maintenance Worker - Entry) shall work a schedule of 75 hours over nine days every two weeks, with alternate Fridays off for individual employees while ensuring a minimum scheduled staffing of two persons on duty every Friday. The normal work hours shall be between 7:00 a.m. and 5:00 p.m.

D. Recycling employees shall work a 7.5 hour work day and a five (5) day work week. The start time for employees assigned to the route trucks shall be at 4:00 a.m. The driver assignment to route trucks shall be by bid. The most senior eligible employee shall bid first. The employee(s) not receiving a route shall have their primary duties as those associated with the recycling yard. Additionally, they will provide back up to route drivers in the route driver's absence. All employees receiving route driving assignments shall also be responsible to provide recycling yard coverage when needed.

E. Childcare Coordinators shall work a 37.5-hour workweek as scheduled by the City. Their normal workweek shall be Monday through Friday with a schedule of hours determined by the City.

Childcare Teachers' normal workweek shall be Monday through Friday. Their hours shall vary between 20 to 40 hours per week depending on the needs of the City.

F. All other represented employees shall work schedules as required by the City.

G. The alternative work schedule (9 day/75 hour per pay period) for City Administrative Offices and (4 day/37.5 hour workweek) for the Recreation Department went into effect September 9, 2001. These are options available for implementation in the recycling operation and other City functions.

As a result of the alternative work schedule program, city services will be available to the public during hours that offices were previously closed. For example, new public hours may incorporate earlier morning hours, lunch periods that are currently closed and/or later evening hours. Thus, the intent of the program is to expand public services. At the same time the alternative work schedule program will address the employees' desire for one or more days away from the work site each pay period without reducing the total number of work hours.

The actual work schedules for employees vary depending upon operational and individual requirements. However, all full-time employees will continue to be assigned 37 ½ hours in a workweek. Regular part-time employees will continue to work the same number of hours in a workweek as currently assigned.

The alternative work schedule program will be monitored closely and may be discontinued at any time by the City with fair notice to the Union, if the City determines that operational and/or public needs are not being met.

ARTICLE XIII

Compensation

13.1 Salaries for Represented Classifications

- Effective the first full pay period in September 2017~~after adoption of this agreement by the City Council~~, the City will increase the salary or wage ranges for all represented classifications by 3.54.0%.
- Effective the first full pay period in July 2018~~2015~~, the City will increase the salary or wages ranges for all represented classifications by 3.53.0%.
- Effective the first full pay period in July 2019~~2016~~, the City will increase the salary or wages ranges for all represented classifications by 3.53.0%.

13.2 Median Total Compensation Survey

When the City conducts its total compensation survey in preparation for negotiations for a successor MOU, the City will add 4.5% to the top step salary in the survey document for every City of El Cerrito classification in recognition of the implementation of the 2.7% @ 55 enhanced retirement formula.

13.3 Eligibility for Merit Increase Upon Appointment

Employees will be eligible for consideration of a merit increase after completing six (6) month of continuous service if originally appointed at the first step of the salary range. Employees will be eligible for consideration of a merit increase after completing the probationary period if initial appointment was at a step that was higher than the first step of the salary range.

13.4 Eligibility for Promotion - Maintenance Worker - Entry to Maintenance Worker

All Maintenance Workers - Entry who have successfully completed their top step shall be considered for promotion to Maintenance Worker, to the step that will provide a minimum 5% increase.

13.5 Merit Increases and Appointment Above First Step

The department manager may increase an employee's salary on the basis of merit within the range for that classification with the approval of the city manager or designee. An employee may be appointed above step A with the approval of the City Manager.

13.6 Employer-Paid Employee Contribution to Pension

~~Effective the first full pay period after adoption of this agreement by the City Council the~~
~~e~~Employees ~~will~~ contribute a total of 8.0% to the Public Employees Retirement System.

13.7 Longevity Bonus

Each December the City shall make longevity bonus payments to employees with 15 or more years of service with the City. The amount of the longevity bonus will be \$1,000 per year. Employees who work half-time or more are eligible for the longevity bonus payment, with the amount of the bonus being prorated based on the annual number of hours worked.

13.8 Bilingual/Notary Pay Differential

The City shall pay a \$50 per ~~pay period month~~-bilingual/notary pay differential to employees in positions designated for bilingual/notary pay by Human Resources based upon the operational needs of the City. Individuals eligible to receive bilingual pay may be required to pass an examination establishing their bilingual skill. The examination shall focus on the employee's ability to speak and comprehend the designated language. Individuals eligible to receive notary pay must be a commissioned Notary Public by the California Secretary State.

13.9 Standby Duty

Employees occupying the classification of Maintenance Worker Entry, Maintenance Worker, or Maintenance Services Lead Worker may be assigned to standby duty in order to respond to calls outside of regularly-scheduled hours. Employees assigned to standby duty shall receive two hours pay at their regular straight-time rate of pay or, at the employee's option, two hours of compensatory time off at the regular straight-time rate, for each standby assignment.

The City shall assign stand-by only duty to employees who reside within 20 miles of the

City.

13.10 Responsibilities

Employees assigned to standby duty shall be provided and shall carry a city-issued phone or pager at all times when on stand-by duty. The employee shall not travel an unreasonable distance from the City and shall not be under the influence of alcohol or any other substance that would impair his/her ability to respond to a call. The employee shall be provided a City vehicle for the duration of the said assignment, subject to administrative policy provisions regarding use of City vehicles.

ARTICLE XIV

Overtime

14.1 Overtime Policy - Definition

It is the policy of the City that overtime work is to be kept at a minimum consistent with the protection of the lives and property of El Cerrito citizens and the efficient operation of the departments and activities of the City. Overtime must be authorized by both the supervisor and department manager and is subject to such other rules and procedures as the City Manager may prescribe.

Overtime shall be defined as time worked beyond the hours worked in a normal workweek, as defined elsewhere in this Memorandum. Hours worked are defined as all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. Sick leave, vacation, holidays and other paid leave are considered to be part of the normal workweek and are included for purposes of calculating overtime compensation. Lunches and unpaid leave shall not be included as time worked. Overtime shall commence at the time an employee reaches the place where he or she is directed to report and shall continue until the employee is released or the work is completed, whichever is earlier. Refer to Article 8.3 for additional information and to Article 19 for over-time provision for part-time employees.

14.2 Minimum Call-Out Compensation

Employees who are called out to perform unscheduled work shall be compensated for a minimum of 2.5 hours at a rate of time and one-half.

14.3 Non-On-Call Overtime

Non-on-call overtime, or that overtime which represents a simple extension of the normal workday, is not subject to any minimum period for pay purposes. Compensation will be based on the nearest one-half hour; increments of time less or more than one-half hour will be rounded off.

14.4 Overtime Compensation

A. For hours worked in excess of the normal workweek, but not in excess of forty hours in a workweek, one of the following shall occur at the discretion of the department manager and in consultation with the employee:

1. Employee shall accrue compensatory time off on a time-and-one-half basis

(this will not count toward the FLSA compensatory time ceiling of 240 hours but will count toward the City's 40-hour compensatory time cap - see Section 14.5);
or

2. Overtime shall be paid at time-and-one-half the regular hourly rate of pay.

B. For hours worked in excess of forty in any workweek, one of the following shall occur at the discretion of the employee:

1. Employee shall accrue compensatory time off on a time-and-one-half basis (this will count toward the FLSA compensatory time ceiling of 240 hours as well as the City's 40-hour compensatory time cap - see Section 14.5);
or

2. Overtime shall be paid at time-and-one-half the regular hourly rate of pay.

14.5 Maximum Accumulation of Compensatory Time

Employees may not accrue more than 40.0 hours of compensatory time off without permission of the department manager. Time off for compensatory time must be approved by the department manager or designee.

14.6 Meal Allowance

A meal allowance of ten dollars shall be allowed employees for every four hours worked continuous to the normal work shift. For scheduled overtime, the employee shall be entitled to one meal allowance per eight-hour shift. A meal allowance of ten dollars shall be allowed childcare coordinators and teachers for every four hours of emergency duty worked continuous to the normal work shift.

14.7 Overtime Assignment

Scheduled and emergency overtime shall be assigned by the department manager or designee on a rotational, seniority basis without regard to the workweek under which any employee currently is working.

14.8 Unscheduled Overtime for Childcare Workers

Childcare workers shall receive a minimum of one-half (1/2) hour straight pay when required to remain on the job because a parent is late to pick up his or her child or children, for any period of time less than one-half hour. If the parent is later than one-half hour, the employee will be paid for another full half-hour at straight time, and so on in half hour increments.

14.9 Each employee who resigns or is terminated from the City shall be paid for all compensatory time that has been earned prior to resignation or termination.

ARTICLE XV

Working In Higher Classification

15.1 Out of Class Assignment Pay

An employee shall be entitled to receive five percent additional pay when working temporarily in a higher classification. Prior to an employee performing duties of a higher classification the department head must assign an employee in writing to perform the duties of the higher classification. ~~An maintenance or childcare employee must work in the higher classification a minimum of one full working day to become eligible; all other represented employees must work in the higher classification a minimum of three full working days to become eligible.~~ The department head shall approve all higher classification pay.

Once an employee meets the above stipulated eligibility periods the employee compensation shall begin the first day of the assignment.

If an employee is temporarily working in a higher classification for a period exceeding twelve consecutive months, the City and the Union shall meet regarding the status of the employee assigned to work in a higher classification.

ARTICLE XVI

Special Provisions -- Childcare Services

16.1 Staff to Child Ratio

The City will meet the California State Licensing requirement for staff to child ratio for all childcare facilities.

16.2 Educational Attainment for Childcare Aides

Childcare Aides who become certified by State Licensing as a teacher will be eligible to be moved to step E of the Aide scale. Aides who begin employment with State Certification as a Teacher will be eligible for step E. Childcare Aides who are at step E when they become licensed as Childcare Teachers will be eligible for a 5% above-classification hourly rate.

16.3 Developmentally Disabled Children - Childcare Services

The City will provide special training on paid work time to all childcare workers who may handle physically and developmentally disabled children. Special certification programs for staff will be reviewed and considered. Higher classification or premium pay for qualified staff working with disabled children will be considered. Staff will be informed of each child's special needs and paid time will be provided for employee review of medical or other records of disabled children in the program. Parent meetings involving affected staff will be arranged as needed.

ARTICLE XVII

Education Benefits

17.1 Tuition Refund Plan

When an employee enrolls in approved courses on employee's own time, the City will pay for books required on the course syllabus and for required school fees, such as tuition and registration fees, up to a maximum of \$500 per year for part-time employees and

\$1,000 for full-time employees. Mileage and optional fees shall not be refundable. Department manager verification of available budgeted funds and approval shall be obtained by the employee before registering for any course in order to be eligible for refund of required fees. Courses taken at any college, university, high school or business or technical school, or courses given by a recognized correspondence school, shall be approved when they are:

- Related to the employee's present position in the City.
- Related to the employee's potential development with the City.
- Part of a program leading to a degree relating to the employee's present position or potential for development.
- Required to obtain a high school diploma.

Any full-time or part-time employee who receives City-paid benefits may apply for such refund of required fees, pursuant to the rules and procedures established by the City Manager.

17.2 Federal and State Assistance

In the event an employee receives assistance under federal or state government legislation or other student aid programs for education charges for any approved course, only the difference between such assistance and the education charges an employee actually incurs may be refunded under this plan.

17.3 Failure to Complete Course or Termination of Employment

If an employee receives an advance refund for books and/or tuition and required fees and should that employee then fail to complete the course(s) satisfactorily, or should he or she terminate employment with the City before completing the course(s), the employee shall be required to return to the City such refunded tuition and required fees.

ARTICLE XVIII

Miscellaneous

18.1 Clothing - Childcare Workers

The City shall provide required clothing which identifies childcare workers as City employees, at no cost to the employee. Each worker will receive two t-shirts and two sweatshirts annually.

18.2 Protective Clothing

City employees shall be furnished the appropriate protective clothing for foul weather, for spraying weed spray, insecticide or substances, which have toxic effects on the skin, as determined by Management.

18.3 Safety Footwear/Specialty Work Glove Allowance

The City shall conform with applicable safety regulations provided by State law to insure reasonable safe working conditions for all employees. The Union agrees to encourage employees covered by this contract to report promptly any unsafe working conditions and equipment, and to wear at the direction of their supervisor, any and all safety clothing and/or equipment that the City either provides to the employee or for which the City reimburses the employee after purchase.

Each maintenance employee ~~in the maintenance unit (see Article 4.2)~~ or in any other position designated by management, who is required to wear safety footwear or specialty gloves, shall be reimbursed, upon purchase of such items, in an amount not to exceed \$200. Such reimbursement shall occur no more than once within any twelve consecutive month period. Eligible employees will receive reimbursement only after submittal of receipts or other appropriate verification of purchase. Safety footwear shall be defined as any supervisor approved footwear with a protective top. Employees must arrive to work in the safety footwear and continue to wear them throughout the day.

The City will provide, at its expense, regular work gloves to appropriate maintenance employees.

18.4 Assignment of Maintenance Employees to Work on Interchangeable Crews

In the event that staffing requirements for a given job exceed the crew's capability, employees may be assigned to work in the other crew. Supervisors shall ask for volunteers to perform such work. In the absence of any volunteers, supervisors shall make appropriate assignments.

18.5 Contracting Out

The City agrees to meet and confer prior to taking action on contracting out services in the event said contracting would result in a reduction in force or otherwise would affect existing wages or terms and conditions of employment of members of this unit.

18.6 Personnel Policies

Procedures governing the rights and obligations of General Employees are found in the City of El Cerrito Personnel Rules and Regulations.

18.7 Administrative Procedures

The City of El Cerrito administrative procedures manual addresses a variety of City-wide issues and advises employees how to proceed in these matters.

18.8 Transfer

A transfer is a change from one position to another with approximately the same (equal or lower) maximum salary which involves the performance of similar duties and which requires substantially the same basic qualifications. The City Manager shall have the power to order a transfer. Seniority shall apply to transfers; that is, a mandatory transfer shall first affect the least senior employee in a classification and last affect the most senior. Employees may request transfers and the City will make transfers and assignments based on seniority and qualifications. Seniority will be given consideration in voluntary

transfers; however, the appointing authority shall have the latitude to appoint or reject, giving consideration to previous work performance.

18.9 Meal Periods and Rest Periods

Employees shall be assigned to a one-half hour or one hour unpaid meal period each day within a two-hour period at the midpoint of each shift, and a 15 minute paid rest period during the first half of the work shift. In the event an employee does not receive a meal period or rest period and has gotten permission from his or her supervisor to miss a meal period or rest period, the employee shall be compensated at the overtime rate for said meal period or rest period, or shall be permitted equivalent straight time off the same day.

18.10 TB Tests and Flu Shots

The City shall pay the cost of TB tests and flu shots for represented employees. The City shall provide Hepatitis (B) shots to all legally mandated represented employees. .

18.11 Childcare Discount and Preferential Position on Waiting List

The City will provide represented employees with resident rate discounts on childcare and other recreation programs. Represented employees will receive preferential positions on waiting lists.

18.12 Adult Lap Swim Fee Waiver

To encourage physical fitness among employees, all represented employees shall receive free entrance to adult lap swimming.

18.13 Safety Committee Representation

The Union will provide up one to two representatives ~~to on~~ the City-wide Safety Committee. The representatives will be selected by the Union and the City will be notified of the selections.

18.14 Grooming

It is the Union's and the City's desire that all employees of the City of El Cerrito present a professional image to the community they serve. In this regard, all items of personal clothing/hygiene shall be maintained to such reasonable standards as may be established by the appropriate supervisor. At a minimum, items of personal clothing shall be kept clean and free of rips, tears, holes or other conditions that would detract from presenting the required professional image.

18.15 Nepotism

The City of El Cerrito is committed to fostering a professional work environment. Employees shall not be allowed to work in a position that would result in an employee directly supervising an immediate family member.

18.16 Promotions

Promotions within the bargaining unit represented by SEIU Local 1021 shall be done in accordance with the City of El Cerrito's Personnel Rules and Regulation 7.2 Promotion.

~~18.17 **Employee Discounts** — Effective prior to July 2015, the City will revise the Administrative Policy/Procedure regarding Employees and Recreation Services to reflect a City of El Cerrito employee rate for program services provided by the Recreation Department at the 75% of the resident rate.~~

ARTICLE XIX

Part-Time Employees

19.1 Definition - Permanent Part-Time

Employees may work less than full-time but will receive benefits based on 75% of a full-time employee's benefits, except for medical and dental insurance, which the City shall provide the same as for full-time employees. Positions in these classifications shall be filled through a competitive selection process. Qualified candidates will be placed on an eligibility list for appointment to vacancies. Employees must complete a one-year probationary period. Previous time in service may be credited toward the probationary period with approval of the department manager and City Manager, and may count as service credit toward vacation leave accrual.

19.2 Compensation

Compensation for part-time employees is covered by Section 13.1 of this Memorandum.

19.3 Merit Increases

Part-time employees are eligible for merit increases annually (until they reach top step) if they obtain satisfactory performance evaluations from their supervisors, approval by the department manager and a recommendation for a salary increase.

19.4 Retirement

~~Effective the first full pay period after adoption of this agreement by the City Council~~
Employees covered by the Public Employees Retirement System (PERS) will contribute a total of 8.0%.

19.5 Flexible Benefits

Permanent part-time employees shall receive a contribution for flexible benefits as described in Article VII of this Memorandum. This includes medical coverage cost at the applicable rate and the cost of dental coverage.

Permanent part-time employees, who meet the eligibility requirements of the Affordable Care Act as defined by the City, shall receive a contribution for flexible benefits as described in Article VII of this Memorandum. This includes medical coverage cost at the applicable rate and the cost of dental coverage.

19.6 Life Insurance

The City will provide a term life insurance policy as described in Section 7.6 of this Memorandum.

19.7 Sick Leave and Family Sick Leave

Permanent part-time employees shall receive 6.5 hours sick leave per calendar month.

Employees may use one-half (1/2) of their annual accrual of sick leave per calendar year for "family sick" purposes as defined in Section 9.8.

19.8 Vacation Leave

Part-time employees shall earn vacation leave at 75% of the rate listed in Article X of this Memorandum. These employees shall be credited with six (6) months of continuous service for every previous year of part-time year-round work with the city.

19.9 Overtime

All part-time childcare workers are provided overtime in accordance with Section 14.8

19.10 Appeal Procedures – Part-time Employees

Part-time employees who have continuous employment for a minimum of 12 months shall have the right to appeal disciplinary actions to the City Manager. The employee first must appeal to the appropriate supervisor through the chain of command in the department. If the matter is not resolved to the satisfaction of the employee, it may be appealed to the City Manager or a designee. Part-time employees with less than 12 months service are considered to have no appeal rights.

19.11 Miscellaneous

Other provisions of this Memorandum will apply to part-time employees where practicable and within the limitations of City policies and regulations.

ARTICLE XX

Termination of Employment/Layoff Procedures

20.1 Resignation

An employee wishing to leave the service of the City in good standing by resignation shall file with the appointing authority a written resignation stating the effective date and reasons for leaving at least two weeks prior to leaving, unless such time limit is waived by the department manager. Failure to do so may be cause for denying future employment with the City.

20.2 Resignation Reappointment

A regular employee who has resigned from the City service in good standing may be considered, upon written request, for reappointment to a position in the same or similar class within one year of such resignation. Reappointment may be made without benefit of additional examination and may take precedence over eligible lists. Appointment otherwise shall be made in the manner as for original employment.

A reappointed employee shall be considered a new employee and shall have no vested interest in nor entitlement to any benefits accrued during any previous employment with the city, except those benefits expressly provided by the Public Employees Retirement System.

20.3 Layoff

Employees may be separated from employment for an indefinite period of time due to lack of work, lack of funds or abolition of position(s). Such action is designated as a layoff and shall entitle the laid off employee to be placed on a reemployment list for his or her position classification. Layoff shall be governed by seniority in classification; that is, an employee being laid off shall be that employee with the lowest seniority in the classification involved. Re-employment from layoffs shall be in the reverse order from which the layoffs occurred.

Any position may be abolished by the City Council. Should such an abolished position be reinstated or any position involving substantially the same duties be created within two years, the laid-off employee shall be entitled to reemployment.

If there is a class of positions of a lower rank and in the same promotional line as the class of positions from which the layoff is made, the City Manager shall demote the employee scheduled for layoff to a position in such lower ranking class. The employee with the lowest seniority occupying such lower ranking class may in turn be laid off. Questions concerning the promotional line for a particular job class will be reviewed and a final decision made by the [Human Resources Manager](#)~~Employee Services Manager~~.

If two or more employees in the same classification from which layoff is to be made have the same seniority date, such employees may be laid off on the basis of the last performance evaluation rating in that class, providing that evaluation is no more than twelve (12) months old.

At the direction of the City Manager, an employee subject to layoff may be transferred to an existing vacant position within the City if that position is at substantially the same level as the position from which the employee is being laid off. The employee's salary would be adjusted to the new classification, and the salary step would be the same as in the former classification.

20.4 Layoff - Exempt Personnel

Exempt personnel who were promoted from a nonexempt classification shall have the right to revert to the nonexempt classification held prior to promotion.

20.5 Layoff Procedure

In the event of layoff, departmental seniority shall be first controlling, in inverse order.

Thereafter, an employee may revert to any position or classification previously held by utilization of City service seniority. There shall be no barrier to reverting to a position previously held in another department under this section of the provisions.

If an employee has held no previous position with the City, the employee shall utilize City service seniority and demote to any position or classification within the employee's department for which he or she is qualified. The final decision as to whether an employee is qualified will be made by the [Human Resources Manager](#)~~employee services manager~~.

No employee holding a permanent appointment in the class from which layoff is to be made shall be laid off unless all provisional, probationary, part-time or intermittent employees in that class have first been terminated.

Employees with permanent status and employees with probationary status who are laid off shall be placed on appropriate reemployment lists in the order of total cumulative time in City service. Such reemployment lists resultant from layoff shall take precedence over any other reemployment or reinstatement lists and shall be in effect for a period of two years from date of layoff.

20.6 Layoff Notice

Regular employees scheduled for layoff shall be notified in writing by the department manager with the approval of the City Manager at least thirty (30) days prior to the date of layoff.

20.7 Layoff - Sick Leave Benefits

In the event of a layoff, represented employees may elect to receive compensation for one-fourth of the accumulated sick leave on the books at the date of layoff, with a maximum payment equivalent to twenty-five days sick leave pay. Such payment shall result in a loss of all accumulated sick leave for employees reinstated after layoff.

20.8 Layoff Reinstatement

Regular employees who have been laid off shall be entitled to reinstatement to positions in the same classification when such positions are to be refilled during the period of their eligibility on the layoff list. Any employee so reinstated shall retain all benefits accrued in prior service with the City.

ARTICLE XXI

Grievance Procedure

21.1 Definitions

A. Grievance: A grievance may be filed regarding an alleged violation, misinterpretation or misapplication of a specific written provision of Title 3 (Personnel) of the El Cerrito Municipal Code, City personnel rules and regulations, or any written agreement or understanding between the city and an employee organization.

Complaints concerning disciplinary actions are processed through the disciplinary appeals procedures described in Chapter 13 of the City's Personnel Rules and Regulations. An employee may not utilize both the grievance and disciplinary appeals procedure for a single action or event. The appropriate procedure should be employed.

B. Grievant: A grievant is an employee or group of employees adversely affected by acts or omissions of the employer.

Step 1 - Informal Discussion. An employee who has a problem should try first to settle it through informal discussion with his or her immediate supervisor. The

employee or employee's representative must bring the complaint to the supervisor within ten (10) business days of the occurrence, or such time as the employee could have reasonably been aware of the occurrence. Failure to bring the matter to the supervisor's attention within ten (10) business days will be deemed a waiver by the employee of his or her right to submit a grievance.

The supervisor must respond to the employee (or representative) within ten (10) business days from the date the complaint was submitted.

If an action of the immediate supervisor is being grieved and it is inappropriate for that supervisor to hear the grievance, it may be brought to the appropriate supervisor at the next level.

Step 2 - Department Head Review. Within ten (10) business days or thirty (30) calendar days after the employee(s) could have reasonably been aware of the occurrence, whichever occurs earlier, the employee(s) or the Union may submit a written grievance to the department head. If the grievance is not filed within the time frames above the grievance shall be considered invalid. The written grievance will contain the following:

- a. Name of the employee(s) impacted
- b. A clear statement of the nature of the grievance
- c. The specific MOU Section, written agreement between the City and SEIU, City Personnel Rule or Regulation or Title 3 of the City Municipal Code allegedly violated, misinterpreted or misapplied.
- d. The specific act or omission which gave rise to this alleged violation, misinterpretation or misapplication.
- e. The date or dates on which the violation, misinterpretation or misapplication occurred.
- f.. What documents, witnesses or other evidence support the employee's position.
- g.. The date the informal discussion was held on. Who submitted the response and the date of the response (if any).
- h.. The remedy requested.
- i. The signature of the employee(s) or Union representative, if the Union is filing the grievance.

A copy of the grievance will be filed with the personnel officer. The department head may confer with the employee and must respond in writing to the employee

within fifteen (15) calendar days of receipt of the grievance, unless the employee filing the grievance agrees to extend this response period.

If the employee(s) or the Union does not receive a response to the grievance in the stipulate time frame, the employee(s) or Union has the right to advance the grievance to Human Resource Manager or his/her designee.

Step 3 - Human Resource Manager Review. If the grievance is not resolved to the satisfaction of the employee the grievance and the department head's response to the grievance shall be submitted by the employee to the Human Resource Manager for review within ten (10) business days.

The Human Resources Manager or his/her designee may meet with any or all of the parties involved in the grievance and request any additional information or documentation required to render a fair and impartial decision. The Human Resources Manager's decision shall be communicated to the grievant and the department head within fifteen (15) business days of meeting with the employee(s)/Union or the receipt of the grievance and the department head's response.

Step 4 - Acceptance of Human Resources Manager Decision or Appeal to Civil Service Commission. The grievant may accept the Human Resources Manager's decision or appeal it through the personnel officer to the Civil Service Commission within ten (10) business days of its issuance.

Step 5 - Civil Service Commission Hearing. In hearing a grievance, the Civil Service Commission will receive and investigate the evidence and will make written findings and a written decision. Hearings of the commission will be informal in nature and, so long as due process is observed, the judicial rules of evidence need not be applied. The Civil Service Commission may be advised by the city attorney or other counsel provided by the city. The chairman of the commission will have full authority at all times to maintain orderly procedure. Civil Service Commission hearings will be public unless appellant is otherwise entitled under law to a private hearing and makes a written request for a private hearing.

Step 6 - City Council Decision. The City Council will review the findings and decision of the Civil Service Commission within thirty (30) calendar days of issuance. The City Council will make the final decision regarding the grievance. The decision of the City Council will be final and binding on all parties. The City Council need not hear additional evidence. If, however, the City Council decides to reject or modify the decision of the Civil Service Commission, it will review the entire record of testimony and related evidence. The City Council also may seek whatever additional information it may need to reach a fair decision.

21.2 General Provisions

- a. Time limits may be extended by mutual consent. The party initially requesting an extension must confirm the extension in writing.
- b. An aggrieved employee may be represented by any person or organization of his choice at any stage of these proceedings. This representative is entitled to be present at all meetings and hearings at which the employee is entitled to be present.
- c. Failure on the part of the city or grievant to appear in any case before the Civil Service Commission, without good cause, will result in forfeiture of the case and responsibility for payment of all direct costs incurred in providing for the hearing.
- d. Notice of time and place set for hearing(s) will be mailed or otherwise promptly furnished to the appellant and his or her designated representative. Such notice shall be addressed to the appellant at his or her last known post office address and sent by registered mail at least five (5) calendar days prior to the hearing.

ARTICLE XXII

Disciplinary Guidelines and Appeal Procedure

The City's "Disciplinary Guidelines and Appeal Procedure," as contained in Chapter 13 of the "Personnel Rules and Regulations," is incorporated by reference to be a part of this Agreement.

Appeal procedures for part-time employees are specified in Section 19.10.

ARTICLE XXIII

Separability

23.1 Separability

Should any section, clause or provision of this Memorandum of Understanding be declared illegal by final judgment of a court of competent jurisdiction, such invalidation of such section, clause or provision shall not invalidate the remaining portions thereof, and such remaining portions shall remain in full force and effect for the duration of this Memorandum of Understanding.

Upon such invalidation, the parties agree immediately to meet and confer on substitute provisions for such parts or provisions rendered or declared illegal or an unfair labor practice.

Approved and Accepted

For the City of El Cerrito

For SEIU Local 1021

Date:

Date:



AGENDA BILL

Agenda Item No. 7(B)

Date: November 7, 2017
To: El Cerrito City Council
From: Scott Hanin, City Manager *SH*
Sky Woodruff, City Attorney
Subject: Charter City Discussion and Possible Direction

ACTION REQUESTED

Adopt a resolution creating the El Cerrito Charter Committee to prepare a recommended charter for the City and directing the City Manager and City Attorney to work with the Charter Review Committee.

DISCUSSION

Recently, the issue of El Cerrito becoming a Charter City had been brought up both by Council Member Lyman during the Strategic Planning Session and in the City's adopted Affordable Housing Strategy as something that should be considered this fiscal year as part of a long-term funding strategy for the City's many services and facility's needs. The City Council received a presentation about becoming a Charter City in 2011 but decided not to proceed at that time.

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, affordable housing, library, public safety building, senior center, CalPERS). General law cities split the "Documentary Transfer Tax" with the county (each receives 55¢ for each \$500 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.
 - Neighboring charter cities maintain a Real Property Transfer Tax (RPTT) with a median rate of \$12 per \$1,000 of the purchase price.
 - EC had an RPTT, which was repealed as a general law city
 - RPTT would generate ~ \$2-3 million annually
 - Traditionally split between buyer and seller
 - A portion could be rebated for seismic and conservation upgrades

- 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 US and California Constitutions and with the charter.

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.
- Scope of authority related to taxes and assessments.

Agenda Item No. 7(B)

Potentially, the biggest impact for the City would be the revenue associated with the implementation of a Real Property Transfer Tax.

- El Cerrito had a RPTT until 2003 when repealed because of changes in law.
- Rate was set at \$7.00 per \$1,000 of sale price.
- In FY2003, RPPT generated \$1.2m in revenue.
- In FY 2016, RPPT would have brought in approximately \$1.7 million.
- If set at \$12.00 per \$1,000 of sale price, approximately \$2.7 million generated.

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

- General Tax that could be used for operations, reserves or debt service.
- There has been no noticeable impact on home prices in neighboring communities.

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 creating a committee to prepare a charter to propose to City voters, the City Council should provide some direction to the committee regarding components that the charter should include. Staff recommends that the Council direct the Charter 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 City will in particular follow California law regarding the payment of prevailing wages for public works project and collective bargaining with represented employee groups; and that the charter should authorize the City to consider the use of all available tools for generating revenue, including but not limited to a real property transfer tax.

Staff also suggests that the Charter Committee consist of two members of the City Council (Lyman and Fadelli), a member of the Financial Advisory Board, an active participant in the El Cerrito real estate community, a representative of local labor groups, and two members of the public. The members of the public could be residents or owners of businesses in El Cerrito or a combination of the two.

STRATEGIC PLAN CONSIDERATIONS

Implementing a City Charter could ultimately provide for more Financial Stability which is one of the primary Strategic Plan goals.

ENVIRONMENTAL CONSIDERATIONS

This proposed action will not result in a project as defined by the California Environmental Quality Act, (CEQA). No further environmental review is needed.

FINANCIAL CONSIDERATIONS

Should the City Council ultimately decide to go forward with a Charter City process, staff estimates that the cost will range between \$90,000-\$110,000 to cover the cost of data collection surveys, public information and the election itself. The election is the largest unknown as costs will depend on the overall election day ballot costs.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the attached resolution and will participate throughout the proposed process and lead in the development of any documents necessary for the process.

Attachment:

1. Presentation
2. Comparison
3. Overview
4. Resolution

Should El Cerrito Become a Charter City?

El Cerrito City Council
November 7, 2017



Overview

- Authority in General Law City vs. Charter City
- Understanding Home Rule
- Municipal Affairs
- Statewide Concerns
- Benefits and Detriments of Becoming a Charter City
- Real Property Transfer Tax
- Questions and Discussion
- Direction

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

- 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
- At all times, the City is subject to the U.S. Constitution, federal laws, the California Constitution, and state laws regarding matters of statewide concern
- The decision to become a charter city relates to what legislative body makes decisions regarding municipal affairs: the State Legislature or the City Council

What is a “Municipal Affair”?

- Term is undefined
- Legislature may not determine what is a municipal affair nor transform a municipal affair into a matter of statewide concern
- Courts decide on a case-by-case basis
- This concept is fluid and changes over time

Municipal Affairs Regarding Elections

- Conduct of city elections and election procedures
- City council member qualifications
- Criteria for vacating and terminating city offices
- City funding of public officers and candidates' campaigns
- However, restricted by constitutional reservations of power, such as the right to vote and powers of initiative/referendum

Municipal Affairs Regarding Finance

- Taxes for municipal purposes, e.g. payroll tax on local businesses and occupations, a property transfer tax
- All new taxes (including in charter cities) must be subjected to voter approval, pursuant to the California Constitution

Municipal Affairs: Planning and Land Use

- Some aspects of planning and land use are municipal affairs, so:
 - Zoning need not be consistent with General Plan (allows for faster changes)
 - State limits on the number of annual General Plan amendments don't apply
 - State rules for specific plans don't apply
- However, many State laws apply, and the State continues to look at ways to control local land use

Planning & Land Use: Matters of Statewide Concern—Charter Cities Must Comply

- General Plan's mandatory elements
- Zoning hearing procedures
- Requirements for low and moderate income housing within special zones
- Time limitations
- Standards for approving housing developments
- Density bonuses/zoning restrictions (e.g., parking)
- Permit Streamlining Act
- Interim zoning ordinance limits and procedures
- Subdivision Map Act
- CEQA

Municipal Affair: Public Contracts/Prevailing Wages

- Design-build construction contracts
- Public Contract Code, including bidding:
 - City must expressly exempt itself by ordinance or charter provision
 - Prevailing Wages
- City must pay prevailing wages on federal and state funded-contracts

Municipal Affairs regarding Employment and Compensation

- Appointment, qualifications, compensation and removal of city employees
- Council members' salaries, expense reimbursements, and benefits

How long is a charter?

- Historically, a charter granted authority (the details of which needed to be listed in the charter) whereas now, a charter grants all authority unless it limits the city's powers (thus, there is a recent trend towards brevity)
- Similar to the U.S. Constitution, a charter is not a document that is designed to address every issue
- Allows the Council and residents to focus on each particular issue at a time
- Municipal Code would be maintained

Advantages to Chartering

- Could allow additional revenue measure for operations or capital projects (e.g., affordable housing, library, public safety building, senior center, CalPERS)
 - Neighboring charter cities maintain a Real Property Transfer Tax (RPTT)
 - EC had an RPTT until recently – repealed as a general law city
 - RPTT would generate ~ \$2-3 million annually
 - Traditionally split between buyer and seller
 - A portion could be rebated for seismic and conservation upgrades
- More flexibility in elections
- May provide more local control

Disadvantages to Chartering

- Transition period
- Legal challenges
- Limited case law
- Charter amendments require vote
- May be divisive in community
- Municipal affairs may erode over time due to state legislation and subsequent judicial review
- Charter cities have not been spared State revenue takeaways

California Charter Cities

Currently 121 Charter Cities

361 General Law Cities

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

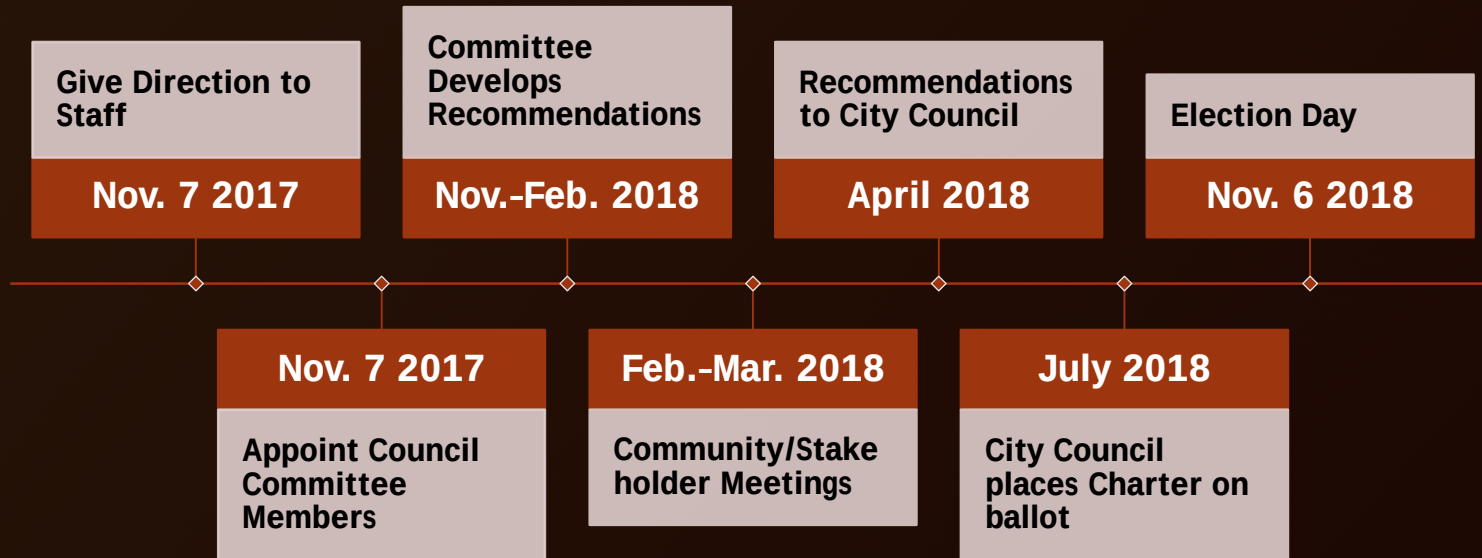
Real Property Transfer Taxes

- El Cerrito had a RPTT until 2003 when repealed
- 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
- General Tax that could be used for operations, reserves or debt service
- No noticeable impact on home prices

Neighboring RPTT Rates:

	<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 Timeline



City Council / Statutory Process

- Committee must complete draft charter by April 2018
- Before putting charter on ballot Council must hold two public hearings
- Hearings must be at least 30 days apart
- 21 days' notice of hearings required
- Can't put charter on ballot until at least 21 days after second public hearing

Preliminary cost estimates

Survey
Research

\$30,000

Public
Information

\$20,000

Election

\$40-\$60,000

TOTAL

\$90-110,000

Charter Review Committee

- Is necessary in order to develop new charter
- Can be commission appointed by city council
- Could be a commission consisting of City Council Members and others appointed by City Council

Charter Development Process

- Charter can be proposed by elected commission or by City Council on its own motion
- Council-proposed charter can be prepared by an appointed committee
- The committee can consist of only Councilmembers or only members of the public appointed by Council or a combination of the two

Items for City Council Consideration

Timing

Length of Charter

Type of Charter
Committee

Make Up of
Committee

Inclusion of
Proactive Statement
on contracts, wages
and labor

Real Property
Transfer Tax

Timing

- Begin Charter Process Immediately

Length of Charter

- Brief – Maintain Municipal Code

Type of Charter Committee

- Appointed committee of Councilmembers and public

Make Up of Committee

- Lyman & Fadelli (not in an election race)
- FAB member, 1 real estate, 1 union and 2 public

Inclusion of Proactive Statement on contracts, wages and labor

- Include in New Charter and Possibly Ballot Question

Real Property Transfer Tax

- Include as part of New Charter AND Ballot Question

Staff Recommendations

Options for next steps

1

Defer any action on the charter until a later date. No further action is necessary at this time.

2

Direct a process for charter implementation with the goal of placing a charter on the ballot in November 2018.
Fadelli, Lyman work with Staff

3

Other?

General Law City v. Charter City

Characteristic	General Law City	Charter City
Ability to Govern Municipal Affairs	Bound by the state's general law, regardless of whether the subject concerns a municipal affair.	Has supreme authority over "municipal affairs." Cal. Const. art. XI, § 5(b).
Form of Government	State law describes the city's form of government. For example, Government Code section 36501 authorizes general law cities be governed by a city council of five members, a city clerk, a city treasurer, a police chief, a fire chief and any subordinate officers or employees as required by law. City electors may adopt ordinance which provides for a different number of council members. Cal. Gov't section 34871. The Government Code also authorizes the "city manager" form of government. Cal. Gov't Code § 34851.	Charter can provide for any form of government including the "strong mayor," and "city manager" forms. See Cal. Const. art. XI, § 5(b); Cal. Gov't Code § 34450 <i>et seq.</i>
Elections Generally	Municipal elections conducted in accordance with the California Elections Code. Cal. Elec. Code §§ 10101 <i>et seq.</i>	Not bound by the California Elections Code. May establish own election dates, rules, and procedures. See Cal. Const. art. XI, § 5(b); Cal. Elec. Code §§ 10101 <i>et seq.</i>
Methods of Elections	Generally holds at-large elections whereby voters vote for any candidate on the ballot. Cities may also choose to elect the city council "by" or "from" districts, so long as the election system has been established by ordinance and approved by the voters. Cal. Gov't Code § 34871. Mayor may be elected by the city council or by vote of the people. Cal. Gov't Code §§ 34902.	May establish procedures for selecting officers. May hold at-large or district elections. See Cal. Const. art. XI, § 5(b).
City Council Member Qualifications	Minimum qualifications are: 1. United States citizen 2. At least 18 years old 3. Registered voter 4. Resident of the city at least 15 days prior to the election and throughout his or her term 5. If elected by or from a district, be a resident of the geographical area comprising the district from which he or she is elected. Cal. Elec. Code § 321; Cal. Gov't Code §§ 34882, 36502; 87 Cal. Op. Att'y Gen. 30 (2004).	Can establish own criteria for city office provided it does not violate the U.S. Constitution. Cal. Const. art. XI, § 5(b), 82 Cal. Op. Att'y Gen. 6, 8 (1999).

Characteristic	General Law City	Charter City
Public Funds for Candidate in Municipal Elections	No public officer shall expend and no candidate shall accept public money for the purpose of seeking elected office. Cal. Gov't Code § 85300.	Public financing of election campaigns is lawful. <i>Johnson v. Bradley</i> , 4 Cal. 4th 389 (1992).
Term Limits	May provide for term limits. Cal. Gov't Code § 36502(b).	May provide for term limits. Cal. Const. art. XI, § 5(b); Cal Gov't Code Section 36502 (b).
Vacancies and Termination of Office	An office becomes vacant in several instances including death, resignation, removal for failure to perform official duties, electorate irregularities, absence from meetings without permission, and upon non-residency. Cal. Gov't Code §§ 1770, 36502, 36513.	May establish criteria for vacating and terminating city offices so long as it does not violate the state and federal constitutions. Cal. Const. art. XI, § 5(b).
Council Member Compensation and Expense Reimbursement	Salary-ceiling is set by city population and salary increases set by state law except for compensation established by city electors. See Cal. Gov't Code § 36516. If a city provides any type of compensation or payment of expenses to council members, then all council members are required to have two hours of ethics training. See Cal. Gov't Code §§ 53234 - 53235.	May establish council members' salaries. See Cal. Const. art. XI, § 5(b). If a city provides any type of compensation or payment of expenses to council members, then all council members are required to have two hours of ethics training. See Cal. Gov't Code §§ 53234 - 53235.
Legislative Authority	Ordinances may not be passed within five days of introduction unless they are urgency ordinances. Cal. Gov't Code § 36934. Ordinances may only be passed at a regular meeting, and must be read in full at time of introduction and passage except when, after reading the title, further reading is waived. Cal. Gov't Code § 36934.	May establish procedures for enacting local ordinances. <i>Brougher v. Bd. of Public Works</i> , 205 Cal. 426 (1928).
Resolutions	May establish rules regarding the procedures for adopting, amending or repealing resolutions.	May establish procedures for adopting, amending or repealing resolutions. <i>Brougher v. Bd. of Public Works</i> , 205 Cal. 426 (1928).
Quorum and Voting Requirements	A majority of the city council constitutes a quorum for transaction of business. Cal. Gov't Code § 36810. All ordinances, resolutions, and orders for the payment of money require a recorded majority vote of the total membership of the city council. Cal. Gov't Code § 36936. Specific legislation requires supermajority votes for certain actions.	May establish own procedures and quorum requirements. However, certain legislation requiring supermajority votes is applicable to charter cities. For example, see California Code of Civil Procedure section 1245.240 requiring a vote of two-thirds of all the members of the governing body unless a greater vote is required by charter.

Characteristic	General Law City	Charter City
Rules Governing Procedure and Decorum	Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a). Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 <i>et seq.</i>.	Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a). Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 <i>et seq.</i>. May provide provisions related to ethics, conflicts, campaign financing and incompatibility of office.
Personnel Matters	May establish standards, requirements and procedures for hiring personnel consistent with Government Code requirements. May have "civil service" system, which includes comprehensive procedures for recruitment, hiring, testing and promotion. See Cal. Gov't Code § 45000 <i>et seq.</i> Meyers-Milias-Brown Act applies. Cal. Gov't Code § 3500. Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, § 10(b).	May establish standards, requirements, and procedures, including compensation, terms and conditions of employment for personnel. See Cal. Const. art. XI, § 5(b). Meyers-Milias-Brown Act applies. Cal. Gov't Code § 3500. Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, section 10(b).
Contracting Services	Authority to enter into contracts to carry out necessary functions, including those expressly granted and those implied by necessity. See Cal. Gov't Code § 37103; <i>Carruth v. City of Madera</i>, 233 Cal. App. 2d 688 (1965).	Full authority to contract consistent with charter. May transfer some of its functions to the county including tax collection, assessment collection and sale of property for non-payment of taxes and assessments. Cal. Gov't Code §§ 51330, 51334, 51335.

Characteristic	General Law City	Charter City
Public Contracts	Competitive bidding required for public works contracts over \$5,000. Cal. Pub. Cont. Code § 20162. Such contracts must be awarded to the lowest responsible bidder. Pub. Cont. Code § 20162. If city elects subject itself to uniform construction accounting procedures, less formal procedures may be available for contracts less than \$100,000. See Cal. Pub. Cont. Code §§ 22000, 22032. Contracts for professional services such as private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms need not be competitively bid, but must be awarded on basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of services. Cal. Gov't Code § 4526.	Not required to comply with bidding statutes provided the city charter or a city ordinance exempts the city from such statutes, and the subject matter of the bid constitutes a municipal affair. Pub. Cont. Code § 1100.7; <i>see R & A Vending Services, Inc. v. City of Los Angeles</i>, 172 Cal. App. 3d 1188 (1985); <i>Howard Contracting, Inc. v. G.A. MacDonald Constr. Co.</i>, 71 Cal. App. 4th 38 (1998).
Payment of Prevailing Wages	In general, prevailing wages must be paid on public works projects over \$1,000. Cal. Lab. Code § 1771. Higher thresholds apply (\$15,000 or \$25,000) if the public entity has adopted a special labor compliance program. See Cal. Labor Code § 1771.5(a)-(c).	Historically, charter cities have not been bound by state law prevailing-wage requirements so long as the project is a municipal affair, and not one funded by state or federal grants. <i>Vial v. City of San Diego</i>, 122 Cal. App. 3d 346, 348 (1981). However, there is a growing trend on the part of the courts and the Legislature to expand the applicability of prevailing wages to charter cities under an analysis that argues that the payment of prevailing wages is a matter of statewide concern. The California Supreme Court declined an opportunity to resolve the issue. <i>See City of Long Beach v. Dept. of Indus. Relations</i>, 34 Cal. 4th 942 (2004).

Characteristic	General Law City	Charter City
Finance and Taxing Power	May impose the same kinds of taxes and assessment as charter cities. See Cal. Gov't Code § 37100.5. Imposition of taxes and assessments subject to Proposition 218. Cal. Const. art. XIII C. Examples of common forms used in assessment district financing include: • Improvement Act of 1911. Cal. Sts. & High. Code § 22500 <i>et seq.</i>. • Municipal Improvement Act of 1913. See Cal. Sts. & High. Code §§ 10000 <i>et seq.</i>. • Improvement Bond Act of 1915. Cal. Sts. & High. Code §§ 8500 <i>et seq.</i>. • Landscaping and Lighting Act of 1972. Cal. Sts. & High. Code §§ 22500 <i>et seq.</i>. • Benefit Assessment Act of 1982. Cal. Gov't Code §§ 54703 <i>et seq.</i>. May impose business license taxes for regulatory purposes, revenue purposes, or both. See Cal. Gov't Code § 37101. May not impose real property transfer tax. See Cal. Const. art. XIII A, § 4; Cal. Gov't Code § 53725; <i>but see</i> authority to impose documentary transfer taxes under certain circumstances. Cal. Rev. & Tax. Code § 11911(a), (c).	Have the power to tax. Have broader assessment powers than a general law city, as well as taxation power as determined on a case-by case basis. Imposition of taxes and assessments subject to Proposition 218, Cal. Const. art. XIII C, § 2, and own charter limitations May proceed under a general assessment law, or enact local assessment laws and then elect to proceed under the local law. See <i>J.W. Jones Companies v. City of San Diego</i>, 157 Cal. App. 3d 745 (1984). May impose business license taxes for any purpose unless limited by state or federal constitutions, or city charter. See Cal. Const. art. XI, § 5. May impose real property transfer tax; does not violate either Cal. Const art. XIII A or California Government Code section 53725. See <i>Cohn v. City of Oakland</i>, 223 Cal. App. 3d 261 (1990); <i>Fielder v. City of Los Angeles</i>, 14 Cal. App. 4th 137 (1993).
Streets & Sidewalks	State has preempted entire field of traffic control. Cal. Veh. Code § 21.	State has preempted entire field of traffic control. Cal. Veh. Code § 21.
Penalties & Cost Recovery	May impose fines, penalties and forfeitures, with a fine not exceeding \$1,000. Cal. Gov't Code § 36901.	May enact ordinances providing for various penalties so long as such penalties do not exceed any maximum limits set by the charter. <i>County of Los Angeles v. City of Los Angeles</i> , 219 Cal. App. 2d 838, 844 (1963).

Characteristic	General Law City	Charter City
Public Utilities/Franchises	May establish, purchase, and operate public works to furnish its inhabitants with electric power. See Cal. Const. art. XI, § 9(a); Cal. Gov't Code § 39732; Cal. Pub. Util. Code § 10002. May grant franchises to persons or corporations seeking to furnish light, water, power, heat, transportation or communication services in the city to allow use of city streets for such purposes. The grant of franchises can be done through a bidding process, under the Broughton Act, Cal. Pub. Util. Code §§ 6001-6092, or without a bidding process under the Franchise Act of 1937, Cal. Pub. Util. Code §§ 6201-6302.	May establish, purchase, and operate public works to furnish its inhabitants with electric power. See Cal. Const. art. XI, § 9(a); <i>Cal. Apartment Ass'n v. City of Stockton</i>, 80 Cal. App. 4th 699 (2000). May establish conditions and regulations on the granting of franchises to use city streets to persons or corporations seeking to furnish light, water, power, heat, transportation or communication services in the city. Franchise Act of 1937 is not applicable if charter provides. Cal. Pub. Util. Code § 6205.
Zoning	Zoning ordinances must be consistent with general plan. Cal. Gov't Code § 65860.	Zoning ordinances are not required to be consistent with general plan unless the city has adopted a consistency requirement by charter or ordinance. Cal. Gov't. Code § 65803.

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Attachment 3 – Charter Overview

What is a charter?

A city charter is a unique document that, in many ways, acts like a constitution for the city adopting it. It can only be adopted, amended or repealed by a majority vote of a city's voters. The primary advantage of a charter is that it allows greater authority for a city's governance than that provided by state law. For example, a city may tailor its organization and elective offices, taking into account the unique local conditions and needs of the community.

A charter transfers the power to adopt legislation affecting municipal affairs from the state legislature to the city adopting it. A city operating under a charter can acquire full control over its municipal affairs. These affairs are unaffected by the general laws passed by the state legislature on the same subject matters. This, in effect, gives the local voters more control over their local government and the affairs of the city. However, a city operating under a charter is still subject to the general laws, as passed by the state legislature, on affairs that are not municipal in nature, and are of statewide concern (e.g., California Vehicle Code).

It is the scope of the term "municipal affairs" that provides the opportunity for uncertainty. No easy analytical test exists. The threshold issue is whether there is a conflict between state law and a charter city enactment. The next issue is whether the state regulation addressed an issue of "state wide concern." Courts analyze these conflicts on a case-by-case basis.

Foundational aspects of charter cities

What is the Constitutional Framework for Charter Cities?

Article XI, section 3(a) of the California Constitution authorizes the adoption of a city charter and provides such a charter has the force and effect of state law. Article XI, section 5(a), the "home rule" provision, affirmatively grants to charter cities supremacy over "municipal affairs." However, the California Constitution does not define the term "municipal affair."

What are "Municipal Affairs?"

The home rule provision of the California Constitution authorizes a charter city to exercise plenary authority over municipal affairs, free from any constraint imposed by the general law and subject only to constitutional limitations. See Cal. Const. art. XI § 5(a); *Ex Parte Braun*, 141 Cal. 204, 209 (1903); *Bishop v. City of San Jose*, 1 Cal. 3d 56, 61 (1969); *Comm. of Seven Thousand v. Super. Ct. (City of Irvine)*, 45 Cal.3d 491 (1988).

How Do the Courts Distinguish Between Municipal and Statewide Concerns?

Whether a given activity is a municipal affair over which a city has sovereignty, or a statewide concern, over which the legislature has authority, is a legal determination for the courts to resolve. Thus, the determination of whether a given activity is a municipal affair or statewide concern is done on a case-by-case basis. The court's determination will depend on the particular facts and circumstances of each case. See *In Re Hubbard*, 62 Cal. 2d 119, 128 (1964). Keep in mind that the concept of "municipal affairs" is a fluid

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Attachment 3 – Charter Overview

one that changes over time as local issues become statewide concerns. See *Issac v. City of Los Angeles*, 66 Cal. App. 4th 586 (1998).

What Activities Have the Courts Classified As Municipal Affairs?

There are some areas that the courts have consistently classified as municipal affairs. Examples include the following:

- Municipal Election Matters. See *Mackey v. Thiel*, 262 Cal. App. 2d 362 (1968).
- Procedures for Initiative, Referendum and Recall. See *Lawing v. Faul*, 227 Cal. App. 2d 23, 29 (1964).
- Procedures for Adopting Ordinances. See *Brougher v. Board of Public Works*, 205 Cal. 426 (1928).
- Compensation of City Officers and Employees. Cal. Const. art. XI, § 5(b); See *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296 (1979); but see *San Leandro Police Officers Association v. City of San Leandro*, 55 Cal. App. 3d 553 (1976) (labor relations is not a municipal affair; Charter cities are subject to the Meyers-Milias Brown Act. Cal. Gov't Code § 3500).
- Processes Associated with City Contracts. See *First Street Plaza Partners v. City of Los Angeles*, 65 Cal. App. 4th 650 (1998); but see *Domar Electric, Inc. v. City of Los Angeles*, 41 Cal. App. 4th 810 (1995) (state law establishing employment policy may preempt local regulation of bidding criteria).
- Financing Public Improvements. See *City of Santa Monica v. Grubb*, 245 Cal. App. 2d 718 (1996).
- Making Charitable Gifts of Public Funds for Public Purposes. See Cal. Const. art. XVI, § 6; *Tevis v. City and County of San Francisco*, 43 Cal. 2d 190 (1954).
- Term Limits for Council Members. See *Cawdrey v. City of Redondo Beach*, 15 Cal. App. 4th 1212 (1993); but see Cal. Gov't Code § 36502(b) (regulating term limits).
- Land Use and Zoning Decisions (with a few exceptions). See *Brougher v. Bd. of Pub. Works*, 205 Cal. 426 (1928).

What Activities Have the Courts Classified as Statewide Concerns?

The following have consistently been classified by the courts as matters of statewide concern:

- School Systems. *Whisman v. San Francisco Unified Sch. Dist.*, 86 Cal. App. 3d 782, 789 (1978).
- Traffic and Vehicle Regulation. Cal. Veh. Code § 21.

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- Licensing of Members of a Trade or Profession. *City and County of San Francisco v. Boss*, 83 Cal. App. 2d 445 (1948).
- Tort Claims Against a Governmental Entity. *Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 247 (1942).
- Open and Public Meetings. Ralph M. Brown Act. Cal. Gov't Code §§ 54951, 54953(a).
- Exercise of the Power of Eminent Domain. *Wilson v Beville*, 47 Cal. 2d 852, 856 (1957).

Process used to adopt a charter

There are two ways to draft and adopt a city charter. The first is to elect a charter commission. The commission then has the responsibility of debating over the provisions and the drafting of the charter. The other alternative allows the governing board of the city, on its own motion, to draft the charter. In either case, the charter is not adopted by the city until it is ratified by a majority vote of the city's voters.

When using the charter commission approach, the first step is to elect the commission. The vote to elect a charter commission is called for by either a majority vote of the city's governing body or by a petition signed by not less than fifteen percent of the registered voters within the city. If the formation of a charter commission is requested by a petition, the authority in charge of the city's registration records must verify the signatures on the petition. The expense of this verification must be paid for by the city's governing board. If the petition is verified, the city's governing board must call for an election in accordance with sections 1000 and 10403 of the California Elections Code. See Cal. Gov't Code section 34452.

Once it has been decided that a charter commission election will take place, candidates for commissioners must be nominated. Candidates for the office of charter commissioner are nominated either in the same manner as officers of the city or by petition. A candidate for charter commissioner must be a registered voter of the city. After the election of commissioners, any vacancy on the commission will be filled by a mayoral appointment. See Cal. Gov't Code section 34452.

At an election for charter commission members, the voters will vote first on the following question: "Shall a charter commission be elected to propose a new charter?" After voting on this question, the voters will then vote for the charter commission candidates. If a majority of the voters vote for the formation of a charter commission, then the top fifteen candidates for the office of charter commissioner will be organized as the city's charter commission. No commission will be formed if a majority of voters vote against the election of a charter commission. See Cal. Gov't Code section 34453.

Once formed, the charter commission will have the responsibility of developing the city's charter. After a simple majority of commissioners have decided that the proposed charter is appropriate, they file the charter with the city's clerk in preparation for a vote by

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the city's electorate. See Cal. Gov't Code section 34455. However, instead of sending the whole charter at once, periodically the commission may send portions of the charter to the city's electorate for a vote. See Cal. Gov't Code section 34462.

After the charter (or portions of it) has been filed, it must be copied in type greater than 10 point and either mailed to all the voters of the city or made available to those citizens who wish to review it before the election. The city may show the difference between existing provisions of law and the new charter through the use of distinguished type styles, but this is not required. See Cal. Gov't Code section 34456.

After the charter has been filed with the city clerk, the city's governing board must decide whether to call a special election or to wait until the next established municipal election to submit the charter to the voters. If the city's governing board determines that a special election should be held, then they must call for that special election within 14 days of the charter being filed. The special election must be set at least 95 days after the date from which the special election was called. See Cal. Gov't Code section 34457. In any case, the charter commission must send the charter to the voters within two years of the vote that formed the commission. Upon the expiration of the two-year time period, the commission is abolished. See Cal. Gov't Code section 34462.

The alternative to electing a charter commission is to have the city's governing board develop and draft the charter. An election to decide on the adoption of a charter may be called by initiative or the city council. See Cal. Const. art. XI, § 3. On its own motion, the city's governing board may propose a charter and submit it to the voters for adoption. See Cal. Gov't Code section 34458. With this option, the governing board can call a special election or allow the charter to be voted on at any established election date, as long as that election date is at least 88 days after the proposed charter was filed with the city clerk. See Cal. Gov't Code section 34458. As a practical matter, an election may have to be called sooner than 88 days before the election in order to meet certain notice and ballot printing deadlines.

In either case, the majority of voters must vote in favor of the proposed charter for it to be ratified. The charter will not go into effect until it has been filed and accepted by the Secretary of State. See Cal. Gov't Code section 34459. After a charter is approved by a majority vote of the voters, the mayor and city clerk shall certify that the charter was submitted to the voters of the city and that it was approved by a majority vote. See Cal. Gov't Code section 34460. One copy of the approved charter shall be filed with the County Recorder's office and one shall be kept in the City's archive. See Cal. Gov't Code section 34460. A third copy of the charter must be submitted to the Secretary of State with (1) copies of all publications and notices in connection with the calling of the election; (2) certified copies of any arguments for or against the charter proposal which were mailed to the voters; (3) a certified abstract of the vote at the election on the charter. See Cal. Gov't Code section 34460.

Charter Cities

Adelanto
Alameda
Albany
Alhambra
Anaheim
Arcadia
Bakersfield
Bell
Berkeley
Big Bear Lake
Buena Park
Burbank
Carlsbad
Cerritos
Chico
Chula Vista
Compton
Culver City
Cypress
Del Mar
Desert Hot Springs
Dinuba
Downey
El Centro
Emeryville
Eureka
Exeter
Folsom
Fortuna
Fresno
Gilroy
Glendale
Grass Valley
Hayward
Huntington Beach
Indian Wells
Industry
Inglewood
Irvine
Irwindale
King City
Kingsburg
Lancaster
La Quinta

Lemoore

Lindsay
Loma Linda
Long Beach
Los Alamitos
Los Angeles
Marina
Marysville
Merced
Modesto
Monterey
Mountain View
Napa
Needles
Newport Beach
Norco
Oakland
Oceanside
Oroville
Pacific Grove
Palm Desert
Palm Springs
Palmdale
Palo Alto
Pasadena
Petaluma
Piedmont
Placentia
Pomona
Port Hueneme
Porterville
Rancho Mirage
Redondo Beach
Redwood City
Richmond
Riverside
Roseville
Sacramento
Salinas
San Bernardino
San Diego
San Francisco
San Jose
San Leandro

San Luis Obispo

San Marcos
San Mateo
San Rafael
San Ramon
Sand City
Santa Ana
Santa Barbara
Santa Clara
Santa Cruz
Santa Maria
Santa Monica
Santa Rosa
Santee
Seal Beach
Shafter
Signal Hill
Solvang
Stockton
Sunnyvale
Temple City
Torrance
Truckee
Tulare
Vallejo
Ventura
Vernon
Victorville
Visalia
Vista
Watsonville
Whittier
Woodlake

Total Cities: 121

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO CREATING THE EL CERRITO CHARTER COMMITTEE TO PREPARE A RECOMMENDED CHARTER FOR THE CITY

WHEREAS, in 2011, the City Council received a presentation regarding the differences between general law and charter cities in California, the powers and limitations of charter cities, the process for becoming a charter city, and options and related schedules for submitting a charter to El Cerrito voters. At that time, the City Council decided not to proceed; and

WHEREAS, during a Strategic Planning session earlier in 2017, the City Council requested that they receive another presentation regarding becoming a charter city, in particular to exercise the additional home rule powers of a charter city over local affairs, including the revenue generating powers of a charter city to fund high priority service and facility needs identified by the community; and

WHEREAS, on November 7, 2017, the City Council received a presentation regarding the powers of and process for becoming a charter city. After reviewing options for the process for drafting a proposed charter, it decided to create a committee with the membership and direction described in this resolution; and

WHEREAS, the California Constitution, Article 11, Section 3, authorizes the voters of a city to adopt a charter. The California Government Code, Title 4, Division 2, Part 1, Chapter 2, sets for the procedures for the preparation and adoption of a charter. A city council may, on its own motion, propose a charter to its voters. (Gov. Code § 34458.) Pursuant to that authority, the City Council may create a committee to prepare a draft charter to be considered by the City Council and proposed to the City's voters on the Council's own motion; and

WHEREAS, in creating a committee to prepare a charter to propose to City voters, the City Council expressed as necessary components of a draft charter that the charter generally provide that the City will follow California law in all areas except those stated in the charter; that the City will in particular follow California law regarding the payment of prevailing wages for public works project and collective bargaining with represented employee groups; and that the charter should authorize the City to consider the use of all available tools for generating revenue, including but not limited to a real property transfer tax.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby establishes a Charter Committee, with necessary staff liaison assigned by the City Manager.

BE IT FURTHER RESOLVED that the Charter Committee shall consist of two members of the City Council, a member of the Financial Advisory Board, an active participant in the El Cerrito real estate market, a representative of local labor groups, and two members of the public. The members of the public shall be residents or owners of businesses in El Cerrito or a combination of the two.

BE IT FURTHER RESOLVED that the Charter Committee shall have the following duties, responsibilities, and direction:

- 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:
 - o It shall reserve to the City Council the power to adopt local rules in all matters of municipal affairs.
 - o 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.
 - o 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.
 - o The El Cerrito Municipal Code shall not be altered by the proposed charter.
- Meetings of the Charter Committee shall comply with the requirements of the Brown Act.
- The Charter Committee shall establish and publish a schedule of meetings
- The Charter Committee shall complete a draft of the charter and submit it to the City Council in sufficient time for the City Council to submit the charter to El Cerrito voters at the municipal election on November 6, 2018. The Charter Committee shall complete a draft charter and submit it to the City Council no later than April 30, 2018.
- Members of the Charter Committee shall serve until the City Council has decided whether or not to submit a charter proposal to El Cerrito voters, or until the election on the proposed charter occurs, whichever is later. The terms of the members of the Charter Committee shall end and the Committee shall be dissolved on November 30, 2018, unless extended by a resolution of the City Council.
- The Charter Committee shall support City efforts to inform and educate the El Cerrito community regarding the proposed charter submitted to voters.

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

I CERTIFY that at a regular meeting on November 7, 2017 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

Agenda Item No. 7(B)
Attachment 4

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 7(C)

Date: November 7, 2017
To: El Cerrito City Council
From: Cheryl Morse, City Clerk
Subject: Repeal of Local Campaign Literature Disclosure Ordinance to Achieve Consistency with State Law

ACTION REQUESTED

Introduce by title and waive any further reading, an ordinance repealing El Cerrito Municipal Code Chapter 2.32 – Campaign Literature Disclosure for Local Candidacies and Measures (Ordinance No. 92-2) to achieve consistency with State Law.

BACKGROUND

Ordinance No. 92-2, codified as El Cerrito Municipal Code Chapter (ECMC) 2.32, was adopted March 2, 1992. By enacting the ordinance, the City Council at that time, sought to ensure that there is disclosure of the identity of persons primarily responsible for the dissemination of campaign literature, thereby aiding the electorate in evaluating information contained in the literature.¹ The Fair Political Practices Commission (FPPC) mass mailing regulations (codified in Government Code §§ 82041.5 and 84305) essentially achieve the same purpose. State mass mailing and political advertising disclaimers regulations have been amended several times since their initial adoption. The differences between the State mass mailing regulations and local campaign literature regulations have caused confusion among candidates and campaign committees during the past several elections. Regulations regarding political advertisement disclaimers have also been adopted by the FPPC. Since local campaign literature disclosure regulations have to incorporate the minimum requirements outlined in the various, complex governing state regulations, staff recommends eliminating the local campaign literature disclosure requirements as stated in ECMC 2.32 to achieve consistency with state law and enforcement requirements. This will also assist candidates and committee officers and treasurers in understanding and complying with applicable laws and will promote fair campaign practices in municipal elections.

In staff's view, the state's disclosure requirements are sufficient to provide El Cerrito voters with necessary information about who is funding mass mailings and other elections communications. The local regulations codified in ECMC Chapter 2.32 create confusion and additional work for candidates and committees while providing minimal additional information that is useful to El Cerrito voters. As a result, there are few benefits to offset the significant burdens that the local regulations impose on candidates and committees, as well as on staff attempting to assist the candidates and committees with compliance.

¹ ECMC Section 2.32.010

ANALYSIS

Although ECMC Chapter 2.32 was enacted to further the intent of FPPC mass mailing requirements, state statutes and regulations require substantial disclosure of the funding of mass mailings and other communications, but state law and local campaign literature disclosure differ in several ways as indicated on Attachments 2 and 3, creating confusion about how to comply with both. As the agenda packet was going to print, staff became aware that the FPPC posted a new Advertising Disclaimer Chart this week that reflects new disclaimer rules that will go into effect January 1, 2018. Attachment 2e details these changes.

Government Code Section 81013 addresses generally the authority of local agencies to impose obligations beyond those set forth in the Political Reform Act, provided those regulations do not conflict with the requirements established by the Political Reform Act. Although ECMC Chapter 2.32 is well intentioned; researching, interpreting and explaining differences between state and local law to candidates, principal officers and treasurers of the many types of committees is extremely time consuming and has caused confusion in each election held in El Cerrito over the past ten years. Nuances in campaign literature disclosure and political advertisements for candidate controlled committees, ballot measure committees, general purpose committees and independent expenditure committees already exist within the framework of FPPC rules and regulations. In addition, relying solely on state laws governing campaign literature and political advertising eliminates the likelihood of local law from falling behind or becoming more confusing as new amendments pass in the state legislature.

STRATEGIC PLAN CONSIDERATIONS

Repealing ECMC 2.32 aligns with the City's Strategic Goal of *Delivering Exemplary Government Services* and the City's Organizational Values of *Ethics and Integrity, Inclusiveness and Respect for Diversity, Professional Excellence, Responsiveness and Transparency and Open Communication*.

ENVIRONMENTAL CONSIDERATIONS

There is no environmental impact associated with this action.

FINANCIAL CONSIDERATIONS

If repeal of the ordinance is approved, the cost to codify and update the municipal code is estimated at less than \$300.00. Cost savings will be achieved by reducing time spent by the City Clerk and City Attorney researching and clarifying the differences between state regulations and ECMC 2.32. Providing clear instructions and consistency in campaign disclosure literature may also provide a public benefit by preventing candidates and committees from inadvertent violations of campaign literature distribution rules and the potential increased costs associated with printing and distributing campaign materials, including signs.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the staff report and ordinance and concurs with staff's recommendation.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Proposed Ordinance
2. FPPC Advertising Disclaimer Charts
3. Chart identifying some differences between state and local law
4. El Cerrito Municipal Code Chapter 2.32

ORDINANCE NO. 2017-XX

AN ORDINANCE OF THE CITY OF EL CERRITO REPEALING EL CERRITO MUNICIPAL CODE CHAPTER 2.32 – CAMPAIGN LITERATURE DISCLOSURE FOR LOCAL CANDIDACIES AND MEASURES

WHEREAS, Ordinance No. 92-2, adopted on March 2, 1992, established in part, regulations, including penalties, for the disclosure and distribution of campaign literature for candidacies and measures in municipal elections in the City of El Cerrito, codified as Chapter 2.32 of the El Cerrito Municipal Code; and

WHEREAS, campaign disclosure and mass mailing regulations are also comprehensively governed by State Law and Fair Political Practices Commission regulations; and

WHEREAS, after discussion, careful review, deliberation and further consideration, the City Council deems it in the best interests of its residents, municipal candidates and proponents and opponents of municipal measures, to eliminate confusion between state and local law regarding campaign literature disclosure requirements.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN as follows:

Section 1: Incorporation of Recitals. The City Council finds that the above Recitals are true and correct and are incorporated herein by reference.

Section 2: Repeal of Chapter 2.32 of the El Cerrito Municipal Code. Chapter 2.32 of the El Cerrito Municipal Code, “Campaign Literature Disclosure for Local Candidacies and Measures” is hereby repealed in its entirety.

Section 3: 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 4: Effective Date. 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.

Agenda Item No. 7(C)
Attachment 1

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on November X, 2017 and passed with amendments by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers
ABSTAIN: Councilmembers

ADOPTED AND ORDERED published at a regular meeting of the City Council held on November X, 2017 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers
ABSTAIN: Councilmembers

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November X, 2017.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2017-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the X day of November 2017; and that said ordinance has been published and/or posted in the manner required by law.

Agenda Item No. 7(C)
Attachment 1

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this
Xth day of November, 2017.

Cheryl Morse, City Clerk

Political Advertising Disclaimers



1. Communications by Candidate Committees for their own Election

The disclaimer must include, unless otherwise noted: “Paid for by *committee name*.”

Examples: “Paid for by Jones for Assembly 20XX”

“Paid for by Friends of Smith for Mayor 20XX”

Communication	Manner of Display
All mass mailings – more than 200 sent within a calendar month (including emails)	• Candidate’s committee name/address (on file with Form 410) on outside of mailing (if no Form 410 on file, use candidate name/address) • Only committee name (no address) required on emails • “Paid for by” must be in the same color and font as the committee name/address and immediately in front of or above the name/address • If sent by more than one candidate/committee: ○ Also on at least one insert in the mailing • No less than 6-point type/contrasting print color • Return envelopes (if included in solicitation) – committee’s name, address and ID number are recommended but not required
Telephone calls advocating candidate’s own election (500 or more) - made by: • Vendors (“robo” calls) or • Paid individuals other than the candidate, campaign manager or volunteers	• Any time during the message • Must identify the candidate that paid for the call or an organization authorizing the call that files campaign reports • Must state that the call is “paid for by” or “authorized by” the identified candidate or organization ○ Examples: <i>This call was paid for by Senator Jones;</i> <i>This call was authorized by (name of committee)</i> • No ID required on telephone calls personally dialed by candidate, campaign manager or volunteers

Candidate Committee Communications

Communication	Manner of Display
The Political Reform Act (Act) does not require a specific disclaimer on the following communications paid for by a candidate's committee in support of his or her own campaign, although the FPPC recommends placing "paid for by committee name" and the committee ID number on all public campaign materials.	
Newspaper, radio and television ads	• Radio and television advertisements require "paid for by" or sponsor identification under Federal Communications Commission (FCC) rules • Check the Elections Code for newspaper ad requirements
Electronic Media (Websites, blogs, Twitter feeds, faxes, social media pages – e.g., Facebook)	• "Paid for by <i>committee name</i>" and committee ID number are recommended but not legally required
Billboards, large signs, yard signs, business cards, door hangers, flyers, and posters	• "Paid for by <i>committee name</i>" and committee ID number are recommended but not legally required

The information on this chart does not carry the force of law. If there are any discrepancies between the chart and the Act or its corresponding regulations and opinions, the Act and its regulations and opinions will control. Communications made by a candidate to support or oppose a ballot measure or other candidates are not addressed in this chart.

References: [Government Code Sections](#): 84305, 84310.
 [Title 2 Regulations](#): 18435, 18440.



Political Advertising Disclaimers

Agenda Item No. 7(C) Attachment 2b

3. Ballot Measure Ads

(by committees primarily formed for a state or local ballot measure)

The disclaimer must include, unless otherwise noted: “Paid for by *committee name*.”

If the committee has **contributors of \$50,000 or more**, the top two contributors must also be identified in the disclaimer by stating, “major funding by” or “top contributors:” as shown in these examples:

- “Paid for by Citizens in Support of Measure B, No New Taxes, Sponsored by the Taxpayers Alliance, Major Funding by ABC Corporation and XYZ Partnership”
- “Paid for by Californians for Education, a Committee Opposed to Proposition 1, Top Contributors are Student Political Action Committee and ZZZ Trade Association”
- “Paid for by Voters in Support of Measure A” (no sponsors or \$50,000 contributors)

The **top two contributors of \$50,000 or more** must be listed:

- In descending order based on the amount contributed to the committee (if more than two contributors gave identical amounts, the most recent must be disclosed).
- First, before other groups such as “concerned citizens,” “consumers,” “taxpayers,” etc.

Communication	Manner of Display
All mass mailings - more than 200 sent within a calendar month (see note)	• Committee name/address (on file with Form 410) on outside of mailing in no less than 14-point, bold, sans serif type/contrasting print color • “Paid for by” must be in the same color and font as the committee name/address and immediately in front of or above the name/address
Telephone Calls – more than 200 made by: • Vendors (“robo” calls) or • Paid individuals	• Disclaimer must state that the call is “paid for by” committee name • Must be at least 3 seconds at beginning or end of call
Radio	• Must be at least 3 seconds either at the beginning or end of ad • Ad which is 15 seconds or less requires only highest major contributor

Ballot Measure Ads

Communication	Manner of Display
Television	• Both written and spoken at the beginning or end of ad • Not less than 4 seconds • Size and contrasting color must be legible to the average viewer • Ad which is 15 seconds or less requires only highest major contributor • <u>Exception</u> - no spoken disclosure required if written statement is shown for at least 5 seconds on a 30 second broadcast or 10 seconds on 60 second broadcast
Electronic Media 1. Websites, blast emails, Facebook posts 2. Ads of limited size (micro bar, button ad, ads limited to 500 characters or less) 3. SMS texts 4. Electronic ads sent in an audio format 5. Electronic ads sent in a video format	1. Disclaimer statement must be in the same font size as majority of text and displayed conspicuously near the ad 2. Abbreviated disclaimer must rollover, link or click-through to full disclaimer on website or social media homepage or “about” section 3. Include the committee ID number and if technically possible link to the committee's campaign statement on Secretary of State's website 4. Same requirements as for radio ads above 5. Same requirements as for television ads above
Paid Spokesperson - \$5,000 or more	• Must also include: "<i>spokesperson's name</i> is being paid by this campaign or its donors" • Printed or televised ad: shown continuously in highly visible font • Radio broadcast or phone message: spoken in clearly audible format
Paid Spokesperson – Payment of <i>any amount</i> to an individual portraying a member of a licensed or certified occupation (e.g., nurse, firefighter, lawyer) <u>Exception:</u> If the paid individual is actually a member of the occupation portrayed, the committee may omit this disclaimer. The committee must maintain documentation of the individual's license or certification.	• Must also include: “Persons portraying members of an occupation in this advertisement are compensated spokespersons not necessarily employed in those occupations.” • Printed or televised ad: shown continuously in highly visible font • Radio broadcast or phone message: spoken in clearly audible format

Political Advertising Disclaimers

3. Ballot Measure Ads

(by committees primarily formed for a state or local ballot measure)

Communication	Manner of Display
Newspaper Ads	• 14-point, bold, sans serif type in contrasting color • Ad which is 20 square inches or less requires only highest major contributor • Also check the Elections Code
A Billboard or Large Sign (e.g., 4' x 4') Yard Signs (more than 200)	• Each line of the disclaimer must be at least 5% of height of advertisement in contrasting color
Door hangers, flyers, posters, and oversized campaign buttons and bumper stickers (buttons 10 inches across or larger and stickers 60 square inches or larger) (all more than 200)	• 14-point, bold, sans serif type in contrasting color • Ad which is 20 square inches or less requires only highest major contributor

Note: Two display rules exist for mass mailings. A mass mailing must have the committee name/address on the outside of an envelope in 6-point type, while the manner of display for the ad disclaimer requires the committee name in no less than 14-point, bold, sans serif type. A one-page mailer may combine the display rules with both the committee name and address in no less than 14-point, bold, sans serif type although the address may be at 6-point type.

Ballot measure committee names. The name of a primarily formed ballot measure committee must include:

- The measure number or letter and whether it supports or opposes the measure (within 30 days of a ballot designation)
- A name or phrase that clearly identifies the economic or other special interests of its major donors of \$50,000 or more
- The name of an employer if donors of \$50,000 or more share a common employer
- A sponsored committee must include the sponsor's name
- A committee controlled by a candidate must include the candidate's name
- A committee that receives \$50,000 or more from a candidate or his or her controlled committee must include the candidate's name

For more information about the committee name requirements or advertising disclaimer rules, see [Campaign Disclosure Manual 3](#).

The information on this chart does not carry the force of law. If there are any discrepancies between the chart and the Political Reform Act (Act) or its corresponding regulations and opinions, the Act and its regulations and opinions will control.

References: [Government Code Sections](#): 84305, 84310, 84503, 84507, 84509, 84511.
[Title 2 Regulations](#): 18435, 18440, 18450.1, 18450.4, 18450.5.



Political Advertising Disclaimers

Agenda Item No. 7(C)
Attachment 2c

4. Independent Expenditure Ads on Ballot Measures

(by general purpose recipient committees, major donors, and independent expenditure committees)

The disclaimer must include, unless otherwise noted: “Paid for by *committee name*”

Examples:

- “This call was paid for by ABC Trade Association”
- “This ad was paid for by Susan Johnson”

Communication	Manner of Display
All Mass Mailings - more than 200 sent within a calendar month (see note)	• Committee name/address (on file with Form 410 or 461) on outside of mailing in no less than 14-point, bold, sans serif type/contrasting color • “Paid for by” must be in the same color and font as name/address and immediately in front of or above name/address
Telephone Calls – more than 200 made by: • Vendors (“robo” calls) or • Paid individuals	• Disclaimer must state the call is “paid for by” committee name • Must be at least 3 seconds at beginning or end of call
Radio	• Must be at least 3 seconds either at beginning or end of ad
Television	• Both written & spoken at the beginning or end of ad • Not less than 4 seconds • Size & contrasting color must be legible to the average viewer • <u>Exception</u> - no spoken disclosure required if written statement is shown for at least 5 seconds on a 30 second broadcast or 10 seconds on 60 second broadcast
Electronic Media 1. Websites, blast emails, Facebook posts 2. Ads of limited size (micro bar, button ad, ads limited to 500 characters or less)	1. Disclaimer statement must be in the same font size as majority of text and displayed conspicuously near the ad 2. Abbreviated disclaimer must rollover, link or click-through to full disclaimer on website or social media homepage or “about” section

Independent Expenditures - Ballot Measures Ads

Communication	Manner of Display
3. SMS texts 4. Electronic ads sent in an audio format 5. Electronic ads sent in a video format	3. Include the committee ID number and if technically possible link to the committee's campaign statement on Secretary of State's website 4. Same requirements as for radio ads above 5. Same requirements as for television ads above
Paid Spokesperson - \$5,000 or more	• Must also include: "<i>spokesperson's name</i> is being paid by this campaign or its donors" • Printed or televised ad: shown continuously in highly visible font • Radio broadcast or phone message: spoken in clearly audible format
Paid Spokesperson – Payment of <i>any amount</i> to an individual portraying a member of a licensed or certified occupation (e.g., nurse, firefighter, lawyer) <u>Exception:</u> If the paid individual is actually a member of the occupation portrayed, the committee may omit this disclaimer. The committee must maintain documentation of the individual's license or certification.	• Must also include: "Persons portraying members of an occupation in this advertisement are compensated spokespersons not necessarily employed in those occupations." • Printed or televised ad: shown continuously in highly visible font • Radio broadcast or phone message: spoken in clearly audible format
Newspaper Ads	• 14-point, bold, sans serif type in contrasting color • Also check the Elections Code
A Billboard or Large Sign (e.g., 4' x 4') Yard Signs (more than 200)	• Each line of the disclaimer must be at least 5% of height of advertisement in contrasting color
Door hangers, flyers, posters, and oversized campaign buttons and bumper stickers (buttons 10 inches across or larger and stickers 60 square inches or larger) (all more than 200)	• 14-point, bold, sans serif type in contrasting color

Independent Expenditures - Ballot Measures Ads

Note: Two display rules exist for mass mailings. A mass mailing must have the committee name/address on the outside of an envelope in 6-point type, while the manner of display for the ad disclaimer requires the committee name in no less than 14-point, bold, sans serif type. A one-page mailer may combine the display rules with both the committee name and address in no less than 14-point, bold, sans serif type although the address may be at 6-point type.

The information on this chart does not carry the force of law. If there are any discrepancies between the chart and the Political Reform Act (Act) or its corresponding regulations and opinions, the Act and its regulations and opinions will control.

References: [Government Code Sections](#): 82031, 84305, 84310, 84506, 84507, 84509, 84511.
[Title 2 Regulations](#): 18225, 18435, 18440, 18450.1, 18450.4, 18450.5.



2. Independent Expenditure Ads on Candidates

General purpose committees provide a disclaimer that must include, unless otherwise noted:

“Paid for by *committee name*” and “[t]his advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”

Examples:

- “This call was paid for by ABC Trade Association and was not authorized by a candidate for this office or a committee controlled by candidate for this office.”
- “This ad was paid for by Susan Johnson and was not authorized by a candidate for this office or a committee controlled by candidate for this office.”

Primarily formed committees for or against a candidate must add an additional disclaimer that lists \$50,000 donors, if any.

Example:

- “Paid for by Citizens Against Senator Smith, major funding by International Workers Association and California Insurance Committee. This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”

The following disclaimers apply to ads that expressly advocate support or opposition of a candidate

Communication	Manner of Display
All mass mailings - more than 200 sent within a calendar month (see note)	• Committee name/address (on file with Form 410 or 461) on outside of mailing in no less than 14-point, bold, sans serif type • “Paid for by” must be in the same color and font as the name/address and immediately in front of or above the name/address • IE disclaimer in box. The required statement (“[t]his advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office”) must be located within one-half of an inch from the recipient’s name and address in a box. The box’s outline must have a 3.25 line weight. So the statement is clearly readable, contrasting colors must be used for the background of the ad and the box outline, text and background

Independent Expenditures - Candidate Ads

Communication	Manner of Display
Telephone calls – more than 200 made by: - Vendors (“robo” calls) or - Paid individuals	- Disclaimer must state that the call is “paid for by” committee name - Must be at least 3 seconds either at beginning or end of call
Radio	Must be at least 3 seconds either at beginning or end of the ad
Television	- Both written & spoken at the beginning or end of ad - Not less than 4 seconds - Size and contrasting color must be legible to average viewer <u>Exception</u> - no spoken disclosure required if written statement is shown for at least 5 seconds on a 30 second broadcast or 10 seconds on a 60 second broadcast
Electronic Media 1. Websites, blast emails, Facebook posts 2. Ads of limited size (micro bar, button ad, ads limited to 500 characters or less) 3. SMS texts 4. Electronic ads sent in an audio format 5. Electronic ads sent in a video format	- Disclaimer statement must be in the same font size as majority of text and displayed conspicuously near the ad - Abbreviated disclaimer must rollover, link or click-through to full disclaimer on website or social media homepage or “about” section - Include the committee ID number and if technically possible link to the committee's campaign statement on Secretary of State's website - Same requirements as for radio ads above - Same requirements as for television ads above
Newspaper Ads	14-point, bold, sans serif type in contrasting color - Also check the Elections Code

Independent Expenditures - Candidate Ads

Communication	Manner of Display
A Billboard or Large Sign (e.g., 4' x 4') Yard Signs (more than 200)	Each line of the disclaimer must be at least 5% of height of advertisement in contrasting color
Door hangers, flyers, posters, and oversized campaign buttons and bumper stickers (buttons 10 inches across or larger and stickers 60 square inches or larger) (all more than 200)	14-point, bold, sans serif in contrasting color

Note: Two display rules exist for mass mailings. A mass mailing must have the committee name/address on the outside of an envelope in 6-point type, while the manner of display for the ad disclaimer requires the committee name in no less than 14-point, bold, sans serif type. A one-page mailer may combine the display rules with both the committee name and address in no less than 14-point, bold, sans serif type although the address may be at 6-point type.

The information on this chart does not carry the force of law. If there are any discrepancies between the chart and the Political Reform Act (Act) or its corresponding regulations and opinions, the Act and its regulations and opinions will control.

References: [Government Code Sections](#): 82031, 84305, 84310, 84506, 84506.5, 84507, 84509.
[Title 2 Regulations](#): 18225, 18435, 18440, 18450.1, 18450.4, 18450.5.

1. Communications by Candidate Committees for their own Election

Agenda Item No. 7(C)
Attachment 2e

The disclaimer must include, unless otherwise noted: “Paid for by *committee name*.”

Examples: “Paid for by Jones for Assembly 20XX”

“Paid for by Friends of Smith for Mayor 20XX”

Communication	Current Law	AB 249 Changes
All mass mailings – more than 200 sent within a calendar month	• Candidate’s committee name/address (on file with Form 410) on outside of mailing (if no Form 410 on file, use candidate name/address) • “Paid for by” must be in the same color and font as the committee name/address and immediately in front of or above the name/address • If sent by more than one candidate/committee: ○ Also on at least one insert in the mailing • No less than 6-point type/contrasting print color • Return envelopes (if included in solicitation) – committee’s name, address and ID number are recommended but not required	• No changes to candidate mass mailing
All mass electronic mailings – more than 200 substantially similar pieces of electronic mail sent within a calendar month	• Name of candidate or committee (no address required on mass electronic mailings) • “Paid for by” must be in the same color and font as the committee name and immediately in front of or above the name	• “Paid for by” must be in the same font size as a majority of the text

1. Communications by Candidate Committees for their own Election

Communication	Current Law	AB 249 Changes
Telephone calls advocating candidate's own election (500 or more) - made by: - Vendors ("robo" calls) or - Paid individuals other than the candidate, campaign manager or volunteers	- Any time during the message - Must identify the candidate that paid for the call or an organization authorizing the call that files campaign reports - Must state that the call is "paid for by" or "authorized by" the identified candidate or organization <i>Examples: This call was paid for by Senator Jones; This call was authorized by (name of committee)</i> - No ID required on telephone calls personally dialed by candidate, campaign manager or volunteers	No changes to candidate telephone calls
The Political Reform Act (Act) does not currently require a specific disclaimer on the following communications paid for by a candidate's committee in support of his or her own campaign, although the FPPC recommends placing "paid for by committee name" and the committee ID number on all public campaign materials.		Assembly Bill 249 requires specific disclaimers on the following communications paid for by a candidate's committee in support of his or her own campaign.
Newspaper, radio and television ads	- Radio and television advertisements require "paid for by" or sponsor identification under Federal Communications Commission (FCC) rules - Check the Elections Code for newspaper ad requirements	Radio and Television: "Paid for by" followed by name of committee on most recent Statement of Organization Radio: Disclaimer at the beginning or end of advertisement read in a clearly spoken manner with pitch and tone substantially similar to the rest of advertisement Television: Disclaimer shown at least four seconds. Letters must be in a type size greater than or equal to 4 percent of the height of the screen

1. Communications by Candidate Committees for their own Election

Communication	Current Law	AB 249 Changes
Electronic Media (Websites, blogs, Twitter feeds, faxes, social media pages – e.g., Facebook)	• “Paid for by <i>committee name</i>” and committee ID number are recommended but not legally required	• No changes
Billboards, large signs, yard signs, business cards, door hangers, flyers, and posters	• “Paid for by <i>committee name</i>” and committee ID number are recommended but not legally required	• No changes

2. Independent Expenditure Ads on Candidates

General Provisions Under Current Law	AB 249 Changes
General Purpose Committees “Paid for by <i>committee name</i>” and “[t]his advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.” Examples: “This call was paid for by ABC Trade Association and was not authorized by a candidate for this office or a committee controlled by candidate for this office.” “This ad was paid for by Susan Johnson and was not authorized by a candidate for this office or a committee controlled by candidate for this office.”	General Purpose Committees (except political party) Committees “Paid for by <i>committee name</i>” and “[t]his advertisement was not authorized by a candidate or a committee controlled by a candidate.” List Top Three Donors - “Committee major funding from” top three donors of \$50,000+, if applicable, and depends on ad type - If a top donor is a sponsored committee with a single sponsor, only the sponsor is listed - In certain situations, the donor of an earmarked contribution is listed as a top donor when given through another committee Example: “Paid for by Blue Sky Committee, major funding from Top Firm, Big Spender, and Election Union. This advertisement was not authorized by a candidate or a committee controlled by a candidate.”
Primarily Formed Committees “Paid for by <i>committee name</i>” and “[t]his advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.” - Disclaimer must include the top two donors of \$50,000 donors, if any.	Primarily Formed Committees “Paid for by <i>committee name</i>” and “[t]his advertisement was not authorized by a candidate or a committee controlled by a candidate.” List Top Three Donors - “Committee major funding from” top three donors of \$50,000+, if applicable, and depends on ad type - If a top donor is a sponsored committee with a single sponsor, only the sponsor is listed - In certain situations, the donor of an earmarked contribution is listed as a top donor when given through another committee

2. Independent Expenditure Ads on Candidates

General Provisions Under Current Law	AB 249 Changes
Example: “Paid for by Citizens against Senator Smith, major funding by International Workers Association and California Insurance Committee. This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”	Example: “Paid for by Committee to Elect, major funding from Top Firm, Big Spender, and Election Union. This advertisement was not authorized by a candidate or a committee controlled by a candidate.”
Candidate Committees “Paid for by <i>committee name</i>” and “[t]his advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”	Candidate Committees “Paid for by <i>committee name</i>” and “[t]his advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”
Political Party Committees “Paid for by <i>committee name</i>” and “[t]his advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”	Political Party Committees “Paid for by <i>committee name</i>” and “[t]his advertisement was not authorized by a candidate or a committee controlled by a candidate.”

2. Independent Expenditure Ads on Candidates

Communications and Advertisements Paid for by Candidates and Political Parties

Communication	Current Law	AB 249 Changes
All mass mailings and mass electronic mailings – more than 200 sent within a calendar month	• Committee name/address (on file with Form 410) on outside of mailing in no less than 14-point, bold, sans serif type (no address required on mass electronic mailings) • “Paid for by” must be in the same color and font as the name/address and immediately in front of or above the name/address • IE disclaimer in box: The required statement (“[t]his advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office”) must be located within one-half of an inch from the recipient’s name and address in a box. The box’s outline must have a 3.25 line weight. So the statement is clearly readable, contrasting colors must be used for the background of the ad and the box outline, text and background.	• Committee name/address in no less than 10-point font, color has reasonable contrast with background • “Paid for by” must be in a color with reasonable contrast to the background or in at least the same size font as a majority of the text for electronic mailings • IE disclaimer “Not authorized” ○ <i>Non-candidate controlled committee:</i> “This advertisement was not authorized by a candidate or committee controlled by a candidate.” ○ <i>Candidate controlled committee:</i> “This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”
Radio Telephone calls (200 or more) - made by: • Vendors (“robo” calls) or • Paid individuals other than the candidate, campaign manager or volunteers	• Disclaimer must state that the call or ad is “paid for by” committee name • Must be at least 3 seconds either at beginning or end of call or ad	• “Paid for by” and “Not authorized by” disclaimers required at the beginning or end of advertisement. Must be read in a clearly spoken manner in pitch and tone substantially similar to the rest of the ad. • Must be no less than 3 seconds

2. Independent Expenditure Ads on Candidates

Communications and Advertisements Paid for by Candidates and Political Parties

Communication	Current Law	AB 249 Changes
Television and Video Ads	- Both written and spoken at the beginning or end of ad - Not less than 4 seconds - Size and contrasting color must be legible to average viewer <u>Exception</u> - no spoken disclosure required if written statement is shown for at least 5 seconds on a 30 second broadcast or 10 seconds on a 60 second broadcast	“Paid for by” and “Not authorized by” disclaimers required at the beginning or end of advertisement in writing in text that is of sufficient size to be readily legible to an average viewer Not less than 4 seconds Color must be in reasonable degree of contrast with background Disclosure must also be spoken during ad if written disclosure appears for less than 5 seconds for an ad 30 seconds or less or for less than 10 seconds for an ad of 60 seconds or more
1) Electronic Media (Websites, blogs, Twitter feeds, faxes, social media pages – e.g., Facebook) 2) Ads limited in size 3) SMS Texts 4) Audio Ads	1) Disclaimer must be in the same font size as majority of text and displayed conspicuously near the ad 2) Abbreviated disclaimer must rollover, link or click-through to full disclaimer on website or social media homepage or “about” section 3) Include the committee ID number and if technically possible link to the committee's campaign statement on Secretary of State's website 4) Same requirements as for radio ads above	- Disclaimer must include the statement “Who funded this ad?” that is a hyperlink to a disclaimer website containing “Paid for by” and “Not authorized by” disclaimers Hyperlink must be in a contrasting color and a font size easily readable by the average viewer Disclaimer website must contain above disclaimers in contrasting color in no less than 8-point font and must remain online and publicly available until 30 days after date of election in which candidate was voted upon

2. Independent Expenditure Ads on Candidates

Communications and Advertisements Paid for by Candidates and Political Parties

Communication	Current Law	AB 249 Changes
		○ <u>Exception</u> – “Who funded this ad?” disclaimer not required if language is impracticable. If this is the case, then only a hyperlink to the “disclaimer website” with required disclosures is required. • Audio-only electronic advertisements have the same requirements as radio ads • Social media advertisements must include “Paid for by” and “Not authorized by” on the profile page or landing page in a contrasting color and no less than 8-point font ○ <u>Exceptions</u> – The disclaimers are not required when ads made via social media for which the only expense of the communication is compensated staff time unless the account where the content is posted was created only for the purpose of ads under the Act ○ No disclaimer on individual posts, comments, or similar communications
A Billboard or Large Sign (larger than 6 square feet) Yard Signs (more than 200 and no larger than 6 square feet)	• Each line of the disclaimer must be at least 5% of height of advertisement in contrasting color	• “Paid for by” and “Not authorized by” disclaimers required in no less than 5% of total height of ad in a color with reasonable degree of contrast with background

2. Independent Expenditure Ads on Candidates

Communications and Advertisements Paid for by Candidates and Political Parties

Communication	Current Law	AB 249 Changes
Newspaper Ads Door hangers, flyers, posters, and oversized campaign buttons and bumper stickers (buttons 10 inches across or larger and stickers 60 square inches or larger) (all more than 200)	• 14-point, bold, sans serif type in contrasting color • Also check the Elections Code (for newspaper ads)	• Committee name in no less than 10-point font, color has reasonable contrast with background • “Paid for by” must be in color with reasonable contrast to the background • IE disclaimer “Not authorized” ○ <i>Non-candidate controlled committee:</i> “This advertisement was not authorized by a candidate or committee controlled by a candidate.” ○ <i>Candidate controlled committee:</i> “This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”

2. Independent Expenditure Ads on Candidates

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

Communication	Current Law	AB 249 Changes
All mass mailings and mass electronic mailings – more than 200 sent within a calendar month	• Committee name/address (on file with Form 410 or 461) on outside of mailing in no less than 14-point, bold, sans serif type (no address required on mass electronic mailings) • “Paid for by” must be in the same color and font as the name/address and immediately in front of or above the name/address • IE disclaimer in box. The required statement (“[t]his advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office”) must be located within one-half of an inch from the recipient’s name and address in a box. The box’s outline must have a 3.25 line weight. So the statement is clearly readable, contrasting colors must be used for the background of the ad and the box outline, text and background	• “Paid for by [committee name and address]” must be in a color with reasonable contrast to the background or, for electronic mailings, in at least the same size font as a majority of the text • “Committee major funding from [list top three \$50k+ contributors]” ○ Top contributors must be centered horizontally on separate horizontal lines ○ In descending order with largest cumulative contributor on first line • Top Ten: If committee is subject to Top Ten reporting under Section 84223 then disclaimer must include below top contributors: ○ “Funding details at http://www.fppc.ca.gov” in Arial equivalent font at least 10 point in size • “Not authorized” IE disclaimer required: “This advertisement was not authorized by a candidate or committee controlled by a candidate • All disclaimers must be in a printed or drawn box with a solid white background at the bottom of at least one page and set apart from other printed matter • Text in disclosure area must be in contrasting color in Arial equivalent font, at least 10 point in size

2. Independent Expenditure Ads on Candidates

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

Communication	Current Law	AB 249 Changes
Radio Telephone calls (500 or more) - made by: • Vendors (“robo” calls) or • Paid individuals other than the candidate, campaign manager or volunteers	• Disclaimer must state that the call or ad is “paid for by” committee name • Must be at least 3 seconds either at beginning or end of call or ad	• “Paid for by [committee name]” • “Committee major funding from [top two \$50k+ contributors]” and • “Not authorized” disclaimers are required • “Paid for by” and “Not authorized by” disclaimers required at the beginning or end of call. Must be read in a clearly spoken manner in pitch and tone substantially similar to the rest of the call. • Must be no less than 3 seconds. ○ <u>Exception</u> – Calls less than 15 seconds only require one top contributor. Disclaimer statement longer than 8 seconds only require one top contributor.
Television and Video Ads	• Both written and spoken at the beginning or end of ad • Not less than 4 seconds • Size and contrasting color must be legible to average viewer • <u>Exception</u> - no spoken disclosure required if written statement is shown for at least 5 seconds on a 30 second broadcast or 10 seconds on a 60 second broadcast	• “Paid for by [committee name]” • “Committee major funding from [top three \$50k+ contributors]” ○ Top contributors must be centered horizontally on separate horizontal lines ○ In descending order with largest cumulative contributor on first line • Black background: All disclaimers for television and video ads must appear on solid black background that encompasses the entire bottom 1/3 of the screen ○ <u>Exception</u> – If there are no top contributors or if contributor disclosure is not required, then the bottom 1/4 of the screen is encompassed

2. Independent Expenditure Ads on Candidates

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

Communication	Current Law	AB 249 Changes
		• Written disclosure must be in a contrasting color, Arial equivalent font with the smallest letters at least 4% of screen height. All text must be underlined except for top contributors • “Not authorized” disclaimers are required ○ This will appear below all other required text on black background • Timing: The disclaimer must be shown at the beginning or end of ad for at least 5 seconds for ads 30 seconds or less or at least 10 seconds for ads longer than 30 seconds ○ <u>Exception</u> – If 4% screen height causes top contributors not to fit, then type size must be reduced until names fit on width of screen or entire disclosure fits on bottom 1/3 but in no case shall the type size be smaller than 2.5% of the height of the screen
1) Electronic Media (Websites, blogs, Twitter feeds, faxes, social media pages – e.g., Facebook) 2) Ads limited in size 3) SMS Texts	1) Disclaimer must be in the same font size as majority of text and displayed conspicuously near the ad 2) Abbreviated disclaimer must rollover, link or click-through to full disclaimer on website or social media homepage or “about” section 3) Include the committee ID number and if technically possible link to the committee's campaign statement on Secretary of State's website	• Disclaimer must include the statement “Who funded this ad?” that is a hyperlink to a disclaimer website containing: ○ “Paid for by” and “Not authorized by” disclaimers ○ “Committee major funding from [top three \$50k+ contributors]” • Hyperlink must be in a contrasting color and a font size easily readable by the average viewer

2. Independent Expenditure Ads on Candidates

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

Communication	Current Law	AB 249 Changes
4) Audio Ads	4) Same requirements as for radio ads above	• Disclaimer website must contain above disclaimers in contrasting color in no less than 8-point font and must remain online and publicly available until 30 days after date of election which candidate was voted upon ○ <u>Exception</u> – “Who funded this ad?” disclaimer not required if language is impracticable. If this is the case, then only a hyperlink to the “disclaimer website” with required disclosures is required. • Audio-only electronic advertisements have the same requirements as radio ads • Social media advertisements must include “Paid for by” and “Not authorized by” on the profile page or landing page in a contrasting color and no less than 8-point font ○ <u>Exceptions</u> – The disclaimers are not required when ads made via social media for which the only expense of the communication is compensated staff time unless the account where the content is posted was created only for the purpose of ads under the Act ○ No disclaimer on individual posts, comments, or similar communications

2. Independent Expenditure Ads on Candidates

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

Communication	Current Law	AB 249 Changes
A Billboard or Large Sign (larger than 6 square feet) Yard Signs (more than 200 and no larger than 6 square feet)	Each line of the disclaimer must be at least 5% of height of advertisement in contrasting color	“Paid for by [committee name]” “Committee major funding from [top three \$50k+ contributors]” - Top contributors must be centered horizontally on separate horizontal lines - In descending order with largest cumulative contributor on first line <u>Exception</u> – Text may be adjusted so it does not appear on separate lines with top contributors separated by comma “Not authorized” disclaimers are required - Must be in Arial equivalent font at least 5% the height of the ad. Text must be on solid background with sufficient contrast and easily readable by the average viewer.
Newspaper Ads	14-point, bold, sans serif type in contrasting color - Also check the Elections Code	“Paid for by [committee name]” “Committee major funding from [top three \$50k+ contributors]” - Top contributors must be centered horizontally on separate horizontal lines - In descending order with largest cumulative contributor on first line “Not authorized” disclaimers are required - Must be in Arial equivalent font, at least 10-point - Exception - Less than 20 square inches shall only be required to list single top contributor

2. Independent Expenditure Ads on Candidates

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

Communication	Current Law	AB 249 Changes
Door hangers, flyers, posters, and oversized campaign buttons and bumper stickers (buttons 10 inches across or larger and stickers 60 square inches or larger) (all more than 200)	• 14-point, bold, sans serif in contrasting color	• "Paid for by [committee name]" • "Committee major funding from [top three \$50k+ contributors]" ○ Top contributors must be centered horizontally on separate horizontal lines ○ In descending order with largest cumulative contributor on first line • "Not authorized" disclaimers are required • All disclaimers must be in a printed or drawn box with a solid white background at the bottom of at least one page and set apart from other printed matter • Text in disclosure area must be in contrasting color in Arial equivalent font, at least 10-point • Top Ten: If committee is subject to Top Ten reporting under Section 84223 then disclaimer must include below top contributors: ○ "Funding details at http://www.fppc.ca.gov" in Arial equivalent font at least 10 point in size

3. General Purpose & Primarily Formed Committee Ads (Ballot Measure and Candidate) (Excluding Independent Expenditures)

General Provisions Under Current Law	AB 249 Changes
Primarily Formed Committee: • “Paid for by <i>committee name</i>” • List Top Two Donors - If the committee has contributors of \$50,000 or more, the top two contributors must also be identified in the disclaimer using “major funding by” or “top contributors” Examples: ○ “Paid for by Citizens in Support of Measure B, No New Taxes, Sponsored by the Taxpayers Alliance, Major Funding by ABC Corporation and XYZ Partnership” ○ “Paid for by Californians for Education, a Committee Opposed to Proposition 1, Top Contributors are Student Political Action Committee and ZZZ Trade Association” • The top two contributors must be listed in descending order based on aggregate amount contributed to committee before other groups such as “concerned citizens,” “consumers” and “taxpayers,” etc. General Purpose Committee: • “Paid for by committee name” Example: ○ “This call was paid for by ABC Trade Association”	Primarily Formed and General Purpose Committees [Non-political party, non-candidate]: • “Paid for by <i>committee name</i>” • List Top Three Donors – “Committee major funding from [top three donors of \$50,000+] if applicable, and depends on ad type • If a top donor is a sponsored committee with a single sponsor, only list name of sponsor Example: ○ “Paid for by Committee to Elect, major funding from Top Firm, Big Spender, and Election Union.”

3. General Purpose & Primarily Formed Committee Ads (Ballot Measure and Candidate) (Excluding Independent Expenditures)

Communication	Current Law	AB 249 Changes
All mass mailings – more than 200 sent within a calendar month	- Committee name/address (on file with Form 410) on outside of mailing in no less than 6-point type/contrasting print color “Paid for by” must be in the same color and font as the committee name/address and immediately in front of or above the name/address	“Paid for by [committee name and address]” If mass mailing is an advertisement, “Committee major funding from [top three \$50k+ contributors]” - Top contributors must be centered horizontally on separate horizontal lines - In descending order with largest cumulative contributor on first line - All disclaimers must be in a printed or drawn box with a solid white background at the bottom of at least one page and set apart from other printed matter - Text in disclosure area must be in contrasting color in Arial equivalent font, at least 10-point Top Ten: If committee is subject to Top Ten reporting under Section 84223 then disclaimer must include below top contributors: “Funding details at http://www.fppc.ca.gov” in Arial equivalent font at least 10 point in size
All mass electronic mailings – more than 200 substantially similar pieces of electronic mail within a calendar month	“Paid for by” Committee name (on file with Form 410) in same font size as majority of text and displayed conspicuously	“Paid for by [committee name]” - If the electronic mailing is an ad, disclaimer must include the statement “Who funded this ad?” that is a hyperlink to a disclaimer website containing:

3. General Purpose & Primarily Formed Committee Ads (Ballot Measure and Candidate) (Excluding Independent Expenditures)

		○ "Paid for by" disclaimer ○ "Committee major funding from [top three \$50k+ contributors]" • Hyperlink must be in a contrasting color and a font size easily readable by the average viewer • Disclaimer website must contain above disclaimers in contrasting color in no less than 8-point font and must remain online and publicly available until 30 days after date of election which candidate was voted upon ○ <u>Exception</u> – "Who funded this ad?" disclaimer not required if language is impracticable. If this is the case, then only a hyperlink to the "disclaimer website" with required disclosures is required. • Audio-only electronic advertisements have the same requirements as radio ads
Radio Telephone calls (200 or more)	• Disclaimer must state that the call or ad is "paid for by" committee name • Must be at least 3 seconds at beginning or end of call or ad	• "Paid for by [committee name]" • "Committee major funding from [top two \$50k+ contributors]" • Disclaimers required at the beginning or end of call or ad. Must be read in a clearly spoken manner in pitch and tone substantially similar to the rest of the call or ad. • Must be no less than 3 seconds.

3. General Purpose & Primarily Formed Committee Ads (Ballot Measure and Candidate) (Excluding Independent Expenditures)

		○ <u>Exception</u> – Calls or ads less than 15 seconds only require one top contributor. Disclaimer statement longer than 8 seconds only require one top contributor.
Television and Video Ads	• Both written and spoken at the beginning or end of ad • Not less than 4 seconds • Size and contrasting color must be legible to average viewer • <u>Exception</u> - no spoken disclosure required if written statement is shown for at least 5 seconds on a 30 second broadcast or 10 seconds on 60 second broadcast	• “Paid for by [committee name]” • “Committee major funding from [top three \$50k+ contributors]” ○ Top contributors must be centered horizontally on separate horizontal lines ○ In descending order with largest cumulative contributor on first line • Black background: All disclaimers for television and video ads must appear on solid black background that encompasses the entire bottom 1/3 of the screen ○ <u>Exception</u> – If there are no top contributors or if contributor disclosure is not required, then the bottom 1/4 of the screen is encompassed • Written disclosure must be in a contrasting color, Arial equivalent font with the smallest letters at least 4% of screen height. All text must be underlined except for top contributors • Timing: The disclaimer must be shown at the beginning or end of ad for at least 5 seconds for ads 30 seconds or less or at least 10 seconds for ads longer than 30 seconds ○ <u>Exception</u> – If 4% screen height causes top contributors not to fit, then type size must be reduced until names fit on

3. General Purpose & Primarily Formed Committee Ads (Ballot Measure and Candidate) (Excluding Independent Expenditures)

		width of screen or entire disclosure fits on bottom 1/3 but in no case shall the type size be smaller than 2.5% of the height of the screen
1) Electronic Media (Websites, blogs, Twitter feeds, faxes, social media pages – e.g., Facebook) 2) Ads limited in size 3) SMS Texts 4) Audio Ads	1) Disclaimer must be in the same font size as majority of text and displayed conspicuously near the ad 2) Abbreviated disclaimer must rollover, link or click-through to full disclaimer on website or social media homepage or “about” section 3) Include the committee ID number and if technically possible link to the committee's campaign statement on Secretary of State's website 4) Same requirements as for radio ads above	- Disclaimer must include the statement “Who funded this ad?” that is a hyperlink to a disclaimer website containing: “Paid for by” disclaimer “Committee major funding from [top three \$50k+ contributors]” Hyperlink must be in a contrasting color and a font size easily readable by the average viewer Disclaimer website must contain above disclaimers in contrasting color in no less than 8-point font and must remain online and publicly available until 30 days after date of election which candidate was voted upon <u>Exception</u> – “Who funded this ad?” disclaimer not required if language is impracticable. If this is the case, then only a hyperlink to the “disclaimer website” with required disclosures is required. Audio-only electronic advertisements have the same requirements as radio ads Social media advertisements must include “Paid for by” on the profile page

3. General Purpose & Primarily Formed Committee Ads (Ballot Measure and Candidate) (Excluding Independent Expenditures)

		or landing page in a contrasting color and no less than 8-point font ○ <u>Exceptions</u> – The disclaimers are not required when ads made via social media for which the only expense of the communication is compensated staff time unless the account where the content is posted was created only for the purpose of ads under the Act ○ No disclaimer on individual posts, comments, or similar
Newspaper Ads	• 14-point, bold, sans serif type in contrasting color • Also check the Elections Code	• “Paid for by [committee name]” • “Committee major funding from [top three \$50k+ contributors]” ○ Top contributors must be centered horizontally on separate horizontal lines ○ In descending order with largest cumulative contributor on first line • Must be in Arial equivalent font, at least 10-point ○ Exception - Less than 20 square inches shall only be required to list single top contributor
A Billboard or Large Sign (larger than 6 square feet) Yard Signs (more than 200 and no larger than 6 square feet)	• Each line of the disclaimer must be at least 5% of height of advertisement in contrasting color	• “Paid for by [committee name]” • “Committee major funding from [top three \$50k+ contributors]” ○ Top contributors must be centered horizontally on separate horizontal lines ○ In descending order with largest cumulative contributor on first line

3. General Purpose & Primarily Formed Committee Ads (Ballot Measure and Candidate) (Excluding Independent Expenditures)

		○ <u>Exception</u> – Text may be adjusted so it does not appear on separate lines with top contributors separated by comma • Must be in Arial equivalent font at least 5% the height of the ad. Text must be on solid background with sufficient contrast and easily readable by the average viewer.
Door hangers, flyers, posters, and oversized campaign buttons and bumper stickers (buttons 10 inches across or larger and stickers 60 square inches or larger) (all more than 200)	• 14-point, bold, sans serif in contrasting color	• “Paid for by [committee name]” • “Committee major funding from [top three \$50k+ contributors]” ○ Top contributors must be centered horizontally on separate horizontal lines ○ In descending order with largest cumulative contributor on first line • All disclaimers must be in a printed or drawn box with a solid white background at the bottom of at least one page and set apart from other printed matter • Text in disclosure area must be in contrasting color in Arial equivalent font, at least 10-point • Top Ten: If committee is subject to Top Ten reporting under Section 84223 then disclaimer must include below top contributors: ○ “Funding details at http://www.fppc.ca.gov” in Arial equivalent font at least 10 point in size

4. Independent Expenditure Ads on Ballot Measures

General Provisions Under Current Law	AB 249 Changes
Primarily Formed Committee: • “Paid for by <i>committee name</i>” • List Top Two Donors - If the committee has contributors of \$50,000 or more, the top two contributors must also be identified in the disclaimer using “major funding by” or “top contributors” Examples: ○ “Paid for by Citizens in Support of Measure B, No New Taxes, Sponsored by the Taxpayers Alliance, Major Funding by ABC Corporation and XYZ Partnership” ○ “Paid for by Californians for Education, a Committee Opposed to Proposition 1, Top Contributors are Student Political Action Committee and ZZZ Trade Association” • The top two contributors must be listed in descending order based on aggregate amount contributed to committee before other groups such as “concerned citizens,” “consumers” and “taxpayers,” etc. General Purpose Committee: • “Paid for by committee name” Example: ○ “This call was paid for by ABC Trade Association”	Primarily Formed and General Purpose Committees [Non-political party, non-candidate]: • “Paid for by <i>committee name</i>” • List Top Three Donors – “Committee major funding from [top three donors of \$50,000+] if applicable, and depends on ad type • If a top donor is a sponsored committee with a single sponsor, only list name of sponsor Example: ○ “Paid for by Committee to Elect, major funding from Top Firm, Big Spender, and Election Union.”
• Candidate Committees: “Paid for by [candidate committee name]”	• No changes
• Political Party Committee: “Paid for by [committee name]”	• No changes

4. Independent Expenditure Ads on Ballot Measures

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

Communication	Current Law	AB 249 Changes
All mass mailings and mass electronic mailings – more than 200 sent within a calendar month	Committee name/address (on file with Form 410) on outside of mailing in no less than 14-point, bold, sans serif type (no address required on mass electronic mailings) “Paid for by” must be in the same color and font as the name/address and immediately in front of or above the name/address or displayed conspicuously for electronic mailings	“Paid for by [committee name and address]” “Who funded this ad?” that is a hyperlink to a disclaimer website containing: “Paid for by” disclaimer “Committee major funding from [top three \$50k+ contributors]” Hyperlink must be in a contrasting color and a font size easily readable by the average viewer Disclaimer website must contain above disclaimers in contrasting color in no less than 8-point font and must remain online and publicly available until 30 days after date of election which candidate was voted upon <u>Exception</u> – “Who funded this ad?” disclaimer not required if language is impracticable. If this is the case, then only a hyperlink to the “disclaimer website” with required disclosures is required. Audio-only electronic advertisements have the same requirements as radio ads
Radio Telephone calls (200 or more)	- Disclaimer must state that the call or ad is “paid for by” committee name - Must be at least 3 seconds at beginning or end of call or ad	“Paid for by [committee name]” “Committee major funding from [top two \$50k+ contributors]”

4. Independent Expenditure Ads on Ballot Measures

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

		- Disclaimers required at the beginning or end of call or ad. Must be read in a clearly spoken manner in pitch and tone substantially similar to the rest of the call or ad. Must be no less than 3 seconds. <u>Exception</u> – Calls or ads less than 15 seconds only require one top contributor. Disclaimer statement longer than 8 seconds only require one top contributor.
Television and Video Ads	- Both written and spoken at the beginning or end of ad - Not less than 4 seconds - Size and contrasting color must be legible to average viewer <u>Exception</u> - no spoken disclosure required if written statement is shown for at least 5 seconds on a 30 second broadcast or 10 seconds on 60 second broadcast	“Paid for by [committee name]” “Committee major funding from [top three \$50k+ contributors]” - Top contributors must be centered horizontally on separate horizontal lines - In descending order with largest cumulative contributor on first line Black background: All disclaimers for television and video ads must appear on solid black background that encompasses the entire bottom 1/3 of the screen <u>Exception</u> – If there are no top contributors or if contributor disclosure is not required, then the bottom 1/4 of the screen is encompassed Written disclosure must be in a contrasting color, Arial equivalent font with the smallest letters at least 4% of screen height. All text must be underlined except for top contributors

4. Independent Expenditure Ads on Ballot Measures

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

		• Timing: The disclaimer must be shown at the beginning or end of ad for at least 5 seconds for ads 30 seconds or less or at least 10 seconds for ads longer than 30 seconds ○ <u>Exception</u> – If 4% screen height causes top contributors not to fit, then type size must be reduced until names fit on width of screen or entire disclosure fits on bottom 1/3 but in no case shall the type size be smaller than 2.5% of the height of the screen
1) Electronic Media (Websites, blogs, Twitter feeds, faxes, social media pages – e.g., Facebook) 2) Ads limited in size 3) SMS Texts 4) Audio Ads	1) Disclaimer must be in the same font size as majority of text and displayed conspicuously near the ad 2) Abbreviated disclaimer must rollover, link or click-through to full disclaimer on website or social media homepage or “about” section 3) Include the committee ID number and if technically possible link to the committee's campaign statement on Secretary of State's website 4) Same requirements as for radio ads above	• Disclaimer must include the statement “Who funded this ad?” that is a hyperlink to a disclaimer website containing: ○ “Paid for by” disclaimer ○ “Committee major funding from [top three \$50k+ contributors]” • Hyperlink must be in a contrasting color and a font size easily readable by the average viewer • Disclaimer website must contain above disclaimers in contrasting color in no less than 8-point font and must remain online and publicly available until 30 days after date of election which candidate was voted upon ○ <u>Exception</u> – “Who funded this ad?” disclaimer not required if language is impracticable. If this is the case, then only a hyperlink to the “disclaimer website” with required disclosures is required.

4. Independent Expenditure Ads on Ballot Measures

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

		• Audio-only electronic advertisements have the same requirements as radio ads Social media advertisements must include “Paid for by” on the profile page or landing page in a contrasting color and no less than 8-point font ○ <u>Exceptions</u> – The disclaimers are not required when ads made via social media for which the only expense of the communication is compensated staff time unless the account where the content is posted was created only for the purpose of ads under the Act ○ No disclaimer on individual posts, comments, or similar
Newspaper Ads	• 14-point, bold, sans serif type in contrasting color • Also check the Elections Code	• “Paid for by [committee name]” • “Committee major funding from [top three \$50k+ contributors]” ○ Top contributors must be centered horizontally on separate horizontal lines ○ In descending order with largest cumulative contributor on first line • Must be in Arial equivalent font, at least 10-point ○ Exception - Less than 20 square inches shall only be required to list single top contributor
A Billboard or Large Sign (larger than 6 square feet)	• Each line of the disclaimer must be at least 5% of height of advertisement in contrasting color	• “Paid for by [committee name]” • “Committee major funding from [top three \$50k+ contributors]”

4. Independent Expenditure Ads on Ballot Measures

Communications and Advertisements Paid for by Non-Candidate and Non-Political Party Committees

Yard Signs (more than 200 and no larger than 6 square feet)		○ Top contributors must be centered horizontally on separate horizontal lines ○ In descending order with largest cumulative contributor on first line • Must be in Arial equivalent font at least 5% the height of the ad. Text must be on solid black background with sufficient contrast and easily readable by the average viewer. ○ <u>Exception</u> – Text may be adjusted so it does not appear on separate lines with top contributors separated by comma
Door hangers, flyers, posters, and oversized campaign buttons and bumper stickers (buttons 10 inches across or larger and stickers 60 square inches or larger) (all more than 200)	• 14-point, bold, sans serif type in contrasting color	• “Paid for by [committee name]” • “Committee major funding from [top three \$50k+ contributors]” ○ Top contributors must be centered horizontally on separate horizontal lines ○ In descending order with largest cumulative contributor on first line • All disclaimers must be in a printed or drawn box with a solid white background at the bottom of at least one page and set apart from other printed matter • Text in disclosure area must be in contrasting color in Arial equivalent font, at least 10-point font • Top Ten – If committee is subject to Top Ten contributor under Section 84223 then disclaimer must include ○ “Funding details at http://www.fppc.ca.gov” in Arial equivalent font at least 10-point in size

Several Differences between State and Local Campaign Disclosure Law

State Regulations	ECMC Chapter 2.32	Difference
A “mass mailing” has been made when over two hundred substantially similar pieces of mail have been sent within a calendar month. (FPPC Reg §18435(a))	“Mass distribution” means two hundred or more substantially similar writings distributed to the citizenry of the city. Form letters or other mail sent in response to an unsolicited request, letter or other inquiry are not a “mass distribution.” (ECMC §2.32.02(D))	1) Note distinction between “mailing” and “distribution.” Local law appears to apply to distribution of any printed or copied flyers, bumper stickers, door hangers, some letters, pamphlets, brochures, signs, posters, blogging etc. The FPPC has opined that door to door delivery of campaign literature is not a “mass mailing” subject to sender identification requirements. (See Sher Advice Letter, File No. A-96-036 (March 6, 1996)) The local exemption for form letters and other mail sent in response to an unsolicited request or inquiry mirrors state mass mailing requirements. (GC §82041.5) 2) State law limits application of mass mailing requirements to 200 or more pieces mailed within a calendar month. Local law provides no time limitation. 3) The Political Reform Act does not require a specific disclaimer on yard signs and other communications, when they are paid for by a candidate controlled committee in support of the candidate’s own campaign. However the FPPC recommends placing “paid for by [committee name]” and the committee’s ID number on all public

Several Differences between State and Local Campaign Disclosure Law

State Regulations	ECMC Chapter 2.32	Difference
		campaign materials. (FPPC Campaign Manual 2, Ch. 7.1 (April 2016)). Primarily formed committees making independent expenditures to support or oppose a candidate must include a disclaimer on mass mailings, emails, yard signs, door hangers, flyers, etc. Specific language, font size, font type and box outline weight also apply. (FPPC Manual 2, Ch. 7.2 & 7.5 (April 2016))
(a) Except as provided in subdivision (b), no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization's address is a matter of public record with the Secretary of State. (GC 84305)	No mass distribution...shall be made unless the names, and street and city addresses, of all principal officers of the campaign committee are shown on the outside of each piece of the distribution. The names, addresses and cities shall be printed in no less than 10 point type, in a color print which contrasts with the background so as to be easily legible. If the candidate or campaign committee is not responsible for the mass distribution, the name, address, and the city of those otherwise involved in the preparation and distribution shall be printed. If the sender of a mass distribution is a controlled committee, the name of the person controlling the committee shall be included in addition to the disclosure above.(ECMC §2.32.030)	State law allows for a disclosure to identify only the candidate or committee. Local law requires that each officer of the committee be identified. State law allows contact information to be printed in 6 point font. Local law requires 10 point font. <i>State law requires ballot measure advertisement disclosures to be in 14-point sans serif font.</i> State law allows for disclosure of a P.O. Box in lieu of a street address if the organization's address is a matter of public record with the SOS (ie FPPC Form 410. FPPC Manual 2, Ch. 7.8 & Ch. 7.9 (April 2016)).

Several Differences between State and Local Campaign Disclosure Law

State Regulations	ECMC Chapter 2.32	Difference
(b) If the sender of the mass mailing is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each piece of mail. (GC 84305) (c) If the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall be included in addition to the information required by subdivision (a).(GC §84305) Mass mailings sent by more than one candidate controlled committee must include a disclaimer on the outside of the piece of mail and include the names and addresses of all committees on at least one insert. (FPPC Manual 2, Ch. 7.9 (April 2016))		Local law is ambiguous regarding slate mailers¹ and independent expenditure committees. State regulations for slate mailers require a mix of 8-10 point font depending upon the type of disclosure required. ECMC Ch. 2.32 does not explicitly state a requirement to print candidate and committee information on the envelope AND the insert.

¹ "Slate mailer" means a mass mailing which supports or opposes a total of four or more candidates or ballot measures.

Several Differences between State and Local Campaign Disclosure Law

State Regulations	ECMC Chapter 2.32	Difference
"Paid for by" disclaimers required on mass mailings, (§18435(d)) campaign advertising, radio and tv ads, telephone robocalls and electronic media ads. Other rules apply to independent expenditure committees.		No requirement to specifically include the language "Paid for by" in local campaign distributions.
For ballot measure advertisements, a disclosure statement...shall be printed in no less than 14-point, bold color contrasting sans serif type font...(GC 84507). Note two display rules exist. See FPPC Manual 3, Ch. 7.5. Ballot measure committees are also required to place disclaimers with 14 pt, bold, sans serif contrasting color font on 200 or more door hangers, flyers, posters and oversized campaign buttons (10" across or larger) and bumper stickers (60 sq. in or larger). (FPPC Manual 3, Ch. 7.4 (May 2016)) When a committee files an amended campaign statement pursuant to Section 81004.5, the committee shall		Since local law states that font size must be 10 point and does not specify font type this may cause confusion resulting in an inadvertent violation of state law. Local law is ambiguous as to whether door hangers, flyers, posters, campaign buttons and bumper stickers apply. "Paid for by..." required by state law but not explicitly stated for local law.

Several Differences between State and Local Campaign Disclosure Law

State Regulations	ECMC Chapter 2.32	Difference
change its advertisements to reflect the changed disclosure information. (GC 84508)		
Mass mailings include email (FPPC Manual 2, Ch. 7.2 (April 2016)). Rules regarding electronic media (websites, ads, texts, Facebook posts, ads) for independent expenditures apply. (FPPC Manual 2, Ch. 7.6 (April 2016))		Application of local law to e-mail and other forms of electronic communication ambiguous.
Failure to comply with the Political Reform Act's disclaimer requirements may result in fines of up to \$5,000 per violation. In addition, any person who violates the disclaimer requirements for ballot measure and independent expenditure advertisements may be liable for fines of up to three times the cost of the advertisement, including placement costs. (FPPC Manual 2, Chapter 7.14 (April 2016))	Failure to comply with (ECMC Chapter 2.32) is an infraction. Every violation determined to be an infraction is punishable by the maximum fine allowed by law. Each piece of a mass distribution not containing the requisite information as set forth in Section 2.32.030 of this chapter shall constitute a separate violation of this chapter. (ECMC §2.32.030)	No indication of who shall enforce, prosecute or assess fines under ECMC Chapter 2.32 or what the dollar amount per infraction should be. There are no time limitations. If an inadvertent non-compliant mass distribution was sent to each of the 15877² registered voters in the city, the fine, if estimated at \$250 per violation, could amount to \$3,969,250 per candidate or campaign committee. The FPPC or District Attorney may conduct investigations into violations of state campaign law. The FPPC researches and assesses penalties and fines.

² Number of registered voters in El Cerrito for the November 2016 General Election. Source: Contra Costa Registrar of Voters Election Certification.

**El Cerrito Municipal Code Chapter 2.32
CAMPAIGN LITERATURE DISCLOSURE FOR LOCAL CANDIDACIES AND
MEASURES**

Sections:

2.32.010 - Purpose.

2.32.020 - Definitions.

2.32.030 - Dissemination of mass distributions.

2.32.040 - Penalty.

2.32.010 - Purpose.

The council declares that the purpose of this chapter is to ensure that there is disclosure of the identity of persons primarily responsible for the dissemination of campaign literature, thereby aiding the electorate in evaluating information contained therein. (Ord. 92-2 Div. 2 (part), 1992.)

2.32.020 - Definitions.

The following words and phrases when used in this chapter shall have the meanings ascribed to them:

1. "Campaign committee" means any person or combination of persons who directly or indirectly receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the action of voters for or against the election of one or more local candidates, or the passage or defeat of any local ballot measure.
2. "Local ballot measure" means an issue being voted on only in the city.
3. "Local Candidate" means a person seeking election to the Council.
4. "Mass distribution" means two hundred or more substantially similar writings distributed to the citizenry of the city. Form letters or other mail sent in response to an unsolicited request, letter, or other inquiry are not a "mass distribution."

5. "Principal officers of campaign committees" means the "principal officers" as that term is used in Section 84102 of the state Government Code. (Ord. 92-2 Div. 2 (part), 1992.)

2.32.030 - Dissemination of Mass Distributions.

No mass distribution for the purpose of influencing or attempting to influence the actions of voters for or against the election of one or more local candidates, or the passage or defeat of a local ballot measure shall be made unless the names, and street and city addresses, of all principal officers of the campaign committee are shown on the outside of each piece of the distribution and on at least one of the inserts included within each piece of the distribution. The names, addresses and cities shall be printed in no less than ten point type, in a color print which contrasts with the background so as to be easily legible. If the candidate or campaign committee is not responsible for the mass distribution, the name, address and city of those otherwise involved in the preparation and distribution shall be printed.

If the sender of a mass distribution is a controlled committee, the name of the person controlling the committee shall be included in addition to the disclosure above. (Ord. 92-2 Div. 2 (part), 1992.)

2.32.040 - Penalty.

Failure to comply with this chapter is an infraction. Every violation determined to be an infraction is punishable by the maximum fine allowed by law. Each piece of a mass distribution not containing the requisite information as set forth in Section 2.32.030 of this chapter shall constitute a separate violation of this chapter. (Ord. 92-2 Div. 2 (part), 1992.)