



AGENDA

SPECIAL CITY COUNCIL MEETING

Tuesday, May 16, 2017 ĩ 5:45 p.m.

Hillside Conference Room

SPECIAL CITY COUNCIL MEETING

Tuesday, May 16, 2017 ĩ 6:00 p.m.

City Council Chambers

REGULAR CITY COUNCIL MEETING

Tuesday, May 16, 2017 ĩ 7:00 p.m.

City Council Chambers

Meeting Location

El Cerrito City Hall

10890 San Pablo Avenue, El Cerrito

Janet Abelson ĩ Mayor

Mayor Pro Tem Gabriel Quinto
Councilmember Greg Lyman

Councilmember Paul Fadelli
Councilmember Rochelle Pardue-Okimoto

5:45 p.m. ROLL CALL

CONVENE SPECIAL CITY COUNCIL MEETING *(Hillside Conference Room)*

ORAL COMMUNICATIONS FROM THE PUBLIC *(Comments limited to two minutes and to items on this Special City Council meeting agenda only)*

COMMISSION STATUS AND APPOINTMENTS

Discuss board, commission and committee vacancies. Discussion may result in additional appointments.

ADJOURN SPECIAL CITY COUNCIL MEETING

6:00 p.m. ROLL CALL

CONVENE SPECIAL CITY COUNCIL MEETING *(City Council Chambers)*

ORAL COMMUNICATIONS FROM THE PUBLIC *(Comments limited to three minutes and to items on this Special City Council meeting agenda only)*

City Council Goals and Priorities Worksession

City Council discussion and possible action regarding city goals and priorities.
Continued from May 2, 2017.

ROLL CALL

7:00 p.m.

CONVENE REGULAR CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE ĩ *Councilmember Greg Lyman.*

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 ĩ **Item No. 4(A) through 4(F)****A. National Public Works Week Proclamation**

Approve a proclamation declaring May 21 through 27, 2017 as National Public Works Week in the City of El Cerrito and encouraging all residents and civic organizations to acquaint themselves with the issues involved in providing public works infrastructure, facilities and services and recognizing the contributions which public works personnel make every day to the City's health, safety, comfort and quality of life.

B. Approval of a Green Infrastructure Plan Framework

Adopt a resolution approving the City of El Cerrito's Green Infrastructure Plan Framework as required by the National Pollution Discharge Elimination System Municipal Regional Stormwater Permit.

C. Storm Drain Easement with 600 Seaview Drive

Adopt a resolution authorizing the City Manager to execute an easement agreement with Nelson and Marcia Faller, ĩOwners,Ē for public storm drain facilities located at 600 Seaview Drive. *Exempt from CEQA.*

D. Transfer of the Idaho Apartments (10203 San Pablo Avenue) and Reassignment of City Loan

That the City Council, acting as Housing Successor to the former Redevelopment Agency adopt a resolution taking the following actions: 1) Approve the sale of the Idaho Apartments from Idaho Apartments Associates, LP to San Pablo Preservation, LP, on terms and conditions to be approved by the City Manager; 2) Approve the amendment and restatement of the current City loan on the Idaho Apartments on terms and conditions to be approved by the City Manager; and 3) Authorize the City Manager to take such actions as are necessary to accomplish the sale of the Idaho Apartments and the amendment of the City Loan consistent with the Council's direction.

E. Support for California Senate Bill 687 (Skinner) i Save our Emergency Rooms Act of 2007

At the request of Councilmember Pardue-Okimoto, adopt a resolution and authorize Mayor Abelson to sign a letter supporting California Senate Bill 687 (Skinner) which will give the Attorney General of California the authority to oversee and consent to the sale and/or closure of non-profit hospitals and directing the City Clerk to send a copy of the resolution to Congressman Mark DeSaulnier, Assemblymember Tony Thurmond, Senator Nancy Skinner and Governor Jerry Brown.

F. Quarterly Cash and Investments Report

Receive and file the City's Quarterly Investment Report for the period ending March 31, 2017

5. PRESENTATIONS

Support for Senate Bill 562 i The Healthy California Act

At the request of Mayor Abelson and Councilmember Pardue-Okimoto, receive a presentation from Mel Benningshof, Health Care for All, Contra Costa County Chapter, and consider adopting a resolution supporting Senate Bill 562 i The Healthy California Act which establishes a comprehensive universal single-payer health care coverage program and a health cost control system for the benefit of all residents of the state.

6. PUBLIC HEARINGS

A. Confirm the Diagram and Levy the Assessment for Fiscal Year 2017-18 for Landscape and Lighting Assessment District No. 1988-1

Conduct a public hearing and upon conclusion adopt a resolution setting the annual Landscape and Lighting Assessment for Fiscal Year 2017-18 as \$72 per residential parcel and as noted in the Engineer's Report for other classes of properties.

B. Fiscal Year 2017-18 Storm Drain Annual Report and Method of Collecting Storm Drain Fees

Conduct a public hearing and upon conclusion, adopt a resolution approving the Fiscal Year 2017-18 Storm Drain Annual Report and directing that Storm Drain Fees be collected on the property tax rolls.

C. Update of Accessory Dwelling Unit Regulations

Conduct a public hearing and upon conclusion, introduce by title and waive any further reading of an ordinance amending various sections of Titles 8 and 19 of the El Cerrito Municipal Code to update the City's Accessory Dwelling Unit Regulations. *Exempt from CEQA.*

7. POLICY MATTERS – None

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, June 6, 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 ĩ 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: 215ĭ 4305 Fax: 215ĭ 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.

Attachment 1 - 2017 Board and Commission Applicant Matrix

Revised 3/15/2017

* Currently serving /eligible for re-appointment

	<i>Arts & Culture (0)</i>	<i>Centennial Celebration (2)</i>	<i>Citizens Street Oversight (2)</i>	<i>Civil Service Commission (0)</i>	<i>Committee on Aging (1)</i>	<i>Crime Prevention (9)</i>	<i>Design Review Board (1)</i>	<i>Economic Devt. Cmte (5)</i>	<i>Environmental Quality (3)</i>	<i>Financial Advisory Bd (0)</i>	<i>Human Relations (1)</i>	<i>Park and Recreation (0)</i>	<i>Planning Commission (0)</i>	<i>Tree Committee (9)</i>	<i>CC Library (0)</i>	<i>WCCUSD Bond (Delegate)</i>	<i>Interview Date</i>	<i>Appointed?</i>
Richard Brooks	2	1															3/4/17	3/4/17
Ruth Cazden*	1																3/4/17	3/4/17
Georgina Edwards*											1						2/21/17	3/4/17
Farhad Farahmand									2	1							2/23/17	3/4/17
Michael A Fischer															1		3/4/17	3/4/17
Kathleen Fleming	4										2	3				1	2/23/17	
Erin Gillett							2						1				2/7/17	
Carl Groch*							X						X				2/7/17	
Gabriel Guenette						3					1	2					2/21/17	3/4/17
Cathy Hanville								2		1			3				2/23/17	
Mollie Hazen*	1								3			2					3/4/17	Withdrawn
Phyllis Hoffman				1							2						2/23/17	3/4/17
Nicholas Kam				3						2			1				2/21/17	
Lee Kariuki								2			1					3	2/21/17	3/4/17
Marlene Keller										1			2				2/21/17	3/4/17
Sam A. Kohan				X							X		X					No response
C. William "Bill" Kuhlman								1		2							2/23/17	
Jessica Nicole Laird						2		3			1						3/4/17	3/21/17
Susan Leach						1		2			3						Pursue CPC	
Andrea M. Lucas*													1				2/21/17	3/4/17
Laura Lundy	1																	Declined
Elli Matejka	3										1	2					2/21/17	

Attachment 1 - 2017 Board and Commission Applicant Matrix

	<i>Arts & Culture (0)</i>	<i>Centennial Celebration (2)</i>	<i>Citizens Street Oversight (2)</i>	<i>Civil Service Commission (0)</i>	<i>Committee on Aging (1)</i>	<i>Crime Prevention (9)</i>	<i>Design Review Board (1)</i>	<i>Economic Devt. Cmte. (5)</i>	<i>Environmental Quality (3)</i>	<i>Financial Advisory Bd (0)</i>	<i>Human Relations (1)</i>	<i>Park and Recreation (0)</i>	<i>Planning Commission (0)</i>	<i>Tree Committee (9)</i>	<i>CC Library (0)</i>	<i>WCCUSD Bond (Delegate)</i>	<i>Interview Date</i>	<i>Appointed?</i>
Tara McIntire									2			1		3			2/23/17	3/4/17
Leslie Mendez													1				2/23/17	3/4/17
Eugene Park				1													3/4/17	3/4/17
Alex Perry	1											2			3		2/21/17	
Julia Pon							3	2					1				2/7/17	Withdrawn
Melanie L. Proctor					2						1						3/4/17	
Heidi Rand*	1																3/4/17	3/4/17
Patrick Riley							1	3					2				3/4/17	3/21/17
Judith Tannenbaum	1										2						2/23/17	3/4/17
Peter F. Vranich*								2		1							2/23/17	3/4/17
Christopher Walsh	1											2		3			3/4/17	3/4/17
Christopher Whaley								2					1				3/4/17	
Wilhelmenia Wilson											1						2/21/17	3/4/17
Bruce L. Yow										1		2			3		2/23/17	
Shengyi Yue (Shen)									2			1		3			2/23/17	
David Zuckermann												1					2/23/17	3/4/17

Revised 3/15/2017



**May 16, 2017
Special City Council Meeting**

Commission Status and Appointments

Applications

are 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

EL CERRITO CITY COUNCIL PROCLAMATION

Designating May 21 through 27, 2017 as National Public Works Week in the City of El Cerrito

WHEREAS, public works infrastructure, facilities, and services are of vital importance to the health, safety, and sustainability of all communities; and

WHEREAS, quality and effective infrastructure, facilities, and services could not be provided without the dedicated and skilled efforts of public works personnel; and

WHEREAS, public works personnel in the City of El Cerrito are involved in the planning, design, construction, operations and maintenance of storm drains, streets, transportation facilities, public buildings, parks, playfields, open space, creeks, paths, and recycling and solid waste programs; and

WHEREAS, since 1960, the American Public Works Association has sponsored National Public Works Week to promote an understanding and appreciation for the role that public works play in our communities.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby proclaim May 21 through May 27, 2017 as "National Public Works Week" in the City of El Cerrito and encourages all residents and civic organizations to acquaint themselves with the issues involved in providing our public works infrastructure, facilities and services and to recognize the contributions which public works personnel make every day to the City's health, safety, comfort, and quality of life.

Dated: May 16, 2017

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 4(B)

Date: May 16, 2017
To: El Cerrito City Council
From: Stephen Pr@e, Environmental Programs Manager / City Arborist
Maria Sanders, Operations + Environmental Services Division Manager
Yvetteh Ortiz, Public Works Director / City Engineer
Subject: Approval of a Green Infrastructure Plan Framework

ACTION REQUESTED

Adopt a resolution approving the City of El Cerrito's Green Infrastructure Plan Framework (Framework) as required by the National Pollution Discharge Elimination System Municipal Regional Stormwater Permit.

BACKGROUND

Under the 1987 amendments to the Federal Water Pollution Control Act (Clean Water Act), all jurisdictions in the United States are responsible for ensuring compliance with the National Pollutant Discharge Elimination System (NPDES) program. The State Water Resources Control Board grants regulatory responsibilities for water quality to the Regional Water Quality Control Boards in nine regions throughout California. In the Bay Area, the San Francisco Regional Water Quality Control Board (Water Board) regulates the discharge of stormwater runoff from the municipal separate storm sewer systems (MS4) draining into San Francisco Bay through a Municipal Regional Permit (MRP). The MRP covers Alameda, Contra Costa, Santa Clara and San Mateo counties, as well as the cities of Fairfield, Suisun and Vallejo. Through its participation in the Contra Costa County Clean Water Program, the City of El Cerrito, along with nineteen other jurisdictions and Districts in the County, is responsible for implementing measures throughout its jurisdiction that prevent pollutants from entering the storm drain system, creeks and San Francisco Bay.

The current MRP was adopted November 15, 2015 and became effective January 1, 2016. Similar to the previous MRP, the current permit term is anticipated to be for a period of five years. At its April 4, 2017 meeting, City Council received a summary of the current MRP requirements and the progress that El Cerrito has made towards achieving those requirements. The summary highlighted significant new MRP provisions for green infrastructure, trash load reduction, and various polychlorinated biphenyls (PCB) and mercury controls.

One of the most substantial new conditions of the MRP (Provision C.3.j.) requires Permittees to develop, implement and submit a Green Infrastructure Plan (Plan) to the Water Board by the end of September 2019. This Plan is intended to identify and prioritize potential Green Infrastructure projects that can be built in the Permittee's jurisdiction to incrementally reach reduction targets for PCBs and mercury by 2020, 2030 and 2040.

Green Infrastructure (GI) systems mimic the natural water cycle by using soils and plants to slow down and clean stormwater runoff before it reaches receiving waters, such as local creeks and San Francisco Bay. GI is considered to be a more resilient, sustainable stormwater system that slows runoff by dispersing it into vegetative and bioretention areas to filter pollutants, promote infiltration and evapotranspiration, and harvest runoff as a water source. GI facilities include pervious pavement, bio-retention facilities, landscaped infiltration areas, green roofs, and rainwater harvesting systems. Examples of completed GI projects in El Cerrito include the Ohlone Greenway Natural Play Area and Rain Garden at Fairmount Avenue, the parking lot landscaped infiltration areas at City Hall and the Public Safety Building, the San Pablo Avenue rain gardens, and the rainwater cistern and rain gardens at the Recycling + Environmental Resource Center.

ANALYSIS

In the near term, Provision C.3.j requires that Permittees approve by June 30, 2017 a Green Infrastructure Plan Framework that provides a work plan describing how the City will develop its Green Infrastructure Plan. The City of El Cerrito's Green Infrastructure Plan Framework outlines the tasks, schedule requirements and potential budget considerations for the City of El Cerrito to develop the Green Infrastructure Plan. The Framework describes MRP-required elements of the Plan, including the following:

1. Interdepartmental staff coordination and public outreach
2. Mapped and prioritized areas for potential and planned projects so that there are no missed opportunities to install GI systems
3. Targets for the amount of impervious surface to be retrofitted over time
4. A system for tracking and mapping completed projects
5. Guidelines for project design, and standard designs and specifications
6. Requirements for sizing green infrastructure projects
7. Integration with existing planning documents (such as the San Pablo Avenue Specific Plan and Complete Streets Plan, the Urban Greening Plan, and the Storm Drain Master Plan Update)
8. Methods for estimating the load reductions to be achieved
9. Evaluation of funding options

Several of these elements (such as tasks 4, 5, 6, and 8 above) will be developed collaboratively with other Contra Costa municipalities through the Contra Costa Clean Water Program (CCCWP) or regionally through the Bay Area Stormwater Management Agencies Association (BASMAA).

Staff will provide a progress report on the development of the Green Infrastructure Plan in 2018 as part of the annual Clean Water Update, which is normally provided to Council in early April. Staff anticipates providing a Council presentation of the Green

Infrastructure Plan in spring 2019 for Council consideration of Plan approval and submittal to the Water Board by September 2019.

STRATEGIC PLAN CONSIDERATIONS

Approval of the City's Green Infrastructure Plan Framework contributes to the fulfillment of Strategic Plan Goal F – *To foster environmental sustainability citywide*. The Framework provides a work plan for the development of the City's Green Infrastructure Plan, leading to the ultimate development of future Green Infrastructure projects, which will help maintain clean water standards. Approval of the Framework not only promotes good water quality, it also promotes future actions to protect the health and sustainability of the City's waterways and ecology.

ENVIRONMENTAL CONSIDERATIONS

Approval of the Green Infrastructure Plan Framework does not constitute a "project," as defined in the California Environmental Quality Act (CEQA) and its Guidelines, under the general rule that CEQA applies only to actions that have the potential to cause a significant effect on the environment. Any qualifying actions and projects that will be outlined in the Green Infrastructure Plan will be reviewed under CEQA prior to approval.

FINANCIAL CONSIDERATIONS

There are no financial obligations associated with the requested action to approve the Framework. As noted in the Framework, the City will begin the initial tasks for development of the Green Infrastructure Plan as part of the Storm Drain Master Plan Update, for which funding is included in the Fiscal Year (FY) 2016-2017 Adopted Budget and Capital Improvement Program. Based on these initial tasks, staff will identify any additional resources and funding necessary to fully develop the Green Infrastructure Plan as part of the FY 2018-2019 budget process.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. The City of El Cerrito Green Infrastructure Plan Framework

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING THE CITY OF EL CERRITO GREEN INFRASTRUCTURE PLAN FRAMEWORK (FRAMEWORK) AS REQUIRED BY THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) MUNICIPAL REGIONAL STORMWATER PERMIT

WHEREAS, under the 1987 amendments to the Federal Water Pollution Control Act (Clean Water Act), all jurisdictions in the United States are responsible for ensuring compliance with the National Pollutant Discharge Elimination System (NPDES) program; and

WHEREAS, the San Francisco Regional Water Quality Control Board (Water Board) through Order No. R2-2015-0049, NPDES Permit No. CAS612008, issued waste discharge requirements under the San Francisco Bay Municipal Regional Stormwater Permit (MRP) to the Cities, Flood Control Districts and County agencies located in Alameda, Contra Costa, Santa Clara, and San Mateo Counties; and

WHEREAS, under this Municipal Regional Permit (MRP), the City of El Cerrito, is responsible for implementing measures throughout its jurisdiction that prevent pollutants from entering the storm drain system, creeks and San Francisco Bay; and

WHEREAS, the MRP (Provision C.3.j.) requires Permittees to develop, approve and submit a Green Infrastructure Plan to the Water Board by September 2019; and

WHEREAS, Green Infrastructure systems mimic the natural water cycle by using soils and plants to slow down and clean stormwater runoff of pollutants before it reaches receiving waters, such as local creeks and San Francisco Bay; and

WHEREAS, the Green Infrastructure Plan is intended to identify and prioritize potential Green Infrastructure projects that can be built in the City to incrementally reach reduction targets for stormwater pollutants, specifically polychlorinated biphenyls (PCB) and mercury, by 2020, 2030 and 2040; and

WHEREAS, Provision C.3.j requires that Permittees adopt by June 30, 2017 a Green Infrastructure Plan Framework that provides a work plan describing how the City will develop its Green Infrastructure Plan, and staff has prepared a Framework that meets the requirements of Provision C.3.j.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby approves the Green Infrastructure Plan Framework as required by the NPDES Municipal Regional Stormwater Permit.

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

I CERTIFY that at a regular meeting on May 16, 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:

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

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



Green Infrastructure Plan Framework

Order R2-2015-0049 Provision C.3.j.i (1)



May 16, 2017

City of El Cerrito Green Infrastructure Plan Framework

ACRONYMS

ABAG	Association of Bay Area Governments
BASMAA	Bay Area Stormwater Management Agencies Association
CCCWP	Contra Costa Clean Water Program
CCSWRP	Contra Costa Watersheds Stormwater Resource Plan
GIS	Geographic Information System
IRWMP	Integrated Regional Water Management Plan
MRP	Municipal Regional Stormwater Permit
MTC	Metropolitan Transportation Commission
NPDES	National Pollutant Discharge Elimination System
PCBs	Polychlorinated Biphenyls
RAA	Reasonable Assurance Analysis
TMDL	Total Maximum Daily Load

City of El Cerrito Green Infrastructure Plan Framework

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0 - Summary

To implement the Clean Water Act, and with direction from the California Regional Water Quality Control Board for the San Francisco Bay Region, Bay Area municipalities are incorporating green infrastructure into the development and renewal of the urban landscape.

Green infrastructure refers to the construction and retrofit of storm drainage to reduce runoff volumes, disperse runoff to vegetated areas, harvest and use runoff where feasible, promote infiltration and evapotranspiration, and use bioretention and other natural systems to detain and treat runoff before it reaches our creeks and bay. Green infrastructure facilities include, but are not limited to, pervious pavement, infiltration basins, bioretention facilities or “raingardens”, green roofs, and rainwater harvesting systems. Green infrastructure can be incorporated into construction on new and previously developed parcels, as well as new and rebuilt streets, roads, and other infrastructure within the public right-of-way.

This Framework outlines the tasks, schedule requirements, and future budget considerations for the City of El Cerrito to develop a Green Infrastructure Plan (Plan). The Plan for the City of El Cerrito is required by the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit (MRP)¹, and must be submitted to the California Regional Water Quality Control Board for the San Francisco Bay Region by September 2019.

The Framework describes required elements of the Plan, including the following:

1. Interdepartmental staff coordination and public outreach
2. Mapped and prioritized areas for potential and planned projects
3. Targets for the amount of impervious surface to be retrofit over time
4. A system for tracking and mapping completed projects
5. Guidelines for project design, and standard designs and specifications
6. Requirements for sizing green infrastructure projects
7. Integration with existing planning documents
8. Methods and results for estimating the load reductions to be achieved
9. Evaluation of funding options

Several of these elements will be developed collaboratively with other Contra Costa municipalities through the Contra Costa Clean Water Program (CCCWP) or regionally through the Bay Area Stormwater Management Agencies Association (BASMAA).

The City of El Cerrito will begin initial tasks for development of the Green Infrastructure Plan as part of the Storm Drain Master Plan Update, for which funding is included in the Fiscal Year (FY) 2016-2017 Adopted Budget and Capital Improvement Program. Based on these initial tasks, staff also proposes to identify any additional resources and funding that may be necessary for full development of the Green Infrastructure Plan as part of the FY 2018-2019 budget process.

¹ Order R2-2015-0049.

0.1 El Cerrito's History in Green Infrastructure

The City of El Cerrito has been implementing various types of Green Infrastructure in City facilities and the public right-of-way for over 10 years. As the design of a new El Cerrito City Hall was underway in 2007, City staff recognized the opportunity to incorporate Green Infrastructure before it was required as part of development projects, incorporating two landscaped infiltration areas that treat a 1.04 acre drainage area. In 2008, City staff pursued federal and other grants to add Green Infrastructure to a streetscape project, resulting in the installation of two urban raingardens on San Pablo Avenue that filter 1.33 acres of stormwater along this commercial corridor. In 2011, when the City rebuilt its award winning Recycling + Environmental Resource Center, several bioretention facilities were incorporated into the project, resulting in treatment of 1.94 drainage acres. The Center also includes a rainwater cistern used to flush toilets and irrigate native plant gardens at the Center. In 2015, the City was awarded a Proposition 84 Urban Greening Grant to construct the Ohlone Greenway Natural Area and Rain Garden Project, which converted a paved maintenance lot on the Greenway to a native garden with a 1,200 linear foot bioswale treating 2.29 acres of urban stormwater runoff. Most recently, with the San Francisco Estuary Partnership (SFEP) as lead, the City is participating in the San Pablo Avenue Green Stormwater Spine Project. This demonstration project, currently under construction, will implement green infrastructure such as permeable walkway surfaces, bio-retention, and flow-through planters at select sites along San Pablo Avenue, including a site near Moeser Avenue in El Cerrito. Finally, the City of El Cerrito has included Green Infrastructure considerations and potential projects in its *San Pablo Avenue Specific Plan & Complete Streets Plan* and *Urban Greening Plan*, as well as its Capital Improvement Program.

1 • Purpose

1.1 Regulatory Requirements

The City of El Cerrito is one of 76 Bay Area municipalities covered by the MRP issued by the California Regional Water Quality Control Board for the San Francisco Bay Region (Water Board). Provision C.3.j.i. in the MRP requires that each Permittee prepare and submit a Green Infrastructure Plan. Required elements of the Plan are specified by the Water Board. Each Permittee's Plan is scheduled to be submitted with the Annual Report due on September 30, 2019.

The provision further specifies that each Permittee prepare a framework or workplan that describes specific tasks and timeframes for development of the Plan. The City of El Cerrito must approve the framework or workplan by June 30, 2017. This document fulfills that requirement.

Provisions C.11 and C.12 in the MRP requires Contra Costa Permittees (Contra Costa County and its 19 cities and towns) to reduce estimated PCB loading by 23 grams/year and estimated mercury loading by 9 grams/year using green infrastructure by June 30, 2020. Regionally, Permittees must also project the load reductions achieved via green infrastructure by 2020, 2030, and 2040, showing that collectively, reductions will amount to 3 kg/year for PCBs and

10 kg/year for mercury by 2040. The Plan will provide estimates of the reductions in the quantity of these pollutants based on implementation of the elements outlined in the Plan.

1.2 Purpose of the Green Infrastructure Plan

The City of El Cerrito's Plan will guide a shift from conventional "collect and convey" storm drain infrastructure to more resilient, sustainable stormwater management that reduces runoff volumes, disperses runoff to vegetated areas, harvests and uses runoff where feasible, promotes infiltration and evapotranspiration, and uses natural processes to detain and treat runoff. Green infrastructure features and facilities include, but are not limited to, pervious pavement, infiltration basins, and bioretention facilities ("rain gardens"), green roofs, and rainwater harvesting systems.

As required by Provisions C.3.a. through C.3.i. in the MRP, these Green Infrastructure practices are currently implemented on land development projects in the City of El Cerrito. Specific methods and design criteria are spelled out in the CCCWP's *Stormwater C.3 Guidebook*, which the City of El Cerrito has referenced in Municipal Code 8.40.050 – Stormwater control plan required.

The proposed Plan will detail how similar methods will be incorporated to retrofit existing storm drainage infrastructure using facilities constructed on public and private parcels and within the public right-of-way.

To prepare the Plan, the City of El Cerrito will:

- Review planned capital projects to identify the potential to incorporate green infrastructure and low impact development drainage design.
- Identify and prioritize areas and projects within the City of El Cerrito to implement additional green infrastructure projects.
- Coordinate within and between the City of El Cerrito's departments to develop concepts for integrated projects that serve multiple objectives (e.g., multi-modal transportation, recreation, streetscape improvements, and parks, as well as green infrastructure).
- Document resources and a process for completing conceptual designs.
- Document a funding strategy for future projects, including a process to pursue funding and align project funding sources and schedules to successfully build integrated projects.
- Develop and implement a system to track green infrastructure projects, including land development projects subject to the Provision C.3.a. through C.3.i. requirements, and project future implementation.
- Evaluate and predict the resulting reductions in the quantity of pollutants—including PCBs, mercury, and trash—transported to creeks and the Bay/Delta.

1.3 Countywide and Regional Collaboration

Several of the elements required for preparation of City of El Cerrito's Plan will be developed collaboratively through the City's participation in the CCCWP and/or regionally through participation in BASMAA.

2 • Plan Elements and Approach

2.1 Interdepartmental Coordination and Community Outreach

To be successful, the Plan must engage a wide variety of stakeholders in plan, policy, and project concept development. Planned projects with multiple benefits may be proposed for streets, parks, schools or other public parcels. A successful green infrastructure planning team will include representatives from the municipal departments who plan and implement projects on these streets and parcels.

A successful planning approach will also include an effective plan for engaging municipal staff, elected officials *and* the community members who live, work, and play near proposed green infrastructure projects.

2.1.1 Interdepartmental Coordination

The City of El Cerrito has begun developing a strategy for engagement and education of municipal staff on the purposes and goals of green infrastructure, the required elements of the Plan, and the steps needed to develop and implement the Plan.

The City of El Cerrito has also begun convening an interdepartmental committee under the leadership of the Director of Public Works to oversee and implement the process of preparing the Plan.

The City of El Cerrito interdepartmental committee consists of the following departments and staff representatives:

Table 1. Interdepartmental Green Infrastructure Plan Committee

Staff	Title
Melanie Mintz	Community Development Director
Maria Sanders	Operations and Environmental Services Manager
Margaret Kavanaugh-Lynch	Development Services Manager
Melissa Tigbao	Engineering Manager/Senior Engineer
Will Provost	Environmental Analyst / Clean Water Coordinator
Stephen Prée	Environmental Programs Manager / City Arborist

The interdepartmental committee met two (2) times in FY 16/17 to discuss the required elements and development of the City's Plan.

2.1.2 Community Engagement and Outreach

The City of El Cerrito will develop a comprehensive community engagement and education strategy in order to educate public stakeholders on green infrastructure benefits and requirements and to engage them in the development of the City's Plan. Such outreach will include both general outreach and targeted outreach and training for professionals involved

in infrastructure planning and design. Targeted outreach and training is ongoing and will be coordinated countywide with the CCCWP.

2.2 Green Infrastructure Project Identification and Prioritization

The Plan will describe the mechanism(s) by which the City will identify, prioritize and map potential and planned green infrastructure projects on a drainage-area-specific basis. These include public and private projects that may be implemented over the long term, with milestones for implementation by 2020, 2030, and 2040.

The Plan will also contain the outputs resulting from the identification and prioritization mechanism(s) described above, including the prioritization criteria as well as the lists and maps of prioritized projects and timeframes for implementation.

2.2.1 Review of Capital Improvement Program Projects

The City of El Cerrito will prepare and maintain a list of public and private green infrastructure projects planned for implementation during the permit term, and public projects that have potential for green infrastructure measures. The City of El Cerrito has begun this process and an initial list was submitted with the FY 15-16 Annual Report.

The creation and maintenance of this list is supported by guidance developed by BASMAA: “Guidance for Identifying Green Infrastructure Potential in Municipal Capital Improvement Projects” (May 6, 2016). The Plan will document current implementation of this process within the City of El Cerrito and will identify planned changes or needed improvements. The resultant project lists will be used to provide potential projects for incorporation into the Plan. The Plan will also include a workplan to complete prioritized projects identified through this process.

2.2.2 City of El Cerrito Tools and Processes for Project Identification and Prioritization

City staff will develop a process and resources for identifying and pursuing, on an ongoing basis, additional opportunities to construct green infrastructure projects in the City of El Cerrito. The process and resources will be documented in the Plan and will address how multi-objective projects will be identified through a collaborative interdepartmental planning process. Public and private projects will be evaluated by the Interdepartmental Green Infrastructure Plan Committee for Green Infrastructure benefit, potential and feasibility.

2.2.3 Use of Contra Costa Watersheds Stormwater Resource Plan Tools and Project Lists

The Contra Costa Clean Water Program has obtained a planning grant from the State Water Resources Control Board to develop a Stormwater Resource Plan for Contra Costa County. The Contra Costa Watersheds Stormwater Resources Plan (CCSWRP) will support the development and implementation of green infrastructure plans within the County through identification of local and regional opportunities for green infrastructure projects and the development of tools for estimating pollutant load reductions over future timeframes. The CCSWRP will identify and prioritize multi-benefit projects using a metrics-based approach for quantifying project benefits such as volume of stormwater infiltrated and/or treated and quantity of pollutants removed. The metrics-based analysis will be conducted using hydrologic and pollutant load reduction models coupled with GIS resources and other tools.

Potential projects will also be assessed for additional benefits such as flood control, community greening, and habitat creation. The product of these analyses will be a map of opportunity areas for green infrastructure projects throughout the County and an initial prioritized list of potential projects. The tools, maps, and list of potential projects developed through this process will be available for incorporation into the City's Plan.

2.3 Evaluating Pollutant Load Reductions

The project prioritization criteria will consider opportunities to reduce loads of trash, mercury, PCBs, and other pollutants. It is anticipated that mercury and PCB pollutant load reductions will be evaluated for each project using the regionally developed Interim Accounting Methodology which is based on watershed locations and historic land uses. A draft of this regionally developed methodology was submitted to the Water Board in the 2016 Annual Report. Furthermore, it is anticipated that a Reasonable Assurance Analysis (RAA) will be developed in cooperation with both regional and countywide partners to demonstrate that reductions will be achieved in the time frames required by the Mercury TMDL and the PCBs TMDL. The City of El Cerrito's Plan will include a description of these two methodologies and the results of these methodologies will be incorporated into the planning process.

It is also anticipated that these two methodologies will be used to help develop and/or confirm targets for the amount of impervious surface from both public and private projects within the City of El Cerrito which will need to be converted or "retrofitted" to drain to green infrastructure features by the MRP's 2020, 2030, and 2040 milestones. The City's Plan will include these targets as well as a description of the analyses used to develop them.

2.4 Projecting Green Infrastructure Implementation

To develop the RAA and generate targets for green infrastructure implementation on public and private land, the Plan will include an estimate of the pace of future green infrastructure implementation on public and private parcels.

To estimate the pace of future implementation on private parcels, the City will participate in development of a consistent countywide or regional methodology for projecting private development in future decades. The projections will likely incorporate or adapt regional scenarios created by the Association of Bay Area Governments/Metropolitan Transportation Commission (ABAG/MTC) to estimate future implementation of green infrastructure in each municipality.

2.5 Completed Project Tracking System

The Plan will describe the City of El Cerrito's process for tracking and mapping completed public and private projects and making the information available to the public.

Through the CCCWP, the City is participating in development of a Geographic Information System (GIS) that will allow spatial tracking and representation (maps) of green infrastructure projects and associated tributary drainage areas. The database will be used for tracking and reporting public projects and Regulated Projects (MRP Provision C.3.b.) including Special Projects (MRP Provision C.3.e.) and may be used for tracking operation and maintenance verification inspections of installed stormwater treatment facilities (MRP Provision C.3.h.).

The City of El Cerrito's Plan will include an update on this countywide/regional project and the City's status and plans for integrating this tool into its processes for implementing green infrastructure.

The project is currently underway, with cooperation and cost-sharing between the CCCWP and the Alameda Countywide Clean Water Program (ACCWP) and will significantly leverage the City's ability to make project information available to the public.

2.6 Design Guidance and Specifications for Green Infrastructure Projects

The Plan will include general design and construction guidelines, as well as standard specifications and details (or references to those documents) for incorporating green infrastructure components into projects within the City. These guidelines and specifications should address the different street and project types within the City, as defined by its land use and transportation characteristics, and allow projects to provide a range of functions and benefits, such as stormwater management, bicycle and pedestrian mobility and safety, public green space, urban forestry, etc. The Plan will build off similar elements contained in the San Pablo Avenue Specific Plan & Complete Streets Plan and Urban Greening Plan.

The City will collaborate with other Permittees countywide and regionally to compile, reference, and/or develop this design guidance. Questions to be addressed during development of the guidelines include:

- Does existing design guidance address local needs? Are there local conditions or characteristics that require different guidance?
- To what extent would additional guidance, if developed, address the needs of multiple projects? Or are the design issues presented by local green infrastructure projects so site-specific that designs must be developed individually for each project?

The results of this review and the status of design guidance to be used in future projects will be discussed and presented in the Plan.

2.7 Sizing Requirements for Green Infrastructure Projects

The City's Plan will include a requirement that projects be designed to meet the treatment and hydromodification sizing requirements in MRP Provisions C.3.c. and C.3.d. The Permittees may collectively propose an approach on how to proceed should project constraints in non-regulated right-of-way projects preclude fully meeting the C.3.d. sizing requirements.

A BASMAA project is currently underway to analyze hydrologic data and bioretention facility performance under different sizing scenarios. It is anticipated that this project will result in recommendations for sizing green infrastructure in non-regulated right-of-way projects. The City's Plan will describe the outcomes of BASMAA's efforts and how those outcomes have been incorporated into local planning and design practices.

3 • Integration with Existing Plans and Policies

3.1 Updates to Planning Documents

The Plan will describe its relationship to other planning documents and efforts within the City and how those planning documents have been updated or modified, if needed, to support and

incorporate the green infrastructure requirements. If any necessary updates or modifications have not been accomplished by the completion of the Plan, the Plan must include a work plan and schedule to complete them.

The City has reviewed its existing municipal planning documents and identified which documents need to be updated or modified to support and/or be consistent with the Plan. A summary of the results of the municipal plan review and a schedule for updates or modifications is in Table 2.

The Plan will also describe a process or processes, including criteria, to ensure future planning documents are consistent with the Plan's policies, processes, and tasks.

Name of Plan	Responsible Department/Staff	Last Updated
General Plan – Element	Community Development	August 1999
San Pablo Avenue Specific Plan & Complete Streets Plan	Community Development and Public Works Departments	September 2014
Active Transportation Plan	Public Works Department	April 2016
Urban Greening Plan	Community Development, Public Works and Recreation Departments	December 2015
Storm Drain Master Plan	Public Works Department	March 1999
Urban Forest Management Plan	Public Works Department	May 2007
Parks & Recreation Facilities Master Plan	Public Works and Recreation Departments	Underway

3.2 Adoption of Policies, Ordinances and Other Legal Mechanisms

The Plan will review the City's existing policies, ordinances, and other legal mechanisms to identify which documents may need to be updated or modified to help implement the Plan, and the timing for those actions. As mandated by the MRP, all needed updates, modifications, or new mechanism(s) will need to be completed and adopted (if necessary) by September 30, 2019.

Staff will also collaborate with other Permittees, countywide and regionally, to ensure policies, ordinances, and other legal mechanisms are consistent with those of other Permittees countywide and regionally, while being tailored to the specific needs and characteristics of the City.

4 • Evaluation of Funding Options

The Plan will include an evaluation of funding options for design, construction, and long-term maintenance of prioritized green infrastructure projects, considering local, state and federal funding sources. The City will analyze possible funding options to raise additional revenue for the projects that will eventually be included in the Plan, including capital and operation and maintenance (O&M) costs of these projects. The evaluation for capital costs will include,

but not be limited to: alternative compliance funds, grants – including transportation project grants, new taxes or other levies, existing resources, and other sources of funds.

5 • Budget, Task List, and Timeframes

5.1 Budget Considerations

The City will begin initial tasks for development of the Green Infrastructure Plan as part of the Storm Drain Master Plan Update, for which funding is included in the Fiscal Year (FY) 2016-2017 Adopted Budget and Capital Improvement Program. Based on these initial tasks, staff proposes to identify any additional resources and funding necessary to fully develop the Green Infrastructure Plan as part of the FY 2018-2019 budget process.

5.2 Tasks and Timeframes

The tasks identified in this Framework are shown in Table 4 below.

Table 4. Green Infrastructure Planning Tasks, Roles, and Timeframes

#	Task Description (and reference to the specific sub-provision within Provision C.3.j. that is addressed by the task)		Lead			Estimated Timeframe for Completion
			Local	CCCWP	BASMAA	
	Tasks to complete by June 30, 2017					
1	Complete the Green Infrastructure Plan Framework and have it approved by the Council (C.3.j.i.(1))) and (C.3.j.i.(5)(a))					
	A	Create a schedule for approval of the Framework	●			Jan. 2017
	B	Prepare a draft Framework	●			Feb. 2017
	C	Circulate and obtain comments on the draft Framework	●			March 2017
	D	Revise Framework and make final	●			April 2017
	E	Prepare a Staff Report for the Framework	●			May 2017
	F	Obtain Council Action	●			By June 30
	Tasks to complete July 1, 2017 – September 30, 2019					
2	Draft Green Infrastructure Plan (C.3.j.i.(2))					
	A	Review and revise schedule for provision of resources to be provided countywide or regionally		●		July-Aug. 2017
	B	Begin development of Storm Drain Master Plan and evaluate initial Green Infrastructure Plan elements	●			July-Oct. 2017
	C	Create a detailed schedule for completion and approval of the Green Infrastructure Plan, and for submittal with the 2019 Annual Report	●			Nov.– Dec. 2017
	D	Prepare a Green Infrastructure Plan Template		●		Dec. 2017
	E	Identify additional resources & funding which may be necessary to assist with Plan preparation	●			Jan. -March 2018
	F	Draft the Green Infrastructure Plan and any policies required to implement the Plan	●			Jan. 2018 – Feb. 2019
	G	Staff update to Council on Plan development	●			April 2018
	H	Circulate, obtain comments and revise the draft Plan	●			Feb.-May 2019
	I	Staff presentation to Council of the draft Green Infrastructure Plan and any policies required to implement the Plan, Council approval of Plan	●			May – June 2019
	J	Submit the Green Infrastructure Plan	●			Sept. 2019

#	Task Description (and reference to the specific sub-provision within Provision C.3.j. that is addressed by the task)	Lead			Estimated Timeframe for Completion
		Local	CCCWP	BASMAA	
3	Mechanism for Identifying and Prioritizing Projects				
	A Create a mechanism to locate, prioritize, and map areas for potential and planned public projects on a drainage-area-specific basis (C.3.j.i.(2)(a))		●		Oct. 2017
	B Identify targets for the amount of impervious surface to be retrofitted by 2020, 2030, and 2040 (C.3.j.i.(2)(c))	●	●		June 2018
	C Identify and prioritize projects and/or areas for potential projects for implementation by 2020, 2030, and 2040, consistent with the Reasonable Assurance Analysis (C.3.j.i.(2)(b) and C.3.j.iv.(1))	●	●		June 2018
4	Project Amount and Locations of Private Development (C.3.j.i.(2)(c))				
	A Identify or develop a methodology for projecting amount and locations of private development		●		July 2017
	B Apply methodology and revise/validate projections of private development based on local understanding and knowledge of development patterns	●			June 2018
5	List of Prioritized Projects (C.3.j.i.(2)(b))				
	A Develop list of project concepts and prioritize based on evaluation of multiple benefits		●		Jan. 2018
	B Revise/validate project lists based on local knowledge	●			Feb.- March 2018
	C Identify projects that may be candidates for grant funding, including funding under Round 2 of the Prop. 1 Stormwater Grant Program	●			Feb.- March 2018
6	Early Implementation				
	A Prepare workplans to complete prioritized projects produced from capital improvement program review (C.3.j.i.(2)(j))	●			Nov.-Dec. 2017
	B Prepare workplans for additional staff-identified Green Infrastructure projects	●			Nov.-Dec. 2017
	C Incorporate the lists of early implementation projects and additional staff-identified projects and associated workplans into the Green Infrastructure Plan	●			Jan. 2019
7	Supporting Elements and Associated Tasks				
	A Develop a model ordinance, policy or policies for Green Infrastructure Plan Implementation (C.3.j.i.(3))		●		Dec. 2018
	B Review local ordinances, policies, and resolutions and determine if updates are needed to support implementation of Green Infrastructure. Document this review in the 2019 Annual Report (C.3.j.i.(5)(c))	●			May-July 2018
	C Prepare an analysis of potential funding options for Green Infrastructure Projects (C.3.j.i.(2))		●		Dec. 2017
	D Analyze funding options for Green Infrastructure Projects and applicability to local conditions (C.3.j.i.(2)(k))	●			July- Aug. 2018
	E Develop Green Infrastructure Design Guidelines for streetscapes and other public infrastructure (C.3.j.i.(2)(e))		●		Dec. 2018
	F Develop specifications and typical design details for Green Infrastructure (C.3.j.i.(2)(f))		●		Dec. 2018
	G Develop sizing criteria for Green Infrastructure facilities in non-Regulated right-of-way projects (C.3.j.i.(2)(g))			●	Sep. 2017
	H Develop regionally consistent methods to track and report implementation of green infrastructure measures, including load reductions achieved (C.3.j.iv.(1))			●	Dec. 2017
8	Update Planning Documents (C.3.j.i.(2)(h))				
	A Review planning documents and identify potentially needed updates	●			Sep. 2017

#	Task Description (and reference to the specific sub-provision within Provision C.3.j. that is addressed by the task)	Lead			Estimated Timeframe for Completion
		Local	CCCWP	BASMAA	
	B Identify remaining updates and reference in Green Infrastructure Plan (C.3.j.i.(2)(i))	●			May 2019
9	Outreach and Education (C.3.j.i.(4))				
	A Develop a stakeholder education and engagement strategy/plan for Green Infrastructure Plan development, including outreach and education about the required Green Infrastructure Plan elements.	●			Dec. 2017
	B Participate in countywide and regional Green Infrastructure outreach and education efforts, including general outreach and targeted outreach and training for professionals involved in infrastructure planning and design (C.3.j.iii.)		●		Jun. 2019
	C Implement Green Infrastructure outreach and education in connection with planning and design of green infrastructure projects (C.3.j.i.(4)(a))	●			Jun. 2019
	D Incorporate Green Infrastructure outreach on municipal websites	●			Jun. 2019
	E Provide updates to elected officials on Green Infrastructure requirements and methods of implementation (C.3.j.i.(4)(c))	●			Periodic



AGENDA BILL

Agenda Item No. 4(C)

Date: May 16, 2017
To: El Cerrito City Council
From: Melissa Tigbao, Engineering Manager / Senior Engineer
Yvetteh Ortiz, Public Works Director / City Engineer
Subject: Storm Drain Easement Agreement with 600 Seaview Drive

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute an easement agreement with Nelson and Marcia Faller, Owners for public storm drain facilities located at 600 Seaview Drive.

BACKGROUND AND ANALYSIS

In October 2015, the City of El Cerrito received a Building Permit Application for an addition to a single-family home on the property at 600 Seaview Drive. During the design development of the project, the property owners had discovered that an existing 24-inch public storm drain line would have to be relocated because it was within the footprint of the new foundation. The storm drain line is mapped as part of the City's storm drain system collecting stormwater runoff from areas east of the property and maintained by the City. The existing storm drain pipe ran diagonally from the northeast to the southwest across the northerly third of the subject property.

A hydrologic and hydraulic analysis was performed by Moran Engineering, Inc. and was submitted as a part of the Building Permit Application. The analysis found that the existing storm drain system had no issues nor was it in disrepair, and also specified design parameters for the proposed relocation to continue to provide a properly functioning system, such as the type, size, and required slope of the pipe. The property owners worked directly with the Public Works Department to submit construction plans for a new 24-inch storm drain pipe with associated manholes, which would connect to the main line on Seaview Drive. The Public Works Department approved all required permits for the storm drain work and has performed all necessary inspections for this work. Construction of the home addition is still on-going.

It was also discovered that the existing storm drain facilities were constructed on private property without a recorded easement. The Easement Agreement is required to improve City access and facilitate operation, inspection, maintenance, repair, replacement, and removal of public storm drain facilities on this private property as needed in the future.

STRATEGIC PLAN CONSIDERATIONS

Execution of the Easement Agreement is consistent with El Cerrito Strategic Plan Goal A – *Deliver exemplary government services*. Specifically, approval of this action will make municipal operations more efficient by improving City access and facilitating various operations and maintenance functions for our storm drain infrastructure. It also continues strengthening relationships with residents who are looking to improve their homes.

ENVIRONMENTAL CONSIDERATIONS

The storm drain relocation work is categorically exempt from CEQA pursuant to Section 15302 (Class 2 – Replacement or Reconstruction) because the work is a reconstruction of existing utility facilities where the new utility facilities will be located on the same site as those replaced and will have substantially the same purpose as those replaced with negligible to no expansion of capacity.

FINANCIAL CONSIDERATIONS

Execution of the Easement Agreement will have no fiscal impact on the City. No funds are being exchanged for execution of the Easement Agreement. The property owner will provide an easement on its property according to the Agreement, granting the City access rights in perpetuity. The costs for relocating the storm drain facilities within the easement are paid for by the property owner. The City will continue to provide the same level of maintenance for these storm drain facilities therefore costs are not expected to increase beyond current levels on an annual basis.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and Easement Agreement, and found that legal considerations have been addressed. The Easement Agreement will be recorded with the Contra Costa County Recorder if approved by City Council.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. Easement Agreement

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AN EASEMENT AGREEMENT WITH NELSON AND MARCIA FALLER, FOR PUBLIC STORM DRAIN FACILITIES LOCATED AT 600 SEAVIEW DRIVE

WHEREAS, an application for an addition to a single-family home located at 600 Seaview Drive was received by the City of El Cerrito Building Department in October 2015; and

WHEREAS, the footprint of the building addition was directly above an existing storm drain pipe collecting stormwater runoff from the areas east of the property; and in order to construct the addition to the existing house on site, the property owner requested permission from the City to re-align the storm drain pipe on the property and abandon the existing facilities; and

WHEREAS, the owners worked directly with the City of El Cerrito Public Works Department; and the Public Works Department approved all required permits for the storm drain work and performed all necessary inspections during the construction; and

WHEREAS, it was also discovered that the existing storm drain facilities were constructed on private property without a recorded easement; and

WHEREAS, the storm drain relocation work is categorically exempt from CEQA pursuant to Section 15302 (Class 2 i Replacement or Reconstruction) because the work is a reconstruction of existing utility facilities where the new utility facilities will be located on the same site as those replaced and will have substantially the same purpose as those replaced with negligible to no expansion of capacity; and

WHEREAS, an Easement Agreement is required to improve City access and facilitate operation, inspection, maintenance, repair, replacement, and removal of public storm drain facilities on this private property as needed in the future.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito, that it hereby authorizes the City Manager to execute an Easement Agreement with Nelson and Marcia Faller, for public storm drain facilities located at 600 Seaview Drive.

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

I CERTIFY that at a regular meeting on May 16, 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. 4(C)
Attachment 1

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

APPROVED:

Cheryl Morse, City Clerk

Janet Abelson, Mayor

Recording Requested by
and when recorded, return to:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

Attention: City Manager

FOR RECORDER'S USE ONLY

Free Recording Pursuant to
Government Code §27383

EASEMENT AGREEMENT
(Storm Drain Improvements)

For and in consideration of the acceptance by the Grantee of the hereinafter described easement for public use and to enable relocation of storm drain facilities by Nelson + Marcia Falk ("Owner"), Owner hereby grants to CITY OF EL CERRITO ("Grantee"), an easement (the "Easement") for the operation, inspection, maintenance, repair, replacement and removal of a storm drain pipe and associated storm drain structures under and through the real property described in Exhibit A and depicted on Exhibit B (the "Easement Area"), subject to the conditions stated in this Agreement.

1. Terms of Easement. The Easement shall burden the Easement Area, shall be non-exclusive, perpetual in duration (unless terminated by the written agreement of the Owner and the Grantee), and shall run with the land.

2. Non-Exclusive Use. The Owner may use the Easement Area, including the surface of the Easement Area, for any purpose which is not inconsistent with the Grantee's permitted use of the Easement Area. However, neither party shall place or permit any temporary or permanent improvement of any nature on the Easement Area which might impair the parties' respective rights to use the Easement Area. Moreover, Owner shall not erect any structure beyond that which is currently located or approved to be located within the Easement Area without obtaining the prior written approval of the Grantee

3. Grantee's Obligations. In exercising its rights hereunder, the Grantee shall comply with the following conditions:

(a) The Grantee shall notify the Owner at least two (2) business days prior to accessing the Easement Area for any purpose, except in the event of an emergency, in which case the Grantee shall give notice to the Owner as reasonable under the circumstances.

(b) In performing activities under this Agreement, the Grantee shall not unreasonably impair the Owner's use of the Easement Area. In the event Grantee anticipates activities that could materially affect access to the Owner's property or improvements thereon, the Grantee shall provide at least five (5) business days' prior notice to the Owner to allow the Owner to inform its tenants and/or provide alternative means of access.

(c) The Grantee shall take all reasonable steps necessary to secure that portion of the Easement Area in which the Grantee is performing any activities.

(d) The Grantee shall be solely responsible for the cost of any activities permitted under this Agreement.

(e) Following the completion of any activities, the Grantee shall restore the Easement Area, including any surface improvements, to the condition existing prior to the commencement of such activities, reasonable wear and tear excepted, except for any improvements beyond those approved under Section 2 or otherwise approved in writing by the Grantee or that impair the Grantee's rights to use the Easement Area.

(f) The Grantee shall defend, indemnify and hold the Owner harmless from and against losses, actions, demands, damages, claims, costs and expenses (including, but not limited to, experts fees and attorneys' fees and costs) and liabilities of whatever kind or nature that arise out of or are in any way connected with the activities of the Grantee or any entity or individual acting under the Grantee's direction or control under this Agreement, except and to the extent resulting from any gross negligence or willful misconduct of the Owner.

(g) The provisions of this Section 3 shall survive expiration or termination of this Agreement.

4. Default. The failure by a party to perform any covenant or obligation of such party hereunder and to cure such non-performance within twenty (20) business days after written notice by the other party shall constitute a default hereunder. Upon a default the aggrieved party shall be entitled to all remedies, legal and equitable, allowed by law, except termination of the Easement herein granted.

5. Amendments. This Agreement may be amended or otherwise modified only by a writing signed and recorded by the parties hereto.

6. No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the parties and their successors and assigns, subject to the provisions hereof. This Agreement shall not be deemed to confer any rights upon any person except the parties and their successors and assigns.

7. Attorneys' Fees. If either party brings an action or proceeding against the other by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.

8. Notices. All notices required shall be in writing and shall be deemed to have been given (1) when hand delivered to the other party; or (2) three business days after the same have been deposited in a United States post office with first-class or certified mail, return receipt requested, postage prepaid; or (3) the next business day after same have been deposited with an overnight delivery service, provided that the sending party receives a confirmation of delivery from delivery service provider.. All notices shall be addressed as follows:

To the Owner:

Nelson & Marcia Faller
15090 Saddlebrook Ln.
Poway, CA 92064

To the City:

The City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
Attn: Public Works Director/City Engineer

9. Recording: Easements to Run with the Land. This Agreement shall be recorded by the parties, and it is hereby agreed that the terms and conditions set forth in this Agreement shall be considered covenants running with the land.

10. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

11. Miscellaneous Provisions.

(a) If any provision hereof shall be held invalid or unenforceable, the remainder hereof shall not be affected thereby, and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

(b) Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

(c) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one document.

Signatures on Following Pages

The parties have executed this Agreement as of the latest date indicated below.

CITY:

The City of El Cerrito

By: _____

Title: City Manager

Date: _____

OWNER:

By: Marcia Jallu

Title: _____

Date: 11/2/15



11/2/15

Date: _____

SIGNATURES MUST BE NOTARIZED

State of California

County of SAN DIEGO

On NOVEMBER 7, 2015 before me PETER A. BROWNELL, NOTARY PUBLIC
Date

personally appeared NELSON FALLER & MARCIA FULLER

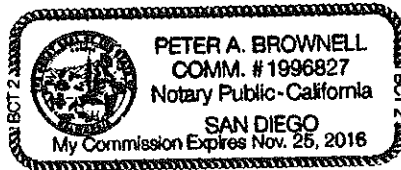
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

Place Notary Seal Above

WITNESS my hand and official seal.

Peter A. Brownell
Signature of Notary Public



ADD EXHIBITS A & B

Exhibit A

The land referred to is situated in the county of Contra Costa, city of El Cerrito, state of California, and is described as follows:

Lot 130, Map, Map of Havenside Unit No. Two, filed November 29, 1946, Map Book 31, Page 44, Contra Costa County Records.

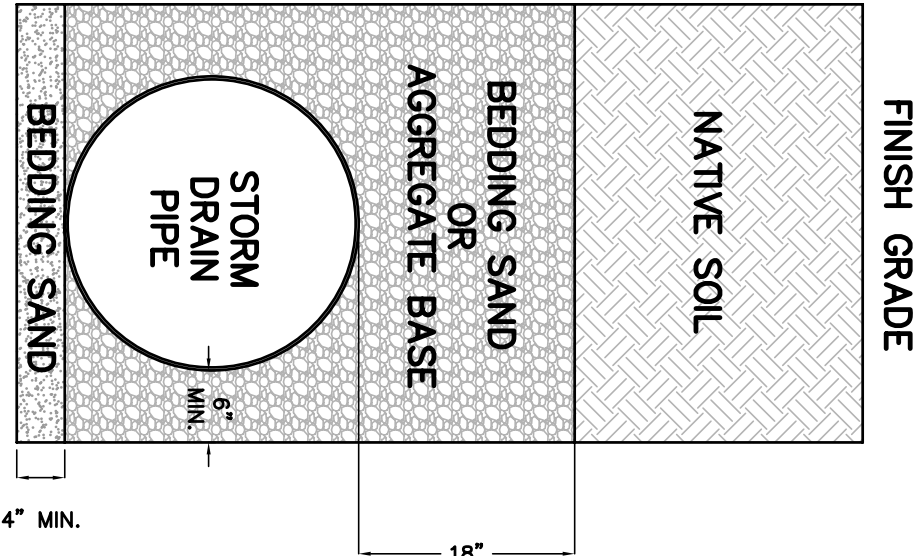
APN: 504-415-002

UTILITY LINE NOTE:
UNDERGROUND UTILITY LOCATIONS WERE MAPPED BASED UPON MARKS AND STRUCTURES FOUND IN THE FIELD, AND OLD RECORDS. DUE TO THE INHERENT UNCERTAINTY IN LOCATING UNDERGROUND UTILITIES, IT IS RECOMMENDED THAT THE POSITIONS OF THE LINES AS SHOWN BE VERIFIED BY HAND DIGGING PRIOR TO EXCAVATING IN THE VICINITY OF SAME.

BENCHMARK:
ELEVATIONS ARE BASED ON THE SURVEY BY WILEY PIERCE DATED 1-16-73. THE FLOW LINE OF THE 24" PIPE IN THE CATCH BASIN NEAR THE NORTHEAST CORNER OF THE PROPERTY WAS TAKEN AS ELEVATION = 301.96 FEET.

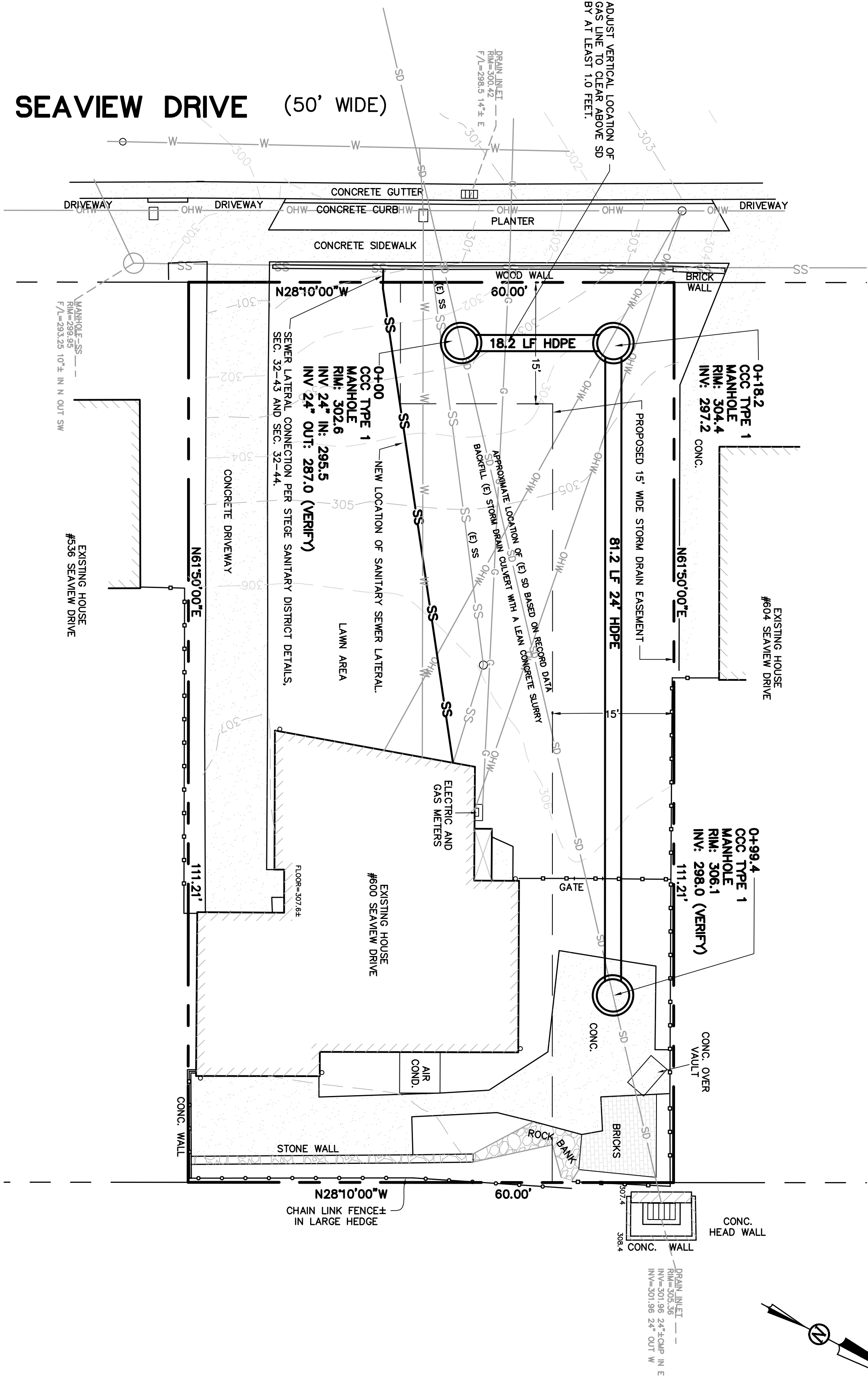
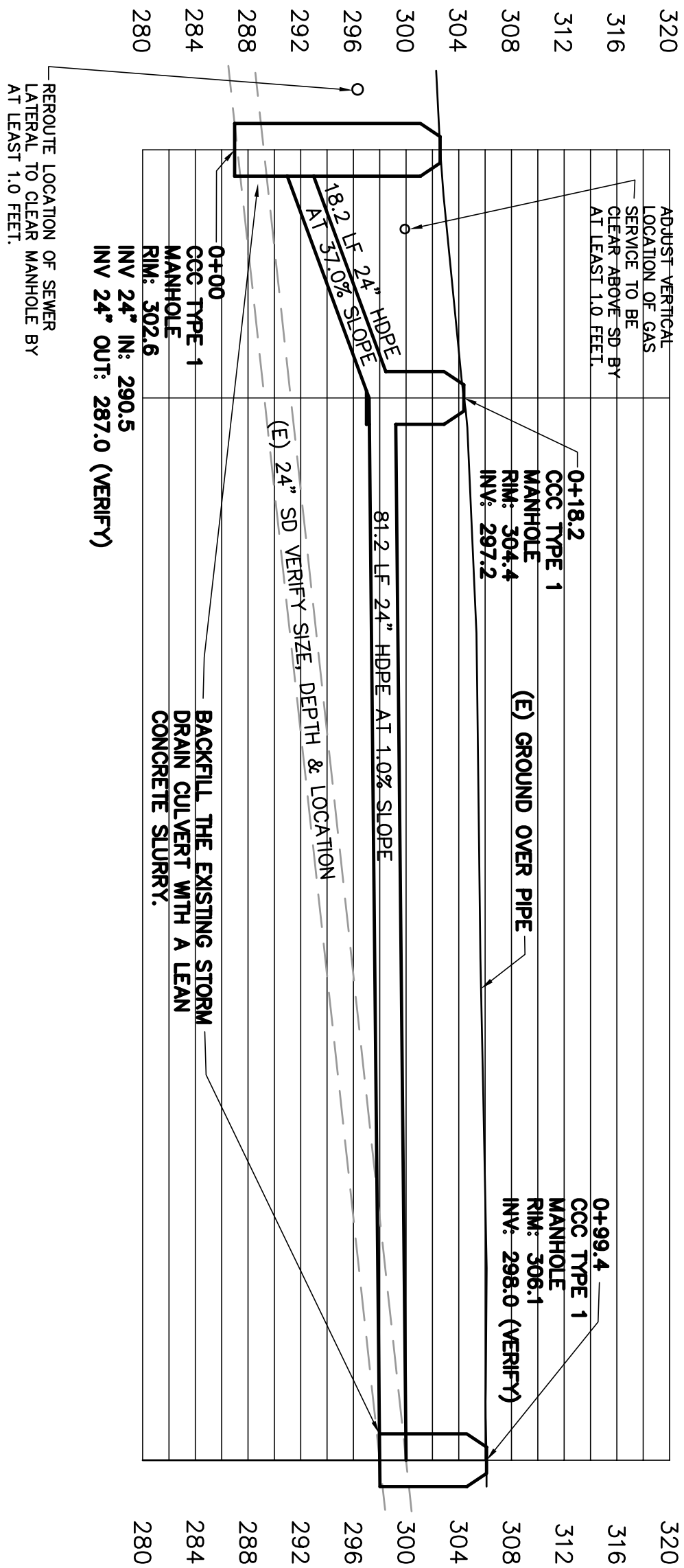
LEGEND	
A/C	ASPHALT/CONCRETE
B/W	BASE OF WALL
CMP	CORRUGATED METAL PIPE
C.O.	CLEAN OUT
CONC.	CONCRETE
D.I.	DRAIN INLET
D.S.	DOWN SPOUT
D/W	DRIVEWAY
E.P.	EDGE OF PAVEMENT
F/L	FLOW LINE
G	GAS
HDPE	HIGH DENSITY POLYETHYLENE PIPE (ADS N12 OR EQUAL)
INV.	INVERT
J.P.	JOINT POLE
M.H.	MANHOLE
OHW	OVERHEAD WIRES
SD	STORM DRAIN
SS	SANITARY SEWER
S/W	SIDEWALK
T.C.	TOP OF CURB
TOP	TOP OF BANK
T/W	TOP OF WALL
W	WATER
W.M.	WATER METER
W.V.	WATER VALVE

FILL SHOULD BE PLACED IN LIFTS NOT EXCEEDING 8 INCHES OF UNCOMPACTED THICKNESS.
MOISTURE CONTENT OF THE FILL SHOULD BE KEPT AT ABOUT 2% TO 3% ABOVE OPTIMUM.
FILL SHOULD NOT CONTAIN ROCKS OR CLUMPS GREATER THAN 6 INCHES IN GREATEST DIMENSION, WITH NOT MORE THAN 15% LARGER THAN 2.5 INCHES.
FILL SHOULD BE COMPACTED TO AT LEAST 90% RELATIVE COMPACTION PER ASTM D-1557-91, WITH THE TOP 6 INCHES UNDER PAYMENT OR HARDSCAPE WHERE VEHICULAR TRAFFIC IS PRESENT COMPACTED TO AT LEAST 95% RELATIVE COMPACTION.



TYPICAL TRENCH SECTION
NOT TO SCALE

ESTIMATE OF IMPORT / EXPORT QUANTITIES:
EXPORT 45 CU. YD. OF NATIVE MATERIAL
IMPORT 33 CU. YD. OF BEDDING SAND AND / OR AGGREGATE BASE
IMPORT 10 CU. YD. OF LEAN CONCRETE SLURRY



MORAN ENGINEERING
1930 SHATTUCK AVENUE
BERKELEY, CALIFORNIA 94704
TEL. (510) 848-1930 FAX (510) 848-9725

STORM DRAIN PLAN

600 SEAVIEW DRIVE
EL CERRITO CALIFORNIA

DRAWING	SEAWECIVL
F.B. NO.	1489
SCALE	1" = 10'
DATE	FEBRUARY 13, 2014
REVISIONS	
SHEET NO.	1 OF 1
JOB NO.	14-8811

C10



AGENDA BILL

Agenda Item No. 4(D)

Date: May 16, 2017
To: El Cerrito City Council
From: Katherine Ahlquist, Community Development Analyst
Melanie Mintz, Community Development Director
Subject: Approve Transfer of the Idaho Apartments (10203 San Pablo Avenue) and Reassign City Loan

ACTION REQUESTED

That the City Council, acting as Housing Successor to the former Redevelopment Agency adopt a resolution taking the following actions:

1. Approve the sale of the Idaho Apartments from Idaho Apartments Associates, LP to San Pablo Preservation, LP, on terms and conditions to be approved by the City Manager;
2. Approve the amendment and restatement of the current City loan on the Idaho Apartments on terms and conditions to be approved by the City Manager; and
3. Authorize the City Manager to take such actions as are necessary to accomplish the sale of the Idaho Apartments and the amendment of the City Loan consistent with the Council's direction.

BACKGROUND

The Idaho Apartments (Idaho Project), located at 10203 San Pablo Avenue, is a 29-unit affordable housing development providing supportive services to its special needs residents. The property, formerly the Idaho Motel, was acquired in 1995 and redeveloped into affordable housing by Idaho Apartments Associates, LP, a limited partnership between Idaho Apartments Housing Corporation (an affiliate of Rubicon Programs, Inc.), as the general partner, and the National Equity Fund as the limited partner. The Idaho Project was, in part, made possible by financial assistance from the El Cerrito Redevelopment Agency and Contra Costa County. On January 21, 1997, the City and County entered into an Intercreditor Agreement (ICA) that established priority between the City and the County for their respective loans. In February 1997, pursuant to El Cerrito Redevelopment Agency Board Resolution No. 447, the former El Cerrito Redevelopment Agency loaned \$350,000 of Low and Moderate Income Housing Funds (City Loan) to the Idaho Apartments Associates, LP for the Idaho Project through an Owner Participation Agreement and associated documents (Idaho OPA).

The City Loan terms, inclusive of the ICA requirements are summarized as follows:

- A \$350,000 principal balance;
- A 3.0% simple interest rate, with approximately \$83,000 in accrued interest as of February 2017;
- A maturity date of August 25, 2054;
- A first trust deed position shared with the County;
- City Loan to be repaid from approximately 14% (28% of 50%) of the total project cash flow after payment of operating expenses.
- To date, no payments have been made on the loan as allowed per the terms in the ICA.

The Project was also funded with low income housing tax credits (Tax Credits) allocated by the California Tax Credit Allocation Committee (TCAC). As such, the Idaho OPA, County Regulatory Agreement and TCAC Regulatory Agreement restrict the 29 units as follows:

Restrictions¹	TCAC	County	City	City of Richmond ²
35% of Area Median Income (AMI)	28	N/A	N/A	N/A
Very-Low Income (50% of AMI)	N/A	11	11	2
Moderate Income (120% of AMI)	N/A	N/A	13	2
Totals	28	11	24	4

Given that the strictest affordability restrictions prevail, 28 of the units are inhabited by special needs households earning below 35% of AMI and the remaining unit is set-aside for the on-site manager.

The City acquired the Redevelopment Agency's interest in the Idaho OPA in February 2012 when it became the Housing Successor to the former Redevelopment Agency. The Project has been owned and operated by the same entity from 1999 to 2013, when National Equity Fund withdrew from the partnership and Rubicon Programs, Inc. (RPI) entered as the limited partner.

After RPI decided that the ownership and management of affordable housing was no longer part of their core mission, RPI decided to divest its interest in all RPI-owned housing. RPI approached Resources for Community Development (RCD), a non-profit housing developer based in Berkeley, regarding potentially acquiring the Idaho Project.

¹ On August 15, 2014, the CalHFA Regulatory Agreement that was also recorded against the Idaho Project was terminated.

² A portion of the Idaho Project is located in the City of Richmond.

Agenda Item No. 4(D)

In 2014, RPI and RCD presented to City staff for review and approval the Assignment and Assumption Agreement and Second Amendment to Amended and Restated Articles of Limited Partnership of Idaho Apartments Associates, LP (Second Amendment), which contains the proposed structure and terms of the transfer. On September 22, 2014, the City Council consented to the withdrawal and substitution of the general partner and the limited partner of Idaho Apartments Associates, LP and authorized the City Manager to execute documents necessary to indicate the City's consent. (Resolution No. 2014-48)

Idaho Apartments Associates, LP is currently in compliance with the City loan terms. There have never been any loan payments and after the review of the Fiscal Year 2015-16 audited financial statements for the Idaho Project, no residual receipts payments are currently due. The City calculates that the accrued interest as of May 2017, is \$91,000, therefore, the loan balance is \$441,000. However, for consistency purposes, this analysis will assume the City Loan balance is \$432,250, or the balance at the end of the Fiscal Year.

Current Proposal from RCD

RCD wishes to substantially rehabilitate the Idaho Project. The rehabilitation will include the following:

1. Evaluation and repair of any dry rot and wood destroying pests;
2. New elevated walkway;
3. Abatement of any hazardous materials, such as lead-based paint and asbestos containing materials;
4. Structural evaluation for seismic integrity;
5. Painting of all exterior siding;
6. New roof and gutters;
7. Replacement of original, single-paned windows and doors;
8. Improvement of mechanical ventilation in bathrooms and kitchens;
9. Repair and widening of elevated walkways;
10. Resealing of site pavement;
11. Landscaping;
12. Upgrades to energy efficiency of unit and site lighting;

13. Replacement of heating units and water heaters;
14. Replacement of unit fixtures, showers, resilient flooring, cabinetry, counters, and appliances;
15. Upgrade unit electrical.

RCD applied and received approval for a \$3,162,564 Multi-Housing Program-Special Needs (MHP-SN) loan from the State of California's Housing and Community Development Department (HCD). Therefore, the special needs component of the Idaho Project will continue. RCD has applied to CTCAC for an allocation of 4% federal and state tax credits and an allocation award is expected in June 2017, while the CDLAC allocation of tax-exempt bonds is expected in July 2017.

Replacement Housing Plan

RCD obtained a relocation plan for the Idaho Project in January 2015 from a relocation consultant that meets state and federal relocation requirements. According to the Relocation Plan and proposed rehabilitation scope of work, all households will be temporarily displaced for the rehabilitation to proceed. RCD will provide the temporarily displaced households with relocation assistance including temporary housing and moving assistance.

Rehabilitation will be in multiple phases, per the following table. Households will be moved to nearby off-site resources. Subsequent phases will be moved once the previous phase has been completed and the residents have returned to their original unit. No household will be required to pay rent in excess of their current rent during their temporary move.

Building / Phase	Use	Units	Weeks of Rehab
1	Office	3 Offices	3
2	Residential / Maintenance	4	4
3	Residential	8	6
4	Residential	4	4
5	Residential / Community	13	9

A resource survey will be conducted prior to any mandatory displacement to identify available comparable, decent, safe and sanitary units, which are adequate in size and in close proximity to the Project site.

Combination of Idaho and Church Projects

In order to maximize funding, re-syndication and refinancing of the Idaho Project, RCD proposes to combine this project with another RCD project, Church Lane Apartments (Church Project), located in San Pablo. The Church Project includes 22 units, originally built as affordable housing in 1996. Both properties will be sold to San Pablo Preservation, Limited Partners, of which the general partner will be RCD GP, LLC that has RCD as its sole member, and the limited partner has yet to be determined. This scattered-site proposal will generate more tax credit equity and private debt than would be possible by renovating either property individually. In addition, both properties will be managed and accounted for as one entity.

The two properties will be sold to San Pablo Preservation, LP for the appraised values and RCD proposes that the new owner will assume the existing City and County debt on each property as partial payment of the purchase price. The Seller will provide a "Seller Take-Back Loan" to the new owner for the difference between the sale price and the assumed debt. In addition, RCD will utilize new funds committed in 2015 from HCD's MHP-SH Loan as well as the Affordable Housing Program, tax-exempt bonds, and 4% Tax Credit equity.

Sources and Uses

The following summarizes the proposed sources and uses for the \$22.05 million combined rehabilitation project:³

(Rounded)	Idaho Project	Church Project	Total Proposed Project
Number of Units	29	22	51
<u>Uses of Funds:</u>			
Acquisition of Costs	\$2,380,000	\$3,575,000	\$5,955,000
Rehabilitation Costs	<u>7,886,000</u>	<u>8,210,000</u>	<u>16,096,000</u>
Total Uses of Funds	\$10,266,000	\$11,785,000	\$22,051,000
<u>Sources of Funds:</u>			
Permanent Loan	\$1,291,000	\$655,000	\$1,946,000
MHP-SH Loan	3,162,000	0	3,162,000
Assumed Loans:			
County Loans	1,266,000	1,756,000	3,022,000
City Loan	432,000	0	432,000
AHP Loan	280,000	210,000	490,000
Seller Take-Back Loan	682,000	1,527,000	2,209,000
Reserves	121,000	0	121,000
Deferred Developer Fee	286,000	214,000	500,000
General Partner Contribution	670,000	503,000	1,173,000
Limited Partner Equity Contribution	<u>2,076,000</u>	<u>6,920,000</u>	<u>8,996,000</u>

³ Please note that these estimates are subject to change. However, the City Loan will be set at the actual loan balance at close of escrow.

(Rounded)	Idaho Project	Church Project	Total Proposed Project
Total Sources of Funds	\$10,266,000	\$11,785,000	\$22,051,000

Proposed Changes to City Loan:

In order to assist with the rehabilitation and refinancing of the property, RCD is requesting that the City amend its loan terms as follows:

1. The original \$350,000 principal balance would be assigned to the new partnership. However, in order to maximize tax benefits for the investor limited partner, the City may be asked to forgive its accrued interest which is approximately \$83,000 as of the end of the 2015-16 Fiscal Year. Whether the City will need to forgive the accrued interest cannot be determined until an investor limited partner is selected and all of the financing is in place.
2. The interest rate will be set at closing to match the long-term, annual Applicable Federal Rate (AFR), and the interest will be compounded. The current AFR long term rate is 2.75%. Compounded interest at the AFR will result in higher interest than the existing 3% simple interest;
3. The loan term will be increased to 57 years from construction close, with maturity in 2072, when the principal and accrued interest will be due and payable;
4. The County and the City will continue to share residual receipts and loan repayments will be solely from residual receipts. However, the HCD loan will also be repaid from residual receipts so the City and County will now be sharing residual receipts with the State. The formula for the residual receipts distribution would be similar to the formula that was approved for Hana Gardens but because the City is only making a loan to the Idaho portion of the Project, the City's share would be proportionate to the number of units at the Idaho versus the total project units. As a result of discussions between the City and County staff about how to set the new City loan payment, a formula has been agreed to. However, it should be noted that the formula has not been officially approved by the County Board. The proposed City Loan Payment will be the sum of:
 - a. $\text{Residual Receipts} \times 50\%^4 \times 56.86\% \times (\text{City Loan Amount} / \text{Total Soft Loans})$; and
 - b. $\text{Residual Receipts} \times 25\%^5 \times 56.86\%^6 \times (\text{City Loan Amount} / \text{Total Idaho Soft Loans})$

⁴ 50% is the share of the residual receipts that is to be shared between the Soft Lenders (HCD, County and City).

The City's share of residual receipts is currently estimated to change from approximately 14% of the Idaho Project Residual Receipts to approximately 4.82% of the Residual Receipts from the combination of the Idaho and Church Projects.

5. The City loan will be subordinated to 3rd position behind the permanent loan and the MHP-SH Loan, and will be secured with a subordinated deed of trust on both the Idaho and Church properties, which will be on par with the County's security position.

Proposed Affordability Restrictions

While the City and County affordability restrictions will remain the same, the Idaho Project will have a deeper average affordability level, as follows:

Restrictions	TCAC	HCD	County	City	City of Richmond
30% of AMI	21	21	N/A	N/A	N/A
40% of AMI	7	7	N/A	N/A	N/A
Very-Low Income (50% of AMI)	N/A	N/A	11	11	2
Moderate Income (120% of AMI)	N/A	N/A	N/A	13	2
Totals	28	28	11	24	4

Given that the strictest affordability restrictions prevail, 28 of the units are inhabited by special needs households earning on average 32.5% of AMI and the remaining unit is set-aside for the on-site manager.

ANALYSIS

Approval of the purchase of the Idaho Project by San Pablo Preservation, LP

The sale of the property to San Pablo Preservation, LP is necessary in order for RCD to access low income housing tax credits which will enable RCD to rehabilitate the property. San Pablo Preservation, LP will be controlled by an entity controlled by RCD but at this time RCD has not identified an investor limited partner. The sale of the property will not result in any cash to RCD at closing.

Approval of Combining the Idaho Project with the Church Lane Project

The combination of the Idaho Project with the Church Project for financing purposes will result in the City's deed of trust being recorded on both projects, providing additional security for the City Loan. Additionally, combining the projects creates some economies of scale that should help both projects. However, it is also possible that over the course of the loan term, one of the two projects will underperform causing financial issues for the other project. Although this is an unlikely outcome, it is a potential adverse effect of

⁵ 25% is the share of the residual receipts that is to be shared between the Local Lenders (County and City).

⁶ 56.86% is the result of dividing the total number of units in the Idaho Project (29 units) by the total number of units in both projects (51 units).

the proposed financing. Both the City and County loan documents require that the project owner maintain and operate the project to a high standard which should help mitigate against any adverse effect one project would have on another.

The combination of the two projects will also result in the combination of the financial statements and residual receipts.

Change in Loan Terms

1. Potential Accrued Interest Forgiveness: The City Loan has currently accrued interest in the approximate amount of \$83,000. To date no payments have been made on the City Loan and payments are only due to the extent that the project has cash flow. If the new owner requests that the City forgive the accrued interest, the City would be foregoing potential repayment of \$83,000 at some point in the future but it is not certain when that interest would be repaid. The City Loan would be expected to begin accruing interest at the new interest rate upon closing of the new financing.
2. Change in Interest Rate: RCD has also asked that the interest rate be set at the current applicable federal rate at the time of the close of new financing. The new interest rate would be a compounding interest rate rather than the current simple interest. The current AFR rate would be 2.75% but that rate is likely to change before the close of the financing. It is not clear whether the AFR will increase or decrease but the compounding of the interest is likely to produce a higher overall interest payment than the current simple interest.
3. Change City Loan Security Position: The City Loan currently shares a first priority deed of trust position with the County Loan. RCD has requested that the City agree to subordinate its loan to the institutional lender's loan as well as the HCD loan. The County and the City would share third position. HCD requires that its loan have a higher priority than a loan from a local public agency, unless the local public agency funds are at least twice as much as the amount of the HCD Loan. Neither the City nor the County loans meet this standard. It is typical in an affordable housing transaction for the public agency lenders to subordinate their loans to the institutional lender and usually a requirement to obtain the loan from the institutional lender.
4. Shared Deed of Trust on Both Projects: RCD is proposing that the City's deed of trust would be recorded on both the Idaho property and the Church Lane Property providing the City with additional security for its loan. However, as discussed above, the two projects may not perform in similar fashions so it is not clear if that additional security will provide a significant benefit to the City.
5. Change the City Loan Payment Calculation: The City Loan is currently to be repaid from project cash flow (residual receipts). The amount of residual receipts received by the City is based on the City's pro rata share of residual receipts determined by the amount of the City Loan in relation to the County Loan, or approximately 14% of the Idaho Project Residual Receipts. With the proposed refinancing, the HCD Loan will also share in residual receipts so the City's pro rata share will be determined based on the amount of its loan in relation to both

the County Loan and the HCD Loan. Additionally, because the City Loan is only providing financing for the Idaho property, the City residual receipts share is also further reduced to adjust for that fact. The result is that the City's pro rate share is significantly reduced, or approximately 4.82%. However, the residual receipts from both Projects will be approximately double what the residual receipts would be from the Idaho Project alone. To date, the Idaho Project has failed to produce any residual receipts. With the refinancing it is possible that the combined project has the potential to produce cash flow that would repay the City Loan over time.

STRATEGIC PLAN CONSIDERATIONS

The project supports Goal E: Ensure the public's health and safety and Goal D: Develop and rehabilitate public facilities. The project also supports the housing element Goals H1: Conserve and improve El Cerrito's existing housing supply and H3.1 Encourage the provision of housing for special needs groups.

Affordability restrictions will be lengthened.

ENVIRONMENTAL CONSIDERATIONS

The project is exempt from the California Environmental Quality Act (CEQA) section 5301 Existing Facilities.

FINANCIAL CONSIDERATIONS

The proposed actions do not commit any additional City funds to the Project.

LEGAL CONSIDERATIONS

The legal counsel to the City as Housing Successor has reviewed this report and attachments.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution

RESOLUTION NO. 2017-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ACTING AS HOUSING SUCCESSOR TO THE EL CERRITO REDEVELOPMENT AGENCY (THE "CITY") APPROVING THE TRANSFER OF THE IDAHO APARTMENTS AND ASSIGNMENT OF THE CITY LOAN TO SAN PABLO PRESERVATION L.P. AND AUTHORIZING THE CITY MANAGER TO APPROVE CERTAIN AMENDMENTS TO THE CITY LOAN CONSISTENT WITH THE REFINANCING OF THE IDAHO APARTMENTS

WHEREAS, the El Cerrito Redevelopment Agency (the "Agency") has encouraged redevelopment in specific portions of the El Cerrito Redevelopment Project Area in accordance with the goals and objectives of the City of El Cerrito Redevelopment Plan as amended; and

WHEREAS, the Agency, in 1997, provided a loan to Idaho Apartments Associates, LP ("Owner") in the amount of \$350,000 from Agency Low and Moderate Income Housing Funds for the purposes of financing the development of the Idaho Apartments, located at 10203 San Pablo Avenue (the "Property") which provides housing to very low income households; and

WHEREAS, the Agency loan to the Idaho Apartments is evidenced by that certain Owner Participation Agreement between the Agency and Owner and secured by a deed of trust on the Property; and

WHEREAS, the Agency provided the Loan for the purposes of increasing, improving and preserving the community's supply of low- and moderate-income housing pursuant to California Health and Safety Code §33334.2; and

WHEREAS, the City adopted Resolution No. 2012-04 on January 17, 2012 electing to retain the housing assets and functions previously performed by the Agency in accordance with Section 34176 of the Redevelopment Law and becoming the housing successor to the El Cerrito Redevelopment Agency; and

WHEREAS, the Agency was dissolved effective February 1, 2012 pursuant to the State Budget bill ABX1 26 (the "Dissolution Act") and all housing assets, less the unencumbered housing balance, and obligations of the former Agency were transferred to the City as housing successor by operation of law; and

WHEREAS, Owner desires to rehabilitate the Property and has secured financing from the State of California Department of Housing and Community Development to achieve that purpose; and

WHEREAS, Owner also expects to use Low Income Housing Tax Credits and tax exempt revenue bonds to provide additional financing for the rehabilitation of the Property;

Agenda Item No. 4(D)
Attachment

WHEREAS, as part of the rehabilitation of the Property, Owner desires to sell the Property to San Pablo Preservation, LP, a limited partnership, the general partner of which will be controlled by Resources for Community Development;

WHEREAS, as part of the rehabilitation of the Property, Owner intends to combine the Idaho Apartments with a low income housing development located in San Pablo and identified as Church Lane Apartments for financing purposes;

WHEREAS, the rehabilitation and refinancing of the Property requires that the City make certain modifications to its existing loan with the Owner including, agree to the assignment of the loan to San Pablo Preservation, LP, subordination of the City's deed of trust to additional financing necessary for the rehabilitation including the loan from the State of California, the recordation of the City's deed of trust on both the Property and the Church Lane Property, extension of the term of the City Loan for an additional 55 years, change the interest rate on the City Loan to the applicable federal rate, revisions to the Intercreditor Agreement with the County of Contra Costa providing for the distribution of residual receipts to the City and the County and potentially the forgiveness of accrued interest on the Loan; and

WHEREAS, the City has determined that the rehabilitation of the Property is in the best interest of the City and will ensure that the Idaho Apartments continue to provide high quality affordable housing to low income households; and

WHEREAS, the Owner is still negotiating the terms of the refinancing with potential lenders and investors so final terms for the City loan are subject to change; and

WHEREAS, the City Council desires to authorize the City Manager to approve changes to the Idaho Apartments Loan consistent with the discussion of potential changes in the agenda bill accompanying this Resolution in order to facilitate the rehabilitation of the Property;

WHEREAS, by the Agenda Bill accompanying this Resolution and incorporated herein by this reference (the Agenda Bill), the City has been provided with additional information upon which the findings and actions set forth in this Resolution are based;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City Council finds that the above recitals are accurate.
2. The City Council hereby approves the transfer of the Property and the assignment of the City's loan for the Idaho Apartments to San Pablo Preservation, LP and authorizes the City Manager to execute any and all documents necessary to evidence the City's consent to such transfer including assignment agreements and to take such other actions as are appropriate to effectuate the transfer of the Property.

Agenda Item No. 4(D)
Attachment

3. The City Council hereby approves the amendment of the loan terms for the City Loan for the Property consistent with the information provided in the Agenda Bill on terms and conditions to be approved by the City Manager and hereby authorizes the City Manager to execute any and all documents necessary to amend the City Loan terms to facilitate the rehabilitation and refinancing of the Property including but not limited to amended loan agreements, regulatory agreements, deeds of trust, intercreditor agreements, subordination agreements and any other documents necessary to carry out the intent of this resolution.

I CERTIFY that at the regular meeting on May 16, 2017, the City Council of the City of El Cerrito passed this resolution by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

IN WITNESS of this action, I have hereunto set my hand and affixed the official Seal of said City, this ____ day of May, 2017.

Cheryl Morse, City Clerk

Approved:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 4(E)

Date: May 16, 2017
To: El Cerrito City Council
From: Councilmember Rochelle Pardue-Okimoto
Subject: Support for Senate Bill 687 (Skinner) – Save our Emergency Rooms Act of 2007 – Sale and/or Closure of Non-Profit Hospitals

ACTION REQUESTED

At the request of Councilmember Pardue-Okimoto, adopt a resolution and authorize Mayor Abelson to sign a letter supporting California Senate Bill 687 (Skinner) which will give the Attorney General of California the authority to oversee and consent to the sale and/or closure of non-profit hospitals and directing the City Clerk to send a copy of the resolution and letter to Congressman Mark DeSaulnier, Assemblymember Tony Thurmond, Senator Nancy Skinner and Governor Jerry Brown.

BACKGROUND AND ANALYSIS

According to a study published in the Journal of Health Affairs, relative to the impacts of emergency department closures between 1999-2010, the closure of non-profit hospitals had a 5% higher chance of inpatient mortality and admissions at other hospitals. Patients under the age of 65 faced a 10% higher chance of inpatient mortality compared to those who were not affected by the closure. Further, the study found that African Americans, Latino, women, people under 65, and those who were uninsured or on Medicaid were more likely to be affected by emergency department closures. A study conducted by the Annals of Emergency Medicine found that for every 10% increase of black patients, a hospital's risk of shutting down its Emergency Department increased by 40% and that for every 10% increase in Medicaid patients, the risk jumped up by 17%.

The closure of Doctors Medical Center in San Pablo in 2015 has resulted in a 5-11% increase in EMS ambulance transports to Alta Bates (Contra Costa Health Services). With the closure of non-profit hospitals it will result in over-crowding, poor patient care quality, and longer waits for patients in need of ambulance assistance.

The passage of SB 687 would give California Attorney General the authority to oversee and consent to the sale and or closure of non-profit hospitals. The Berkeley and Richmond City Councils have approved similar resolutions in support of SB 687.

STRATEGIC PLAN CONSIDERATIONS

Support and passage of this resolution is in alignment with the City's goal of ensuring the public's health and safety.

FINANCIAL CONSIDERATIONS

There is no financial impact to the city. However, the Kaiser hospital located in Richmond, CA and surrounding hospitals will experience an increase of overcrowding in hospitals in surrounding areas. Between 1996 and 2009 the State of California saw a 12% reduction in Emergency Departments and a 27% increase in patient Emergency Department visits.

Attachments:

1. Resolution
2. Letter of Support
3. SB-687 Text, History and Status
4. [Data Note: Americans' Challenges with Health Care Costs. Kaiser Family Foundation](#) (March 2, 2017) (*reference weblink*)
5. [Per Capita Healthcare Costs - International Comparison. Peter G. Peterson Foundation](#) (October 17, 2016) (*reference weblink*)
6. [America's Emergency Care Environment - A State-by-State Report Card 2014. American College of Emergency Physicians](#) (2014) (*reference weblink*)

RESOLUTION NO. 2017-XX

RESOLUTION OF THE COUNCIL OF THE CITY OF EL CERRITO, CALIFORNIA IN SUPPORT OF CALIFORNIA SENATE BILL 687 (SKINNER) WHICH WILL GIVE THE ATTORNEY GENERAL OF CALIFORNIA THE AUTHORITY TO OVERSEE AND CONSENT TO THE SALE AND/OR CLOSURE OF NON-PROFIT HOSPITALS

WHEREAS, the number of emergency room visits in California has increased by 27% between 1996-2009; and

WHEREAS, in 2014 California received an F grade for access to emergency care due to the lack of available beds in emergency rooms. The study was conducted by the American College of Emergency Physicians; and

WHEREAS, a study published in the Journal of Health Affairs found that a quarter of all hospital admissions between 1999-2010 occurred near an emergency department closure, and that admissions had a 5% higher chance of in-patient mortality (10% for patients under the age of 65). The study also found that African Americans, Latinos, women, people under 65, and those who were uninsured or on Medicaid were more likely to be affected by emergency department closures; and

WHEREAS, California has the lowest number of emergency departments per capita in the country, with only 6.7 per 1 million people; and

WHEREAS, the closure of Doctors Medical Center in April of 2015 has increased transit time in the case of emergencies for the residents of El Cerrito and put a significant strain on Kaiser Permanente Richmond Medical Center; and

WHEREAS, in 2016 the Kaiser Permanente Richmond Medical Center on average received 50-55 patients per day; and

WHEREAS, the closure of non-profit hospitals will result in backups in ambulance response time to emergency calls, emergency rooms becoming more congested, and emergency rooms prioritizing patients based on their needs; and

WHEREAS, SB 687, introduced by State Senator Nancy Skinner, would require any nonprofit hospital that operates or controls a health facility to write notice to and obtain consent of the Attorney General prior to a reduction or elimination of the level of emergency services; and

WHEREAS, SB 687 would also give the Attorney General the authority to act on the public's behalf by assessing the negative impacts that a closure or reduction would have on the community.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of El Cerrito hereby supports SB 687 and directs the City Clerk to send a copy of this resolution and a letter of support signed by Mayor Abelson to Congressman Mark DeSaulnier, Governor Jerry Brown, Senator Nancy Skinner and Assemblymember Tony Thurmond.

Agenda Item No. 4(E)
Attachment 1

I CERTIFY that at the regular meeting on May 16, 2017 the El Cerrito City Council passed this resolution by the following vote:

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

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

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



Agenda Item No. 4(E) Att 2

Mayor Janet Abelson

May 16, 2017

Honorable Congressman Mark DeSaulnier
United States Congress District Office
440 Civic Center Plaza, 2nd Floor
Richmond, CA 94804

Honorable Governor Jerry Brown
c/o California State Capitol, Suite 1173
Sacramento, CA 95814

Honorable State Senator Nancy Skinner
District Office
1515 Clay Street, Suite 2202
Oakland, CA 94612

Honorable Assemblymember Tony Thurmond
District Office
Elihu Harris State Building
1515 Clay Street, Suite 2201
Oakland, CA 94612

RE: Support SB 687 (Skinner) Save Our Emergency Rooms Act of 2017

Honorable Senator Skinner, Assemblymember Thurmond, Governor Brown and
Congressman DeSaulnier:

I am writing on behalf of the El Cerrito City Council, in support of SB 687 (Skinner) which would establish the Save Our Emergency Rooms Act of 2016. SB 687 would clarify the Attorney General's existing authority to supervise nonprofit hospitals' use of their charitable assets, expanding on the existing statutory authority for the Attorney General to oversee and consent to sales and transfers of nonprofit hospitals. The proposed legislation would give the Attorney General additional explicit statutory authority to review and consent to any nonprofit health facility's reduction or elimination of emergency services.

Emergency room closures have resulted in overcrowding, longer waits, and diverted ambulances which have led to lower quality patient care. Between 1996 and 2009 the annual number of emergency department visits in California increased by 27% while the number of emergency departments decreased by 12%. A 2014 national report on U.S.



Agenda Item No. 4(E) Att 2

Mayor Janet Abelson

Emergency Medical Care gave California an 'F' for lacking emergency room beds, citing that California has the lowest number of emergency departments per capita in the nation – 6.7 per 1 million people. Another study analyzed the association of emergency department closures and inpatient mortality rates at nearby hospitals, and found that nearly one-quarter of hospital admissions occurred near an emergency department closure and that these admissions had 5% higher odds of inpatient mortality than admissions not occurring near a closure.

The closure of Doctors Medical Center in April 2015 has increased transit time in the case of emergencies for the residents of El Cerrito and put a significant strain on Kaiser Permanente Richmond Medical Center. In 2016 the Kaiser Permanente Richmond Medical Center received, on average, 50-55 patients per day.

There are currently few restrictions in place on the closure of emergency services; hospitals decide to reduce or eliminate them without a robust review of the impact to the surrounding community. Nonprofit hospitals are heavily subsidized by taxpayers and have an obligation to their communities. Given the startling statistics on California's emergency service shortage, hospital decisions to further reduce emergency services should be heavily scrutinized. The Attorney General already possesses supervisory authority over nonprofit hospitals, as a matter of common law and statute. The Corporations Code provides that the Attorney General reviews and supervises nonprofit sales closely to protect the community's interest; this bill would expand on that power. SB 687 gives the Attorney General the authority to oversee the reduction or closure of emergency services and act on the public's behalf by assessing the impacts that a closure or reduction would have on the community, and deciding whether to approve such proposed closures or reductions.

For these reasons, I am pleased to support SB 687 and respectfully urge your support for this measure.

Sincerely,

Janet Abelson
Mayor, City of El Cerrito

AMENDED IN SENATE MAY 3, 2017

AMENDED IN SENATE APRIL 6, 2017

SENATE BILL

No. 687

Introduced by Senator Skinner

February 17, 2017

An act to amend Sections 5914 and 5920 of, and to add Chapter 9.2 (commencing with Section 5940) to Part 2 of Division 2 of the Corporations Code, and to amend Sections 1254 and 1255.1 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 687, as amended, Skinner. Health facilities: emergency centers: Attorney General.

Existing law requires any nonprofit ~~public benefit corporation~~ corporation, as defined, that operates or controls a health facility or operates or controls a facility that provides similar health care, to provide written notice to, and obtain the written consent of, the Attorney General prior to agreeing to sell or otherwise dispose of a material amount of its assets to a for-profit corporation or entity, a mutual benefit corporation or entity, or another nonprofit corporation or entity. Existing law authorizes the Attorney General to consider, before consenting to an agreement to sell or dispose of assets to these corporations or entities, whether the terms and conditions of the agreement or transaction are fair and reasonable to the ~~nonprofit public benefit~~ corporation, and whether the agreement or transaction is at a fair market value, as specified.

This ~~bill, on and after January 1, 2015, bill~~ would apply the above notice and consent requirements to a nonprofit ~~public benefit corporation~~ corporation, as defined, prior to agreeing to sell, transfer, lease,

exchange, option, convey, or otherwise dispose of the assets resulting from the reduction or elimination of emergency medical services provided at a licensed emergency center after the Attorney General gives a specified consent or conditional consent. *The bill would apply these provisions to a nonprofit corporations' reduction or elimination of emergency medical services that occurred between January 1, 2016, and the effective date of this bill, provided that those assets remain under the control of the qualifying nonprofit corporation and notwithstanding the fact that the Attorney General did not review or consent to the closure or reduction. The bill, if those assets are no longer in the control of the qualifying nonprofit corporation but were sold, transferred, leased, optioned, conveyed, or disposed of between January 1, 2017, and the effective date of this bill, would require the qualifying nonprofit corporation to notify the Attorney General of the details of the transaction, and would require the Attorney General to review whether the transaction, in whole or in part, was intended to avoid application of the notice requirement and, if the Attorney General makes that determination, would authorize the Attorney General to assess a civil penalty on the qualifying nonprofit corporation.*

~~This bill, except as specified,~~ bill also would require any nonprofit ~~public benefit corporation~~ corporation, as defined, that operates or controls a health facility or operates or controls a facility that provides similar health care and that provides emergency services at a licensed emergency center to provide written notice to, and obtain written consent of, the Attorney General prior to a reduction of the level of emergency medical services provided or their elimination. This bill would require the written notice to contain the information that the Attorney General determines is required to make a decision in the public interest. *The bill would require the written notice be provided to the Attorney General as soon as possible, but in no case later than 135 days before the planned reduction or elimination.* The bill would require the Attorney General to notify the ~~public benefit~~ nonprofit corporation of the decision to provide consent or conditional consent or withhold consent to the reduction in or elimination of emergency medical services within specified periods of time. The bill, among other things, would require the Attorney General to conduct one or more public hearings after providing public notice, as specified, before issuing the written notice.

Existing law requires emergency services and care to be provided to any person requesting the services or care, or for whom services or care is requested, for any condition in which the person is in danger of loss

of life, or serious injury or illness, at any licensed health facility that maintains and operates an emergency department to provide emergency services to the public when the health facility has appropriate facilities and qualified personnel available to provide the services or care. Existing law authorizes the Attorney General to bring a civil action against the responsible hospital or administrative or medical personnel to enjoin the violation of various provisions of existing law regarding the provision of emergency services at a licensed health facility.

Existing law requires the State Department of Public Health, except as provided, to inspect and license health facilities, as specified. Existing law requires a hospital that provides emergency medical services to, as soon as possible, but not later than 90 days prior to a planned reduction or elimination of the level of emergency medical services, provide notice of the intended change to the State Department of Public Health, among other entities. Violation of these requirements is a crime.

This bill would prohibit the State Department of Public Health from licensing a stand-alone emergency ~~room~~ *freestanding emergency department*, or freestanding emergency center that is not part of a general acute care hospital facility providing 24-hour inpatient care with basic services. The bill would require the above-described notice to also be given to the agency in charge of the provision of health services. By changing the definition of a crime, this bill would impose a state-mandated local program.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 5914 of the Corporations Code is
- 2 amended to read:
- 3 5914. (a) (1) Any nonprofit corporation that is defined in
- 4 Section 5046 and operates or controls a health facility, as defined
- 5 in Section 1250 of the Health and Safety Code, or operates or
- 6 controls a facility that provides similar health care, shall be required
- 7 to provide written notice to, and to obtain the written consent of,

1 the Attorney General prior to entering into any agreement or
2 transaction to do any of the following:

3 (A) Sell, transfer, lease, exchange, option, convey, or otherwise
4 dispose of, its assets to a for-profit corporation or entity or to a
5 mutual benefit corporation or entity when a material amount of
6 the assets of the nonprofit corporation are involved in the
7 agreement or transaction.

8 (B) Transfer control, responsibility, or governance of a material
9 amount of the assets or operations of the nonprofit corporation to
10 any for-profit corporation or entity or to any mutual benefit
11 corporation or entity.

12 (C) Sell, transfer, lease, exchange, option, convey, or otherwise
13 dispose of the assets resulting from the reduction or elimination
14 of emergency medical services provided at an emergency center
15 licensed pursuant to Sections-1255 1254, 1255, and 1277 of the
16 Health and Safety Code to a for-profit corporation or entity or to
17 a mutual benefit corporation or entity after the Attorney General
18 gives, pursuant to Section 5940, consent or conditional consent to
19 the reduction or elimination of emergency medical services.

20 (2) The substitution of a new corporate member or members
21 that transfers the control of, responsibility for, or governance of
22 the nonprofit corporation shall be deemed a transfer for purposes
23 of this article. The substitution of one or more members of the
24 governing body, or any arrangement, written or oral, that would
25 transfer voting control of the members of the governing body, shall
26 also be deemed a transfer for purposes of this article.

27 (b) The notice to the Attorney General provided for in this
28 section shall include and contain the information the Attorney
29 General determines is required. The notice, including any other
30 information provided to the Attorney General under this article,
31 and that is in the public file, shall be made available by the
32 Attorney General to the public in written form, as soon as is
33 practicable after it is received by the Attorney General.

34 (c) (1) This section shall not apply to a nonprofit corporation
35 if the agreement or transaction is in the usual and regular course
36 of its activities or if the Attorney General has given the corporation
37 a written waiver of this section as to the proposed agreement or
38 ~~transaction.~~ *transaction, except that this subdivision shall not apply*
39 *to subparagraph (C) of paragraph (1) of subdivision (a).*

1 (2) *The changes made to this section by the act adding this*
2 *paragraph shall apply to the sale, transfer, lease, exchange, option,*
3 *conveyance, or disposal of any assets resulting from a qualifying*
4 *nonprofit corporation's reduction or elimination of emergency*
5 *medical services that occurred between January 1, 2016, and the*
6 *effective date of the act adding this paragraph, provided those*
7 *assets remain under the control of the qualifying nonprofit*
8 *corporation as of the effective date of the act adding this*
9 *paragraph, notwithstanding the fact that the Attorney General did*
10 *not review or consent to the closure or reduction pursuant to*
11 *Section 5940. If those assets no longer remain in the control of*
12 *the qualifying nonprofit corporation, but were sold transferred,*
13 *leased, optioned, conveyed, or disposed of between January 1,*
14 *2017, and the effective date of the act adding this paragraph, the*
15 *qualifying nonprofit corporation shall notify the Attorney General*
16 *of the details of the transaction and the Attorney General shall*
17 *review whether the transaction, in whole or in part, was intended*
18 *to avoid the application of this section. If the Attorney General*
19 *makes a determination that the transaction was intended to avoid*
20 *application of this section, the Attorney General may assess a civil*
21 *penalty upon the qualifying nonprofit corporation in an amount*
22 *not to exceed the value of such assets.*

23 (d) This section shall apply to any foreign nonprofit corporation
24 that operates or controls a health facility, as defined in Section
25 1250 of the Health and Safety Code, or a facility that provides
26 similar health care.

27 ~~(e) The changes made to this section by the act adding this~~
28 ~~subdivision shall apply on and after January 1, 2015.~~

29 (e) This section shall not be construed to allow the Attorney
30 General to authorize emergency medical services to be provided
31 by a facility that does not meet the requirements of Section
32 1798.175 of the Health and Safety Code or is not licensed to
33 provide emergency medical services pursuant to Sections 1254,
34 1255, and 1277 of the Health and Safety Code or to authorize a
35 nonprofit general acute care hospital to reduce operations to
36 provide emergency medical services without providing 24-hour
37 inpatient care with basic services, including, but not limited to,
38 medical, nursing, surgical, anesthesia, laboratory, radiology,
39 pharmacy, and dietary services. This section shall not be construed
40 to authorize, allow for, or permit operation of a stand-alone

1 *emergency room or freestanding emergency center, except as*
2 *provided in subdivision (b) of Section 1798.101 of the Health and*
3 *Safety Code.*

4 SEC. 2. Section 5920 of the Corporations Code is amended to
5 read:

6 5920. (a) (1) Any nonprofit corporation that is defined in
7 Section 5046 and operates or controls a health care facility, as
8 defined in Section 1250 of the Health and Safety Code, or operates
9 or controls a facility that provides similar health care, shall be
10 required to provide written notice to, and to obtain the written
11 consent of, the Attorney General prior to entering into any
12 agreement or transaction to do any of the following:

13 (A) Sell, transfer, lease, exchange, option, convey, or otherwise
14 dispose of, its assets to another nonprofit corporation or entity
15 when a material amount of the assets of the nonprofit corporation
16 are involved in the agreement or transaction.

17 (B) Transfer control, responsibility, or governance of a material
18 amount of the assets or operations of the nonprofit corporation to
19 another nonprofit corporation or entity.

20 (C) Sell, transfer, lease, exchange, option, convey, or otherwise
21 dispose of the assets resulting from the reduction or elimination
22 of emergency medical services provided at an emergency center
23 licensed pursuant to Sections ~~1255~~ 1254, 1255, and 1277 of the
24 Health and Safety Code to another nonprofit corporation or entity
25 after the Attorney General gives, pursuant to Section 5940, consent
26 or conditional consent to the reduction or elimination of emergency
27 medical services.

28 (2) The substitution of a new corporate member or members
29 that transfers the control of, responsibility for, or governance of
30 the nonprofit corporation, the substitution of one or more members
31 of the governing body that would transfer voting control of the
32 members of the governing body, or any arrangement, written or
33 oral, that would transfer voting control of the entity shall be deemed
34 a transfer for purposes of this article.

35 (b) The notice to the Attorney General provided for in this
36 section shall contain the information the Attorney General
37 determines is required. The notice, including any other information
38 provided to the Attorney General under this article, and that is the
39 public file, shall be made available by the Attorney General to the

1 public in written form, as soon as is practicable after it is received
2 by the Attorney General.

3 (c) (1) This section shall not apply to a nonprofit corporation
4 if the agreement or transaction is in the usual and regular course
5 of its activities or if the Attorney General has given the corporation
6 a written waiver of this section as to the proposed agreement or
7 ~~transaction~~. *transaction, except that this subdivision shall not apply*
8 *to subparagraph (C) of paragraph (1) of subdivision (a).*

9 (2) *The changes made to this section by the act adding this*
10 *paragraph shall apply to the sale, transfer, lease, exchange, option,*
11 *conveyance, or disposal of any assets resulting from a qualifying*
12 *nonprofit corporation's reduction or elimination of emergency*
13 *medical services that occurred between January 1, 2016, and the*
14 *effective date of the act adding this paragraph, provided those*
15 *assets remain under the control of the qualifying nonprofit*
16 *corporation as of the effective date of the act adding this*
17 *paragraph, notwithstanding the fact that the Attorney General did*
18 *not review or consent to the closure or reduction pursuant to*
19 *Section 5940. If those assets no longer remain in the control of*
20 *the qualifying nonprofit corporation, but were sold transferred,*
21 *leased, optioned, conveyed, or disposed of between January 1,*
22 *2017, and the effective date of the act adding this paragraph, the*
23 *qualifying nonprofit corporation shall notify the Attorney General*
24 *of the details of the transaction and the Attorney General shall*
25 *review whether the transaction, in whole or in part, was intended*
26 *to avoid the application of this section. If the Attorney General*
27 *makes a determination that the transaction was intended to avoid*
28 *the application of this section, the Attorney General may assess a*
29 *civil penalty upon the qualifying nonprofit corporation in an*
30 *amount not to exceed the value of such assets.*

31 (d) This section shall apply to any foreign nonprofit corporation
32 that operates or controls a health facility, as defined in Section
33 1250 of the Health and Safety Code, or a facility that provides
34 similar health care.

35 (e) This section shall not apply to an agreement or transaction
36 if the other party to the agreement or transaction is an affiliate, as
37 defined in Section 5031, of the transferring nonprofit corporation
38 or entity, and the corporation or entity has given the Attorney
39 General 20 days advance notice of the agreement or transaction.

~~(f) The changes made to this section by the act adding this subdivision shall apply on and after January 1, 2015.~~

(f) This section shall not be construed to allow the Attorney General to authorize emergency medical services to be provided by a facility that does not meet the requirements of Section 1798.175 of the Health and Safety Code or is not licensed to provide emergency medical services pursuant to Sections 1254, 1255, and 1277 of the Health and Safety Code or to authorize a nonprofit general acute care hospital to reduce operations to provide emergency medical services without providing 24-hour inpatient care with basic services, including, but not limited to, medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. This section shall not be construed to authorize, allow for, or permit operation of a stand-alone emergency room or freestanding emergency center, except as provided in subdivision (b) of Section 1798.101 of the Health and Safety Code.

SEC. 3. Chapter 9.2 (commencing with Section 5940) is added to Part 2 of Division 2 of the Corporations Code, to read:

CHAPTER 9.2. EMERGENCY CENTER SERVICES

5940. (a) ~~Except as provided in subdivision (b), a~~ A nonprofit corporation that operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, and that provides emergency medical services at an emergency center licensed under Sections ~~1255~~ 1254, 1255, and 1277 of the Health and Safety Code, shall provide written notice to, and to obtain the written consent of, the Attorney General prior to a planned reduction in the level of emergency medical services provided or elimination of those services. *The written notice required by this section shall be provided to the Attorney General as soon as possible, but in no case later than 135 days before the planned reduction in the level of emergency medical services provided or elimination of those services.*

~~(b) (1) This section shall not apply to a nonprofit corporation if the Attorney General has given the corporation a written waiver of this section as to the planned elimination or reduction of the level of emergency medical services.~~

1 ~~(2) A health facility shall not be subject to this section if,~~
2 ~~pursuant to subdivision (c) of Section 1255.1 of the Health and~~
3 ~~Safety Code, the State Department of Public Health determines~~
4 ~~that the use of resources to keep the emergency center open~~
5 ~~substantially threatens the stability of the hospital as a whole, or~~
6 ~~cites the emergency center for unsafe staffing practices.~~

7 ~~(e)~~

8 *(b)* The notice to the Attorney General described in subdivision
9 *(a)* shall include and contain the information the Attorney General
10 determines is required to make a decision in the public interest
11 pursuant to this section. The notice, including any other information
12 provided to the Attorney General under this section, and that is in
13 the public file, shall be made available by the Attorney General to
14 the public in written form, as soon as is practicable after it is
15 received by the Attorney General.

16 ~~(d)~~

17 *(c)* Within 90 days of the receipt of the written notice described
18 in subdivision *(a)*, the Attorney General shall notify the nonprofit
19 corporation in writing of the decision to consent to, give conditional
20 consent to, or not consent to the reduction or elimination in
21 emergency medical services. The Attorney General may extend
22 this period for one additional 45-day period if either of the
23 following conditions is satisfied:

24 *(1)* The extension is necessary to obtain information to make a
25 determination pursuant to paragraph *(1)* of subdivision ~~(f)~~: *(e)*.

26 *(2)* The plan to reduce or eliminate emergency medical services
27 is substantially modified after the first public meeting conducted
28 by the Attorney General in accordance with subdivision ~~(e)~~: *(d)*.

29 ~~(e)~~

30 *(d)* Prior to issuing any written decision referred to in
31 subdivision *(a)*, the Attorney General shall conduct one or more
32 public meetings, one of which shall be in the county in which the
33 facility is located, to hear comments from interested parties. At
34 least 14 days before conducting the public meeting, the Attorney
35 General shall provide written notice of the time and place of the
36 meeting through publication in one or more newspapers of general
37 circulation in the affected community and to the board of
38 supervisors of the county in which the facility is located. If a
39 substantive change in the plan to eliminate or reduce emergency
40 medical services is submitted to the Attorney General after the

1 initial public meeting, the Attorney General may conduct an
2 additional public meeting to hear comments from interested parties
3 with respect to that change.

4 ~~(f)~~

5 (e) The Attorney General shall have discretion to consent to,
6 give conditional consent to, or not consent to any elimination or
7 reduction of emergency medical services described in subdivision
8 (a). In making the determination, the Attorney General shall
9 consider any factors that the Attorney General deems relevant,
10 including, but not limited to, whether any of the following apply:

11 (1) The planned elimination or reduction in the level of
12 emergency medical services is consistent with the charitable trust
13 on which the assets are held by the health facility or by the
14 affiliated nonprofit health system.

15 (2) The planned elimination or reduction involves or constitutes
16 any breach of trust.

17 (3) The Attorney General has been provided, pursuant to Section
18 5250, with sufficient information and data by the nonprofit
19 corporation to evaluate adequately the reduction or elimination of
20 emergency medical services, or the effects thereof on the public.

21 (4) The reduction or elimination of emergency medical services
22 may create a significant effect on the availability or accessibility
23 of health care services to the affected community.

24 (5) The proposed reduction or elimination of emergency medical
25 services is in the public interest.

26 ~~(g)~~

27 (f) If the Attorney General gives consent or conditional consent
28 to the reduction or elimination of emergency medical services
29 pursuant to this section, and the assets resulting from the reduction
30 or elimination are sold, transferred, leased, exchanged, optioned,
31 conveyed, or otherwise disposed of, the disposal of those assets
32 shall be subject to Sections 5914 or 5920.

33 ~~(h)~~

34 (g) (1) Within the time periods designated in subdivision ~~(d)~~
35 (c) and relating to those factors specified in subdivision ~~(f)~~, (e),
36 the Attorney General may do the following:

37 (A) Contract with, consult, and receive advice from any state
38 agency on those terms and conditions that the Attorney General
39 deems appropriate.

1 (B) In his or her sole discretion, contract with experts or
2 consultants to assist in reviewing the proposed changes to the level
3 of emergency services provided.

4 (2) Contract costs shall not exceed an amount that is reasonable
5 and necessary to conduct the review and evaluation. Any contract
6 entered into under this section shall be on a noncompetitive bid
7 basis and shall be exempt from Chapter 2 (commencing with
8 Section 10290) of Part 2 of Division 2 of the Public Contract Code.
9 The nonprofit corporation, upon request, shall pay the Attorney
10 General promptly for all contract costs.

11 (3) The Attorney General shall be entitled to reimbursement
12 from the nonprofit corporation for all actual, reasonable, direct
13 costs incurred in reviewing, evaluating, and making the
14 determination referred to in this chapter, including administrative
15 costs. The nonprofit corporation shall promptly pay the Attorney
16 General, upon request, for all of those costs.

17 (4) In order to monitor effectively ongoing compliance with
18 any terms and conditions that the Attorney General may impose
19 pursuant to this section, including, but not limited to, the ongoing
20 use of the charitable assets in a manner consistent with the trust
21 pursuant to which they are held, the Attorney General may, in his
22 or her sole discretion, contract with experts and consultants to
23 assist in this regard. Contract costs shall not exceed an amount
24 that is reasonable and necessary to conduct the review and
25 evaluation. Any contract entered into under this section shall be
26 on a noncompetitive bid basis and shall be exempt from Chapter
27 2 (commencing with Section 10290) of Part 2 of Division 2 of the
28 Public Contract Code. The nonprofit corporation shall pay the
29 Attorney General promptly for all contract costs. The Attorney
30 General shall be entitled to reimbursement from the corporation
31 for all actual, reasonable, and direct costs incurred in monitoring
32 ongoing compliance with the terms and conditions of the reduction
33 or elimination of emergency medical services, including contract
34 and administrative costs. The nonprofit corporation, upon request,
35 shall pay the Attorney General promptly for all contract costs.

36 (i)

37 (h) The Attorney General may adopt regulations implementing
38 this section.

39 (j)

(i) This section shall not be construed to allow the Attorney General to authorize emergency medical services to be provided by a facility that does not meet the requirements of Section 1798.175 of the Health and Safety Code, ~~or is not licensed to provide emergency medical services pursuant to Section 1254, 1255, and 1277 of the Health and Safety Code~~, or to authorize a nonprofit general acute care hospital to reduce operations to provide emergency medical services without providing 24-hour inpatient care with basic services, including, but not limited to, medical, nursing, surgical, anaesthesia, laboratory, radiology, pharmacy, and dietary services. This section shall not be construed to authorize, allow for, or permit operation of a stand-alone emergency-room room, freestanding emergency department, or freestanding emergency center, except as provided in subdivision (b) of Section 1798.101 of the Health and Safety Code.

(k)
(j) For purposes of this section, “nonprofit corporation” means a corporation that is defined in Section 5046 or a foreign corporation that is defined in Section 5053.

SEC. 4. Section 1254 of the Health and Safety Code is amended to read:

1254. (a) Except as provided in subdivision (e), the state department shall inspect and license health facilities. The state department shall license health facilities to provide their respective basic services specified in Section 1250. Except as provided in Section 1253, the state department shall inspect and approve a general acute care hospital to provide special services as specified in Section 1255. The state department shall not license a stand-alone emergency-room room, freestanding emergency department, or freestanding emergency center that is not part of a general acute care hospital facility providing 24-hour inpatient care with basic services, including, but not limited to, medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. The state department shall develop and adopt regulations to implement the provisions contained in this section.

(b) Upon approval, the state department shall issue a separate license for the provision of the basic services enumerated in subdivision (c) or (d) of Section 1250 whenever these basic services are to be provided by an acute care hospital, as defined in subdivision (a), (b), or (f) of that section, where the services

enumerated in subdivision (c) or (d) of Section 1250 are to be provided in any separate freestanding facility, whether or not the location of the separate freestanding facility is contiguous to the acute care hospital. The same requirement shall apply to any new freestanding facility constructed for the purpose of providing basic services, as defined in subdivision (c) or (d) of Section 1250, by any acute care hospital on or after January 1, 1984.

(c) (1) Those beds licensed to an acute care hospital which, prior to January 1, 1984, were separate freestanding beds and were not part of the physical structure licensed to provide acute care, and which beds were licensed to provide those services enumerated in subdivision (c) or (d) of Section 1250, are exempt from the requirements of subdivision (b).

(2) All beds licensed to an acute care hospital and located within the physical structure in which acute care is provided are exempt from the requirements of subdivision (b) irrespective of the date of original licensure of the beds, or the licensed category of the beds.

(3) All beds licensed to an acute care hospital owned and operated by the State of California or any other public agency are exempt from the requirements of subdivision (b).

(4) All beds licensed to an acute care hospital in a rural area as defined by Chapter 1010, of the Statutes of 1982, are exempt from the requirements of subdivision (b), except where there is a freestanding skilled nursing facility or intermediate care facility which has experienced an occupancy rate of 95 percent or less during the past 12 months within a 25-mile radius or which may be reached within 30 minutes using a motor vehicle.

(5) All beds licensed to an acute care hospital which meet the criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and published by the California Health Facilities Commission, and all beds in hospitals which have fewer than 76 licensed acute care beds and which are located in a census designation place of 15,000 or less population, are exempt from the requirements of subdivision (b), except where there is a freestanding skilled nursing facility or intermediate care facility which has experienced an occupancy rate of 95 percent or less during the past 12 months within a 25-mile radius or which may be reached within 30 minutes using a motor vehicle.

(6) All beds licensed to an acute care hospital which has had a certificate of need approved by a health systems agency on or before July 1, 1983, are exempt from the requirements of subdivision (b).

(7) All beds licensed to an acute care hospital are exempt from the requirements of subdivision (b), if reimbursement from the Medi-Cal program for beds licensed for the provision of services enumerated in subdivision (c) or (d) of Section 1250 and not otherwise exempt does not exceed the reimbursement which would be received if the beds were in a separately licensed facility.

(d) Except as provided in Section 1253, the state department shall inspect and approve a general acute care hospital to provide special services as specified in Section 1255. The state department shall develop and adopt regulations to implement subdivisions (a) to (d), inclusive, of this section.

(e) The State Department of Health Care Services shall inspect and license psychiatric health facilities. The State Department of Health Care Services shall license psychiatric health facilities to provide their basic services specified in Section 1250.2. The State Department of Health Care Services shall develop, adopt, or amend regulations to implement this subdivision.

SEC. 5. Section 1255.1 of the Health and Safety Code is amended to read:

1255.1. (a) Any hospital that provides emergency medical services under Section 1255 shall, as soon as possible, but not later than 90 days prior to a planned reduction or elimination of the level of emergency medical services, provide notice of the intended change to the state department, the local government entity, and the agency in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital to provide services to enrollees of the plan or other entity.

(b) In addition to the notice required by subdivision (a), the hospital shall, within the time limits specified in subdivision (a), provide public notice of the intended change in a manner that is likely to reach a significant number of residents of the community serviced by that facility.

(c) A hospital shall not be subject to this section or Section 1255.2 if the state department does either of the following:

1 (1) Determines that the use of resources to keep the emergency
2 center open substantially threatens the stability of the hospital as
3 a whole.

4 (2) Cites the emergency center for unsafe staffing practices.

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

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Date	Action
05/05/17	Set for hearing May 15.
05/03/17	Read second time and amended. Re-referred to Com. on APPR.
05/02/17	From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (April 25).
04/21/17	Set for hearing April 25.
04/20/17	From committee: Do pass and re-refer to Com. on JUD. (Ayes 6. Noes 2. Page 808.) (April 19). Re-referred to Com. on JUD.
04/06/17	From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.
04/04/17	Set for hearing April 19.
03/09/17	Referred to Coms. on HEALTH and JUD.
02/21/17	From printer. May be acted upon on or after March 23.
02/17/17	Introduced. Read first time. To Com. on RLS. for assignment. To print.


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SB-687 Health facilities: emergency centers: Attorney General. (2017-2018)

Senate: 1st Cmt 2nd Cmt

Assembly:

Bill Status	
Measure:	SB-687
Lead Authors:	Skinner (S)
Principal Coauthors:	-
Coauthors:	-
Topic:	Health facilities: emergency centers: Attorney General.
31st Day in Print:	03/23/17
Title:	An act to amend Sections 5914 and 5920 of, and to add Chapter 9.2 (commencing with Section 5940) to Part 2 of Division 2 of the Corporations Code, and to amend Sections 1254 and 1255.1 of the Health and Safety Code, relating to health facilities.
House Location:	Senate
Last Amended Date:	05/03/17
Committee Location:	Sen Appropriations
Committee Hearing Date:	05/15/17

Type of Measure
Active Bill - In Committee Process
Majority Vote Required
Non-Appropriation
Fiscal Committee
State-Mandated Local Program
Non-Urgency
Non-Tax levy

Last 5 History Actions	
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SENATE COMMITTEE ON HEALTH

Senator Ed Hernandez, O.D., Chair

Agenda Item No. 5
Attachment

BILL NO: SB 687
AUTHOR: Skinner
VERSION: April 6, 2017
HEARING DATE: April 19, 2017
CONSULTANT: Vince Marchand

SUBJECT: Health facilities: emergency centers: Attorney General

SUMMARY: Requires a non-profit corporation that operates a health facility that includes a licensed emergency center to obtain the consent of the Attorney General prior to a planned elimination or reduction in the level of emergency medical services provided.

Existing law:

- 1) Requires any non-profit corporation that operates or controls a health facility, as defined, to provide written notice to, and obtain the written consent of, the Attorney General (AG) prior to entering into any agreement or transaction to do either of the following:
 - a) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity, or another non-profit corporation; or,
 - b) Transfer control, responsibility, or governance of a material amount of the assets or operations of the non-profit corporation to any for-profit corporation or entity, or another non-profit corporation.
- 2) Requires the AG, within 60 days of the receipt of a written notice of a proposed transaction involving a non-profit health facility, to notify the non-profit corporation in writing of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction.
- 3) Permits the AG to extend the 60-day deadline described above for one additional 45-day period if any of the following conditions are satisfied: the extension is necessary to obtain specified information, the proposed transaction is substantially modified after the first public meeting conducted by the AG, or the proposed transaction involves a multifacility health system serving multiple communities.
- 4) Licenses general acute care hospitals under the Department of Public Health (DPH). Defines general acute care hospitals as hospitals that provide 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services.
- 5) Permits general acute care hospitals, in addition to the basic services all hospitals are required to offer, to be approved by DPH to offer special services, including, but not limited to, a radiation therapy department, a burn center, an emergency center, a hemodialysis center or unit, psychiatric services, intensive care newborn nursery, cardiac surgery, cardiac catheterization laboratory, and renal transplant.
- 6) Requires any hospital that provides emergency medical services to provide notice no later than 90 days prior to a planned reduction or elimination of the level of emergency medical services of the intended change to DPH, the local emergency medical services agency, and

all health care service plans or other entities under contract with the hospital to provide services to enrollees. Additionally requires the hospital to provide notice of the intended change in a manner that is likely to reach a significant number of residents of the community served by the facility.

This bill:

- 1) Requires a non-profit corporation that operates or controls a health facility, as defined, and that provides emergency medical services at a licensed emergency center, to provide written notice to, and to obtain the written consent of, the AG prior to a planned reduction in the level of emergency medical services provided or elimination of those services.
- 2) Requires any non-profit corporation that operates or controls a health facility, as defined, to provide written notice to, and obtain the written consent of, the AG prior to entering into any agreement or transaction to sell, transfer, lease, or otherwise dispose of the assets resulting from the reduction or elimination of emergency medical services provided at an emergency center after the AG gives consent to the reduction or elimination of emergency medical services. Specifies that this provision applies retroactively to January 1, 2015.
- 3) Exempts non-profit corporations from the requirement in 1) above if the AG has given the corporation a written waiver of this requirement as to the planned elimination or reduction of emergency medical services, or if DPH determines that the use of resources to keep the emergency center open substantially threatens the stability of the hospital as a whole, or cites the emergency center for unsafe staffing practices.
- 4) Requires the written notice to the AG specified in 1) above to include the information the AG determines is required to make a decision in the public interest, and requires the notice to be made available to the public by the AG as soon as is practicable after it is received by the AG, along with any other information provided to the AG and that is in the public file.
- 5) Requires the AG, within 90 days of the receipt of the written notice specified in 1) above, to notify the non-profit corporation in writing of the decision to consent to, give conditional consent to, or not consent to the reduction or elimination in emergency medical services. Permits the AG to extend this period for one additional 45-day period if either of the following conditions is satisfied:
 - a) The extension is necessary to obtain information to make a determination; or,
 - b) The plan to reduce or eliminate emergency medical services is substantially modified after the first public meeting conducted by the AG.
- 6) Requires the AG, prior to issuing any written decision, to conduct one or more public meetings, one of which is required to be in the county in which the facility is located, to hear comments from interested parties. Requires the AG to provide written notice of the time and place of the meeting at least 14 days before conducting the meeting, through publication in one or more newspapers and to the board of supervisors of the county in which the facility is located. Permits the AG to conduct an additional public meeting if a substantive change in the plan is submitted to the AG after the initial public meeting.
- 7) Provides the AG with the discretion to consent to, give conditional consent to, or not consent to any elimination or reduction of emergency medical services based on any factors that the AG deems relevant, including, but not limited to, whether any of the following apply:

- a) The planned elimination or reduction in the level of emergency medical services is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated non-profit health system;
 - b) The planned elimination or reduction involves or constitutes any breach of trust;
 - c) The AG has been provided with sufficient information and data by the non-profit corporation to adequately evaluate the reduction or elimination of emergency medical services, or the effects thereof on the public;
 - d) The reduction or eliminate of emergency medical services may create a significant effect on the availability or accessibility of health care services to the affected community; or
 - e) The proposed reduction or elimination of emergency medical services is in the public interest.
- 8) Requires, if the AG provides consent to a reduction or elimination, that any assets resulting from the reduction or elimination that are sold transferred, leased, exchanged, optioned, conveyed, or otherwise disposed of, are subject to the AG review and approval process of existing law.
- 9) Permits the AG to contract with, consult, and receive advice from any state agency, to contract with experts, get reimbursed from the non-profit corporation for costs incurred in reviewing and making the determination referred to in this bill, and to monitor ongoing compliance with the terms and conditions that the AG may impose, in the same manner that the AG has all of these abilities under existing law in regard to the sale or transfer of non-profit health facilities.
- 10) Prohibits anything in this bill from being construed to allow the AG to authorize emergency medical services to be provided by a facility that does not meet specified requirements of law, which include being a general acute care hospital approved to provide emergency services, or to authorize a non-profit general acute care hospital to reduce operations to provide emergency medical services without providing 24-hour inpatient care with basic services, as specified. Prohibits this bill from authorizing the operation of a stand-alone emergency room or freestanding emergency center, except as provided for in an existing provision of law which allows emergency medical services to utilize rural hospitals without a basic emergency room under specified conditions.
- 11) Prohibits DPH from licensing a stand-alone emergency room or freestanding emergency center that is not part of a general acute care hospital facility providing 24-hour inpatient care with basic services, as specified.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) *Author's statement.* According to the author, in recent decades, pressure has been placed on California's emergency centers as more patients seek care in a shrinking number of available emergency centers. As the primary point of healthcare access for many patients, emergency centers are vital safety nets. Low-income communities, including Medi-Cal beneficiaries and the uninsured, are most likely to be affected by emergency center closures, particularly in rural and underserved regions. Overcrowding in emergency centers and long distances patients must travel to obtain emergency care are associated with worse patient outcomes,

including higher mortality rates. Non-profit corporations that operate hospitals are subject to the oversight and enforcement authority of the AG, who ensures that charitable assets are dedicated to their intended use. Currently, however, AG review is triggered when a non-profit hospital's assets change hands, but not when a non-profit hospital closes or reduces services at an emergency center. This bill closes this loophole. In determining whether to consent to the proposed reduction or elimination of emergency services by a non-profit hospital, the AG will consider whether the change is consistent with the hospital's charitable mission and how the availability and accessibility of healthcare services in the community will be impacted.

- 2) *AG review.* As described in existing law above, California law requires the AG's review and consent for any sale or transfer of a health care facility owned or operated by a non-profit corporation whose assets are held in public trust. The review process includes public meetings and, when necessary, preparation of expert reports. The AG's decision often requires the continuation of existing levels of charity care, continued operation of emergency rooms and other essential services, and other actions necessary to avoid adverse effects on healthcare in the local community. Specifically, the law provides the AG with the discretion to consent to, give conditional consent to, or not consent to any agreement or transaction involving a non-profit health facility based on the consideration of any factors that the AG deems relevant, including but not limited to:

- a) Whether the agreement or transaction is at fair market value;
- b) Whether the proposed use of the proceeds from the transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated non-profit health system;
- c) Whether the transaction would create significant effects on the availability or accessibility of health care services to the affected community; or,
- d) Whether the transaction is in the public interest.

The law also prohibits the AG from consenting to a health facility transaction in which the seller restricts the type or level of medical services that may be provided at the health facility that is the subject of the transaction. The AG is authorized to contract with experts when deciding whether to give consent to a transaction, or to monitor ongoing compliance with the terms and conditions of any transaction, and requires the non-profit corporation to reimburse the AG for all reasonable and necessary costs to conduct the review or monitoring ongoing compliance.

- 3) *Current process for closing an emergency department requires an impact evaluation.* Under existing law, hospitals are required to provide notice at least 90 days prior to a planned reduction or elimination of the level of emergency medical services to DPH, the local health department, and all health care service plans or other entities under contract with the hospital to provide services to enrollees. However, a separate provision of law, which permits a hospital to surrender a license or permit with the approval of DPH, specifies that "before approving a downgrade or closure of emergency services," the county or the local emergency medical services agency is required to conduct an impact evaluation of the downgrade or closure upon the community, and how that downgrade or closure will affect emergency services provided by other entities. This impact evaluation is required to incorporate at least one public hearing, and must be done within 60 days of DPH receiving notice of the intent to downgrade or close emergency services. However, despite the language stating "before approving a downgrade or closure of emergency services," DPH has not interpreted this

provision of law as giving them the ability to deny a hospital the ability to close or reduce emergency services, and therefore the impact evaluation is more of a tool to help the community and the local emergency services agency prepare for the reduction or closure.

- 4) *Closing an emergency department usually means closing a hospital.* Although operating an emergency department is expensive, they are also an important source of inpatient admissions to hospitals in an era where inpatient admissions have been declining. Additionally, while inpatient admissions have been going down across the state, emergency department utilization has increased, making it unlikely that hospitals will choose to eliminate an emergency room unless the hospital itself closes. To the extent the provisions of this bill will apply to hospitals that are not closing entirely, it will likely be when an emergency department reduces the level of services, such as going from a “comprehensive emergency department” to a “basic emergency department,” or down to a “standby emergency department.” Therefore, the most common situation that will trigger an AG review under the provisions of this bill is when a non-profit corporation is choosing to close a hospital entirely, when an emergency department is part of that hospital.
- 5) *Saddleback Memorial San Clemente and Alta Bates Medical Center.* Supporters of this bill have pointed to one recent closure, and a possible upcoming closure, as examples of where this bill could have, or would trigger an AG review. Saddleback Memorial San Clemente was a 73 bed hospital that was part of MemorialCare Health System, which is a non-profit health care delivery system with six hospitals, as well as a number of surgical centers and outpatient clinics in Los Angeles and Orange County. MemorialCare Health System announced in August of 2014 that they were planning to replace San Clemente Hospital with a new facility that would offer a wide range of outpatient services, including an advanced urgent care. In response to community concerns about the loss of the emergency room in particular, MemorialCare sought the ability, via SB 787 (Bates of 2015) to maintain just the emergency room on the hospital campus as a satellite extension of its hospital in Laguna Hills 14 miles away. SB 787 ultimately failed passage in Senate Health Committee in January of 2016, and the San Clemente Hospital closed on May 30, 2016. However, in an attempt to ensure hospital and emergency room access for its residents, the City of San Clemente rezoned the property to require that the property be used for a hospital with an emergency room, which prompted MemorialCare to file a lawsuit against the city. In the meantime, the hospital buildings are fenced off and sit idle. The provisions of this bill that would require AG consent prior to a non-profit selling or otherwise disposing of the assets resulting from the reduction or elimination of an emergency room, and making this provision retroactive to January 1, 2015, could give the AG the ability to have a say in how the assets of San Clemente Hospital are used in the future.

Alta Bates Medical Center is a 347 bed hospital located in Berkeley. Alta Bates merged with Summit in 1999, which is part of Sutter Health, a non-profit hospital chain. Sutter has stated that it does not plan to bring the Alta Bates campus up to seismic safety standards that would be required by 2030, and therefore intends to close the Alta Bates campus sometime prior to 2030. Sutter states that it intends to consolidate services at its Summit campus in Oakland a few miles away, which has a new 238 bed tower that is compliant with the 2030 deadline, with future plans for another tower and upgraded and expanded emergency services. However, Berkeley officials and many community members are especially concerned about the potential loss of the only emergency department in Berkeley, and fear increased transport time and emergency room overcrowding throughout the East Bay region. Obviously, should

this bill become law, any closure of the Alta Bates campus would also necessitate a closure of its emergency room, which would trigger the AG review process.

- 6) *Freestanding emergency departments (EDs)*. There are currently no freestanding EDs licensed in California, although they do operate in other states. According to an article in Kaiser Health News in July of 2013, the number of freestanding EDs doubled to more than 400 between 2009 and 2013. According to a 2013 information paper published by the American College of Emergency Physicians, there are two distinct types of freestanding EDs: those that are operated by, or licensed through, medical centers or hospital systems but are geographically separate from the hospital, and those that are independent of a hospital. As an example of the latter, First Choice ER is a for-profit chain of freestanding, 24-hour emergency rooms that operate in Texas and Colorado. The California Health Care Foundation (CHCF) published an issue brief in July of 2009, entitled “Freestanding Emergency Departments: Do They Have a Role in California” (CHCF report). According to the CHCF report, the growth of freestanding EDs has prompted discussions regarding their regulation and effect on the health care system. The CHCF report states that these facilities differ from urgent care centers in that they can accommodate additional procedures such as defibrillation, intubation, and conscious sedation. Additionally, most freestanding EDs are staffed by trained emergency physicians and nurses, and some have been permitted to receive ambulance patients. In California, in order to offer emergency medical services, a facility must provide certain services, such as intensive care, radiology, and surgical services that are immediately available for life-threatening situations, which have the effect of requiring an ED to be part of a full-fledged hospital.
- 7) *Double referral*. This bill is double referred. Should it pass out of this committee, it will be referred to Judiciary Committee.
- 8) *Related legislation*. AB 651 (Muratsuchi) extends the time frame that the AG has to approve or reject the proposed sale of a non-profit health facility from 60 to 90 days, requires that public notice of a hearing regarding the proposed sale be provided in English and any other language that is widely spoken in the county where the facility is located, and requires the AG to consider whether the sale will have an adverse impact on the significant cultural interests in the affected community. *AB 651 is set for hearing in the Assembly Judiciary Committee on April 18, 2017.*
- 9) *Prior legislation*. SB 787 (Bates, 2015) would have permitted Saddleback Memorial Medical Center to operate an emergency department at its San Clemente campus, subject to approval by the California Department of Public Health (CDPH), even if the San Clemente campus stopped providing acute care services, thereby permitting a freestanding emergency department, subject to specified conditions. *SB 787 failed passage in Senate Health Committee.*

SB 1094 (Lara of 2014) would have provided an additional 30 days for the AG to review proposed transactions involving non-profit health facilities. This bill would also have allowed the AG to enforce the conditions of an approved agreement, and to amend the conditions of an agreement or transaction involving a non-profit health facility if a party to the transaction or agreement made material misrepresentations to the AG. Finally, this bill would have required the AG, prior to imposing an amended condition, to provide the parties to the agreement written notice of the proposed condition and allowed the parties 30 days to respond. *SB 1094 was vetoed by the Governor.*

SB 932 (Bowen, Chapter 65, Statutes of 2003) prohibits the AG from consenting to an agreement or transaction involving the sale, transfer, lease or other disposition of a health facility owned by a non-profit corporation to a for-profit corporation, a mutual benefit corporation or another non-profit corporation, if the seller restricts the type or level of medical services that may be provided at the facility.

AB 890 (Cedillo, Chapter 427, Statutes of 2002) subjects health facilities owned by religious corporations to the same requirements as other non-profit hospitals with regard to obtaining the consent of the AG prior to transferring hospital ownership. The bill also adds to the factors that may be considered by the AG when considering transfers of a health facility from one non-profit to another non-profit, and clarifies that the AG may collect the costs of the review from either the transferring or receiving entity.

AB 254 (Cedillo, Chapter 850, Statutes of 1999) requires non-profit health facilities to obtain the consent of the AG prior to the sale, transfer or lease of a material amount of assets to another non-profit corporation.

AB 3101 (Isenberg, Chapter 1105, Statutes of 1996) requires profit health facilities that are subject to public benefit corporation law to obtain written consent from the AG prior to entering into an agreement to (1) sell, transfer, lease, exchange, option, convey, or otherwise dispose of assets, or (2) transfer control or governance of assets. AB 3101 requires the AG to conduct at least one public meeting in the county where the facility is located, to contract with experts, and to obtain reimbursement for the costs from health facilities being reviewed.

- 10) *Support.* Health Access California states in support that under current law, non-profit health facilities are required to obtain the AG's consent for the sale or transfer of a facility, and that this review ensures the assets of non-profit corporations are held in public trust. According to Health Access, this process provides the public with an opportunity to meaningfully participate in the AG's review process and voice any concerns about how the transaction might impact them and the local community, and that the AG's decision on a transaction often requires the continuation of existing levels of charity care and the continued operation of emergency rooms. Health Access states that this bill will ensure that emergency medical services are accessible to communities by closing a loophole that currently allows non-profit hospitals to reduce or close emergency services without any oversight by the AG. Health Access states that emergency room closures should be subject to the same prior review and approval by the AG, consistent with other transactions involving non-profit hospitals. SEIU California states in support that California has the lowest number of emergency department beds per capita in the nation, and this lack of available emergency access has led to excessive wait times for emergency services. SEIU California states that despite the fact that emergency care services are among the most important services provided by a hospital to their community, review by the AG is not triggered when a non-profit hospital seeks to reduce or even eliminate emergency care services. The Alameda County Board of Supervisors states in support that non-profit hospitals are subsidized heavily by taxpayers and are obligated to serve and protect their communities, and that this bill will give the AG the authority to assess the community impact of planned hospital closures or reductions. The City of San Clemente states in support that on May 30, 2016, Saddleback Memorial San Clemente closed its hospital and emergency room services, which has reduced medical services and increased medical transport times for the citizens of San Clemente and

surrounding communities. The City of San Clemente states that the AG already possesses regulatory authority over non-profit sales, and this bill would expand on that power to oversee the reduction or closure of emergency services and act on the public's behalf.

- 11) *Letter of concern.* The California Nurses Association/National Nurses United (CNA) states that it has been working closely with the author to ensure that this bill does not inadvertently allow for the existing of standalone emergency rooms, and is continuing to work to address remaining concerns, including deleting language making the bill's changes retroactive, re-inserting language deleted in the most recent amendments which require the hospital to give notice to the AG no later than 90 days prior to a planned reduction in emergency services, and deleting language providing for exemptions from the review and consent procedure in this bill when the AG has given the hospital a waiver or when the health facility's emergency department has been cited by DPH for unsafe staffing practices.
- 12) *Opposition.* The California Hospital Association (CHA) states in opposition that hospitals generally do not reduce emergency services or close an emergency department if the patient volume is sufficient to keep them open. CHA notes that under this bill, the AG would conduct public meetings to hear comments from interested parties and may also hire experts or consultants to assist in reviewing the proposed changes to the level of emergency services provided, with the costs being charged to the hospital. According to CHA, financially troubled hospitals may be unable to sustain continued emergency department losses during this period, and that forcing hospitals to keep emergency departments open during a review by the AG could adversely impact the entire hospital and all its services to the community. CHA states that there are existing procedures in place for hospitals to notify DPH and local county governments prior to downgrading or closing emergency services, including having the local emergency medical services agency conduct an impact evaluation to assess how the closure or reduction will affect emergency services in the community, and that adding a statutory layer of oversight for the AG is unnecessary and duplicative. In addition to concerns with the additional oversight by the AG, CHA states that recent amendments prohibit the licensure of a freestanding emergency room. According to CHA, this model is untested in California and could provide beneficial in some communities should a hospital need to close, and that considering of this provision should be fully vetted in separate legislation. Finally, CHA states that the recent amendments also apply the AG-related provisions retroactively, which could be unconstitutional and threaten existing services in neighboring regions.
- 13) *Amendments to be taken in next committee.* The author has provided a draft of amendments that would revise the "retroactivity" language that proposes to give the AG the ability to review the disposition of assets resulting from the closure or reduction of emergency services after the AG gives consent to the reduction or elimination. The draft amendments delete the language that simply makes those provisions of the bill apply on and after January 1, 2015, and instead require the AG to consent to the disposition of assets resulting from a closure or reduction that occurred between January 1, 2015 and the effective date of this bill, provided those assets remain under the control of the non-profit corporation as of the effective date of this bill, notwithstanding that the AG did not review or consent to the closure or reduction. Further, if the assets were no longer in the control of the non-profit because they were disposed of between January 1, 2017 and the effective date of this bill, the amendments require the AG to review whether the transaction was intended to avoid the application of this bill, and if so, permits the AG to assess a civil penalty up to the value of the assets.

SUPPORT AND OPPOSITION:

Support: Alameda County Board of Supervisors
Alameda County Firefighters
City of Berkeley
City of Emeryville
City of Oakland
City of San Clemente
Consumers Union
Councilmember of Long Beach, Al Austin
Councilmember of Watsonville, Felipe Hernandez
Councilmember of Watsonville, Lowell Hurst
Health Access California
Mayor of Huntington Park, Marilyn Sanabria
Multi-faith ACTION Coalition
Santa Clara County Board of Supervisors
SEIU California
Supervisor of Contra Costa County, John Gioia
Numerous individuals

Oppose: California Hospital Association
United Hospital Association

-- END --



AGENDA BILL

Agenda Item No. 4(F)

Date: May 16, 2017
To: El Cerrito City Council
From: Mark R. Rasiah, Finance Director/City Treasurer
Subject: Cash & Investments Report for Quarter Ending March 31, 2017

ACTION REQUESTED

Receive and file the City's Quarterly Investment Report for the period ending March 31, 2017.

BACKGROUND

It is the policy of the City of El Cerrito (the City), to invest public funds in a manner which provides for safety of principal while providing sufficient liquidity to cover the City's short and long term needs while generating the appropriate yield. All investment activity will conform to the California Government Code, Sections 53601 through 53659.

ANALYSIS

The Quarterly Investment Report for January 1, 2017 to March 31, 2017 shows that the City's investments had a par value of \$2,209,936 as of March 31, 2017. The City continues to have minimal investments that are not required for debt service reserves and to have limited, if any, interest earnings on restricted funds. Of the total amount invested, \$2,014,281 is invested in the pooled funds with the State Treasurer's Local Agency Investment Funds (LAIF) and \$195,655 is held in money market funds. Cash with Mechanics Bank was \$1,514,127. Total cash and investments were \$3,724,063. Of this amount, \$3,528,408 was available to meet operating expenses for the next six months.

STRATEGIC PLAN CONSIDERATIONS

The purpose of the City's Investment Policy is to provide guidelines for prudent investment of the City's idle funds and maximum efficiency of the City's cash management system. The long term goal is to enhance the City's economic condition while protecting the funds at all times.

FINANCIAL CONSIDERATIONS

During the quarter interest of approximately \$1,563.96 was earned and debt service payments for the Recycle Center, Master Equipment Lease, Valente Note and Swim Center were made totaling \$500,994.73.

LEGAL CONSIDERATIONS

The City's investments comply with the "Authorized Investments" section of the Investment Policy.

Reviewed by:



Scott Hanin
City Manager

Attachment:

1. Cash & Investment Report for the Quarter ending Mar 31, 2017.

Agenda Item No. 4(F) Attachment

El Cerrito
Early Cash & Investment Report
Period Ending Mar 31, 2017

FUND	INVESTMENT TYPE	INVESTMENT	TRUSTEE/ BROKER	PAR VALUE	COST	INTEREST OR YIELD	MATURITY DATE	COST/ 100	*MARKET VALUE
Investments	Pooled Fund	LAIF	CA State Treasurer	\$2,014,281	\$2,014,281	0.78%	N/A	100.00	\$2,014,281
Project Financing	Fidelity Institutional Fund	Prime Money Market	Deutsche Bank	\$10,205	\$10,205	0.01%	N/A	100.00	\$10,205
Center Fund	Blackrock Institutional Money Market	Union Bank/Blackrock Liquidity	Union Bank of CA	\$185,450	\$185,450	0.01%	N/A	100.00	\$185,450
				\$2,209,936	\$2,209,936				\$2,209,936
Cash with Bank (General Checking)	Mechanics Bank	N/A	N/A	\$1,514,127	\$1,514,127	N/A	N/A	N/A	\$1,514,127
Total Cash and Investments				\$3,724,063	\$3,724,063				\$3,724,063

I certify that this report is in compliance with the City of El Cerrito Investment Policy and the California Government Code Section 53646. The City has sufficient cash flow to meet the next six months of estimated expenditures as required by the Code. The balance of the pool's unrestricted investments in combination with anticipated operating cash inflows and the balance in the general checking account, will be used to meet the expenditure requirements for the next six months.


Mark Rasiah, Finance Director/City Treasurer

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO IN SUPPORT OF SENATE BILL 562 (LARA & ATKINS), HEALTHY CALIFORNIA ACT, TO ESTABLISH A COMPREHENSIVE UNIVERSAL SINGLE-PAYER HEALTH CARE COVERAGE PROGRAM AND A HEALTH COST CONTROL SYSTEM FOR THE BENEFIT OF ALL RESIDENTS OF THE STATE

WHEREAS, every resident of the State of California should have a right to health care; and

WHEREAS, while the federal Patient Protection and Affordable Care Act (PPACA) brought many improvements in health care and health care coverage, it still leaves many Californians without coverage or with inadequate coverage; and

WHEREAS, on his first day in office, President Trump signed an executive order giving federal agencies broad powers to dismantle regulations created under the PPACA; and the executive order stated that the Trump Administration's official policy is to seek the prompt repeal of the PPACA; and

WHEREAS, Californians, as individuals, employers, and taxpayers have experienced a rise in the cost of health care and health care coverage in recent years, including rising premiums, deductibles, and copays, as well as restricted provider networks and high out-of-network charges; and

WHEREAS, businesses have also experienced increases in the costs of health care benefits for their employees, and many employers are shifting a larger share of the cost of coverage to their employees or dropping coverage entirely; and

WHEREAS, Senate Bill 562 (SB 562) would create a comprehensive universal single-payer health care coverage program and a health care cost control system for the benefit of all 38 million Californians including undocumented residents; and

WHEREAS, SB 562 would consistently cover all Californians, because coverage is based on residency, not a person's changing income or employment status; and

WHEREAS, SB 562 would eliminate out of control co-pays and high deductibles, and reduce costs by cutting out insurance company waste and duplication; and

WHEREAS, SB 562 would give patients the freedom to choose their doctor, and would manage prescription drug costs; and

WHEREAS, SB 562 is sponsored by the California Nurses Association and is supported by Healthy California, a broad-based grassroots campaign comprised of four million Californians and over 150 organizations representing community, labor, immigrant rights, business, senior, healthcare providers and advocates; and

WHEREAS, the El Cerrito City Council's endorsement of SB 562 is consistent with past support for other Single Payer and Universal Health Care bills presented in the legislature as

Agenda Item No. 5

well as the Health and Wellness Element of the City's General Plan. The City Council has a strong history of showing its support for quality healthcare. In 2003, the City Council supported SB 921 - the Healthcare for All Californians Act. In 2005, SB 840 - the California Health Insurance Reliability Act. In 2007, SB 840 - Reaffirming support for the California Health Insurance Reliability Act. In 2009, SB 810 - The California Universal Healthcare Act. In 2011, Re-Endorsement of SB 810 - California Universal Healthcare Act. All of which preceded the passage of the Federal Affordable Care Act.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby endorses SB 562 consistent with the City Council's past support for other Single Payer and Universal Healthcare bills presented in the California state legislature, as well as the Health and Wellness Element of the City's General Plan.

BE IT FURTHER RESOLVED, that the City Council of the City of El Cerrito directs staff to send a copy of this resolution to Assemblymember Tony Thurmond and State Senator Nancy Skinner, urging them to stand with the people of El Cerrito and California in support of this important bill.

I CERTIFY that at a regular meeting on May 16, 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:

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

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

What Is The Healthy California Act ? S.B. 562 ?



When enacted, the Healthy California Act will guarantee that every resident of California will receive comprehensive healthcare services. It's like Medicare for All. Individuals will have free choice of licensed health professionals and services. Covered benefits will include services to keep people healthy—mentally and physically—as well as those services that diagnose and treat diseases. In addition to emergency services, surgeries, and hospital stays, services such as home healthcare, day care and hospice are covered. Vision and dental care are also included. The Healthy California Act has been crafted to provide a single high standard of safe, therapeutic care for all California residents in a manner that is financially sustainable:

- A payroll and income premium, which is higher for upper income earners, would replace insurance company premiums, co-pays and deductibles—likely resulting in significant out-of-pocket net savings.
- Choose any provider. No more surprise bills. No out-of-pocket costs for covered services.
- Eliminates co-pays for Medicare Part B.
- Lower prescription drug costs.
- Regional planning to reduce overlap and duplication of expensive equipment and facilities.
- Provider rates will be negotiated to ensure access, cost control and high-value services.
- The advances from the Affordable Care Act will be folded into the new system.
- Huge cost-savings from reduced bureaucracy. No more insurance company runaround. No more bill collectors.
- Diverse participants including ordinary citizens and representatives of labor and business, as well as various health care professionals and health policy experts, will advise and help design the Healthy California program.



**HEALTHY
CALIFORNIA**

www.HealthyCaliforniaAct.org
info@HealthyCaliforniaAct.org
 CampaignForAHealthyCalifornia
 @4HealthyCA #HealthyCA

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Date Published: 04/17/2017 02:50 PM

AMENDED IN SENATE APRIL 17, 2017

AMENDED IN SENATE MARCH 29, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL**No. 562****Introduced by Senators Lara and Atkins*****(Principal coauthors: Senators Galgiani and Wiener)******(Principal coauthors: Assembly Members Bonta and Gomez)******(Coauthors: Senators Allen, ~~Galgiani~~, McGuire, and Skinner)******(Coauthors: Assembly Members ~~Bonta~~, Chiu, Friedman, Kalra, McCarty, Nazarian, Mark Stone, and Thurmond)*****February 17, 2017**

An act to add Title 22.2 (commencing with Section 100600) to the Government Code, relating to health care coverage, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 562, as amended, Lara. The Healthy California Act.

Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), enacted various health care coverage market reforms that took effect January 1, 2014. PPACA required each state, by January 1, 2014, to establish an American Health Benefit Exchange to facilitate the purchase of qualified health benefit plans by qualified individuals and qualified small employers. PPACA defines a "qualified health plan" as a plan that, among other requirements, provides an essential health benefits package. Existing state law creates the California Health Benefit Exchange, also known as Covered California, to facilitate the purchase of qualified health plans by qualified individuals and qualified small employers.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions.

This bill, the Healthy California Act, would create the Healthy California program to provide comprehensive universal single-payer health care coverage and a health care cost control system for the benefit of all residents

of the state. The bill, among other things, would provide that the program cover a wide range of medical benefits and other services and would incorporate the health care benefits and standards of other existing federal and state provisions, including, but not limited to, the state's Children's Health Insurance Program (CHIP), Medi-Cal, ancillary health care or social services covered by regional centers for persons with developmental disabilities, Knox-Keene, and the federal Medicare program. The bill would require the board to seek all necessary waivers, ~~approval~~, *approvals*, and agreements to allow various existing federal health care payments to be paid to the Healthy California program, which would then assume responsibility for all benefits and services previously paid for with those funds.

This bill would also provide for the participation of health care providers in the program, require care coordination for members, provide for payment for health care services and care coordination, and specify program standards. The bill would state the intent of the Legislature to enact legislation that would develop a revenue plan, taking into consideration anticipated federal revenue available for the Healthy California program. The bill would create the Healthy California Trust Fund in the State Treasury, as a continuously appropriated fund, consisting of any federal and state moneys received for the purposes of the act. Because the bill would create a continuously appropriated fund, it would make an appropriation.

This bill would create the Healthy California Board to govern the program, made up of 9 members with demonstrated and acknowledged expertise in health care, and appointed as provided. The bill would provide the board with all the powers and duties necessary to establish the Healthy California program, including, but not limited to, determining when individuals may start enrolling into the program, employing necessary staff, and negotiating and entering into any necessary contracts. The bill would also require the Secretary of California Health and Human Services to establish a public advisory committee to advise the board on all matters of policy for the Healthy California program.

This bill would prohibit health care service plans and health insurers from offering health benefits or covering any service for which coverage is offered to individuals under the program, except as provided. The bill would authorize health care providers, as defined, to collectively negotiate rates of payment for health care services, rates of payment for prescription and nonprescription drugs, and payment methodologies using a ~~third-party~~ *3rd-party* representative, as provided.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) All residents of this state have the right to health care. While the federal Patient Protection and Affordable Care Act (PPACA) brought many improvements in health care and health care coverage, it still leaves many Californians without coverage or with inadequate coverage.

(2) Californians, as individuals, employers, and ~~taxpayers~~ *taxpayers*, have experienced a rise in the cost of health care and health care coverage in recent years, including rising premiums, deductibles, and copays, as well as restricted provider networks and high out-of-network charges.

(3) Businesses have also experienced increases in the costs of health care benefits for their employees, and many employers are shifting a larger share of the cost of coverage to their employees or dropping coverage entirely.

(4) Individuals often find that they are deprived of affordable care and choice because of decisions by health benefit plans guided by the plan's economic needs rather than consumers' health care needs.

(5) To address the fiscal crisis facing the health care system and the state, and to ensure Californians can exercise their right to health care, comprehensive health care coverage needs to be provided.

(6) It is the intent of the Legislature to establish a comprehensive universal single-payer health care coverage program and a health care cost control system for the benefit of all residents of the state.

(b) (1) It is further the intent of the Legislature to establish the Healthy California (HC) program to provide universal health coverage for every Californian based on his or her ability to pay and funded by broad-based revenue.

(2) It is the intent of the Legislature for the state to work to obtain waivers and other approvals relating to Medi-Cal, the state's Children's Health Insurance Program, Medicare, the PPACA, and any other federal programs so that any federal funds and other subsidies that would otherwise be paid to the State of California, Californians, and health care providers would be paid by the federal government to the State of California and deposited in the Healthy California Trust Fund.

(3) Under those waivers and approvals, those funds would be used for health coverage that provides health benefits equal to or exceeded by those programs as well as other program modifications, including elimination of cost sharing and insurance premiums.

(4) Those programs would be replaced and merged into the HC program, which will operate as a true single-payer program.

(5) If any necessary waivers or approvals are not obtained, it is the intent of the Legislature that the state use state plan amendments and seek waivers and approvals to maximize, and make as seamless as possible, the use of federally matched public health programs and federal health programs in the HC program.

(6) Thus, even if other programs such as Medi-Cal or Medicare may contribute to paying for care, it is the goal of this act that the coverage be delivered by the HC program, and, as much as possible, that the multiple sources of funding be pooled with other HC program funds and not be apparent to HC program members or participating providers.

(c) This act does not create any employment benefit, nor does it require, prohibit, or limit the providing of any employment benefit.

(d) (1) It is the intent of the Legislature not to change or impact in any way the role or authority of any licensing board or state agency that regulates the standards for or provision of health care and the standards for health care providers as established under current law, including, but not limited to, the Business and Professions Code, the Health and Safety Code, the Insurance Code, and the Welfare and Institutions Code, as applicable.

(2) This act would in no way authorize the Healthy California Board, the Healthy California program, or the Secretary of California Health and Human Services to establish or revise licensure standards for health care providers.

(e) It is the intent of the Legislature that neither health information technology nor clinical practice guidelines limit the effective exercise of the professional judgment of physicians and registered nurses. Physicians and registered nurses shall be free to override health information technology and clinical practice guidelines if, in their professional judgment, it is in the best interest of the patient and consistent with the patient's wishes.

(f) (1) It is the intent of the Legislature to prohibit the HC program, a state agency, a local agency, or a public employee acting under color of law from providing or disclosing to anyone, including, but not limited to, the federal government, any personally identifiable information obtained, including, but not limited to, a person's religious beliefs, practices, or affiliation, national origin, ethnicity, or immigration status, for law enforcement or immigration purposes.

(2) This act would also prohibit law enforcement agencies from using the HC program's funds, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any criminal, civil, or administrative violation or warrant for a violation of any requirement that individuals register with the federal government or any federal agency based on religion, national origin, ethnicity, or immigration status.

(g) It is the further intent of the Legislature to address the high cost of prescription drugs and ensure they are affordable for patients.

SEC. 2. Title 22.2 (commencing with Section 100600) is added to the Government Code, to read:

TITLE 22.2. The Healthy California Act
CHAPTER 1. General Provisions

100600. This title shall be known, and may be cited, as the Healthy California Act.

100601. There is hereby established in state government the Healthy California program to be governed by the Healthy California Board pursuant to Chapter 2 (commencing with Section 100610).

100602. For the purposes of this title, the following definitions apply:

(a) "Affordable Care Act" or "PPACA" means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any amendments to, or regulations or guidance issued under, those acts.

(b) "Allied health practitioner" means a group of health professionals who apply their expertise to prevent disease transmission, diagnose, treat, and rehabilitate people of all ages and in all specialties. Together with a range of technical and support staff, they may deliver direct patient care, rehabilitation, treatment, diagnostics, and health improvement interventions to restore and maintain optimal physical, sensory, psychological, cognitive, and social functions. Examples include, but are not limited to, audiologists, occupational therapists, social workers, and radiographers.

(c) "Board" means the Healthy California Board described in Section 100610.

(d) "Care coordination" means services provided by a care coordinator under Section 100637.

(e) "Care coordinator" means an individual or entity approved by the board to provide care coordination under Section 100637.

(f) "Carrier" means either a private health insurer holding a valid outstanding certificate of authority from the Insurance Commissioner or a health care service plan, as defined under subdivision (f) of Section 1345 of the Health and Safety Code, licensed by the Department of Managed Health Care.

(g) "Committee" means the public advisory committee established pursuant to Section 100611.

(h) "Essential community providers" means persons or entities acting as safety net clinics, safety net health care providers, or rural hospitals.

(i) "Federally matched public health program" means the state's Medi-Cal program under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and the state's Children's Health Insurance Program (CHIP) under Title XXI of the federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.).

(j) "Fund" means the Healthy California Trust Fund established under Section 100655.

(k) "Health care organization" means an entity that is approved by the board under Section 100640 to provide health care services to members under the program.

(l) "Health care service" means any health care service, including care coordination, that is included as a benefit under the program.

(m) "Healthy California" or "HC" means the Healthy California program established in Section 100601.

(n) "Implementation period" means the period under subdivision (f) of Section 100612 during which the program is subject to special eligibility and financing provisions until it is fully implemented under that section.

(o) "Integrated health care delivery system" means a provider organization that meets both of the following criteria:

(1) Is fully integrated operationally and clinically to provide a broad range of health care services, including ~~preventative~~ *preventive* care, prenatal and well-baby care, immunizations, screening diagnostics, emergency services, hospital and medical services, surgical services, and ancillary services.

(2) Is compensated by Healthy California using capitation or facility budgets for the provision of health care services.

(p) "Long-term care" means long-term care, treatment, maintenance, or services not covered under the state's Children's Health Insurance ~~Program (CHIP)~~, *Program*, as appropriate, with the exception of short-term rehabilitation, and as defined by the board.

(q) "Medicaid" or "medical assistance" means a program that is one of the following:

(1) The state's Medi-Cal program under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

(2) The state's Children's Health Insurance Program ~~(CHIP)~~ under Title XXI of the federal Social Security Act (42 U.S.C. Sec. 1397aa et seq.).

(r) "Medicare" means Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395 et seq.) and the programs thereunder.

(s) "Member" means an individual who is enrolled in the program.

(t) "Out-of-state health care service" means a health care service provided in person to a member while the member is physically located out of the state under either of the following circumstances:

(1) It is medically necessary that the health care service be provided while the member physically is out of the state.

(2) It is clinically appropriate and necessary, and cannot be provided in the state, because the health care service can only be provided by a particular health care provider physically located out of the state. However, any health care service provided to an HC member by a health care provider qualified under Section 100635 that is located outside the state shall not be considered an out-of-state service and shall be covered as otherwise provided in this title.

(u) "Participating provider" means any individual or entity that is a health care provider qualified under Section 100635 that provides health care services to members under the program, or a health care organization.

(v) "Prescription drugs" means prescription drugs as defined in subdivision (n) of Section 130501 of the Health and Safety Code.

(w) "Program" means the Healthy California program established in Section 100601.

(x) "Resident" means an individual whose primary place of abode is in the state, without regard to the individual's immigration status.

100603. This title does not preempt any city, county, or city and county from adopting additional health care coverage for residents in that city, county, or city and county that provides more protections and benefits to California residents than this title.

100604. To the extent any provision of California law is inconsistent with this title or the legislative intent of the Healthy California Act, this title shall apply and prevail, except when explicitly provided otherwise by this title.

CHAPTER 2. Governance

100610. (a) The Healthy California Board shall be an independent public entity not affiliated with an agency or department. The board shall be governed by an executive board consisting of nine members who are residents of California. Of the members of the board, four shall be appointed by the Governor, two shall be appointed by the Senate Committee on Rules, and two shall be appointed by the Speaker of the Assembly. The Secretary of California Health and Human Services or his or her designee shall serve as a voting, ex officio member of the board.

(b) Members of the board, other than an ex officio member, shall be appointed for a term of four years. Appointments by the Governor shall be subject to confirmation by the Senate. A member of the board may continue to serve until the appointment and qualification of his or her successor. Vacancies shall be filled by appointment for the unexpired term. The board shall elect a chairperson on an annual basis.

(c) (1) Each person appointed to the board shall have demonstrated and acknowledged expertise in health care.

(2) Appointing authorities shall also consider the expertise of the other members of the board and attempt to make appointments so that the board's composition reflects a diversity of expertise in the various aspects of health care.

(3) Appointments to the board by the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall be composed of:

(A) At least one representative of a labor organization representing registered nurses.

(B) At least one representative of the general public.

(C) At least one representative of a labor organization.

(D) At least one representative of the medical provider community.

(d) Each member of the board shall have the responsibility and duty to meet the requirements of this title, the Affordable Care Act, and all applicable state and federal laws and regulations, to serve the public interest of the individuals, employers, and taxpayers seeking health care coverage through the program, and to ensure the operational well-being and fiscal solvency of the program.

(e) In making appointments to the board, the appointing authorities shall take into consideration the cultural, ethnic, and geographical diversity of the state so that the board's composition reflects the communities of California.

(f) (1) A member of the board or of the staff of the board shall not be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, a health care provider, a health care facility, or a health clinic while serving on the board or on the staff of the board. A member of the board or of the staff of the board shall not be a member, a board member, or an employee of a trade association of health facilities, health clinics, or health care providers while serving on the board or on the staff of the board. A member of the board or of the staff of the board shall not be a health care provider unless he or she receives no compensation for rendering services as a health care provider and does not have an ownership interest in a health care practice.

(2) A board member shall not receive compensation for his or her service on the board, but may receive a per diem and reimbursement for travel and other necessary expenses, as provided in Section 103 of the Business and Professions Code, while engaged in the performance of official duties of the board.

(3) For purposes of this subdivision, "health care provider" means a person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Act or the Chiropractic Act.

(g) A member of the board shall not make, participate in making, or in any way attempt to use his or her official position to influence the making of a decision that he or she knows, or has reason to know, will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on him or her or a member of his or her immediate family, or on either of the following:

(1) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the member within 12 months prior to the time when the decision is made.

(2) Any business entity in which the member is a director, officer, partner, trustee, employee, or holds any position of management.

(h) There shall not be liability in a private capacity on the part of the board or a member of the board, or an officer or employee of the board, for or on account of an act performed or obligation entered into in an official capacity, when done in good faith, without intent to defraud, and in connection with the administration, management, or conduct of this title or affairs related to this title.

(i) The board shall hire an executive director to organize, administer, and manage the operations of the board. The executive director shall be exempt from civil service and shall serve at the pleasure of the board.

(j) The board shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), except that the board may hold closed sessions when considering matters related to litigation, personnel, contracting, and rates.

(k) The board may adopt rules and regulations as necessary to implement and administer this title in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).

100611. (a) The Secretary of California Health and Human Services shall establish a public advisory committee to advise the board on all matters of policy for the program.

(b) The members of the committee shall include all of the following:

(1) Four physicians, all of whom shall be board certified in their fields, and at least one of whom shall be a psychiatrist. The Senate Committee on Rules and the Governor shall each appoint one member. The Speaker of the Assembly shall appoint two of these members, both of whom shall be primary care providers.

(2) Two registered nurses, to be appointed by the Senate Committee on Rules.

- (3) One licensed allied health practitioner, to be appointed by the Speaker of the Assembly.
 - (4) One mental health care provider, to be appointed by the Senate Committee on Rules.
 - (5) One dentist, to be appointed by the Governor.
 - (6) One representative of private hospitals, to be appointed by the Governor.
 - (7) One representative of public hospitals, to be appointed by the Governor.
 - (8) One representative of an integrated health care delivery system, to be appointed by the Governor.
 - (9) Four consumers of health care. The Governor shall appoint two of these members, one of whom shall be a member of the disabled community. The Senate Committee on Rules shall appoint a member who is 65 years of age or older. The Speaker of the Assembly shall appoint the fourth member.
 - (10) One representative of organized labor, to be appointed by the Speaker of the Assembly.
 - (11) One representative of essential community providers, to be appointed by the Senate Committee on Rules.
 - (12) One member of organized labor, to be appointed by the Senate Committee on Rules.
 - (13) One representative of small business, which is a business that employs less than 25 people, to be appointed by the Governor.
 - (14) One representative of large business, which is a business that employs more than 250 people, to be appointed by the Speaker of the Assembly.
 - (15) One pharmacist, to be appointed by the Speaker of the Assembly.
 - (c) In making appointments pursuant to this section, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall make good faith efforts to ensure that their appointments, as a whole, reflect, to the greatest extent feasible, the social and geographic diversity of the state.
 - (d) Any member appointed by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly shall serve a four-year term. These members may be reappointed for succeeding four-year terms.
 - (e) Vacancies that occur shall be filled within 30 days after the occurrence of the vacancy, and shall be filled in the same manner in which the vacating member was initially selected or appointed. The Secretary of California Health and Human Services shall notify the appropriate appointing authority of any expected vacancies on the public advisory committee.
 - (f) Members of the committee shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for those expenses is not otherwise provided or payable by another public agency or agencies, and shall receive one hundred dollars (\$100) for each full day of attending meetings of the committee. For purposes of this section, "full day of attending a meeting" means presence at, and participation in, not less than 75 percent of the total meeting time of the committee during any particular 24-hour period.
 - (g) The public advisory committee shall meet at least six times per year in a place convenient to the public. All meetings of the committee shall be open to the public, pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).
 - (h) The public advisory committee shall elect a chairperson who shall serve for two years and who may be reelected for an additional two years.
 - (i) Appointed committee members shall have worked in the field they represent on the committee for a period of at least two years prior to being appointed to the committee.
 - (j) It is unlawful for the committee members or any of their assistants, clerks, or deputies to use for personal benefit any information that is filed with, or obtained by, the committee and that is not generally available to the public.
- 100612.** (a) The board shall have all powers and duties necessary to establish and implement Healthy California under this title. The program shall provide comprehensive universal single-payer health care coverage and a health care cost control system for the benefit of all residents of the state.

(b) The board shall, to the maximum extent possible, organize, administer, and market the program and services as a single-payer program under the name "HC," "Healthy California," or any other name as the board determines, regardless of which law or source the definition of a benefit is found, including, on a voluntary basis, retiree health benefits. In implementing this title, the board shall avoid jeopardizing federal financial participation in the programs that are incorporated into Healthy California and shall take care to promote public understanding and awareness of available benefits and programs.

(c) The board shall consider any matter to effectuate the provisions and purposes of this title. The board shall have no executive, administrative, or appointive duties except as otherwise provided by law.

(d) The board shall employ necessary staff and authorize reasonable expenditures, as necessary, from the Healthy California Trust Fund to pay program expenses and to administer the program.

(e) The board may do all of the following:

(1) Negotiate and enter into any necessary contracts, including, but not limited to, contracts with health care providers, integrated health care delivery systems, and care coordinators.

(2) Sue and be sued.

(3) Receive and accept gifts, grants, or donations of moneys from any agency of the federal government, any agency of the state, and any municipality, county, or other political subdivision of the state.

(4) Receive and accept gifts, grants, or donations from individuals, associations, private foundations, and corporations, in compliance with the conflict-of-interest provisions to be adopted by the board by regulation.

(5) Share information with relevant state departments, consistent with the confidentiality provisions in this title, necessary for the administration of the program.

(f) The board shall determine when individuals may begin enrolling in the program. There shall be an implementation period that begins on the date that individuals may begin enrolling in the program and ends on a date determined by the board.

(g) A carrier may not offer benefits or cover any services for which coverage is offered to individuals under the program, but may, if otherwise authorized, offer benefits to cover health care services that are not offered to individuals under the program. However, this title does not prohibit a carrier from offering either of the following:

(1) Any benefits to or for individuals, including their families, who are employed or self-employed in the state but who are not residents of the state.

(2) Any benefits during the implementation period to individuals who enrolled or may enroll as members of the program.

(h) After the end of the implementation period, a person shall not be a board member unless he or she is a member of the program, except the ex officio member.

(i) No later than two years after the effective date of this section, the board shall develop the following proposals:

(1) The board shall develop a proposal, consistent with the principles of this title, for provision by the program of long-term care coverage, including the development of a proposal, consistent with the principles of this title, for its funding. In developing the proposal, the board shall consult with an advisory committee, appointed by the chairperson of the board, including representatives of consumers and potential consumers of long-term care, providers of long-term care, members of organized labor, and other interested parties.

(2) The board shall develop proposals for both of the following:

(A) Accommodating employer retiree health benefits for people who have been members of HC but live as retirees out of the state.

(B) Accommodating employer retiree health benefits for people who earned or accrued those benefits while residing in the state prior to the implementation of HC and live as retirees out of the state.

(3) The board shall develop a proposal for HC coverage of health care services currently covered under the workers' compensation system, including whether and how to continue funding for those services under that system and whether and how to incorporate an element of experience rating.

100613. The board may contract with not-for-profit organizations to provide both of the following:

(a) Assistance to consumers with respect to selection of a care coordinator or health care organization, enrolling, obtaining health care services, disenrolling, and other matters relating to the program.

(b) Assistance to health care providers providing, seeking, or considering whether to provide health care services under the program, with respect to participating in a health care organization and interacting with a health care organization.

100614. The board shall provide grants from funds in the Healthy California Trust Fund or from funds otherwise appropriated for this purpose to health planning agencies established pursuant to Section 127155 of the Health and Safety Code to support the operation of those health planning agencies.

100615. The board shall provide funds from the Healthy California Trust Fund or funds otherwise appropriated for this purpose to the Secretary of Labor and Workforce Development for a program for retraining and assisting job transition for individuals employed or previously employed in the fields of health insurance, health care service plans, and other third-party payments for health care or those individuals providing services to health care providers to deal with third-party payers for health care, whose jobs may be or have been ended as a result of the implementation of the program, consistent with otherwise applicable law.

100616. (a) The board shall provide for the collection and availability of all of the following data to promote transparency, assess adherence to patient care standards, compare patient outcomes, and review utilization of health care services paid for by the program:

(1) Inpatient discharge data, including acuity and risk of mortality.

(2) Emergency department and ambulatory surgery data, including charge data, length of stay, and patients' unit of observation.

(3) Hospital annual financial data, including all of the following:

(A) Community benefits by hospital in dollar value.

(B) Number of employees and classification by hospital unit.

(C) Number of hours worked by hospital unit.

(D) Employee wage information by job title and hospital unit.

(E) Number of registered nurses per staffed bed by hospital unit.

(F) Type and value of healthy information technology.

(G) Annual spending on health information technology, including purchases, upgrades, and maintenance.

(b) The board shall make all disclosed data collected under subdivision (a) publicly available and searchable through an Internet Web site and through the Office of Statewide Health Planning and Development public data sets.

(c) The board shall, directly and through grants to not-for-profit entities, conduct programs using data collected through the Healthy California program to promote and protect public, environmental, and occupational health, including cooperation with other data collection and research programs of the Office of Statewide Health Planning and Development and the California Health and Human Services Agency, consistent with this title and otherwise applicable law.

(d) Prior to full implementation of the program, the board shall provide for the collection and availability of data on the number of patients served by hospitals and the dollar value of the care provided, at cost, for all of the following categories of Office of Statewide Health Planning and Development data items:

(1) Patients receiving charity care.

(2) Contractual adjustments of county and indigent programs, including traditional and managed care.

(3) Bad debts.

100617. (a) Notwithstanding any other law, Healthy California, any state or local agency, or a public employee acting under color of law shall not provide or disclose to anyone, including, but not limited to, the federal government any personally identifiable information obtained, including, but not limited to, a person's religious

beliefs, practices, or affiliation, national origin, ethnicity, or immigration status for law enforcement or immigration purposes.

(b) Notwithstanding any other law, law enforcement agencies shall not use Healthy California moneys, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any criminal, civil, or administrative violation or warrant for a violation of any requirement that individuals register with the federal government or any federal agency based on religion, national origin, ethnicity, or immigration status.

CHAPTER 3. Eligibility and Enrollment

100620. (a) Every resident of the state shall be eligible and entitled to enroll as a member under the program.

(b) (1) A member shall not be required to pay any fee, payment, or other charge for enrolling in or being a member under the program.

(2) A member shall not be required to pay any premium, copayment, coinsurance, deductible, and any other form of cost sharing for all covered benefits.

(c) A college, university, or other institution of higher education in the state may purchase coverage under the program for a student, or a student's dependent, who is not a resident of the state.

CHAPTER 4. Benefits

100630. (a) Covered health care benefits under the program include all medical care determined to be medically appropriate by the member's health care provider.

(b) Covered health care benefits for members shall include, but are not limited to, all of the following:

(1) Licensed inpatient and licensed outpatient medical and health facility services.

(2) Inpatient and outpatient professional health care provider medical services.

(3) Diagnostic imaging, laboratory services, and other diagnostic and evaluative services.

(4) Medical equipment, appliances, and assistive technology, including prosthetics, eyeglasses, and hearing aids and the repair, technical support, and customization needed for individual use.

(5) Inpatient and outpatient rehabilitative care.

(6) Emergency care services.

(7) Emergency transportation.

(8) Necessary transportation for health care services for persons with disabilities or who may qualify as low income.

(9) Child and adult immunizations and preventive care.

(10) Health and wellness education.

(11) Hospice care.

(12) Care in a skilled nursing facility.

(13) Home health care, including health care provided in an assisted living facility.

(14) Mental health services.

(15) Substance abuse treatment.

(16) Dental care.

(17) Vision care.

(18) Prescription drugs.

(19) Pediatric care.

(20) Prenatal and postnatal care.

- (21) Podiatric care.
- (22) Chiropractic care.
- (23) Acupuncture.
- (24) Therapies that are shown by the National Institutes of Health, National Center for Complementary and Integrative Health to be safe and effective.
- (25) Blood and blood products.
- (26) Dialysis.
- (27) Adult day care.
- (28) Rehabilitative and habilitative services.
- (29) Ancillary health care or social services previously covered by county integrated health and human services programs pursuant to Chapter 12.96 (commencing with Section 18986.60) and Chapter 12.991 (commencing with Section 18986.86) of Part 6 of Division 9 of the Welfare and Institutions Code.
- (30) Ancillary health care or social services previously covered by a regional center for persons with developmental disabilities pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.
- (31) Case management and care coordination.
- (32) Language interpretation and translation for health care services, including sign language and Braille or other services needed for individuals with communication barriers.
- (33) Health care and long-term supportive services currently covered under Medi-Cal or the state's Children's Health Insurance ~~Program (CHIP)~~ *Program*.
- (34) Covered benefits for members shall also include all health care services required to be covered under any of the following provisions, without regard to whether the member would otherwise be eligible for or covered by the program or source referred to:
 - (A) The state's Children's Health Insurance Program ~~(CHIP)~~ (Title XXI of the Social Security Act (42 U.S.C. Sec. 1397aa et seq.)).
 - (B) Medi-Cal (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).
 - (C) The federal Medicare program pursuant to Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395 et seq.).
 - (D) Health care service plans pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) *of* Division 2 of the Health and Safety Code).
 - (E) Health insurers, as defined in Section 106 of the Insurance Code, pursuant to Part 2 (commencing with Section 10110) of Division 2 of the Insurance Code.
 - (F) Any additional health care services authorized to be added to the program's benefits by the program.
 - (G) All essential health benefits mandated by the Affordable Care Act as of January 1, 2017.

CHAPTER 5. Delivery of Care
Article 1. Health Care Providers

- 100635.** (a) (1) Any health care provider who is licensed to practice in California and is otherwise in good standing is qualified to participate in the program as long as the health care provider's services are performed within the State of California.
- (2) The board shall establish and maintain procedures and standards for recognizing health care providers located out of the state for purposes of providing coverage under the program for members who require out-of-state health care services while the member is temporarily located ~~out of state~~ *out of the state*.
- (b) Any health care provider qualified to participate under this section may provide covered health care services under the program, as long as the health care provider is legally authorized to perform the health care service for the individual and under the circumstances involved.

(c) A member may choose to receive health care services under the program from any participating provider, consistent with provisions of this title, the willingness or availability of the provider, subject to provisions of this title relating to discrimination, and the appropriate clinically relevant circumstances.

(d) A person who chooses to enroll with an integrated health care delivery system, group medical practice, or essential community provider that offers comprehensive services, shall retain membership for at least one year after an initial three-month evaluation period during which time the person may withdraw for any reason.

(1) The three-month period shall commence on the date when a member first sees a primary care provider.

(2) A person who wants to withdraw after the initial three-month period shall request a withdrawal pursuant to the dispute resolution procedures established by the board and may request assistance from the patient advocate, which shall be provided for in the dispute resolution procedures, in resolving the dispute. The dispute shall be resolved in a timely fashion and shall not have an adverse effect on the care a patient receives.

Article 2. Care Coordination

100637. (a) Care coordination shall be provided to the member by his or her care coordinator. A care coordinator may employ or utilize the services of other individuals or entities to assist in providing care coordination for the member, consistent with regulations of the board and with the statutory requirements and regulations of the care coordinator's licensure.

(b) Care coordination includes administrative tracking and medical recordkeeping services for members, except as otherwise specified for integrated health care delivery systems.

(c) Care coordination administrative tracking and medical recordkeeping services for members shall not be required to utilize a certified electronic health record, meet any other requirements of the federal Health Information Technology for Economic and Clinical Health, enacted under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), or meet certification requirements of the federal Centers for Medicare ~~and~~ **and** Medicaid Services' Electronic Health Records Incentive Programs, including meaningful use requirements.

(d) The care coordinator shall comply with all federal and state privacy laws, including, but not limited to, the federal Health Insurance Portability and Accountability Act (HIPAA; 42 U.S.C. Sec. 1320d et seq.) and its implementing regulations, the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code), and Section 1798.81.5 of the Civil Code.

(e) Referrals from a care coordinator are not required for a member to see any eligible provider.

(f) A care coordinator may be an individual or entity that is approved by the program that is any of the following:

(1) A health care practitioner that is any of the following:

(A) The member's primary care provider.

(B) The member's provider of primary gynecological care.

(C) At the option of a member who has a chronic condition that requires specialty care, a specialist health care practitioner who regularly and continually provides treatment to the member for that condition.

(2) An entity licensed pursuant to any of the following provisions:

(A) Health facility, Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(B) Health care service plan, Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) **of** Division 2 of the Health and Safety Code).

(C) Long-term health care facility, as defined in Section 1418 of the Health and Safety Code, or a program developed pursuant to paragraph (1) of subdivision (i) of Section 100612, or a long-term health care facility with respect to a member who receives mental health care services.

(D) County medical facility, Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code.

- (E) Residential care facility for persons with chronic, life-threatening illness, Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the Health and Safety Code.
- (F) Alzheimer's day-~~care resource~~ *care resource* center, Chapter 3.1 (commencing with Section 1568.15) of Division 2 of the Health and Safety Code.
- (G) Residential care facility for the elderly, Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety Code.
- (H) Home health agency, Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.
- (I) Private duty nursing agency, Chapter 8.3 (commencing with Section 1743) of Division 2 of the Health and Safety Code.
- (J) Hospice, Chapter 8.5 (commencing with Section 1745) of Division 2 of the Health and Safety Code.
- (K) Pediatric day health and respite care facility, Chapter 8.6 (commencing with Section 1760) of Division 2 of the Health and Safety Code.
- (L) Home care service, Chapter 13 (commencing with Section 1796.10) of Division 2 of the Health and Safety Code.
- (M) Mental health care provider, pursuant to Division 4 (commencing with Section 4000 of the Welfare and Institutions Code).
- (3) A health care organization.
- (4) A Taft-Hartley health and welfare fund, with respect to its members and their family members. This provision does not preclude a Taft-Hartley health and welfare fund from becoming a care coordinator under paragraph (5) or a health care organization under Section 100640.
- (5) Any not-for-profit or governmental entity approved by the program.
- (g) (1) A health care provider shall only be reimbursed for services if the member is enrolled with a care coordinator at the time the health care service is provided.
- (2) Every member shall be encouraged to enroll with a care coordinator that agrees to provide care coordination prior to receiving health care services to be paid for under the program. If a member receives health care services before choosing a care coordinator, the program shall assist the member, when appropriate, with choosing a care coordinator.
- (3) The member shall remain enrolled with that care coordinator until the member becomes enrolled with a different care coordinator or ceases to be a member. Members have the right to change their care coordinators on terms at least as permissive as Medi-Cal (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) relating to an individual changing his or her primary care provider or managed care provider.
- (h) A health care organization may establish rules relating to care coordination for members in the health care ~~organization~~, *organization that are* different from this section but otherwise consistent with this title and other applicable laws.
- (i) This section does not authorize any individual to engage in any act in violation of the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code.
- (j) An individual or entity may not be a care coordinator unless the services included in care coordination are within the individual's professional scope of practice or the entity's legal authority.
- (k) (1) The board shall develop and implement procedures and standards, by regulation, for an individual or entity to be approved as a care coordinator in the program, including, but not limited to, procedures and standards relating to the revocation, suspension, limitation, or annulment of approval on a determination that the individual or entity is incompetent to be a care coordinator or has exhibited a course of conduct that is inconsistent with program standards and regulations, or that exhibits an unwillingness to meet those standards and regulations, or is a potential threat to the public health or safety.
- (2) The procedures and standards adopted by the board shall be consistent with professional practice, licensure standards, and regulations established pursuant to the Business and Professions Code, the Health and Safety Code, the Insurance Code, and the Welfare and Institutions Code, as applicable.

(3) In developing and implementing standards of approval of care coordinators for individuals receiving chronic mental health care services, the board shall consult with the Mental Health Services Division of the State Department of Health Care Services and the Director of Developmental Services.

(l) To maintain approval under the program, a care coordinator shall do all of the following:

(1) Renew its status every three years pursuant to regulations adopted by the board.

(2) Provide to the program any data required by the Office of Statewide Health Planning and Development pursuant to Division 107 (commencing with Section 127000) of the Health and Safety Code that would enable the board to evaluate the impact of care coordinators on quality, outcomes, and cost of health care.

Article 3. Payment-~~Fee~~ for Health Care Services and Care Coordination

100639. (a) The board shall adopt regulations regarding contracting for, and establishing payment methodologies for, covered health care services and care coordination provided to members under the program by participating providers, care coordinators, and health care organizations. There may be a variety of different payment methodologies, including those established on a demonstration basis. All payment rates under the program shall be reasonable and reasonably related to the cost of efficiently providing the health care service and ensuring an adequate and accessible supply of health care services.

(b) Health care services provided to members under the program, except for care coordination, shall be paid for on a fee-for-service basis unless and until another payment methodology is established by the board.

(c) Notwithstanding subdivision (b), integrated health care delivery systems, essential community providers, and group medical practices that provide comprehensive, coordinated services may choose to be reimbursed on the basis of a capitated system operating budget or a noncapitated system operating budget that covers all costs of providing health care services.

(d) The program shall engage in good faith negotiations with health care providers' representatives under Chapter 8 (commencing with Section 100660), including, but not limited to, in relation to rates of payment for health care services, rates of payment for prescription and nonprescription drugs, and payment methodologies. Those negotiations shall be through a single entity on behalf of the entire program for prescription and nonprescription drugs.

(e) (1) Payment for health care services established under this title shall be considered payment in full.

(2) A participating provider shall not charge any rate in excess of the payment established under this title for any health care service provided to a member under the program and shall not solicit or accept payment from any member or third party for any health care service, except as provided under a federal program.

(3) However, this section does not preclude the program from acting as a primary or secondary payer in conjunction with another third-party payer when permitted by a federal program.

(f) The program may adopt, by regulation, payment methodologies for the payment of ~~capital-related~~ *capital-related* expenses for specifically identified capital expenditures incurred by not-for-profit or governmental entities that are health facilities pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. Any ~~capital-related~~ *capital-related* expense generated by a capital expenditure that requires prior approval shall have received that approval in order to be paid by the program. That approval shall be based on achievement of the program standards described in Chapter 6 (commencing with Section 100645).

(g) Payment methodologies and payment rates shall include a distinct component of reimbursement for direct and indirect graduate medical education.

(h) The board shall adopt, by regulation, payment methodologies and procedures for paying for health care services provided to ~~members~~ *a member* while the member is located ~~out-of-state~~ *out of the state*.

Article 4. Health Care Organizations

100640. (a) A member may choose to enroll with and receive program care coordination and ancillary health care services from a health care organization.

(b) A health care organization shall be a not-for-profit or governmental entity that is approved by the board that is either of the following:

(1) A county integrated health and human services program under Chapter 12.96 (commencing with Section 18986.60) and Chapter 12.991 (commencing with Section 18986.86) of Part 6 of Division 9 of the Welfare and Institutions Code.

(2) A regional center for persons with developmental disabilities under Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

(c) (1) The board shall develop and implement procedures and standards, by regulation, for an entity to be approved as a health care organization in the program, including, but not limited to, procedures and standards relating to the revocation, suspension, limitation, or annulment of approval on a determination that the entity is incompetent to be a health care organization or has exhibited a course of conduct that is inconsistent with program standards and regulations, or that exhibits an unwillingness to meet those standards and regulations, or is a potential threat to the public health or safety.

(2) The procedures and standards adopted by the board shall be consistent with professional practice and licensure standards established pursuant to the Business and Professions Code, the Health and Safety Code, the Insurance Code, and the Welfare and Institutions ~~Code~~. *Code, as applicable.*

(3) In developing and implementing standards of approval of health care organizations, the board shall consult with the Mental Health Services Division of the State Department of Health Care Services and the Director of Developmental Services.

(d) To maintain approval under the program, a health care organization shall do both of the following:

(1) Renew its status at a frequency determined by the board.

(2) Provide data to the California Health and Human Services Agency, as required by the board, to enable the board to evaluate the health care organization in relation to the quality of health care services, health care outcomes, and cost.

(e) The board may adopt narrowly focused regulations relating solely to health care organizations for the sole and specific purpose of ensuring consistent compliance with this title.

(f) This title may not be construed to alter in any way the professional practice of health care providers or their licensure standards established pursuant to ~~the~~ Division 2 (commencing with Section 500) of the Business and Professions Code.

(g) Health care organizations shall not use health information technology or clinical practice guidelines that limit the effective exercise of the professional judgment of physicians and registered nurses. Physicians and registered nurses shall be free to override health information technology and clinical practice guidelines if, in their professional judgment, it is in the best interest of the patient and consistent with the patient's wishes.

CHAPTER 6. Program Standards

100645. Healthy California shall establish a single standard of safe, therapeutic care for all residents of the state by the following means:

(a) The board shall establish requirements and standards, by regulation, for the program and for health care organizations, care coordinators, and health care providers, consistent with this title and consistent with the applicable professional practice and licensure standards of health care providers and health care professionals established pursuant to the Business and Professions Code, the Health and Safety Code, the Insurance Code, and the Welfare and Institutions Code, including requirements and standards for, as applicable:

(1) The scope, quality, and accessibility of health care services.

(2) Relations between health care organizations or health care providers and members.

(3) Relations between health care organizations and health care providers, including credentialing and participation in the health care organization, and terms, methods, and rates of payment.

(b) The board shall establish requirements and standards, by regulation, under the program that include, but are not limited to, provisions to promote all of the following:

(1) Simplification, transparency, uniformity, and fairness in health care provider credentialing and participation in health care organization networks, referrals, payment procedures and rates, claims processing, and approval of health care services, as applicable.

(2) In-person primary and preventive care, care coordination, efficient and effective health care services, quality assurance, and promotion of public, environmental, and occupational health.

(3) Elimination of health care disparities.

(4) Consistent with the Unruh Civil Rights Act (Section 51 of the Civil Code), nondiscrimination with respect to members and health care providers on the basis of race, color, ancestry, national origin, religion, citizenship, immigration status, primary language, mental or physical disability, age, sex, gender, sexual orientation, gender identity or expression, medical condition, genetic information, marital status, familial status, military or veteran status, or source of income; however, health care services provided under the program shall be appropriate to the patient's clinically relevant circumstances.

(5) Accessibility of care coordination, health care organization services, and health care services, including accessibility for people with disabilities and people with limited ability to speak or understand English.

(6) Providing care coordination, health care organization services, and health care services in a culturally competent manner.

(c) The board shall establish requirements and standards, to the extent authorized by federal law, by regulation, for replacing and merging with the Healthy California program health care services and ancillary services currently provided by other programs, including, but not limited to, Medicare, the Affordable Care Act, and federally matched public health programs.

(d) Any participating provider or care coordinator that is organized as a for-profit entity shall be required to meet the same requirements and standards as entities organized as not-for-profit entities, and payments under the program paid to those entities shall not be calculated to accommodate the generation of profit, revenue for dividends, or other return on investment or the payment of taxes that would not be paid by a not-for-profit entity.

(e) Every participating provider shall furnish information as required by the Office of Statewide Health Planning and Development pursuant to Division 107 (commencing with Section 127000) of the Health and Safety Code and permit examination of that information by the program as may be reasonably required for purposes of reviewing accessibility and utilization of health care services, quality assurance, cost containment, the making of payments, and statistical or other studies of the operation of the program or for protection and promotion of public, environmental, and occupational health.

(f) In developing requirements and standards and making other policy determinations under this chapter, the board shall consult with representatives of members, health care providers, care coordinators, health care organizations, labor organizations representing health care employees, and other interested parties.

CHAPTER 7. Funding

Article 1. Federal Health Programs and Funding

100650. (a) The board shall seek all federal waivers and other federal approvals and arrangements and submit state plan amendments as necessary to operate the program consistent with this title.

(b) (1) The board shall apply to the United States Secretary of Health and Human Services or other appropriate federal official for all waivers of requirements, and make other arrangements, under Medicare, any federally matched public health program, the Affordable Care Act, and any other federal programs that provide federal funds for payment for health care services that are necessary to enable all Healthy California members to receive all benefits under the program through the program, to enable the state to implement this title, and to allow the state to receive and deposit all federal payments under those programs, including funds that may be provided in lieu of premium tax credits, cost-sharing subsidies, and small business tax credits, in the State Treasury to the credit of the Healthy California Trust Fund, created pursuant to Section 100655, and to use those funds for the program and other provisions under this title.

(2) To the fullest extent possible, the board shall negotiate arrangements with the federal government to ensure that federal payments are paid to Healthy California in place of federal funding of, or tax benefits for, federally matched public health programs or federal health programs.

(3) The board may require members or applicants to provide information necessary for the program to comply with any waiver or arrangement under this title. Information provided by members to the board for the purposes of this subdivision shall not be used for any other purpose.

(4) The board may take any additional actions necessary to effectively implement Healthy California to the maximum extent possible as a single-payer program consistent with this title.

(c) The board may take actions consistent with this article to enable the program to administer Medicare in California, and the program shall be a provider of supplemental insurance coverage (Medicare Part B) and shall provide premium assistance drug coverage under Medicare Part D for eligible members of the program.

(d) The board may waive or modify the applicability of any provisions of this section relating to any federally matched public health program or Medicare, as necessary, to implement any waiver or arrangement under this section or to maximize the federal benefits to the program under this section, provided that the board, in consultation with the Director of Finance, determines that the waiver or modification is in the best interest of the state and members affected by the action.

(e) The board may apply for coverage for, and enroll, any eligible member under any federally matched public health program or Medicare. Enrollment in a federally matched public health program or Medicare shall not cause any member to lose any health care service provided by the program or diminish any right the member would otherwise have.

(f) (1) Notwithstanding any other law, the board, by regulation, shall increase the income eligibility level, increase or eliminate the resource test for eligibility, simplify any procedural or documentation requirement for enrollment, and increase the benefits for any federally matched public health program and for any program in order to reduce or eliminate an individual's coinsurance, cost-sharing, or premium obligations or increase an individual's eligibility for any federal financial support related to Medicare or the Affordable Care Act.

(2) The board may act under this subdivision, upon a finding approved by the Director of Finance and the board that the action does all of the following:

(A) Will help to increase the number of members who are eligible for and enrolled in federally matched public health programs, or for any program to reduce or eliminate an individual's coinsurance, cost-sharing, or premium obligations or increase an individual's eligibility for any federal financial support related to Medicare or the Affordable Care Act.

(B) Will not diminish any individual's access to any health care service or right the individual would otherwise have.

(C) Is in the interest of the program.

(D) Does not require or has received any necessary federal waivers or approvals to ensure federal financial participation.

(3) Actions under this subdivision shall not apply to eligibility for payment for long-term care.

(g) To enable the board to apply for coverage for, and enroll, any eligible member under any federally matched public health program or Medicare, the board may require that every member or applicant provide the information necessary to enable the board to determine whether the applicant is eligible for a federally matched public health program or for Medicare, or any program or benefit under Medicare.

(h) As a condition of continued eligibility for health care services under the program, a member who is eligible for benefits under Medicare shall enroll in Medicare, including Parts A, B, and D.

(i) The program shall provide premium assistance for all members enrolling in a Medicare Part D drug coverage [plan](#) under Section 1860D of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-101 et seq.), limited to the low-income benchmark premium amount established by the federal Centers for Medicare and Medicaid Services and any other amount the federal agency establishes under its de minimis premium policy, except that those payments made on behalf of members enrolled in a Medicare advantage plan may exceed the low-income benchmark premium amount if determined to be cost effective to the program.

(j) If the board has reasonable grounds to believe that a member may be eligible for an income-related subsidy under Section 1860D-14 of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-114), the member shall provide, and authorize the program to obtain, any information or documentation required to establish the member's eligibility for that subsidy; however, the board shall attempt to obtain as much of the information and documentation as possible from records that are available to it.

(k) The program shall make a reasonable effort to notify members of their obligations under this section. After a reasonable effort has been made to contact the member, the member shall be notified in writing that he or she has 60 days to provide the required information. If the required information is not provided within the 60-day

period, the member's coverage under the program may be terminated. Information provided by members to the board for the purposes of this section shall not be used for any other purpose.

(l) The board shall assume responsibility for all benefits and services paid for by the federal government with those funds.

Article 2. The Healthy California Trust Fund

100655. (a) The Healthy California Trust Fund is hereby created in the State Treasury for the purposes of this title. Notwithstanding Section 13340, all moneys in the fund shall be continuously appropriated without regard to fiscal year for the purposes of this title. Any moneys in the fund that are unexpended or unencumbered at the end of a fiscal year may be carried forward to the next succeeding fiscal year.

(b) Notwithstanding any other law, moneys deposited in the fund shall not be loaned to, or borrowed by, any other special fund or the General Fund, or a county general fund or any other county fund.

(c) The board shall establish and maintain a prudent reserve in the fund.

(d) The board or staff of the board shall not utilize any funds intended for the administrative and operational expenses of the board for staff retreats, promotional giveaways, excessive executive compensation, or promotion of federal or state legislative or regulatory modifications.

(e) Notwithstanding Section 16305.7, all interest earned on the moneys that have been deposited into the fund shall be retained in the fund and used for purposes consistent with the fund.

(f) The fund shall consist of all of the following:

(1) All moneys obtained pursuant to legislation enacted as proposed under Section 100657.

(2) Federal payments received as a result of any waiver of requirements granted or other arrangements agreed to by the United States Secretary of Health and Human Services or other appropriate federal officials for health care programs established under Medicare, any federally matched public health program, or the Affordable Care Act.

(3) The amounts paid by the State Department of Health Care Services that are equivalent to those amounts that are paid on behalf of residents of this state under Medicare, any federally matched public health program, or the Affordable Care Act for health benefits that are equivalent to health benefits covered under Healthy California.

(4) Federal and state funds for purposes of the provision of services authorized under Title XX of the Social Security Act (42 U.S.C. Sec. 1397 et seq.) that would otherwise be covered under Healthy California.

(5) State moneys that would otherwise be appropriated to any governmental agency, office, program, instrumentality, or institution that provides health care services for services and benefits covered under Healthy California. Payments to the fund pursuant to this section shall be in an amount equal to the money appropriated for those purposes in the fiscal year beginning immediately preceding the effective date of this title.

(g) All federal moneys shall be placed into the Healthy California Federal Funds Account, which is hereby created within the Healthy California Trust Fund.

(h) Moneys in the fund shall only be used for the purposes established in this title.

Article 3. Healthy California Financing

100657. (a) It is the intent of the Legislature to enact legislation that would develop a revenue plan, taking into consideration anticipated federal revenue available for the program. In developing the revenue plan, it is the intent of the Legislature to consult with appropriate officials and stakeholders.

(b) It is the intent of the Legislature to enact legislation that would require all state revenues from the program to be deposited in an account within the Healthy California Trust Fund to be established and known as the Healthy California Trust Fund Account.

CHAPTER 8. Collective Negotiation by Health Care Providers with Healthy California

Article 1. Definitions

100660. For purposes of this chapter, the following definitions apply:

(a) (1) "Health care provider" means a person who is licensed, certified, registered, or authorized to practice a health care profession pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code and who is any of the following:

(A) An individual who practices that profession as a health care provider or as an independent contractor.

(B) An owner, officer, shareholder, or proprietor of a health care provider.

(C) An entity that employs or utilizes health care providers to provide health care services, including, but not limited to, a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) A health care provider under Division 2 (commencing with Section 500) of the Business and Professions Code who practices as an employee of a health care provider is not a health care provider for purposes of this chapter.

(b) "Health care providers' representative" means a third party that is authorized by health care providers to negotiate on their behalf with Healthy California over terms and conditions affecting those health care providers.

(c) "Healthy California" or "HC" means the Healthy California program established in Section 100601.

Article 2. Collective Negotiation Authorized

100662. (a) Health care providers may meet and communicate for the purpose of collectively negotiating with Healthy California on any matter relating to Healthy California, including, but not limited to, rates of payment for health care services, rates of payment for prescription and nonprescription drugs, and payment methodologies.

(b) This chapter shall not be construed to allow or authorize an alteration of the terms of the internal and external review procedures set forth in law.

(c) This chapter shall not be construed to allow a strike of Healthy California by health care ~~providers'~~ providers related to the collective negotiations.

(d) This chapter shall not be construed to allow or authorize terms or conditions that would impede the ability of Healthy California to obtain or retain accreditation by the National Committee for Quality Assurance or a similar body, or to comply with applicable state or federal law.

Article 3. Collective Negotiation Requirements

100664. (a) Collective negotiation rights granted by this chapter shall meet all of the following requirements:

(1) Health care providers may communicate with other health care providers regarding the terms and conditions to be negotiated with HC.

(2) Health care providers may communicate with health care providers' representatives.

(3) A health care providers' representative is the only party authorized to negotiate with HC on behalf of the health care providers as a group.

(4) A health care provider can be bound by the terms and conditions negotiated by the health care providers' representatives.

(5) In communicating or negotiating with the health care providers' representative, HC is entitled to offer and provide different terms and conditions to individual competing health care providers.

(b) This chapter does not affect or limit the right of a health care provider or group of health care providers to collectively petition a governmental entity for a change in a law, rule, or regulation.

(c) This chapter does not affect or limit collective action or collective bargaining on the part of a health care provider with his or her employer or any other lawful collective action or collective bargaining.

100666. (a) Before engaging in collective negotiations with HC on behalf of health care providers, a health care providers' representative shall file with the board, in the manner prescribed by the board, information identifying the representative, the representative's plan of operation, and the representative's procedures to ensure compliance with this chapter.

(b) Each person who acts as the representative of negotiating parties under this chapter shall pay a fee to the board to act as a representative. The board, by regulation, shall set fees in amounts deemed reasonable and necessary to cover the costs incurred by the board in administering this chapter.

Article 4. Prohibited Collective Action

100668. (a) This chapter does not authorize competing health care providers to act in concert in response to a health care providers' representative's discussions or negotiations with HC, except as authorized by other law.

(b) A health care providers' representative shall not negotiate any agreement that excludes, limits the participation or reimbursement of, or otherwise limits the scope of services to be provided by any health care provider or group of health care providers with respect to the performance of services that are within the health care provider's scope of practice, license, registration, or certificate.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. The Legislature finds and declares that Section 2 of this act, which adds Sections 100610 and 100617 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect private, confidential, and proprietary information, it is necessary for that information to remain confidential.

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Date	Action
04/27/17	From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (April 26). Re-referred to Com. on APPR.
04/18/17	Set for hearing April 26.
04/17/17	From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.
04/05/17	Re-referred to Com. on HEALTH.
03/29/17	From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.
03/02/17	Referred to Com. on RLS.
02/21/17	From printer. May be acted upon on or after March 23.
02/17/17	Introduced. Read first time. To Com. on RLS. for assignment. To print.

SENATE COMMITTEE ON HEALTH

Senator Ed Hernandez, O.D., Chair

BILL NO: SB 562
AUTHOR: Lara and Atkins
VERSION: April 17, 2017
HEARING DATE: April 26, 2017
CONSULTANT: Scott Bain

SUBJECT: The Healthy California Act

SUMMARY: Enacts the Healthy California program, which is required to provide comprehensive universal single-payer health care coverage system for all California residents.

Existing law:

- 1) Establishes the Medi-Cal program, administered by the Department of Health Care Services (DHCS), under which low income individuals are eligible for medical coverage. Medi-Cal provides coverage to adults and parents with incomes up to 138% of the federal poverty level (FPL) who are under age 65, and to children with incomes up to 266% of the FPL. Undocumented children receive full scope Medi-Cal coverage, while undocumented adults receive limited scope services under Medi-Cal (primarily emergency only).
- 2) Provides federal funds to states to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children through the Children's Health Insurance Program (CHIP). The program is funded jointly by states and the federal government. CHIP is a capped program and each state is provided an annual CHIP allotment. CHIP is authorized under federal law until September 30, 2017.
- 3) Requires, under the Patient Protection and Affordable Care Act (ACA, Public Law 111-148), as amended by the Health Care Education and Reconciliation Act of 2010 (Public Law 111-152), each state, by January 1, 2014, to establish an American Health Benefit Exchange that makes qualified health plans (QHPs) available to qualified individuals and qualified employers. Requires, if a state does not establish an Exchange, the federal government to administer the Exchange. Establishes requirements for the Exchange and for QHPs participating in the Exchange, and defines who is eligible to purchase coverage in the Exchange. Limits enrollment in the Exchanges to citizens or nationals of the United States, or aliens lawfully present in the United States.
- 4) Allows, under the ACA and effective January 1, 2014, eligible individual taxpayers, whose household income is between 100% and 400% of the FPL, an advanceable and refundable premium tax credit (APTC) to use for coverage under a QHP offered in the Exchange. Requires a reduction in cost-sharing for individuals with incomes below 250% of the FPL. Legal immigrants with household incomes less than 100% of the FPL who are ineligible for Medicaid because of their immigration status are also eligible for the APTC and the cost-sharing reductions. Undocumented individuals and incarcerated individuals are ineligible to purchase coverage in Exchanges.
- 5) Authorizes, under Section 1332 of the ACA, waivers for state innovation under which states can seek federal approval to waive major provisions of the ACA, including the requirement for Exchanges, QHPs, premium tax credits and cost-sharing reductions, the individual mandate and the employer responsibility requirement, provided federal requirements for comprehensive benefits, affordability, and comparable coverage are met and the state proposal does not increase the federal deficit.

- 6) Establishes, pursuant to federal law, the Medicare program, which provides coverage for seniors and certain persons with disabilities. Medicare is funded by payroll taxes, premiums paid by individuals who enroll in various “parts” of Medicare (Part A is hospital services, Part B is medical services, Part C is Medicare Advantage plans, and Part D is prescription drug coverage) and general revenue. Authorizes the federal Secretary of the Department of Health and Human Services, to develop and engage in experiments and demonstration projects for specified purposes, either directly or through grants to public or private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations.
- 7) Creates within the Centers for Medicare & Medicaid Services a Center for Medicare and Medicaid Innovation (CMI), the purpose of which is to test innovative payment and service delivery models to reduce program expenditures under the Medicare and Medicaid while preserving or enhancing the quality of care furnished to individuals under those programs.

This bill:

1) Healthy California purpose and governance

Establishes the Health California program in state government as an independent public entity not affiliated with an agency or department. Requires the Healthy California program to provide comprehensive universal single-payer health care coverage and a health care cost control system for the benefit of all residents of the state. Requires Healthy California to be governed by an unpaid (except for per diem) executive board consisting of nine members appointed by Legislature (4) and Governor (5). Four members have to be from the following: a labor organization representing nurses, the general public, a labor organization, and the medical provider community. Requires each person appointed to the board to have demonstrated and acknowledged expertise in health care.

Requires each board member to have the responsibility and duty to meet the requirements of this bill, the ACA, and all applicable state and federal laws and regulations, to serve the public interest of the individuals, employers, and taxpayers seeking health care coverage through the program, and to ensure the operational well-being and fiscal solvency of the program. Requires appointing authorities to take into consideration the cultural, ethnic, and geographical diversity of the state so that the board’s composition reflects the communities of California.

Requires a California Health and Human Services Agency-appointed 22 member public advisory committee. Requires the board to have all powers and duties necessary to establish and implement Healthy California. Requires the board to provide grants to health planning agencies, and requires the board to provide funds for retraining and assisting job transition for individuals in health and insurance-related fields whose jobs may be or have been ended as a result of Healthy California implementation. Requires the board to provide for the collection and availability of specific hospital-related and health information technology-related data to promote transparency, assess patient adherence, compare patient outcomes, and review utilization.

2) Eligibility for Healthy California

Makes every resident of the state eligible and entitled to enroll. “Resident” is defined as an individual whose primary place of abode is in the state, without regard to the individual’s immigration status.

3) Enrollee premiums in Healthy California

Prohibits members from Healthy California from being required to pay any premium.

4) Enrollee cost-sharing in Healthy California

Prohibits members from being required to pay any co-payment, co-insurance, deductible and any other form of cost-sharing for all covered benefits.

5) Enrollee benefits in Healthy California

Requires all medical care determined to be medically appropriate by the members' health care provider. Includes a broad benefit package, including all services covered by Medi-Cal, Medicare, the essential health benefits, and all health plan/insurance mandated benefits. Benefits required include chiropractic, vision, dental, ancillary health or social services previously covered by a regional center, skilled nursing facility care, and therapies shown by the National Institutes of Health, National Center for Complementary and Integrative Health to be safe and effective. Permits Healthy California to offer retiree benefits on a voluntary basis.

6) Choice of health care providers in Healthy California

Permits a member to choose to receive health care services from any participating provider, subject to the willingness and availability of the provider, and the appropriate clinically relevant circumstances. Per 7) below, providers generally have to be in California and be California-licensed.

7) Providers eligible to participate in health care providers under Healthy California

Permits any health care provider licensed to practice in California who is otherwise in good standing to be qualified to participate in Healthy California, so long as the provider's services are performed within the state of California. The Healthy California board is required to establish and maintain procedures and standards for recognizing health care providers located out-of-state for purpose of providing health care coverage for members who require out-of-state health care services while the member is temporarily located out-of-state.

8) Health care providers reimbursement in Healthy California

Requires the Healthy California board to adopt regulations regarding contracting for, and establishing payment methodologies for, covered health care services and care coordination provided to members under Healthy California by participating providers, care coordinators, and health care organizations. Permits a variety of different payment methodologies, including those established on a demonstration basis. Requires all payment rates under the program to be reasonable and reasonably related to the cost of efficiently providing the health care service and ensuring an adequate and accessible supply of health care services. Requires health care services provided to members under the program, except for care coordination, to be paid for on a fee-for-service basis unless and until another payment methodology is established by the Healthy California board.

9) Funding for Healthy California

Intent language on broad-based revenue, and intent for the state to work to obtain approval and other approvals so that Medicaid, Medicare, ACA and other federal funds and subsidies paid by the federal government that would otherwise be paid to the State of California,

Californians and health care providers would be deposited in the Healthy California Trust Fund.

The bill requires the Healthy California board to apply to the federal Secretary of Health and Human Services or other appropriate federal official for all waivers of requirements, and make other arrangements, under Medicare, any federally matched public health program, the ACA, and any other federal programs that provide federal funds for payment for health care services that are necessary to enable all Healthy California members to receive all benefits under the Healthy California program through the program, to enable the state to implement this bill, and to allow the state to receive and deposit all federal payments under those programs, including funds that may be provided in lieu of premium tax credits, cost-sharing subsidies, and small business tax credits, in the State Treasury to the credit of the Healthy California Trust Fund, and to use those funds for the Healthy California program.

Requires all moneys in the Fund to be continuously appropriated without regard to fiscal year for the purposes of this bill, and any moneys in the fund that are unexpended or unencumbered at the end of a fiscal year is authorized to be carried forward to the next succeeding fiscal year.

10) Care Coordination in Healthy California

Requires care coordination to be provided to members, defined to include administrative tracking and medical recordkeeping services, specifies the individual and entities that can be care coordinators, and allows reimbursement to a health care provider only if the member is enrolled with a care coordinator. Requires the Healthy California board to develop and implement procedures and standards by regulation for an individual or entity to be approved as a care coordinator.

11) Role of private health insurance under Healthy California

Prohibits health plans and insurers from offering benefits or services for which coverage is offered under the Healthy California program. Continues to allow plan/insurers to offer benefits to cover health care services that are not offered to individuals under the program, including to non-residents and during the implementation period.

12) Program standards in Healthy California

Requires Healthy California to establish a single standard of safe, therapeutic care for all residents of the state.

Requires the board to establish requirements and standards, by regulation, for the program and for health care organizations, care coordinators, and health care providers, consistent with this bill and consistent with the applicable professional practice and licensure standards of health care providers and health care professionals established pursuant to the Business and Professions Code, the Health and Safety Code, the Insurance Code, and the Welfare and Institutions Code, including specified requirements and standards established by this bill.

Requires the board to establish requirements and standards, to the extent authorized by federal law, by regulation, for replacing and merging with the Healthy California program health care services and ancillary services currently provided by other programs, including, but not limited to, Medicare, the ACA, and federally matched public health programs.

13) Healthy California and Medicare

Permits the Healthy California to take actions consistent to enable the program to administer Medicare in California, and requires the program to be a provider of supplemental insurance coverage (Medicare Part B) and to provide premium assistance drug coverage under Medicare Part D (drug coverage) for eligible members of the program. Requires a member who is eligible for benefits under Healthy California, as a condition of continued eligibility for health care services under the program, to enroll in Medicare, including Parts A, B, and D.

Requires the program to provide premium assistance for all members enrolling in Medicare Part D drug coverage, limited to the low-income benchmark premium amount established by the federal Centers for Medicare and Medicaid Services and any other amount the federal agency establishes under its de minimis premium policy, except that those payments made on behalf of members enrolled in a Medicare advantage plan may exceed the low-income benchmark premium amount if determined to be cost effective to the program.

14) Healthy California and Medi-Cal

Permits the Healthy California board to apply for coverage for, and enroll, any eligible member under any federally matched public health program (such as Medi-Cal) or Medicare. Prohibits enrollment in a federally matched public health program or Medicare from causing any member to lose any health care service provided by the program or diminish any right the member would otherwise have.

Requires the Healthy California board, by regulation, to increase the income eligibility level, increase or eliminate the resource test for eligibility, simplify any procedural or documentation requirement for enrollment, and increase the benefits for any federally matched public health program and for any program in order to reduce or eliminate an individual's coinsurance, cost-sharing, or premium obligations or increase an individual's eligibility for any federal financial support related to Medicare or the ACA. This provision does not apply for long-term care services. Permits the board, to enable the board to apply for coverage for, and enroll, any eligible member under any federally matched public health program or Medicare, to require that every member or applicant provide the information necessary to enable the Healthy California board to determine whether the applicant is eligible for a federally matched public health program or for Medicare, or any program or benefit under Medicare.

15) Collective Negotiation with Healthy California

Allows health care providers to meet and communicate for the purpose of collectively negotiating with Healthy California on any matter, including rates of payment and payment methodologies. Prohibits this provision from being construed to allow a strike of Healthy California by health care providers related to the collective negotiations. Establishes requirements for collective negotiations.

16) Healthy California and existing law

Requires this bill to apply and prevail to the extent any provision of California law is inconsistent with this bill or its legislative intent extent, except when explicitly provided under this bill.

17) Requirement that Healthy California develop proposals on workers compensation and long-term care coverage

Requires the board to develop a proposal for Healthy California coverage of health care services currently covered under the workers' compensation system, including whether and how to continue funding for those services under that system and whether and how to incorporate an element of experience rating.

Requires the board to develop a proposal, consistent with the principles of this bill, for provision by the program of long-term care coverage, including the development of a proposal, consistent with the bill, for its funding. Requires the board, in developing the proposal, to consult with an advisory committee, appointed by the chairperson of the board, including representatives of consumers and potential consumers of long-term care, providers of long-term care, members of organized labor, and other interested parties.

18) Local authority to provide additional coverage

Prohibits this bill from preempting any city, county, or city and county from adopting additional health care coverage for residents in that city, county, or city and county that provides more protections and benefits to California residents than contained in this bill.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) *Author's statement.* According to the author, despite the incredible gains made under the ACA, almost three million California residents still do not have access to health care because cost or legal status. With the federal governments' promises to abandon the ACA and undo the progress we have made, leaving even more people without access to care, California has a chance to lead the rest of the nation toward a health care model that is less expensive and provides better coverage.

SB 562 will move health care services to one publicly run plan that covers everyone who lives in the state. Every Californian will have access to the same comprehensive health benefits under a single plan. Patients will have the ability to choose their providers without worrying about what their insurance will cover or if they are out of network. SB 562 will consolidate and streamline access to care for patients and simplify the billing for hospitals and providers.

SB 562 will fundamentally change California's health care system and improve health access and care for our residents. SB 562 will change health care in California from commodity to a right.

- 2) *The Affordable Care Act (ACA).* The federal ACA, approved on March 23, 2010, was the most transformative legislative action the U.S. health care system had seen in 40 years. The passage of the ACA meant sweeping changes to health care coverage in this country, including establishing more generous eligibility rules and federal funding for California's Medicaid (Medi-Cal) program, providing federally funded premium and cost-sharing subsidies offered through California's Health Benefit Exchange (known as Covered California), and imposing new requirements on health insurers that made it easier for individuals with pre-existing conditions to obtain coverage. The coverage expansions alone led to 20 million newly insured individuals in this country, including over 5 million Californians.

California has seen a remarkable decline in the number of people without health insurance coverage as a result of the ACA. Most notably, the percentage of Californians under age 65 without insurance declined from 22% in 2011 to 8.6% in 2015 (from 7.3 million in 2011 to 2.9 million in 2015). California experienced the largest percentage point decline in the uninsured rate of any state, according to the United States Census Bureau. The federal Centers for Disease Control and Prevention has indicated a further fall to 7.1% in the first nine months of 2016. The decline in uninsured as a result of the ACA crosses the major race/ethnic and income groups in California.

- 3) *How do Californians receive health coverage now?* Unlike other industrialized nations, the American health care system is primarily an employer-based system. Like the rest of the country, most of California's 39 million residents receive employer-based coverage, which is subsidized by the state and federal tax code. Public programs are the other major health coverage source, followed by the individual insurance market. The chart below with data from the California Health Benefit Review Program shows the sources of coverage (or lack thereof) for Californians:

<u>Source of Coverage</u>	<u>Percentage</u>	<u>Population</u>
Employer-based coverage	56%	17,595,000
Individual coverage	7%	2,616,000
Medi-Cal (includes dual eligibles*)	29%	11,169,000
Medicare	10%	4,054,000
Uninsured	8%	3,079,000

*Individuals eligible for both Medicare and Medi-Cal

- 4) *How much is spent on health care expenditures in California?* According to an August 2016 Health Policy Brief by the UCLA Center for Health Policy Research, personal health care expenditures in California are estimated to total more than \$367 billion in 2016.

Approximately 71% of these expenditures will be paid with public funds, broadly defined to include government spending for public employee health benefits, Medicare and Medicaid, tax subsidies for employer-sponsored insurance and ACA insurance exchange and county health care expenditures. The chart below shows the expenditures by category, dollar amount and percentage:

California Health Care Expenditures (Billions of Dollars), 2016

Health Care Expenditure Category	Expenditures, in Billions (% of total Expenditures)
Public health care expenditures	
Direct government expenditures	
Medicare	\$74.7 (20.3%)
Medi-Cal	
Federal share	\$62.8 (17.1%)
State share	\$37.4 (10.2%)
Other government programs	\$10.0 (2.7%)
County health expenditures	\$10.0 (2.7%)
Government employer premium contributions	
FEHB*	\$1.9 (0.5%)
CalPERS	\$7.1 (1.9%)
TRICARE	\$4.1 (1.1%)
Tax subsidies	
Tax subsidies for ESI**	
Federal	\$33.1 (9.0%)
State and local	\$10.9 (3.0%)
ACA subsidies	\$8.9 (2.4%)
Total public health expenditures	\$260.9 (71.0%)
Private health care expenditures	
Employer share of premiums	\$58.3 (15.9%)
Employee share of premiums	
FEHB* premiums	\$0.7 (0.2%)
CalPERS premiums	\$1.0 (0.3%)
Private employee premiums	\$18.7 (5.1%)
Premium contributions for individually purchased insurance	
Covered California	\$3.8 (1.0%)
Outside Exchange	\$8.6 (2.3%)
OOP*** expenses for covered benefits	\$15.5 (4.2%)
Total private health care expenditures	\$106.5 (29.0%)
Total California health care expenditures	\$367.5 (100.0%)

*Federal Employees Health Benefits Program

**Employer-sponsored insurance

***OOP is out-of-pocket

- 5) *The remaining uninsured.* While estimates vary, somewhere around 2.9 million to 3.1 million Californians are uninsured. A December 2016 report by the California HealthCare Foundation entitled “California’s Uninsured: As Coverage Grows, Millions Go Without” found that one in three of California’s uninsured had annual incomes of less than \$25,000, meaning they were potentially eligible for Medi-Cal, one in four were aged 25 to 34, one in three were noncitizens, and more than half were Latino. Sixty-two percent of the uninsured were employed. Of the 1.8 million uninsured workers, 44% worked in firms with less than 50 employees. Workers who were self-employed (16.4%) and who worked for private sector businesses with fewer than ten employees (19.2%) were the most likely to be uninsured. Twenty percent of the uninsured in California and nationally had annual family incomes over \$75,000. The uninsured are more likely to report fair/poor health status compared to the overall population (25.5% vs. 16.2%), to have no usual source of care (42.4% vs. 15.3%) and to delay care (16.5% v. 12.3%) according to 2015 data. The reasons cited for lack of insurance are as follows:

Can’t afford/too expensive	29%
Some other reason	37%
No need/don’t believe in insurance	12%
Not eligible due to citizenship/health condition	22%

While the uninsured rate dropped dramatically for families with incomes under \$25,000 as a result of the ACA, the uninsured are more likely to be from low-income families, as shown in the data below:

Under \$25,000	15%
\$25,000 to \$49,999	11.8%
\$50,000 to \$74,999	9.8%
\$75,000 or more	3.8%

The data below shows the age groups of Californians as a percentage of the population and as a percentage of the uninsured:

Age Group	Percentage of Population	Percentage of Uninsured
Under 18	27%	12%
18 to 20	5%	3%
21 to 24	7%	10%
25 to 34	16%	24%
35 to 44	15%	22%
45 to 54	16%	15%
55 to 64	14%	14%

- 6) *Federal waiver authority.* Medicaid (known as Medi-Cal in California) is a joint federal-state program to provide health coverage to low-income individuals. Section 1115 of the federal Social Security Act (Act) gives the Secretary of the Department of Health and Human Services (HHS) authority to waive provisions of major health and welfare programs authorized under the Act. This includes certain federal Medicaid requirements in any experimental pilot or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of Medicaid. In addition, Section 1115 also allows states to use federal Medicaid funds to reimburse for costs in ways that are not otherwise allowed under federal Medicaid law. This is referred to as expenditure authority for “costs not otherwise matchable.” Section 1115 waivers are approved at the discretion of the Secretary

of HHS through negotiations between a state and CMS for projects that the Secretary determines promote Medicaid program objectives. Section 1115 waivers are generally approved for a five-year period and then must be renewed. Although not required by statute or regulation, longstanding federal administrative policy has required waivers to be “budget neutral” for the federal government, meaning that federal spending under a waiver must not be more than projected federal spending in the state without the waiver.

The ACA also contained waiver provisions related to Medicare and Medicaid through a newly established Center for Medicare and Medicaid Innovation (Innovation Center) and through a waiver of the tax credits for small employers and the premium and cost-sharing subsidies in the individual market under Section 1332. Specifically, Section 1332, the ACA permits states to apply to the federal government for a waiver of major provisions of the ACA beginning in 2017. The provisions of the ACA that can be waived under Section 1332 include any or all parts of the provisions relating to QHPs (including the essential health benefits package requirement), the Exchanges, premium tax credits and cost-sharing reductions, the minimum coverage requirement (commonly referred as the “individual mandate”), and the employer responsibility requirements. If a state is granted a Section 1332 waiver, the state can fund its reforms through the aggregate amount of federal funding that otherwise would have been paid out within the state for premium tax credits, cost-sharing reduction payments, and small business tax credits. However, to qualify for an innovation waiver, the state must establish that its reform plan would provide coverage that:

- a) Will provide coverage that is at least as comprehensive as ACA coverage;
- b) Will provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as the as ACA coverage;
- c) Will provide coverage to at least a comparable number of its residents as the ACA would provide; and,
- d) Will not increase the federal deficit.

The Innovation Center allows the Medicare and Medicaid programs to test models that improve care, lower costs, and better align payment systems to support patient-centered practices. The Innovation Center evaluates innovative reform efforts widely used in the private sector, and is unique in its ability to develop provider-proposed approaches and quickly adjust models in response to feedback from clinicians and patients.

Congress created the Innovation Center for the purpose of testing “innovative payment and service delivery models to reduce program expenditures ...while preserving or enhancing the quality of care” for those individuals who receive Medicare, Medicaid, or CHIP benefits. Congress provided the Secretary of HHS with the authority to expand the scope and duration of a model being tested through rulemaking, including the option of testing on a nationwide basis. In order for the Secretary to exercise this authority, a model must either reduce spending without reducing the quality of care, or improve the quality of care without increasing spending, and must not deny or limit the coverage or provision of any benefits.

7) *Prior legislation.* Since 2004, there have been four single payer bills and one bill to fund single payer, as follows:

- a) SB 810 (Leno of 2011) *failed passage on the Senate Floor in 2012;*
- b) SB 810 (Leno of 2009) *was not taken up on the Assembly Floor;*
- c) SB 840 (Kuehl of 2007) *was vetoed by Governor Schwarzenegger. In his veto message, the Governor cited a Legislative Analyst's Office analysis that estimated*

the bill to cost \$210 billion in its first full year of implementation and cause annual shortfalls of \$42 billion, and he could not support a bill that placed an annual shortfall of over \$40 billion on California's economy;

- d) *SB 1014 (Kuehl of 2007) would have imposed a payroll tax to fund the single payer system. SB 1014 was heard in the Senate Revenue and Taxation Committee but no vote was taken; and,*
- e) *SB 921 (Kuehl of 2003) was never heard in the Assembly Appropriations Committee.*

8) *Support.* This bill is sponsored by the California Nurses Association/National Nurses United and supported by numerous labor organizations, faith-based and consumer groups, certain businesses, and Democratic Party groups, who argue this bill would provide publicly funded and progressively financed health care coverage for all California residents regardless of age, income, or immigration status, with no network restrictions, deductibles, co-pays, or other limitations on necessary care. Supporters argue health care is a human right, and the United States continually outspends other wealthy nations on per capita health care costs—some by more than double—while the quality of care and national health outcomes continue to fall behind. Californians as individuals, workers, families, businesses, and taxpayers are driven past their breaking point because of soaring health costs and lack of access. Supporters argue the experience of Medicare and of nearly every other industrialized country shows a single payer system is the most cost-effective and equitable way to provide quality health care as all residents are covered, and the system can eliminate wasteful spending and rein in skyrocketing prices. Supporters argue the Healthy California Act would provide the comprehensive and quality health care coverage that all Californians deserve and would ensure that insurance companies and the corporate ledger no longer determines the health and well-being of our state.

9) *Support in concept.* The California Pan-Ethnic Health Network, Western Center on Law and Poverty, and Health Access California write that they support this bill in concept in that they support single payer and universal coverage, and suggest additional changes to this measure. Health Access California writes that further work needs to be done on financing, and raises questions about the lack of specifics or provisions that run counter to goals for a universal coverage system related to provisions in this bill regarding transition to a single payer system, system governance, whether existing consumer protections apply to the single payer system, quality improvements/delivery system reform and integrated care, purchasing for cost and quality, cost control and information technology.

10) *Opposition.* This bill is opposed by business and health insurance groups who argue this bill would create a single-payer government bureaucracy which would control and finance the state's health care system and ultimately result in significant job loss to the state. Opponents argue California employers cannot sustain an added tax burden after the most recently enacted transportation tax package, that significant job loss will result from this bill, that California voters in 1996 previously rejected a single payer health measure, that single payer costs are unsustainable, and government-run health care is less efficient and effective. Other opponents argue the state has made important progress in implementation of the ACA, but this progress is in a precarious position due to Congressional "repeal and replace" proposals, and this is not an appropriate time to divide the health care and policy community against itself with a symbolic measure that could not be implemented even if it were passed.

11) *Policy issues.*

- a) *Can single payer be implemented on a state level?* The US employer-based health care system is a tax-subsidized employer-based system, augmented by state and federal programs for low-income individuals (Medi-Cal) or seniors (Medicare), and federal premium and cost-sharing subsidies for low-to-moderate income individuals buying individual coverage through Exchanges. This system has grown incrementally over decades as health coverage programs have been created or expanded and mandates and tax subsidies have been enacted to increase insurance coverage. If state and federal legislators and the state and federal executive branch were starting with a blank state and designing a health care delivery system from scratch, the US health care delivery system would unlikely look like the one that exists today.

The extension of coverage to additional Americans through the ACA has largely been built upon that existing system, with significant amounts of new federal funding to provide health insurance coverage to additional people who were previously uninsured, either because the uninsured are low or moderate income and are unable to afford the high cost of insurance, or have a pre-existing medical condition that made coverage unavailable. For example, California received over \$19.2 billion in federal funds for ACA Medicaid expansion in 2016-17, and nearly \$5 billion in federal funds for premium subsidies (\$4.2 billion) and cost-sharing subsidies (over \$700 million) for Covered California enrollees in 2016.

For single payer to be implemented on a state level, existing spending by government (Medicare and Medi-Cal) would have to be allowed to be “pooled” into the single payer financing system. In addition, to finance single payer, existing spending by employers and individuals with employer-based insurance and individually purchased insurance would have to be replaced with tax revenue to finance the costs of the approximately 20 million Californians who receive employer-based coverage or purchase individual coverage. The UCLA study estimated just these costs at \$106.5 billion, and to implement single payer, this existing individual and employer-based spending would need to be shifted to the state. Many states, including California have a balanced budget requirement, and their state revenue is dependent upon the state and national economy. In California, tax increases require a 2/3 legislative vote, which makes raising tax revenue to fund an expansion of coverage more difficult. States, including California, have traditionally only been able to significantly expand coverage to the uninsured through the use of increased federal funds.

- b) *Financing single payer and risks to the state.* This bill contains intent language on broad-based revenue, and intent for the state to work to obtain approval and other approvals so that Medicaid, Medicare, ACA and other federal funds and subsidies paid by the federal government that would otherwise be paid to the State of California, Californians and health care providers would be deposited in the Healthy California Trust Fund.

Any tax increase to fund Healthy California costs would need to take into account the requirements of Proposition 98, the 1988 school funding initiative, which generally requires 40% of revenues from taxes go to K-14 public education. Because Proposition 98 is in the State Constitution, any tax increases would either have to receive voter approval to exempt the resulting revenue from the calculation of Proposition 98, raise enough new revenue to offset the amount of revenue allocated to Proposition 98, or have a “poison pill” that would invalidate the new taxes if a Proposition 98 claim reduced the resulting revenue to fund Healthy California.

In addition, if the state were able to receive federal approval to combine Medicaid, Medicare, Covered California premium and cost-sharing subsidies and other federal funds for health care, the state would still be potentially at risk if the formula for allocating those funds does not take into account actual state health care expenditures for expenditures the federal government would otherwise have made. While this bill does not request a block grant or per capita amount of federal funding, and the state would argue that it has a legal basis for funds that the federal government would have otherwise spent in the absence of the single payer system, if federal funds come to the state in a fixed amount based on projected expenditures, the state would need to ensure that those amounts would be adequate to fund the actual coverage costs of Healthy California for people who would have been enrolled in those programs.

The recent DHCS preliminary fiscal estimate of the impact on Medi-Cal of the proposed American Health Care Act illustrates the state fiscal risk of a per capita cap on funding, even when growth in the per capita amounts were tied to medical inflation. The DHCS fiscal analysis projected a financing shortfall of \$679 million in the first year of the proposed Medicaid per capita cap, increasing to over \$5.3 billion in 2027.

This bill's sponsor has funded a research project that will estimate the overall cost of the proposed Healthy California program in SB 562 which will examine different ways of financing the program. Specifically, the project will calculate the additional costs associated with covering California residents who are currently uninsured and the expansion of health care utilization of residents who are underinsured (for example, those that currently limit their use of health services due to high deductibles or co-payments). The project will identify areas of savings associated with the Healthy California program, including lower administrative costs and cost-control mechanisms for pharmaceuticals and rates for physician, clinical, and hospital services. The sponsor indicates estimates for additional costs and areas of cost savings will determine the financing needs, and based on these estimates, the project will explore different modalities for financing Healthy California. In addition, the project will assess the ability of the cost-control mechanisms to limit the rate of increase of health care costs over time, to ensure the fiscal sustainability of the program.

- c) *Health care costs and Healthy California.* Health care spending is driven by four principle components: who is eligible for coverage, the rates health plans, health care providers, and health facilities are paid, what benefits enrollees receive, and administration. One of the main arguments for single payer is the significantly higher amount spent on health care in the US as compared to other industrialized countries, despite a lack of evidence that the additional spending produces uniformly better health care outcomes. The principle reason for higher spending are the higher prices charged for health care goods and services in the United States. The United States spends far more per person and as a percentage of Gross Domestic Product as compared to other industrialized countries.

Single payer health care systems are more likely to achieve cost savings over the current multi-payer system by significantly reducing administrative costs through eliminating the multiple payers and associated billing-related costs in the current system, and by using the government's bulk purchasing power to negotiate and/or set rates with health care providers, health facilities, and prescription drug and device manufacturers.

While this bill requires the Healthy California program to provide a single-payer health care coverage and a health care cost control system, there are multiple provisions in this bill that would make cost control unlikely to occur. For example this bill:

- i) Requires reimbursement to health care providers to be reasonable and reasonably-related to costs (which could be inflationary, based on past Medicare hospital-payment experience, and could be used by providers as the basis for rate lawsuits over rates, based on the states' experience in the Medicaid program);
- ii) Requires health care benefits to include all care determined to be medically appropriate (as opposed to a narrower coverage standard of medical necessity);
- iii) Prohibits cost-sharing (a prohibition on co-payments and deductibles would increase utilization);
- iv) Allows Healthy California members to choose any health care provider (managed care plans use network providers to obtain price discounts based on cost and quality, and can require prior authorization for specialist referral);
- v) Requires a broad benefit package that exceeds the benefits in most employer-based plans, Covered California plans, and Medicare (benefits in Healthy California include dental, vision, chiropractic, acupuncture and Medi-Cal-covered services);
- vi) Allows health care providers to negotiate collectively (health plans negotiate and selectively contract with individual providers and anti-trust law limits collective negotiation); and,
- vii) Allows health care providers to override health information technology and clinical practice guidelines based on their professional judgment and prohibits health care organizations from using health information technology or clinical practice guidelines that limit the exercise of the professional judgment of physicians and nurses (payors use clinical practice guidelines and health information technology for quality and cost-related reasons).

In addition, this bill is silent on provisions commonly used by managed care plans and other payers to control costs, such as the use of a prescription drug formulary to obtain price concessions, the use of selective contracting to obtain price discounts from health care providers based on volume, and criteria to be used by Healthy California for coverage of new drugs, devices and procedures.

- d) *Should this bill have an implementation trigger?* As drafted, the provisions of this bill would take effect on January 1, 2018. The bill also requires the Healthy California board to determine when individuals may begin enrolling in the program, and requires there be an implementation periods that begins on the date that individuals begin enrolling and ends on a date determined by the board.

In order to have a successful implementation, the author may want to consider implementation triggers based on federal approval for the movement of Medicare and Medicaid beneficiaries into Healthy California, adequate financing, federal assurances on adequacy of existing funding being transferrable on an on-going basis, and system readiness before implementation can take effect. Prior single payer bills have contained a provision that only implemented the bill when sufficient financing has been identified to implement the system.

- e) *Healthy California governance, the state budget and the role of the Legislature.* Healthy California is housed in state government as an independent public entity not affiliated with an agency or department. The governing board would be 9 members (4 of whom would be appointed by the Legislature) who would be unpaid. Funds appropriated for Healthy California would be continuously appropriated. The existing state budget General Fund spending is projected to be \$123 billion in 2017-18. Given that existing spending on health care in California is estimated to be over \$367 billion from all sources, the significant role in state spending in Medi-Cal today (over \$19 billion General Fund for 2017-18), and the Legislature's role in the budget process, is a continuously appropriated fund and the unpaid governance structure appropriate for a program of this magnitude?
- f) *Other policy and bill language issues.* There are several provisions of the bill that require language tightening and/or policy clarification. For example, the bill makes all California residents eligible for Healthy California, but contains permissive language on the program administering Medicare, which could result in the program having Medicare enrollment but not Medicare funds. In addition, language is needed clarify the condition of Healthy California enrollment on Medicare-eligible individuals' enrollment in Medicare Parts A, B and D with the prohibition on paying a premium and providing coverage that provides the same benefits as Healthy California, to clarify the author's intent with regard to the scope of long-term care coverage for non-Medicaid enrollees of Healthy California, to address the scope of benefits that would be provided out-of-state to Healthy California enrollees, to specify the types of documentation the program will use to determine residency in California, to clarify the ability to opt out of an integrated delivery system in the event a member moves, and to clarify which payments would include a component of reimbursement for graduate medical education.

SUPPORT AND OPPOSITION:

Support: California Nurses Association/National Nurses United (sponsor)
 13 Pages Progressive Alliance for Government Ethics and Sanity
 28ers
 American Federation of State, County and Municipal Employees (AFSCME)
 Council 57
 AFSCME Retirees Ch. 36
 Alameda Progressives
 Alliance of Californians for Community Empowerment Institute
 AM Green Construction
 American Federation of Musicians Local 47
 Americans for Democratic Action, Southern California
 Arbeter Ring/Workmen's Circle
 Arlington Community Church
 Art Between Us
 Asian Pacific American Labor Alliance
 Asian Pacific Environmental Network
 Bagg Lady Handbags
 Bay Area Chapter of Resource Generation
 Bay Rising
 Bell Everman, Inc.
 Berniecrats Labor Alliance Chartered Democratic Club of Yolo County
 Breast Cancer Action
 Business Alliance for a Healthy California
 Butte County Health Care Coalition
 California Alliance for Retired Americans

California Association of Marriage and Family Therapists East Bay Chapter
California Capital Chapter of Physicians for a National Health Program
California Council of Churches IMPACT
California Democratic Party State Central Committee San Gabriel Valley
California Domestic Workers Coalition
California Faculty Association - San Francisco State University Chapter
California Federation of Teachers, AFT, AFL-CIO
California Health Professionals Student Alliance
California Insurance Commissioner Dave Jones
California Labor Federation, AFL-CIO
California National Organization for Women
California One Care
California Partnership
California Physicians Alliance
California School Employees Association
California Teachers Association
Campaign for a Healthy California
Caring Across Generations
Central Valley Indivisible
Central Valley-Sierra Progressives
CEO to CEO
Chinese Progressive Association
City Designworks
City of Berkeley
City of Los Angeles
City of Oakland
City of Richmond- Laurel Park Neighborhood Council
City and County of San Francisco
Clinica Romero
Code Pink
Communications Workers of American District 9
Consider the Homeless
Consumer Federation of California
Contra Costa AFL-CIO Labor Council
Courage Campaign
Courageous Resistance of Humboldt
Decus Biomedical
Dell Arte International
Democratic Action Club of Chico
Democratic Party of Orange County
Democratic Socialists of America – Los Angeles
Democratic Socialists of America, Orange County Chapter
Democratic Socialists of America, San Francisco
Democratic Socialists of America, Ventura County Chapter
Democratic Women's Coalition of Tuolumne County
Disability Action Center
Divine Feminine Yoga
Douglas L. Applegate Law Office
East Bay Democratic Socialists of America
Easter Hill United Methodist Church
Ecological Farming Association

El Cerrito Progressives
Elder Care Providers' Coalition
Elsdon Organizational Renewal
Empowered Investments
Encore
Far Leaves Tea
First They Came for the Homeless
For Grace
Forward Together
Fresno Economic Opportunities Commission
Friends Committee on Legislation
Giraud Photography, Inc.
Give Something Back Office Supplies
Glenview Area Groups for Action
Gray Panthers of San Francisco
Green Party of San Bernardino County
Green Party of Santa Clara County
Hand in Hand
Harvey Milk LGBT Democratic Club
Health Care for All - Alameda County
Health Care for All - California 15 Chapters
Health Care for All - Contra Costa County
Health Care for All-Marin
Health Care for All - Nevada County Chapter
Health Care for All - San Gabriel Valley County
Health Care for All – San Fernando Valley Chapter
Healthy California
Hunger Action Los Angeles
Indivisible Claremont
Indivisible Ladera
Indivisible Mader
Indivisible Orange County
Inland Coalition for Immigrant Justice
Inland Empire Immigrant Youth Collective
Inland Greens
J. Glynn & Company
Jane Thomas Press
Jobs with Justice San Francisco
Justice for All Ventura County
Justice for Palestinians
Kate Harris Consulting
Kramer Translations
Labor United for Universal Healthcare
Lake County Democratic Central Committee
Lamorinda Peace and Justice Group
Lawyers for Good Government
Lonely Liberals Indivisible of San Luis Obispo County
Long Beach Gray Panthers
Loving Way Midwifery
Low-Income Self Help Center
Lucille Design

Maddala Music
March and Rally Los Angeles
McGee-Spaulding Neighbors in Action
Media Alliance
Mini-Vacation Massage
Mobilize the Immigrant Vote
Monkey Wrench Brigade
Mt. Diablo Peace and Justice Center
Musicians Union Local 6
National Association of Social Workers-Fresno County
National Economic and Social Rights Initiative
National Union of Health Care Workers
Nevada County Democratic Women's Club
North Bay Jobs with Justice
Oakland Livable Wage Assembly
Oakley, California Mayor Sue Higgins
Occupy Torrance
One Page Plan
Organizacion en California de Lideres Campesinas, Inc.
Otis Chiropractic Neurology, Inc.
Our Developing World
Our Revolution, West San Fernando Valley
Peace and Freedom Party of California
Peralta Retirees Organization
Pilipino Workers Center of Southern California
Poverty Matters
Progressive Action for Glendale
Progressive Asset Management
Progressive Democrats of America-California
Progressive Democrats of America- Greater Palm Springs Area
Progressive Democrats of America- Lake County Chapter
Progressive Democrats of America- Orange County Chapter
Progressive Democrats of America- San Francisco Chapter
Progressive Democrats of America- Santa Monica Chapter
Progressive Democrats of America- Ventura County Chapter
Project Inform
Resource Generation
Richmond Progressive Alliance
Riverside Temple Beth El
San Francisco Green Party
San Francisco Berniecrats
San Francisco Latino Democratic Club
San Joaquin Valley Democratic Club
San Jose Peace and Justice Center
San Mateo Central Labor Council
Santa Barbara Women's Political Committee
Santa Clara County Board of Supervisors
Santa Clara County Green Party San Francisco Berniecrats
Santa Cruz for Bernie
Senior and Disability Action
Sierra Foothills Democratic Club

Silicon Valley Independent Living Center
 Social and Economic Justice Coalition
 Social Justice Alliance of the Interfaith Council of Contra Costa
 Sol2Economics
 South Bay Labor Council
 Steve Giraud Photography
 Strike Debt
 Sue's Hair Salon
 Sunflower Alliance
 Therapists for Single Payer
 Tenants Together
 The Democracy Project
 The Latina/Latino Roundtable
 The Refill Shop
 Trout in Hand Productions
 Tuolumne County Democratic Club
 UFCW, Local 5
 Unitarian Universalist Justice Ministry of California
 United Democrats of El Dorado County
 United Steelworkers, Local 2801
 United Steelworkers, Local 675
 UNITE-HERE, AFL-CIO
 University Professional and Technical Employees, Local 9119
 Veterans for Peace, South Bay Chapter
 Voices for Mothers and Others
 Wellstone Democratic Renewal Club
 Word Spark Writing & Editing
 Yes We Can Democratic Club
 Yolo MoveOn
 Numerous individuals

Oppose: America's Health Insurance Plans
 Anthem Blue Cross
 Association of California Insurance Companies
 Association of California Life & Health Insurance Companies
 Bay Area Council
 Blue Shield of California
 California Association of Health Plans
 California Association of Health Underwriters
 California Chamber of Commerce
 California Farm Bureau Federation
 California Framing Contractors Association
 California League of Food Processors
 California Manufacturers & Technology Association
 California Professional Association of Specialty Contractors
 California Retailers Association
 California Taxpayers Association
 California Trucking Association
 Camarillo Chamber of Commerce
 El Centro Chamber of Commerce and Tourist Bureau
 Fresno Chamber of Commerce

Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Health Net
Howard Jarvis Taxpayers Association
Independent Insurance Agents and Brokers of California
Kaiser Permanente
Long Beach Chamber of Commerce
Murrieta Chamber of Commerce
Molina Healthcare
National Association of Insurance and Financial Advisors of California
National Federation of Independent Business
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Oxnard Chamber of Commerce
Redondo Beach Chamber of Commerce and Tourist Bureau
Santa Maria Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Torrance Chamber of Commerce
Valley Industry and Commerce Association
Western Growers Association
Yuba-Sutter Chamber of Commerce

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SB-562 The Healthy California Act. (2017-2018)

Senate: 1st Cmt

Assembly:

Bill Status	
Measure:	SB-562
Lead Authors:	Lara (S) , Atkins (S)
Principal Coauthors:	Bonta (A) , Galgiani (S) , Gomez (A) , Wiener (S)
Coauthors:	Allen (S) , Chiu (A) , Friedman (A) , Kalra (A) , McCarty (A) , McGuire (S) , Nazarian (A) , Skinner (S) , Mark Stone (A) , Thurmond (A)
Topic:	The Healthy California Act.
31st Day in Print:	03/23/17
Title:	An act to add Title 22.2 (commencing with Section 100600) to the Government Code, relating to health care coverage, and making an appropriation therefor.
House Location:	Senate
Last Amended Date:	04/17/17
Committee Location:	Sen Appropriations

Type of Measure
Active Bill - In Committee Process
Majority Vote Required
Appropriation
Fiscal Committee
Non-State-Mandated Local Program
Non-Urgency
Non-Tax levy

Last 5 History Actions	
Date	Action
04/27/17	From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (April 26). Re-referred to Com. on APPR.
04/18/17	Set for hearing April 26.
04/17/17	From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.
04/05/17	Re-referred to Com. on HEALTH.
03/29/17	From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

SENATE COMMITTEE ON HEALTH
Senator Ed Hernandez, O.D., Chair

Agenda Item No. 5
Attachment

BILL NO: SB 562
AUTHOR: Lara and Atkins
VERSION: April 17, 2017
HEARING DATE: April 26, 2017
CONSULTANT: Scott Bain

SUBJECT: The Healthy California Act

SUMMARY: Enacts the Healthy California program, which is required to provide comprehensive universal single-payer health care coverage system for all California residents.

Existing law:

- 1) Establishes the Medi-Cal program, administered by the Department of Health Care Services (DHCS), under which low income individuals are eligible for medical coverage. Medi-Cal provides coverage to adults and parents with incomes up to 138% of the federal poverty level (FPL) who are under age 65, and to children with incomes up to 266% of the FPL. Undocumented children receive full scope Medi-Cal coverage, while undocumented adults receive limited scope services under Medi-Cal (primarily emergency only).
- 2) Provides federal funds to states to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children through the Children's Health Insurance Program (CHIP). The program is funded jointly by states and the federal government. CHIP is a capped program and each state is provided an annual CHIP allotment. CHIP is authorized under federal law until September 30, 2017.
- 3) Requires, under the Patient Protection and Affordable Care Act (ACA, Public Law 111-148), as amended by the Health Care Education and Reconciliation Act of 2010 (Public Law 111-152), each state, by January 1, 2014, to establish an American Health Benefit Exchange that makes qualified health plans (QHPs) available to qualified individuals and qualified employers. Requires, if a state does not establish an Exchange, the federal government to administer the Exchange. Establishes requirements for the Exchange and for QHPs participating in the Exchange, and defines who is eligible to purchase coverage in the Exchange. Limits enrollment in the Exchanges to citizens or nationals of the United States, or aliens lawfully present in the United States.
- 4) Allows, under the ACA and effective January 1, 2014, eligible individual taxpayers, whose household income is between 100% and 400% of the FPL, an advanceable and refundable premium tax credit (APTC) to use for coverage under a QHP offered in the Exchange. Requires a reduction in cost-sharing for individuals with incomes below 250% of the FPL. Legal immigrants with household incomes less than 100% of the FPL who are ineligible for Medicaid because of their immigration status are also eligible for the APTC and the cost-sharing reductions. Undocumented individuals and incarcerated individuals are ineligible to purchase coverage in Exchanges.
- 5) Authorizes, under Section 1332 of the ACA, waivers for state innovation under which states can seek federal approval to waive major provisions of the ACA, including the requirement for Exchanges, QHPs, premium tax credits and cost-sharing reductions, the individual mandate and the employer responsibility requirement, provided federal requirements for comprehensive benefits, affordability, and comparable coverage are met and the state proposal does not increase the federal deficit.

- 6) Establishes, pursuant to federal law, the Medicare program, which provides coverage for seniors and certain persons with disabilities. Medicare is funded by payroll taxes, premiums paid by individuals who enroll in various “parts” of Medicare (Part A is hospital services, Part B is medical services, Part C is Medicare Advantage plans, and Part D is prescription drug coverage) and general revenue. Authorizes the federal Secretary of the Department of Health and Human Services, to develop and engage in experiments and demonstration projects for specified purposes, either directly or through grants to public or private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations.
- 7) Creates within the Centers for Medicare & Medicaid Services a Center for Medicare and Medicaid Innovation (CMI), the purpose of which is to test innovative payment and service delivery models to reduce program expenditures under the Medicare and Medicaid while preserving or enhancing the quality of care furnished to individuals under those programs.

This bill:

1) Healthy California purpose and governance

Establishes the Health California program in state government as an independent public entity not affiliated with an agency or department. Requires the Healthy California program to provide comprehensive universal single-payer health care coverage and a health care cost control system for the benefit of all residents of the state. Requires Healthy California to be governed by an unpaid (except for per diem) executive board consisting of nine members appointed by Legislature (4) and Governor (5). Four members have to be from the following: a labor organization representing nurses, the general public, a labor organization, and the medical provider community. Requires each person appointed to the board to have demonstrated and acknowledged expertise in health care.

Requires each board member to have the responsibility and duty to meet the requirements of this bill, the ACA, and all applicable state and federal laws and regulations, to serve the public interest of the individuals, employers, and taxpayers seeking health care coverage through the program, and to ensure the operational well-being and fiscal solvency of the program. Requires appointing authorities to take into consideration the cultural, ethnic, and geographical diversity of the state so that the board’s composition reflects the communities of California.

Requires a California Health and Human Services Agency-appointed 22 member public advisory committee. Requires the board to have all powers and duties necessary to establish and implement Healthy California. Requires the board to provide grants to health planning agencies, and requires the board to provide funds for retraining and assisting job transition for individuals in health and insurance-related fields whose jobs may be or have been ended as a result of Healthy California implementation. Requires the board to provide for the collection and availability of specific hospital-related and health information technology-related data to promote transparency, assess patient adherence, compare patient outcomes, and review utilization.

2) Eligibility for Healthy California

Makes every resident of the state eligible and entitled to enroll. “Resident” is defined as an individual whose primary place of abode is in the state, without regard to the individual’s immigration status.

3) Enrollee premiums in Healthy California

Prohibits members from Healthy California from being required to pay any premium.

4) Enrollee cost-sharing in Healthy California

Prohibits members from being required to pay any co-payment, co-insurance, deductible and any other form of cost-sharing for all covered benefits.

5) Enrollee benefits in Healthy California

Requires all medical care determined to be medically appropriate by the members' health care provider. Includes a broad benefit package, including all services covered by Medi-Cal, Medicare, the essential health benefits, and all health plan/insurance mandated benefits. Benefits required include chiropractic, vision, dental, ancillary health or social services previously covered by a regional center, skilled nursing facility care, and therapies shown by the National Institutes of Health, National Center for Complementary and Integrative Health to be safe and effective. Permits Healthy California to offer retiree benefits on a voluntary basis.

6) Choice of health care providers in Healthy California

Permits a member to choose to receive health care services from any participating provider, subject to the willingness and availability of the provider, and the appropriate clinically relevant circumstances. Per 7) below, providers generally have to be in California and be California-licensed.

7) Providers eligible to participate in health care providers under Healthy California

Permits any health care provider licensed to practice in California who is otherwise in good standing to be qualified to participate in Healthy California, so long as the provider's services are performed within the state of California. The Healthy California board is required to establish and maintain procedures and standards for recognizing health care providers located out-of-state for purpose of providing health care coverage for members who require out-of-state health care services while the member is temporarily located out-of-state.

8) Health care providers reimbursement in Healthy California

Requires the Healthy California board to adopt regulations regarding contracting for, and establishing payment methodologies for, covered health care services and care coordination provided to members under Healthy California by participating providers, care coordinators, and health care organizations. Permits a variety of different payment methodologies, including those established on a demonstration basis. Requires all payment rates under the program to be reasonable and reasonably related to the cost of efficiently providing the health care service and ensuring an adequate and accessible supply of health care services. Requires health care services provided to members under the program, except for care coordination, to be paid for on a fee-for-service basis unless and until another payment methodology is established by the Healthy California board.

9) Funding for Healthy California

Intent language on broad-based revenue, and intent for the state to work to obtain approval and other approvals so that Medicaid, Medicare, ACA and other federal funds and subsidies paid by the federal government that would otherwise be paid to the State of California,

Californians and health care providers would be deposited in the Healthy California Trust Fund.

The bill requires the Healthy California board to apply to the federal Secretary of Health and Human Services or other appropriate federal official for all waivers of requirements, and make other arrangements, under Medicare, any federally matched public health program, the ACA, and any other federal programs that provide federal funds for payment for health care services that are necessary to enable all Healthy California members to receive all benefits under the Healthy California program through the program, to enable the state to implement this bill, and to allow the state to receive and deposit all federal payments under those programs, including funds that may be provided in lieu of premium tax credits, cost-sharing subsidies, and small business tax credits, in the State Treasury to the credit of the Healthy California Trust Fund, and to use those funds for the Healthy California program.

Requires all moneys in the Fund to be continuously appropriated without regard to fiscal year for the purposes of this bill, and any moneys in the fund that are unexpended or unencumbered at the end of a fiscal year is authorized to be carried forward to the next succeeding fiscal year.

10) Care Coordination in Healthy California

Requires care coordination to be provided to members, defined to include administrative tracking and medical recordkeeping services, specifies the individual and entities that can be care coordinators, and allows reimbursement to a health care provider only if the member is enrolled with a care coordinator. Requires the Healthy California board to develop and implement procedures and standards by regulation for an individual or entity to be approved as a care coordinator.

11) Role of private health insurance under Healthy California

Prohibits health plans and insurers from offering benefits or services for which coverage is offered under the Healthy California program. Continues to allow plan/insurers to offer benefits to cover health care services that are not offered to individuals under the program, including to non-residents and during the implementation period.

12) Program standards in Healthy California

Requires Healthy California to establish a single standard of safe, therapeutic care for all residents of the state.

Requires the board to establish requirements and standards, by regulation, for the program and for health care organizations, care coordinators, and health care providers, consistent with this bill and consistent with the applicable professional practice and licensure standards of health care providers and health care professionals established pursuant to the Business and Professions Code, the Health and Safety Code, the Insurance Code, and the Welfare and Institutions Code, including specified requirements and standards established by this bill.

Requires the board to establish requirements and standards, to the extent authorized by federal law, by regulation, for replacing and merging with the Healthy California program health care services and ancillary services currently provided by other programs, including, but not limited to, Medicare, the ACA, and federally matched public health programs.

13) Healthy California and Medicare

Permits the Healthy California to take actions consistent to enable the program to administer Medicare in California, and requires the program to be a provider of supplemental insurance coverage (Medicare Part B) and to provide premium assistance drug coverage under Medicare Part D (drug coverage) for eligible members of the program. Requires a member who is eligible for benefits under Healthy California, as a condition of continued eligibility for health care services under the program, to enroll in Medicare, including Parts A, B, and D.

Requires the program to provide premium assistance for all members enrolling in Medicare Part D drug coverage, limited to the low-income benchmark premium amount established by the federal Centers for Medicare and Medicaid Services and any other amount the federal agency establishes under its de minimis premium policy, except that those payments made on behalf of members enrolled in a Medicare advantage plan may exceed the low-income benchmark premium amount if determined to be cost effective to the program.

14) Healthy California and Medi-Cal

Permits the Healthy California board to apply for coverage for, and enroll, any eligible member under any federally matched public health program (such as Medi-Cal) or Medicare. Prohibits enrollment in a federally matched public health program or Medicare from causing any member to lose any health care service provided by the program or diminish any right the member would otherwise have.

Requires the Healthy California board, by regulation, to increase the income eligibility level, increase or eliminate the resource test for eligibility, simplify any procedural or documentation requirement for enrollment, and increase the benefits for any federally matched public health program and for any program in order to reduce or eliminate an individual's coinsurance, cost-sharing, or premium obligations or increase an individual's eligibility for any federal financial support related to Medicare or the ACA. This provision does not apply for long-term care services. Permits the board, to enable the board to apply for coverage for, and enroll, any eligible member under any federally matched public health program or Medicare, to require that every member or applicant provide the information necessary to enable the Healthy California board to determine whether the applicant is eligible for a federally matched public health program or for Medicare, or any program or benefit under Medicare.

15) Collective Negotiation with Healthy California

Allows health care providers to meet and communicate for the purpose of collectively negotiating with Healthy California on any matter, including rates of payment and payment methodologies. Prohibits this provision from being construed to allow a strike of Healthy California by health care providers related to the collective negotiations. Establishes requirements for collective negotiations.

16) Healthy California and existing law

Requires this bill to apply and prevail to the extent any provision of California law is inconsistent with this bill or its legislative intent extent, except when explicitly provided under this bill.

17) Requirement that Healthy California develop proposals on workers compensation and long-term care coverage

Requires the board to develop a proposal for Healthy California coverage of health care services currently covered under the workers' compensation system, including whether and how to continue funding for those services under that system and whether and how to incorporate an element of experience rating.

Requires the board to develop a proposal, consistent with the principles of this bill, for provision by the program of long-term care coverage, including the development of a proposal, consistent with the bill, for its funding. Requires the board, in developing the proposal, to consult with an advisory committee, appointed by the chairperson of the board, including representatives of consumers and potential consumers of long-term care, providers of long-term care, members of organized labor, and other interested parties.

18) Local authority to provide additional coverage

Prohibits this bill from preempting any city, county, or city and county from adopting additional health care coverage for residents in that city, county, or city and county that provides more protections and benefits to California residents than contained in this bill.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) *Author's statement.* According to the author, despite the incredible gains made under the ACA, almost three million California residents still do not have access to health care because cost or legal status. With the federal governments' promises to abandon the ACA and undo the progress we have made, leaving even more people without access to care, California has a chance to lead the rest of the nation toward a health care model that is less expensive and provides better coverage.

SB 562 will move health care services to one publicly run plan that covers everyone who lives in the state. Every Californian will have access to the same comprehensive health benefits under a single plan. Patients will have the ability to choose their providers without worrying about what their insurance will cover or if they are out of network. SB 562 will consolidate and streamline access to care for patients and simplify the billing for hospitals and providers.

SB 562 will fundamentally change California's health care system and improve health access and care for our residents. SB 562 will change health care in California from commodity to a right.

- 2) *The Affordable Care Act (ACA).* The federal ACA, approved on March 23, 2010, was the most transformative legislative action the U.S. health care system had seen in 40 years. The passage of the ACA meant sweeping changes to health care coverage in this country, including establishing more generous eligibility rules and federal funding for California's Medicaid (Medi-Cal) program, providing federally funded premium and cost-sharing subsidies offered through California's Health Benefit Exchange (known as Covered California), and imposing new requirements on health insurers that made it easier for individuals with pre-existing conditions to obtain coverage. The coverage expansions alone led to 20 million newly insured individuals in this country, including over 5 million Californians.

California has seen a remarkable decline in the number of people without health insurance coverage as a result of the ACA. Most notably, the percentage of Californians under age 65 without insurance declined from 22% in 2011 to 8.6% in 2015 (from 7.3 million in 2011 to 2.9 million in 2015). California experienced the largest percentage point decline in the uninsured rate of any state, according to the United States Census Bureau. The federal Centers for Disease Control and Prevention has indicated a further fall to 7.1% in the first nine months of 2016. The decline in uninsured as a result of the ACA crosses the major race/ethnic and income groups in California.

- 3) *How do Californians receive health coverage now?* Unlike other industrialized nations, the American health care system is primarily an employer-based system. Like the rest of the country, most of California's 39 million residents receive employer-based coverage, which is subsidized by the state and federal tax code. Public programs are the other major health coverage source, followed by the individual insurance market. The chart below with data from the California Health Benefit Review Program shows the sources of coverage (or lack thereof) for Californians:

<u>Source of Coverage</u>	<u>Percentage</u>	<u>Population</u>
Employer-based coverage	56%	17,595,000
Individual coverage	7%	2,616,000
Medi-Cal (includes dual eligibles*)	29%	11,169,000
Medicare	10%	4,054,000
Uninsured	8%	3,079,000

*Individuals eligible for both Medicare and Medi-Cal

- 4) *How much is spent on health care expenditures in California?* According to an August 2016 Health Policy Brief by the UCLA Center for Health Policy Research, personal health care expenditures in California are estimated to total more than \$367 billion in 2016.

Approximately 71% of these expenditures will be paid with public funds, broadly defined to include government spending for public employee health benefits, Medicare and Medicaid, tax subsidies for employer-sponsored insurance and ACA insurance exchange and county health care expenditures. The chart below shows the expenditures by category, dollar amount and percentage:

California Health Care Expenditures (Billions of Dollars), 2016

Health Care Expenditure Category	Expenditures, in Billions (% of total Expenditures)
Public health care expenditures	
Direct government expenditures	
Medicare	\$74.7 (20.3%)
Medi-Cal	
Federal share	\$62.8 (17.1%)
State share	\$37.4 (10.2%)
Other government programs	\$10.0 (2.7%)
County health expenditures	\$10.0 (2.7%)
Government employer premium contributions	
FEHB*	\$1.9 (0.5%)
CalPERS	\$7.1 (1.9%)
TRICARE	\$4.1 (1.1%)
Tax subsidies	
Tax subsidies for ESI**	
Federal	\$33.1 (9.0%)
State and local	\$10.9 (3.0%)
ACA subsidies	\$8.9 (2.4%)
Total public health expenditures	\$260.9 (71.0%)
Private health care expenditures	
Employer share of premiums	\$58.3 (15.9%)
Employee share of premiums	
FEHB* premiums	\$0.7 (0.2%)
CalPERS premiums	\$1.0 (0.3%)
Private employee premiums	\$18.7 (5.1%)
Premium contributions for individually purchased insurance	
Covered California	\$3.8 (1.0%)
Outside Exchange	\$8.6 (2.3%)
OOP*** expenses for covered benefits	\$15.5 (4.2%)
Total private health care expenditures	\$106.5 (29.0%)
Total California health care expenditures	\$367.5 (100.0%)

*Federal Employees Health Benefits Program

**Employer-sponsored insurance

***OOP is out-of-pocket

- 5) *The remaining uninsured.* While estimates vary, somewhere around 2.9 million to 3.1 million Californians are uninsured. A December 2016 report by the California HealthCare Foundation entitled “California’s Uninsured: As Coverage Grows, Millions Go Without” found that one in three of California’s uninsured had annual incomes of less than \$25,000, meaning they were potentially eligible for Medi-Cal, one in four were aged 25 to 34, one in three were noncitizens, and more than half were Latino. Sixty-two percent of the uninsured were employed. Of the 1.8 million uninsured workers, 44% worked in firms with less than 50 employees. Workers who were self-employed (16.4%) and who worked for private sector businesses with fewer than ten employees (19.2%) were the most likely to be uninsured. Twenty percent of the uninsured in California and nationally had annual family incomes over \$75,000. The uninsured are more likely to report fair/poor health status compared to the overall population (25.5% vs. 16.2%), to have no usual source of care (42.4% vs. 15.3%) and to delay care (16.5% v. 12.3%) according to 2015 data. The reasons cited for lack of insurance are as follows:

Can’t afford/too expensive	29%
Some other reason	37%
No need/don’t believe in insurance	12%
Not eligible due to citizenship/health condition	22%

While the uninsured rate dropped dramatically for families with incomes under \$25,000 as a result of the ACA, the uninsured are more likely to be from low-income families, as shown in the data below:

Under \$25,000	15%
\$25,000 to \$49,999	11.8%
\$50,000 to \$74,999	9.8%
\$75,000 or more	3.8%

The data below shows the age groups of Californians as a percentage of the population and as a percentage of the uninsured:

Age Group	Percentage of Population	Percentage of Uninsured
Under 18	27%	12%
18 to 20	5%	3%
21 to 24	7%	10%
25 to 34	16%	24%
35 to 44	15%	22%
45 to 54	16%	15%
55 to 64	14%	14%

- 6) *Federal waiver authority.* Medicaid (known as Medi-Cal in California) is a joint federal-state program to provide health coverage to low-income individuals. Section 1115 of the federal Social Security Act (Act) gives the Secretary of the Department of Health and Human Services (HHS) authority to waive provisions of major health and welfare programs authorized under the Act. This includes certain federal Medicaid requirements in any experimental pilot or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of Medicaid. In addition, Section 1115 also allows states to use federal Medicaid funds to reimburse for costs in ways that are not otherwise allowed under federal Medicaid law. This is referred to as expenditure authority for “costs not otherwise matchable.” Section 1115 waivers are approved at the discretion of the Secretary

of HHS through negotiations between a state and CMS for projects that the Secretary determines promote Medicaid program objectives. Section 1115 waivers are generally approved for a five-year period and then must be renewed. Although not required by statute or regulation, longstanding federal administrative policy has required waivers to be “budget neutral” for the federal government, meaning that federal spending under a waiver must not be more than projected federal spending in the state without the waiver.

The ACA also contained waiver provisions related to Medicare and Medicaid through a newly established Center for Medicare and Medicaid Innovation (Innovation Center) and through a waiver of the tax credits for small employers and the premium and cost-sharing subsidies in the individual market under Section 1332. Specifically, Section 1332, the ACA permits states to apply to the federal government for a waiver of major provisions of the ACA beginning in 2017. The provisions of the ACA that can be waived under Section 1332 include any or all parts of the provisions relating to QHPs (including the essential health benefits package requirement), the Exchanges, premium tax credits and cost-sharing reductions, the minimum coverage requirement (commonly referred as the “individual mandate”), and the employer responsibility requirements. If a state is granted a Section 1332 waiver, the state can fund its reforms through the aggregate amount of federal funding that otherwise would have been paid out within the state for premium tax credits, cost-sharing reduction payments, and small business tax credits. However, to qualify for an innovation waiver, the state must establish that its reform plan would provide coverage that:

- a) Will provide coverage that is at least as comprehensive as ACA coverage;
- b) Will provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as the as ACA coverage;
- c) Will provide coverage to at least a comparable number of its residents as the ACA would provide; and,
- d) Will not increase the federal deficit.

The Innovation Center allows the Medicare and Medicaid programs to test models that improve care, lower costs, and better align payment systems to support patient-centered practices. The Innovation Center evaluates innovative reform efforts widely used in the private sector, and is unique in its ability to develop provider-proposed approaches and quickly adjust models in response to feedback from clinicians and patients.

Congress created the Innovation Center for the purpose of testing “innovative payment and service delivery models to reduce program expenditures ...while preserving or enhancing the quality of care” for those individuals who receive Medicare, Medicaid, or CHIP benefits. Congress provided the Secretary of HHS with the authority to expand the scope and duration of a model being tested through rulemaking, including the option of testing on a nationwide basis. In order for the Secretary to exercise this authority, a model must either reduce spending without reducing the quality of care, or improve the quality of care without increasing spending, and must not deny or limit the coverage or provision of any benefits.

7) *Prior legislation.* Since 2004, there have been four single payer bills and one bill to fund single payer, as follows:

- a) SB 810 (Leno of 2011) *failed passage on the Senate Floor in 2012;*
- b) SB 810 (Leno of 2009) *was not taken up on the Assembly Floor;*
- c) SB 840 (Kuehl of 2007) *was vetoed by Governor Schwarzenegger. In his veto message, the Governor cited a Legislative Analyst's Office analysis that estimated*

the bill to cost \$210 billion in its first full year of implementation and cause annual shortfalls of \$42 billion, and he could not support a bill that placed an annual shortfall of over \$40 billion on California's economy;

- d) *SB 1014 (Kuehl of 2007) would have imposed a payroll tax to fund the single payer system. SB 1014 was heard in the Senate Revenue and Taxation Committee but no vote was taken; and,*
- e) *SB 921 (Kuehl of 2003) was never heard in the Assembly Appropriations Committee.*

8) *Support.* This bill is sponsored by the California Nurses Association/National Nurses United and supported by numerous labor organizations, faith-based and consumer groups, certain businesses, and Democratic Party groups, who argue this bill would provide publicly funded and progressively financed health care coverage for all California residents regardless of age, income, or immigration status, with no network restrictions, deductibles, co-pays, or other limitations on necessary care. Supporters argue health care is a human right, and the United States continually outspends other wealthy nations on per capita health care costs—some by more than double—while the quality of care and national health outcomes continue to fall behind. Californians as individuals, workers, families, businesses, and taxpayers are driven past their breaking point because of soaring health costs and lack of access. Supporters argue the experience of Medicare and of nearly every other industrialized country shows a single payer system is the most cost-effective and equitable way to provide quality health care as all residents are covered, and the system can eliminate wasteful spending and rein in skyrocketing prices. Supporters argue the Healthy California Act would provide the comprehensive and quality health care coverage that all Californians deserve and would ensure that insurance companies and the corporate ledger no longer determines the health and well-being of our state.

9) *Support in concept.* The California Pan-Ethnic Health Network, Western Center on Law and Poverty, and Health Access California write that they support this bill in concept in that they support single payer and universal coverage, and suggest additional changes to this measure. Health Access California writes that further work needs to be done on financing, and raises questions about the lack of specifics or provisions that run counter to goals for a universal coverage system related to provisions in this bill regarding transition to a single payer system, system governance, whether existing consumer protections apply to the single payer system, quality improvements/delivery system reform and integrated care, purchasing for cost and quality, cost control and information technology.

10) *Opposition.* This bill is opposed by business and health insurance groups who argue this bill would create a single-payer government bureaucracy which would control and finance the state's health care system and ultimately result in significant job loss to the state. Opponents argue California employers cannot sustain an added tax burden after the most recently enacted transportation tax package, that significant job loss will result from this bill, that California voters in 1996 previously rejected a single payer health measure, that single payer costs are unsustainable, and government-run health care is less efficient and effective. Other opponents argue the state has made important progress in implementation of the ACA, but this progress is in a precarious position due to Congressional "repeal and replace" proposals, and this is not an appropriate time to divide the health care and policy community against itself with a symbolic measure that could not be implemented even if it were passed.

11) *Policy issues.*

- a) *Can single payer be implemented on a state level?* The US employer-based health care system is a tax-subsidized employer-based system, augmented by state and federal programs for low-income individuals (Medi-Cal) or seniors (Medicare), and federal premium and cost-sharing subsidies for low-to-moderate income individuals buying individual coverage through Exchanges. This system has grown incrementally over decades as health coverage programs have been created or expanded and mandates and tax subsidies have been enacted to increase insurance coverage. If state and federal legislators and the state and federal executive branch were starting with a blank state and designing a health care delivery system from scratch, the US health care delivery system would unlikely look like the one that exists today.

The extension of coverage to additional Americans through the ACA has largely been built upon that existing system, with significant amounts of new federal funding to provide health insurance coverage to additional people who were previously uninsured, either because the uninsured are low or moderate income and are unable to afford the high cost of insurance, or have a pre-existing medical condition that made coverage unavailable. For example, California received over \$19.2 billion in federal funds for ACA Medicaid expansion in 2016-17, and nearly \$5 billion in federal funds for premium subsidies (\$4.2 billion) and cost-sharing subsidies (over \$700 million) for Covered California enrollees in 2016.

For single payer to be implemented on a state level, existing spending by government (Medicare and Medi-Cal) would have to be allowed to be “pooled” into the single payer financing system. In addition, to finance single payer, existing spending by employers and individuals with employer-based insurance and individually purchased insurance would have to be replaced with tax revenue to finance the costs of the approximately 20 million Californians who receive employer-based coverage or purchase individual coverage. The UCLA study estimated just these costs at \$106.5 billion, and to implement single payer, this existing individual and employer-based spending would need to be shifted to the state. Many states, including California have a balanced budget requirement, and their state revenue is dependent upon the state and national economy. In California, tax increases require a 2/3 legislative vote, which makes raising tax revenue to fund an expansion of coverage more difficult. States, including California, have traditionally only been able to significantly expand coverage to the uninsured through the use of increased federal funds.

- b) *Financing single payer and risks to the state.* This bill contains intent language on broad-based revenue, and intent for the state to work to obtain approval and other approvals so that Medicaid, Medicare, ACA and other federal funds and subsidies paid by the federal government that would otherwise be paid to the State of California, Californians and health care providers would be deposited in the Healthy California Trust Fund.

Any tax increase to fund Healthy California costs would need to take into account the requirements of Proposition 98, the 1988 school funding initiative, which generally requires 40% of revenues from taxes go to K-14 public education. Because Proposition 98 is in the State Constitution, any tax increases would either have to receive voter approval to exempt the resulting revenue from the calculation of Proposition 98, raise enough new revenue to offset the amount of revenue allocated to Proposition 98, or have a “poison pill” that would invalidate the new taxes if a Proposition 98 claim reduced the resulting revenue to fund Healthy California.

In addition, if the state were able to receive federal approval to combine Medicaid, Medicare, Covered California premium and cost-sharing subsidies and other federal funds for health care, the state would still be potentially at risk if the formula for allocating those funds does not take into account actual state health care expenditures for expenditures the federal government would otherwise have made. While this bill does not request a block grant or per capita amount of federal funding, and the state would argue that it has a legal basis for funds that the federal government would have otherwise spent in the absence of the single payer system, if federal funds come to the state in a fixed amount based on projected expenditures, the state would need to ensure that those amounts would be adequate to fund the actual coverage costs of Healthy California for people who would have been enrolled in those programs.

The recent DHCS preliminary fiscal estimate of the impact on Medi-Cal of the proposed American Health Care Act illustrates the state fiscal risk of a per capita cap on funding, even when growth in the per capita amounts were tied to medical inflation. The DHCS fiscal analysis projected a financing shortfall of \$679 million in the first year of the proposed Medicaid per capita cap, increasing to over \$5.3 billion in 2027.

This bill's sponsor has funded a research project that will estimate the overall cost of the proposed Healthy California program in SB 562 which will examine different ways of financing the program. Specifically, the project will calculate the additional costs associated with covering California residents who are currently uninsured and the expansion of health care utilization of residents who are underinsured (for example, those that currently limit their use of health services due to high deductibles or co-payments). The project will identify areas of savings associated with the Healthy California program, including lower administrative costs and cost-control mechanisms for pharmaceuticals and rates for physician, clinical, and hospital services. The sponsor indicates estimates for additional costs and areas of cost savings will determine the financing needs, and based on these estimates, the project will explore different modalities for financing Healthy California. In addition, the project will assess the ability of the cost-control mechanisms to limit the rate of increase of health care costs over time, to ensure the fiscal sustainability of the program.

- c) *Health care costs and Healthy California.* Health care spending is driven by four principle components: who is eligible for coverage, the rates health plans, health care providers, and health facilities are paid, what benefits enrollees receive, and administration. One of the main arguments for single payer is the significantly higher amount spent on health care in the US as compared to other industrialized countries, despite a lack of evidence that the additional spending produces uniformly better health care outcomes. The principle reason for higher spending are the higher prices charged for health care goods and services in the United States. The United States spends far more per person and as a percentage of Gross Domestic Product as compared to other industrialized countries.

Single payer health care systems are more likely to achieve cost savings over the current multi-payer system by significantly reducing administrative costs through eliminating the multiple payers and associated billing-related costs in the current system, and by using the government's bulk purchasing power to negotiate and/or set rates with health care providers, health facilities, and prescription drug and device manufacturers.

While this bill requires the Healthy California program to provide a single-payer health care coverage and a health care cost control system, there are multiple provisions in this bill that would make cost control unlikely to occur. For example this bill:

- i) Requires reimbursement to health care providers to be reasonable and reasonably-related to costs (which could be inflationary, based on past Medicare hospital-payment experience, and could be used by providers as the basis for rate lawsuits over rates, based on the states' experience in the Medicaid program);
- ii) Requires health care benefits to include all care determined to be medically appropriate (as opposed to a narrower coverage standard of medical necessity);
- iii) Prohibits cost-sharing (a prohibition on co-payments and deductibles would increase utilization);
- iv) Allows Healthy California members to choose any health care provider (managed care plans use network providers to obtain price discounts based on cost and quality, and can require prior authorization for specialist referral);
- v) Requires a broad benefit package that exceeds the benefits in most employer-based plans, Covered California plans, and Medicare (benefits in Healthy California include dental, vision, chiropractic, acupuncture and Medi-Cal-covered services);
- vi) Allows health care providers to negotiate collectively (health plans negotiate and selectively contract with individual providers and anti-trust law limits collective negotiation); and,
- vii) Allows health care providers to override health information technology and clinical practice guidelines based on their professional judgment and prohibits health care organizations from using health information technology or clinical practice guidelines that limit the exercise of the professional judgment of physicians and nurses (payors use clinical practice guidelines and health information technology for quality and cost-related reasons).

In addition, this bill is silent on provisions commonly used by managed care plans and other payers to control costs, such as the use of a prescription drug formulary to obtain price concessions, the use of selective contracting to obtain price discounts from health care providers based on volume, and criteria to be used by Healthy California for coverage of new drugs, devices and procedures.

- d) *Should this bill have an implementation trigger?* As drafted, the provisions of this bill would take effect on January 1, 2018. The bill also requires the Healthy California board to determine when individuals may begin enrolling in the program, and requires there be an implementation periods that begins on the date that individuals begin enrolling and ends on a date determined by the board.

In order to have a successful implementation, the author may want to consider implementation triggers based on federal approval for the movement of Medicare and Medicaid beneficiaries into Healthy California, adequate financing, federal assurances on adequacy of existing funding being transferrable on an on-going basis, and system readiness before implementation can take effect. Prior single payer bills have contained a provision that only implemented the bill when sufficient financing has been identified to implement the system.

- e) *Healthy California governance, the state budget and the role of the Legislature.* Healthy California is housed in state government as an independent public entity not affiliated with an agency or department. The governing board would be 9 members (4 of whom would be appointed by the Legislature) who would be unpaid. Funds appropriated for Healthy California would be continuously appropriated. The existing state budget General Fund spending is projected to be \$123 billion in 2017-18. Given that existing spending on health care in California is estimated to be over \$367 billion from all sources, the significant role in state spending in Medi-Cal today (over \$19 billion General Fund for 2017-18), and the Legislature's role in the budget process, is a continuously appropriated fund and the unpaid governance structure appropriate for a program of this magnitude?
- f) *Other policy and bill language issues.* There are several provisions of the bill that require language tightening and/or policy clarification. For example, the bill makes all California residents eligible for Healthy California, but contains permissive language on the program administering Medicare, which could result in the program having Medicare enrollment but not Medicare funds. In addition, language is needed clarify the condition of Healthy California enrollment on Medicare-eligible individuals' enrollment in Medicare Parts A, B and D with the prohibition on paying a premium and providing coverage that provides the same benefits as Healthy California, to clarify the author's intent with regard to the scope of long-term care coverage for non-Medicaid enrollees of Healthy California, to address the scope of benefits that would be provided out-of-state to Healthy California enrollees, to specify the types of documentation the program will use to determine residency in California, to clarify the ability to opt out of an integrated delivery system in the event a member moves, and to clarify which payments would include a component of reimbursement for graduate medical education.

SUPPORT AND OPPOSITION:

Support: California Nurses Association/National Nurses United (sponsor)
 13 Pages Progressive Alliance for Government Ethics and Sanity
 28ers
 American Federation of State, County and Municipal Employees (AFSCME)
 Council 57
 AFSCME Retirees Ch. 36
 Alameda Progressives
 Alliance of Californians for Community Empowerment Institute
 AM Green Construction
 American Federation of Musicians Local 47
 Americans for Democratic Action, Southern California
 Arbeter Ring/Workmen's Circle
 Arlington Community Church
 Art Between Us
 Asian Pacific American Labor Alliance
 Asian Pacific Environmental Network
 Bagg Lady Handbags
 Bay Area Chapter of Resource Generation
 Bay Rising
 Bell Everman, Inc.
 Berniecrats Labor Alliance Chartered Democratic Club of Yolo County
 Breast Cancer Action
 Business Alliance for a Healthy California
 Butte County Health Care Coalition
 California Alliance for Retired Americans

California Association of Marriage and Family Therapists East Bay Chapter
California Capital Chapter of Physicians for a National Health Program
California Council of Churches IMPACT
California Democratic Party State Central Committee San Gabriel Valley
California Domestic Workers Coalition
California Faculty Association - San Francisco State University Chapter
California Federation of Teachers, AFT, AFL-CIO
California Health Professionals Student Alliance
California Insurance Commissioner Dave Jones
California Labor Federation, AFL-CIO
California National Organization for Women
California One Care
California Partnership
California Physicians Alliance
California School Employees Association
California Teachers Association
Campaign for a Healthy California
Caring Across Generations
Central Valley Indivisible
Central Valley-Sierra Progressives
CEO to CEO
Chinese Progressive Association
City Designworks
City of Berkeley
City of Los Angeles
City of Oakland
City of Richmond- Laurel Park Neighborhood Council
City and County of San Francisco
Clinica Romero
Code Pink
Communications Workers of American District 9
Consider the Homeless
Consumer Federation of California
Contra Costa AFL-CIO Labor Council
Courage Campaign
Courageous Resistance of Humboldt
Decus Biomedical
Dell Arte International
Democratic Action Club of Chico
Democratic Party of Orange County
Democratic Socialists of America – Los Angeles
Democratic Socialists of America, Orange County Chapter
Democratic Socialists of America, San Francisco
Democratic Socialists of America, Ventura County Chapter
Democratic Women's Coalition of Tuolumne County
Disability Action Center
Divine Feminine Yoga
Douglas L. Applegate Law Office
East Bay Democratic Socialists of America
Easter Hill United Methodist Church
Ecological Farming Association

El Cerrito Progressives
Elder Care Providers' Coalition
Elsdon Organizational Renewal
Empowered Investments
Encore
Far Leaves Tea
First They Came for the Homeless
For Grace
Forward Together
Fresno Economic Opportunities Commission
Friends Committee on Legislation
Giraud Photography, Inc.
Give Something Back Office Supplies
Glenview Area Groups for Action
Gray Panthers of San Francisco
Green Party of San Bernardino County
Green Party of Santa Clara County
Hand in Hand
Harvey Milk LGBT Democratic Club
Health Care for All - Alameda County
Health Care for All - California 15 Chapters
Health Care for All - Contra Costa County
Health Care for All-Marin
Health Care for All - Nevada County Chapter
Health Care for All - San Gabriel Valley County
Health Care for All – San Fernando Valley Chapter
Healthy California
Hunger Action Los Angeles
Indivisible Claremont
Indivisible Ladera
Indivisible Mader
Indivisible Orange County
Inland Coalition for Immigrant Justice
Inland Empire Immigrant Youth Collective
Inland Greens
J. Glynn & Company
Jane Thomas Press
Jobs with Justice San Francisco
Justice for All Ventura County
Justice for Palestinians
Kate Harris Consulting
Kramer Translations
Labor United for Universal Healthcare
Lake County Democratic Central Committee
Lamorinda Peace and Justice Group
Lawyers for Good Government
Lonely Liberals Indivisible of San Luis Obispo County
Long Beach Gray Panthers
Loving Way Midwifery
Low-Income Self Help Center
Lucille Design

Maddala Music
March and Rally Los Angeles
McGee-Spaulding Neighbors in Action
Media Alliance
Mini-Vacation Massage
Mobilize the Immigrant Vote
Monkey Wrench Brigade
Mt. Diablo Peace and Justice Center
Musicians Union Local 6
National Association of Social Workers-Fresno County
National Economic and Social Rights Initiative
National Union of Health Care Workers
Nevada County Democratic Women's Club
North Bay Jobs with Justice
Oakland Livable Wage Assembly
Oakley, California Mayor Sue Higgins
Occupy Torrance
One Page Plan
Organizacion en California de Lideres Campesinas, Inc.
Otis Chiropractic Neurology, Inc.
Our Developing World
Our Revolution, West San Fernando Valley
Peace and Freedom Party of California
Peralta Retirees Organization
Pilipino Workers Center of Southern California
Poverty Matters
Progressive Action for Glendale
Progressive Asset Management
Progressive Democrats of America-California
Progressive Democrats of America- Greater Palm Springs Area
Progressive Democrats of America- Lake County Chapter
Progressive Democrats of America- Orange County Chapter
Progressive Democrats of America- San Francisco Chapter
Progressive Democrats of America- Santa Monica Chapter
Progressive Democrats of America- Ventura County Chapter
Project Inform
Resource Generation
Richmond Progressive Alliance
Riverside Temple Beth El
San Francisco Green Party
San Francisco Berniecrats
San Francisco Latino Democratic Club
San Joaquin Valley Democratic Club
San Jose Peace and Justice Center
San Mateo Central Labor Council
Santa Barbara Women's Political Committee
Santa Clara County Board of Supervisors
Santa Clara County Green Party San Francisco Berniecrats
Santa Cruz for Bernie
Senior and Disability Action
Sierra Foothills Democratic Club

Silicon Valley Independent Living Center
 Social and Economic Justice Coalition
 Social Justice Alliance of the Interfaith Council of Contra Costa
 Sol2Economics
 South Bay Labor Council
 Steve Giraud Photography
 Strike Debt
 Sue's Hair Salon
 Sunflower Alliance
 Therapists for Single Payer
 Tenants Together
 The Democracy Project
 The Latina/Latino Roundtable
 The Refill Shop
 Trout in Hand Productions
 Tuolumne County Democratic Club
 UFCW, Local 5
 Unitarian Universalist Justice Ministry of California
 United Democrats of El Dorado County
 United Steelworkers, Local 2801
 United Steelworkers, Local 675
 UNITE-HERE, AFL-CIO
 University Professional and Technical Employees, Local 9119
 Veterans for Peace, South Bay Chapter
 Voices for Mothers and Others
 Wellstone Democratic Renewal Club
 Word Spark Writing & Editing
 Yes We Can Democratic Club
 Yolo MoveOn
 Numerous individuals

Oppose: America's Health Insurance Plans
 Anthem Blue Cross
 Association of California Insurance Companies
 Association of California Life & Health Insurance Companies
 Bay Area Council
 Blue Shield of California
 California Association of Health Plans
 California Association of Health Underwriters
 California Chamber of Commerce
 California Farm Bureau Federation
 California Framing Contractors Association
 California League of Food Processors
 California Manufacturers & Technology Association
 California Professional Association of Specialty Contractors
 California Retailers Association
 California Taxpayers Association
 California Trucking Association
 Camarillo Chamber of Commerce
 El Centro Chamber of Commerce and Tourist Bureau
 Fresno Chamber of Commerce

Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Health Net
Howard Jarvis Taxpayers Association
Independent Insurance Agents and Brokers of California
Kaiser Permanente
Long Beach Chamber of Commerce
Murrieta Chamber of Commerce
Molina Healthcare
National Association of Insurance and Financial Advisors of California
National Federation of Independent Business
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Oxnard Chamber of Commerce
Redondo Beach Chamber of Commerce and Tourist Bureau
Santa Maria Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Torrance Chamber of Commerce
Valley Industry and Commerce Association
Western Growers Association
Yuba-Sutter Chamber of Commerce

-- END --



AGENDA BILL

Agenda Item No. 6(A)

Date: May 16, 2017
To: El Cerrito City Council
From: Shannon Collins, Accounting Supervisor
Subject: Confirm the Diagram and Levy the Assessment for FY 2017-18 for Landscape and Lighting Assessment District No. 1988-1

ACTION REQUESTED

Conduct a public hearing and upon conclusion adopt a resolution setting the annual Landscape and Lighting Assessment for Fiscal Year 2017-18 as \$72 per residential parcel and as noted in the Engineer's Report for other classes of properties.

BACKGROUND AND ANALYSIS

On June 6, 1988, the City Council established Assessment District No. 1988-1 pursuant to the Landscape and Lighting Act of 1972. The purpose of this Landscape and Lighting Assessment District (LLAD) is to raise funds to support improvements and maintenance of the City's park areas, landscaping areas, and street lighting. Every year since 1988, this Assessment District has generated approximately \$773,000 to support LLAD activities.

In November 1996, the LLAD was approved by the voters and therefore complies with the provisions of Proposition 218. Any increase in the assessment fee level would be subject to Proposition 218's voter approval requirement.

In order to impose this annual assessment, the City Council must annually authorize an Engineer's Report to identify the costs, uses, and general benefits of those parcels within the Assessment District. As detailed in the Engineer's Report, the revenues are used for eligible activities including staff salaries and wages, streetlight maintenance, utility costs for the District, landscaping services, graffiti removal, and park maintenance.

The City Council authorized such a report on April 4, 2017. The Engineer of Record, NBS Local Government Solutions (NBS) prepared and delivered the Engineer's Report prior to the May 2, 2017 City Council meeting. At the May 2, 2017 City Council meeting, this public hearing was scheduled.

In order for these assessments to be imposed, the City Council must accept the Engineer's Report and conduct a public hearing to hear comments on their imposition. The City is also required to cause the notice of the public hearing to be published one time at least ten days prior to the hearing in a newspaper of

general circulation. Such a notice was published in the *West County Times* on May 5, 2017.

The purpose of this public hearing is to confirm the diagram and the assessment, as appearing in the Engineer's Report. The procedures for conducting the public hearing and receiving protests are the same as for forming the District; however, there are no provisions for majority protest.

The California Streets and Highways Code Section 22631 specifies the options available to the City Council, as follows:

If a majority protest has not been filed, the legislative body may adopt a resolution confirming the diagram and assessment, either as originally proposed or as changed by it. The adoption of the resolution shall constitute the levy of an assessment for the fiscal year referred to in the assessment.

FINANCIAL CONSIDERATIONS

Staff estimates that the current rate of assessment will generate approximately \$773,000 of revenue, which is included in the total revenue estimate for the City's FY 2017-18 Budget. To the extent the expenditures eligible for funding by the LLAD exceed the amount received from this assessment, City staff are in the process of identifying other funding sources and reductions in expenditures, in order to keep the LLAD budget in balance.

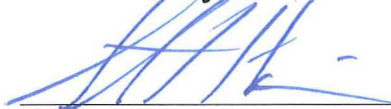
STRATEGIC PLAN

Approving the attached resolution will allow the City to ensure financial sustainability for the Landscape and Lighting Maintenance Program that benefit all residents of the City.

LEGAL CONSIDERATIONS

The provisions of the Landscape and Lighting Act of 1972 require that a public hearing be held prior to adopting a resolution levying the annual assessment.

Reviewed by:



Scott Hanin, City Manager

Attachment:

1. Resolution

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO CONFIRMING THE DIAGRAM AND LEVYING THE ASSESSMENT FOR FISCAL YEAR 2017-18 FOR THE LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT NO. 1988-1.

WHEREAS, the City of El Cerrito, by Resolution No. 88-53 dated June 6, 1988, adopted Assessment District No. 1988-1 pursuant to the Landscape and Lighting Act of 1972; and

WHEREAS, the City of El Cerrito, by Resolution No. 2017-20 dated April 4, 2017, directed the filing of the Annual Report for Assessment District No. 1988-1; and

WHEREAS, the Engineer of Record, NBS Local Government Solutions prepared and, on April 27, 2016 filed said Annual Report; and

WHEREAS, the City of El Cerrito by Resolution No. 2017-29, dated May 2, 2017, reviewed and accepted said annual report and declared its intent to order improvements and provided notice of a public hearing to be held May 16, 2017, and notice of the hearing was given in the time and manner required by law; and

WHEREAS, in November 1996, the voters approved the Landscape and Lighting Assessment thereby complying with the provisions of Proposition 218; and

WHEREAS, at the public hearing, the City Council afforded to every interested person an opportunity to make a protest to the annual report, and the City Council has considered each protest.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that the diagram and assessment as set forth in the Annual Report of the Engineer of Record is hereby confirmed and the assessment set forth therein for Fiscal Year 2017-18 is hereby levied.

BE IT FURTHER RESOLVED that this Resolution is adopted pursuant to California Streets and Highways Code §22631.

BE IT FURTHER RESOLVED that upon adoption of this resolution, the diagram and assessment, or a certified copy thereof is hereby directed to be filed with the County Auditor no later than August 10, 2017.

I CERTIFY that at the regular meeting on May 16, 2017 the El Cerrito City Council passed this resolution by the following vote:

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

Agenda Item No. 6(A)
Attachment 1

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

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 6(B)

Date: May 16, 2017
To: El Cerrito City Council
From: Shannon Collins, Accounting Supervisor
Yvetteh Ortiz, Public Works Director
Mark Rasiah, Finance Director/Treasurer
Subject: Public Hearing regarding Fiscal Year 2017-18 Storm Drain Annual Report and Method of Collecting Storm Drain Fees

ACTION REQUESTED

Conduct a public hearing and upon conclusion adopt a resolution approving the Fiscal Year 2017-18 Storm Drain Annual Report and directing that Storm Drain Fees be collected on the property tax rolls.

BACKGROUND

In March 1993, the voters of the City of El Cerrito approved the issuance of \$6.3 million in revenue bonds for the reconstruction of the City's storm drain system. In June 1993, the City Council adopted Ordinance 93-4, which amends Title 4 (Revenue and Finance) of the El Cerrito Municipal Code by adding a new Chapter 4.44, providing for the imposition and collection of Storm Drain Fees to pay the debt service on the revenue bonds and to fund the acquisition, construction, reconstruction, maintenance, and operation of storm drain facilities. Ordinance 93-4 set the Storm Drain Fee at \$58 for each single-family residential property and other amounts for other property types.

Ordinance 93-4 further provided that the Storm Drain Fees are to be collected on the property tax roll, based on amounts specified in an annual written report. Attachment 2 to this staff report is the FY 2017-18 Storm Drain Annual Report (Annual Report) which contains the description of each parcel of real property receiving storm drain services and the amount of the annual fee for each parcel. The engineering firm of NBS Local Government Solutions prepared the Annual Report.

The City must annually conduct a public hearing to consider the method of collecting the Storm Drain Fees. Notice of such a public hearing must be made at least twice within a two-week period, as specified in Government Code §6066, as follows:

Publication of notice pursuant to this section shall be once a week for two successive weeks. Two publications in a newspaper published once a week or oftener, with at least five days intervening

between the respective publication dates not counting such publication dates, are sufficient. The period of notice commences upon the first day of publication and terminates at the end of the fourteenth day, including therein the first day.

The City met this notification requirement by publishing the notice of public hearing in the *West County Times* on May 2, 2017 and May 9, 2017.

This hearing is not for consideration of the amounts of the Storm Drain Fees, which were already set by the City Council by adoption of Ordinance 93-4; however, the City Council may consider corrections to the use classification of properties in the Annual Report.

ANALYSIS

The City Council needs to determine whether a majority protest exists with respect to the method of collecting the Storm Drain Fees. If a majority protest is lodged against collecting these fees on the property tax roll (as a method of collection), the Storm Drain Fees shall be collected on behalf of the City by a public utility and the City Council would be required to authorize negotiation of an agreement with such a utility.

If the City Council finds that protest is made by the owners of a majority of the parcels of property described in the Annual Report, then the Annual Report shall not be adopted. In the event of such majority protest, the Storm Drain Fees may be collected with the rates for any publicly or privately owned utility through an agreement with such utility.

The administrative costs of collecting the Storm Drain Fee through utility services are substantially higher than by using the property tax bill. Also, if collected through a utility, the Storm Drain Fees would not constitute a lien against any parcel or parcels of land, which would make delinquent collections far more cumbersome and costly.

Since the amount of the Storm Drain Fee is based on property use, the public hearing also provides an opportunity for property owners to contest the fee amount based on the actual use of their property. The City Council may accordingly adjust the fee amount based on the property use.

The adoption of the Annual Report requires the same two-thirds vote as was required to enact Ordinance 93-4. If approved, the Annual Report must be filed with the County Auditor-Controller not later than August 10, 2017, per California Health and Safety Code Section 5474.4, as follows:

On or before the tenth day of August of each year following such final determination, the legislative body shall certify to the auditor a list of the lots or parcels of land, as they appear on the current assessment roll, subject to such fees or charges and the amounts

of the installments of such fees or charges and interest to be entered against such lots or parcels on the assessment roll.

FINANCIAL CONSIDERATIONS

The annual Storm Drain Fee will continue to be assessed at \$58 for each single-family residential unit. Such a rate is expected to generate annual revenues of approximately \$698,000. The last debt service payment on the Storm Drain Revenue Bonds was paid in FY 2013-14. Therefore, the FY 2017-18 proceeds of the Storm Drain Fees will be used to fund storm drain improvements, which will be reflected in the City's FY 2017-18 Budget.

LEGAL CONSIDERATIONS

California Health and Safety Code Section 5470 et seq. requires that a public hearing be held prior to adopting a resolution to accept the Annual Report and levying the annual Storm Drain Fees. The City has complied with the minimum public notice requirements.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. FY 2017-18 Storm Drain Annual Report

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ADOPTING THE FISCAL YEAR 2017-18 STORM DRAIN ANNUAL REPORT AND DIRECTING THAT STORM DRAIN FEES FOR FISCAL YEAR 2017-18 BE COLLECTED THROUGH THE PROPERTY TAX ROLLS

WHEREAS, the City of El Cerrito, by Ordinance 934, directed the filing of an annual report for the imposition and collection of storm drain fees; and

WHEREAS, the Engineering firm of NBS Local Government Solutions has prepared said Fiscal Year 2017-18 Storm Drain Annual Report (the "Annual Report"); and

WHEREAS, the City provided notice on May 2, 2017 and May 9, 2017 of a public hearing to be held by the City Council, with the notice of the hearing being given in the time and manner required by law; and

WHEREAS, at the public hearing the City Council afforded to every interested person an opportunity to make a protest to the Annual Report and the City Council has considered each protest.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito hereby confirms the storm drain fees as set forth in the Annual Report, directs the collection of these fees through the property tax rolls, and directs the City Clerk through NBS Local Government Solutions to file the Annual Report or a certified copy thereof with the County Auditor-Controller not later than August 10, 2017.

I CERTIFY that at the regular meeting on May 16, 2017 the El Cerrito City Council passed this resolution by the following vote:

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

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

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



CITY OF EL CERRITO

Storm Drain Reconstruction Project Annual Report

Fiscal Year 2017/18

OFFICE LOCATIONS:

Temecula – Corporate Headquarters
32605 Temecula Parkway, Suite 100
Temecula, CA 92592

San Francisco – Regional Office
870 Market Street, Suite 1223
San Francisco, CA 94102

California Satellite Offices
Atascadero, Davis
Huntington Beach,
Joshua Tree, Riverside
Sacramento, San Jose

Prepared by:



CITY OF EL CERRITO
10890 San Pablo Avenue
El Cerrito, California 94530
Phone - (510) 215-4300
Fax - (510) 215-4319

CITY COUNCIL

Janet Abelson, Mayor

Gabriel Quinto, Mayor Pro Tem

Paul Fadelli, Councilmember

Greg Lyman, Councilmember

Rochelle Pardue-Okimoto, Councilmember

CITY STAFF

Scott Hanin, City Manager

Mark Rasiah, Finance Director / City Treasurer

Yvetteh Ortiz, Public Works Director / City Engineer

Shannon Collins, Accounting Supervisor

NBS

Tim Seufert, Client Services Director

Greg Davidson, Project Manager

Andrew Kraus, Financial Analyst

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Section 1. EXECUTIVE SUMMARY

On March 2, 1993, the qualified voters of the City of El Cerrito (the "City") approved the issuance of revenue bonds in an amount not to exceed \$6.3 million to finance the first phase of the reconstruction of the City's storm drain system. The qualified voters also approved the repayment of those bonds through the imposition of an annual storm drain fee on property within the City.

Section 5470, et seq. of the *California Health and Safety Code* authorizes cities to enact an ordinance, approved by a two-thirds vote of the members of the legislative body, establishing fees and charges for services and facilities furnished by the City in connection with its storm drain system. The proceeds of these fees and charges may be used only for the acquisition, construction, reconstruction, maintenance, and operation of its storm drain facilities, including the repayment of principal and interest on bonds issued to finance the construction or reconstruction of such facilities.

The storm drain fees and charges may be used exclusively for the purposes of the storm drain system and for the payment of interest and redemption, including premiums payable from the calling of bonds, for those bonds authorized by the qualified voters on March 2, 1993, and for the payment of interest and redemption, including premiums payable from the calling of bonds, for any other bonds for storm drain construction or reconstruction which may be authorized in the future, provided that such bonds are approved in the manner required by California law.

The authorized amounts and rates for storm drain fees and charges are as follows:

Parcel Classification	Rate
Single Family residential	\$58.00 per unit
Multi Family residential 2 through 20 units	43.50 per unit
Multi Family residential over 20 units	870.00 plus 29.00 for each unit over 20
Commercial/Industrial	870.00 per acre
Institutional (Churches, Schools, Fraternal and Service Organizations)	406.00 per acre
Golf Courses, Cemeteries, Vacant Land	11.60 per acre

The following table summarizes the Fiscal Year 2017/18 annual levy by Classification of parcel:

Parcel Classification	Number of Parcels (1)	Levy Total (2)
Single Family residential	7,514	\$441,314.00
Multi Family residential	615	121,133.00
Commercial/Industrial	262	103,500.40
Institutional (Churches, Schools, Fraternal and Service Organizations)	50	32,105.14
Golf Courses, Cemeteries, Vacant Land	204	2,283.22
Exempt	155	0.00
Total:	8,800	\$700,335.76

(1) Includes parcels divided by City boundaries.

(2) Total amount may vary slightly due to rounding adjustments.

Section 2. ASSESSMENTS

2.1 Method of Assessment

The number of Equivalent Residential Units ("ERUs") was determined for each parcel based upon an estimate of the impervious surface associated with the use of the property.

- 1) Single Family (detached) Residential ("SFR") parcels were assumed to have an average of 2,900 sq. ft. of impervious surface. Approximately 90% of the properties in the City are SFR. These parcels were assigned 1.0 ERU.
- 2) Multi Family dwelling unit complexes of up to 20 units were assigned 0.75 ERU (2,175 sq. ft) of impervious surface area per unit. Complexes of more than 20 units were assigned 15 ERU plus 0.5 ERU (1,450 sq. ft) for each unit over 20.
- 3) Commercial/Industrial uses were assigned 15.0 ERU (43,560/2,900 sq. ft.) of impervious surface area per acre.
- 4) Institutional uses such as Churches, Schools, Fraternal and Service Organizations were assigned 7.0 ERU (21,000 sq. ft.) of impervious surface area per acre based upon the Contra Costa County Report on Stormwater Utility Assessment dated March 1994 (County Report).
- 5) Golf courses, cemeteries, and other open spaces were assigned 0.2 ERU (580 sq. ft.) per acre based upon the County Report.

The storm drain fee for a parcel is calculated by multiplying the number of ERU assigned to such parcel by the rate per ERU. The rate for the 2017/18 Fiscal Year is \$58.00/ERU.

The following table shows a breakdown of Classification of parcels by County Use Code and the associated rates for Fiscal Year 2017/18:

Parcel Classification	County Use Code (1)(2)	ERU (3)	Rates
Single Family residential	11, 12, 13, 14, 15, 16, 19, 29, 89	1.0	\$58.00 per unit
Multi Family residential 2 through 20 units	21, 22, 23, 24, 25, 26, 27, 28	0.75*n	43.50 per unit
Multi Family residential over 20 units	21, 22, 23, 24, 25, 26, 27, 28	15.0 + 0.5*m	870.00 + 29.00 for each unit over 20
Commercial/Industrial	31, 32, 33, 34, 35, 36, 41, 42, 43, 44, 45, 46, 47, 48, 49, 53, 85	15.0*A	870.00 per acre
Institutional (Churches, Schools, Fraternal and Service Organizations)	70, 71, 72, 75, 76	7.0*A	406.00 per acre
Golf Courses, Cemeteries, Vacant Land	10, 17, 18, 20, 30, 37, 38, 50, 63, 74, 78, 81	0.2*A	11.60 per acre

(1) Use Code 79 is assigned to Government Owned, and is not charged

(2) Use Code 83 is assigned to State Board Assessed, and is not charged

(3) n = number of residential units up to 20

m = number of residential units over 20

A = acreage, per Contra Costa County Assessor or City Estimate

2.2 Collection of Fees and Charges

The storm drain fees and charges may be collected on the tax roll in the same manner, by the same persons, and at the same time as, together with and not separately from, the City's general taxes.

The City Council will have prepared each year, prior to the commencement of the fiscal year, a written report which will be filed with the City. The report is to contain a description of each parcel of real property receiving storm drain services and the amount of the annual fee and charge for each parcel. This charge will be computed in conformity with the fees and charges prescribed in the report.

2.3 Annual Hearing

Each year, prior to the commencement of the fiscal year, the City Council will hold a public hearing at which the Council will hear and consider all objections and protests, if any, to the written report. The City Council may continue the hearing from time to time. If the City Council finds that protest is made by the owners of a majority of the parcels of property described in the report, then the report will not be adopted. In the event of such majority protest, the storm drain fees and charges will be collected with the rates for any other publicly or privately owned public utility through agreement with such utility. If collected in this manner, the storm drain fees and charges will not constitute a lien against any parcel or parcels of land.

2.4 Notice

Notice of the filing of the report and of the time and place of hearing thereon, is to be published once a week for two consecutive weeks prior to the hearing, in a newspaper of general circulation printed, published or distributed in the City.

Section 3. LIST OF CHARGES

The parcel list of charges is provided as a separate document and is incorporated herein by reference.



**May 16, 2017
Regular City Council Meeting**

**Agenda Item No. 6(B)
Fiscal Year 2017-18 Storm Drain Annual Report and Method
of Collecting Storm Drain Fees**

Attachment 2 List of Charges

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. 6(C)

Date: May 16, 2017
To: El Cerrito City Council
From: Margaret Kavanaugh-Lynch, Development Services Manager
Subject: Update Accessory Dwelling Unit Regulations

ACTION REQUESTED

Staff recommends that the City Council conduct a public hearing and upon conclusion introduce by title and waive any further reading of an ordinance amending various sections of Titles 8 and 19 of the El Cerrito Municipal Code to update the City's Accessory Dwelling Unit Regulations.

BACKGROUND

Over the last two decades, the State of California has adopted a number of laws that encourage the development of Accessory Dwelling Units (ADUs) and limit the requirements that cities and other local agencies may impose on them. In 2016, the California legislature passed two bills, SB1069 and AB2299, intended to facilitate the creation of ADUs. Governor Brown signed the bills into law on September 27, 2016, and the law went into effect on January 1, 2017. The law amends California Government Code 65852.2 to provide greater allowances for ADUs and limit the requirements that cities can impose on their development. The El Cerrito Municipal Code (ECMC) must be amended for consistency with recent State legislation. These amendments will allow the community to have a clear set of regulations to use as a reference.

While the primary goal of this amendment was to bring ECMC into compliance with State law, staff also identified this hearing as an opportunity to have the City Council consider a few additional changes related to making the existing regulations easier to implement and for various reasons to decrease the level of discretionary review needed to grant relief to development standards. These changes are noted in the Table and Analysis, below. The Planning Commission met and discussed this action at the April 2017 meeting. They were generally very supportive of the proposed changes. Their formal comments have also been included below.

This action was also intended to be a first step to address non-controversial items related to ADUs. Staff notes that additional changes to the ADU regulations are being considered as part of the City's Affordable Housing Strategy Program. More information on this Program is available here: <http://www.el-cerrito.org/AffordableHousing>

As an introduction to the public, staff wanted to begin this staff report with a few fundamental concepts.

What is an Accessory Dwelling Unit?

An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons and generally takes two forms:

- Detached: The unit is separated from the primary structure
- Attached: The unit is attached to/included in the primary structure

ADUs are typically created through the conversion of existing living space in a single-family home, the addition of space to an existing home, or in a detached structure in the rear yard.

Why are they important?

ADUs are an effective way to increase housing options without changing neighborhood character. They can provide affordable housing for renters, a source of income for homeowners, and a housing resource for extended families, seniors, college students, and others. ADUs represent a form of infill development that can be relatively affordable to construct and/or rent and offer innovative housing choices within existing neighborhoods.

In El Cerrito, the City typically saw approximately seven new Accessory Dwelling Units constructed each year, over the last five years. A notable exception was in 2016, when that number more than doubled and thirteen ADUs were approved for construction. In the first five months of 2017, only three ADU applications have been submitted, however, staff reports that there is a lot of interest in ADUs being expressed by members of the public. Many seem to be awaiting these new regulations to be in place in order to move forward.

ANALYSIS

Highlights of the new State law (the amendments to Government Code 65852.2) include:

- References to “second unit” or “secondary dwelling unit” must be replaced with the term “accessory dwelling unit.”
- ADUs up to 50 percent of the living area of an existing dwelling and not exceeding 1,200 square feet may be permitted.
- Cities cannot require more than one parking space per bedroom or accessory dwelling unit.
- Cities must allow off-street parking requirements to be met through tandem parking or within setback areas.
- Cities must waive parking requirements for ADUs that do not increase the footprint of existing structures, or that are located within one-half mile of public transit, one block of a car-share vehicle station, or in a historic district.
- Additional streamlined requirements (relating to setbacks and other development standards) apply to ADUs that are contained entirely within existing structures.

For example, existing garages converted to ADUs cannot be required to provide a setback.

- Cities can limit the use of ADUs as short-term rentals.

The ECMC currently permits ADUs in all residential zoning districts (outside the San Pablo Avenue Specific Plan Area) on any lot with an existing single-family dwelling or where a single-family dwelling is proposed to be established in conjunction with construction of the ADU. ADUs are subject to standards for floor area, location, parking, height, and other physical features. These development standards and other special regulations for ADUs are mostly concentrated in Section 19.20.190, (Second Units) of the Zoning Ordinance. The parking regulations for ADUs are cross-referenced/repeated in Chapter 19.24, Off-Street Parking and Loading. Currently, if ADUs meet all of the standards of Section 19.20.190, they are approved “by-right” (or ministerial review) through a permit called an Accessory Dwelling Unit Permit. ADU projects that do not meet one or more development standards may be allowed through a Conditional or an Administrative Use Permit (discretionary permits).

Although many of the El Cerrito’s existing standards for ADUs can be carried forward; others conflict with the new/revised State law and must be amended. To facilitate discussion, staff has created Table 1.

- The first column quotes the existing zoning ordinance text.
- The second column identifies if changes are needed and if they are it notes whether the change is mandatory, recommended by staff as clarifications or proposed as a suggestion to further streamline the process.
- The third column contains the amended language.
- The second and third columns also contain the recommended changes brought forward by the Planning Commission.

For sections that contain revisions, a narrative is also provided after the Table, by topic.

Current Zoning Ordinance Sections	Must Section Be Amended?	Suggested Amendments (Amendments recommended by the Planning Commission are shown in <i>bold italics</i>)
A. Where Allowed. Second Units may be established on any lot in the RS, RD or RM district where a primary single family dwelling has been previously established or is proposed to be established in conjunction with construction of a second unit. Only one Second Unit is permitted per	This section is consistent with State law.	None

Current Zoning Ordinance Sections	Must Section Be Amended?	Suggested Amendments (Amendments recommended by the Planning Commission are shown in <i>bold italics</i>)
primary single-family dwelling on the same lot.		
B. Owner Occupancy. The legal owner of the property shall occupy either the primary dwelling or Second Unit as the owner's primary residence. Prior to the issuance of a building permit for a Second Unit, the applicant shall record notice of this requirement as a deed restriction, in accordance with Subsection I, in the Contra Costa County Recorder's Office.	This section is consistent with State law.	None
C. Type of Unit. A Second Unit may be attached, detached, or located within the living area of the primary dwelling unit on the lot, subject to the standards of this Section.	This section is consistent with State law.	None
D. Minimum and Maximum Floor Area. 1. The maximum floor area of a Second Unit shall not exceed 750 square feet or 40 percent of the floor area of the primary dwelling, whichever is less, except that an attached Second Unit of 400 square feet in floor area is permitted regardless of the size of the primary dwelling. Up to 1200 square feet or 75% of the floor area of the primary dwelling, whichever is less, may be permitted with the approval of a Conditional Use Permit.	New language is needed.	<i>The habitable floor area of an attached or detached accessory dwelling unit shall not exceed 50% of the habitable floor area of the primary dwelling unit, up to a maximum of 1,200 square feet. These shall be the resulting habitable floor areas of each unit after construction, addition, or conversion to create the accessory dwelling unit.</i> <i>No Second Unit may be smaller than 150 square feet.</i>

Current Zoning Ordinance Sections	Must Section Be Amended?	Suggested Amendments (Amendments recommended by the Planning Commission are shown in <i>bold italics</i>)
2. No Second Unit may be smaller than 150 square feet.		
D. Development Standards. Second Units shall conform to setback, height, lot coverage, and other zoning requirements applicable to the primary dwelling in the zoning district where the Second Unit is proposed, subject to the following additional standards: 1. The maximum height of a detached Second Unit is 15 feet. A detached Second Unit may exceed 15 feet in height with the approval of a Conditional Use Permit. 2. An attached or detached Second Unit shall be located on the interior side of a corner lot or behind the existing dwelling. 3. An attached Second Unit that results in two-story construction shall be located in the rear half of the structure. 4. A Second Unit shall have a separate, private exterior entrance.	Clarifying language is recommended in some cases and required in the case of a garage conversion.	<i>Detached Units—Interior Lots. A detached Accessory Dwelling Unit shall be located behind the primary dwelling in relation to the front lot line. For the purpose of this regulation, “behind” shall mean that at least one of the following criteria is met:</i> <i>i. All portions of the Accessory Dwelling Unit are located behind all portions of the primary unit.</i> <i>ii. The Accessory Dwelling Unit is located partially behind the primary dwelling unit, and the front façade of the Accessory Dwelling Unit is at least 20 feet farther from the front lot line than is the front façade of the primary unit.</i> <i>iii. The Accessory Dwelling Unit is located entirely in the rear half of the lot.</i> <i>Detached Units—Corner Lots. On corner lots, the standard of Subsection (a) above shall be met on the front of the property. In addition, a detached Accessory Dwelling Unit shall not be located closer than the primary dwelling unit to the street-facing side lot line.</i> <i>Attached Units.</i>

Current Zoning Ordinance Sections	Must Section Be Amended?	Suggested Amendments (Amendments recommended by the Planning Commission are shown in <i>bold italics</i>)
		<i>i. The exterior entry to the Accessory Dwelling Unit shall be located at least 10 feet behind the exterior entry to the primary unit, or shall be located on the side or rear of the dwelling.</i> <i>ii. If an attached ADU is created through an addition to an existing single-family dwelling at the second or higher story of the dwelling, such ADU shall be located in the rear half of the structure.</i> <i>An Accessory Dwelling Unit that is created through the conversion of an existing attached or detached garage and is located entirely within the footprint of such garage may maintain the existing garage setback, irrespective of whether the setback conforms to the required minimum for a garage, an accessory structure, or living space</i>
E. Architectural Compatibility. The architectural design, exterior materials and colors, roof pitch and style, type of windows, and trim details of the second unit shall be substantially the same as, and visually harmonious and compatible with the primary dwelling, as determined by the Zoning Administrator. Color photographs of the street-facing side(s) of the primary dwelling unit shall be submitted with the second unit	This section is consistent with State law. Planning Commission recommends that the “and” be switched to “or” to allow for additional flexibility in meeting this	To now read, “...substantially the same as, <i>or</i> visually harmonious and compatible with the primary dwelling,...”

Current Zoning Ordinance Sections	Must Section Be Amended?	Suggested Amendments (Amendments recommended by the Planning Commission are shown in <i>bold italics</i>)
building permit application.	criterion.	
F. Parking. One additional parking space shall be provided for each Second Unit. This space may be in tandem with required parking of the principal dwelling unit, may be located in front setback areas provided the ground slope in this area does not exceed 10 percent and may be uncovered. The principal dwelling unit must conform to the parking requirements of Chapter 19.24, Off-Street Parking and Loading.	New language is needed. The Planning Commission first noted that they would like to require no additional parking for ADUs. Additional changes may be brought forth with the Affordable Housing Strategy.	<i>Parking Maintenance.</i> <i>The development of an Accessory Dwelling Unit shall not reduce required parking for the primary dwelling unit below that which is required by Section 19.24.040, Required Off-Street Parking Spaces. If required off-street spaces to serve the primary unit are eliminated in conjunction with development of the Accessory Dwelling Unit, they shall be replaced. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an Accessory Dwelling Unit, or is converted to an Accessory Dwelling Unit, the replacement parking spaces are not required to be covered and may consist of a simple parking pad; to the satisfaction of the Zoning Administrator.</i> <i>Parking Exceptions. No parking space shall be required in conjunction with the creation of an Accessory Dwelling Unit if one or more of the following conditions exist:</i> <i>a. The Accessory Dwelling Unit is located within one-half mile of:</i> <i>i. A Bay Area Rapid Transit</i>

Current Sections	Zoning	Ordinance	Must Section Be Amended?	Suggested Amendments (Amendments recommended by the Planning Commission are shown in <i>bold italics</i>)
				<i>(BART) station; or</i> <i>ii. A stop that serves one or more bus lines that cumulatively provide both 15-minute or more frequent peak-hour service on weekdays and 20 60-minute or more frequent service on Saturdays, Sundays, and holidays.</i> <i>(1) For the purpose of determining weekday peak-hour service frequency, “peak hour” shall mean 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m. In cases in which headways vary during these time periods, peak-hour frequency shall be the average headway during these periods.</i> <i>(2) In order to determine whether an Accessory Dwelling Unit is located within one-half mile of public transit, the distance shall be measured as a straight line, without regard to intervening structures or objects, from the property line of the property containing the Accessory Dwelling Unit to the qualifying transit station or stop. In the case of a BART station, the distance shall be measured to the nearest edge of the outer wall of the primary station building. It need not be measured to the nearest passenger entrance to the station building. It shall not be measured to the edge of the BART property</i>

Current Zoning Ordinance Sections	Must Section Be Amended?	Suggested Amendments (Amendments recommended by the Planning Commission are shown in <i>bold italics</i>)
		<i>or parking lot.</i> <i>b. The Accessory Dwelling Unit is located within a designated architecturally and historically significant historic district.</i> <i>c. The Accessory Dwelling Unit is attached to and does not increase the footprint of the existing primary residence or an existing accessory structure.</i> <i>d. On-street parking permits are required but not offered to the occupant of the Accessory Dwelling Unit.</i> <i>e. There is a designated car share vehicle pick-up location within one block of the Accessory Dwelling Unit.</i> <i>f. The applicant has conducted an inventory of on-street parking in the vicinity of the project and demonstrated, to the satisfaction of the Zoning Administrator, that consists of identifying two twenty foot long spaces along the curb, within three hundred feet of the front property line that are vacant at 7:00 pm on any weeknight. If these two spaces are identified then it is believed that there is sufficient on-street parking to serve the proposed Accessory Dwelling Unit.</i>

Current Zoning Ordinance Sections	Must Section Be Amended?	Suggested Amendments (Amendments recommended by the Planning Commission are shown in <i>bold italics</i>)
G. Exceptions. Exceptions to Subsections E and F above shall require an Administrative Use Permit and a finding that the second unit is compatible with, and preserves, the single-family character of the primary dwelling and the surrounding neighborhood. Exceptions to Subsections D and G above shall require a Conditional Use Permit.	Staff recommends minor changes.	<i>Exceptions to Subsections D, E and F above shall require an Administrative Use Permit, according to the procedures of Chapter 19.34, Use Permits. In addition to the findings for approval of Section 19.34.040, the decision-making authority shall only grant approval if it finds the Accessory Dwelling Unit is compatible with, and preserves, the applicable residential character of the primary dwelling and the surrounding neighborhood. Additionally:</i> <i>1. The hearing shall be publically noticed not less than twenty-one days in the local newspaper and to all property owners located within a 300 foot radius.</i> <i>2. Any decision of the Zoning Administrator shall be appealed directly to the Planning Commission.</i>
H. Deed Restriction. The Second Unit shall not be sold, transferred, or assigned separately from the Primary Dwelling. Before obtaining a building permit for the Second Unit, the owner of the lot or parcel shall file with the County Recorder a declaration or agreement of restrictions, which has been approved by the City Attorney as to its form and content, containing a reference to the deed	This section is consistent with State law.	

Current Zoning Ordinance Sections	Must Section Be Amended?	Suggested Amendments (Amendments recommended by the Planning Commission are shown in <i>bold italics</i>)
under which the property was acquired by the owner and stating that: 1. The Second Unit shall not be sold separately; 2. The Second Unit shall be considered legal only so long as either the Primary Dwelling or the Second Unit is occupied by the owner of record of the property; and 3. The restrictions shall be binding upon any successor in ownership of the property and lack of compliance shall result in legal action against the property owner.		

Maximum Floor Area

State law grants cities the authority to establish minimum and maximum unit sizes. Government Code Section 65852.2(c) states:

A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards.

The default state standards for ADUs include the following maximum unit sizes in Government Code 65852.2(a)(1)(D).

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet.

The standard proposed by staff would be consistent with the intent of the State law to facilitate the development of ADUs. In addition, it would maintain a proportionality standard not only for attached units but also for detached units. This standard would continue to allow a certain floor area to be regardless of the size of the existing primary dwelling. The purpose of this allowance is to give owners of small homes the opportunity and flexibility to develop adequate ADUs to meet their needs.

Development Standards

Location

Government Code 65852.2(a) states that local agencies may establish development standards for ADUs. The new state law does not affect El Cerrito's locational standards for ADUs, but this amendment presents a good opportunity to clarify their implementation. The purpose of the locational requirements is to maintain a single-family residential character and appearance by ensuring that ADUs are non-dominant in their presence from the public street.

The existing Zoning Ordinance currently requires that an ADU be located behind the primary unit, in relation to adjacent streets. Staff proposes to maintain this locational requirement and add provisions to clarify its implementation.

With regard to attached ADUs, the maintenance of a single-family residential appearance could be more effectively achieved by a regulation for the location of entries than by the existing requirement that ADUs must be located behind primary dwellings. Two entry doors on the front façade of a building can create the appearance of a duplex. By contrast, locating the entry to an ADU on the side or rear of a dwelling helps keep an ADU visually subordinate and maintain a single-family appearance.

In addition, attached ADUs created through conversion of a portion of an existing dwelling are commonly created out of an existing basement or lower level. This layout provides a practical way to separate the living spaces of the respective units by level. In some cases, it means that an ADU is not technically behind the main unit in relation to the front lot line but rather is below (or above) the main unit. The existing regulation does not reflect this practical reality.

Conversion of Existing Garages

The new State law states that no setback may be required for units created through conversion of existing garages. Section 65852.2(a)(1)(D) contains the following:

(vii) No setback shall be required for an existing garage that is converted to a [sic] accessory dwelling unit, and a setback of no more than five feet from the side and rear

lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

The City's Zoning Ordinance must be consistent with the above requirement. No setback can be required for an existing garage that is converted to an ADU. This zero setback allowance will facilitate the creation of ADUs by allowing for the cost efficient utilization of properties with existing garages. The issue of what sort of replacement parking may be needed is addressed in the next Section. A garage conversion ADU would still need to be designed to meet the City's Building and Fire Codes to ensure basic life safety requirements are met.

Parking Requirements

Government Code Section 65852.2(a)(1)(D)(x) states:

(I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

The existing Zoning Ordinance only requires one off-street parking space for each accessory dwelling unit. This required space is in addition to spaces required for the primary dwelling unit on the same lot. Section 19.20.190 states that the required space for the accessory dwelling unit may be in tandem with required parking of the principal dwelling unit, may be located in front setback areas provided the ground slope in this area does not exceed 10 percent, and may be uncovered. The Planning Commission offered an additional clarification to this language, below.

The existing parking requirement of one off-street parking space to serve each accessory dwelling unit, as well as the allowances for such parking to be uncovered and in tandem, is consistent with State law. Staff recommends carrying forward the existing requirement of one space per accessory dwelling unit, with exemptions in certain situations described below.

Comments from the Planning Commission: In their resolution (Attachment 2), they recommended that the City Council not require any additional parking spaces for new Accessory Dwelling Units. However, if that recommendation was not supportable, they offered additional language, noted below in **bold**. Staff is currently forwarding the alternative and will address the Planning Commission's further recommendations during the development of the Affordable Housing Strategy.

- The modification to the weekend service intervals was meant to relax some of the requirements related to minimum frequency on the weekends and holidays.
- The modification to the parking inventory was to quantify exactly how a resident could (without technical assistance) prove that there was at least two on-street parking spaces near the subject property at time when most neighbors are home and using on-street parking to serve their ADU.

In terms of maintenance of parking spaces, the Planning Commission noted that a simple parking pad would suffice instead an engineered surface or pavement.

Exemptions to Parking Requirements and Parking Maintenance

State law requires cities to exempt ADUs from off-street parking requirements in a number of circumstances. Government Code 65852.2(d) states:

Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile of public transit.*
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.*
- (3) The Accessory Dwelling Unit is attached to and does not increase the footprint of the existing primary residence or an existing accessory structure.*
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.*
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.*

The law does not define “public transit,” leaving it up to cities to interpret and apply this provision. Staff believes that the parking exemption based on proximity to public transit should relate to the potential for reduced parking demand. The principle behind the parking exemption is that if residents have access to good public transit, it can reduce their need for car ownership and parking spaces. Therefore, the provision should apply to transit stops and stations that provide relatively frequent service for the majority of the day, not just during peak commute hours, and on weekends as well as weekdays.

In El Cerrito, the second criterion will capture the #72 bus rapid transit (BRT) line and other stops on San Pablo Avenue that offer frequent, daily service. It will not capture stops that serve lines that offer only peak-hour commuter service, such as the Transbay G line. It also would not capture infrequent services in the hill areas. The amendment also includes rules of measurement to determine whether an accessory dwelling unit is

located within one-half mile of public transit. For example, the distance to a BART station would be measured from the edge of the property containing the ADU to the outer wall of the BART passenger station building, rather than to the edge of the BART parking lot.

The State law's parking exemption for proximity to a "car share vehicle" is implemented in the amendment as "car share vehicle pick-up station."

In addition to the provisions for parking exemptions specified in State law; staff recommends allowing ADU projects to be exempted from providing off-street parking if the applicant can demonstrate that there is an adequate supply of on-street parking available near the site. The applicant would conduct an inventory of on-street parking space availability according to the procedure created by Planning Commission.

The amendment proposes that City continue to require that an ADU shall not reduce required parking for the primary dwelling unit below that which is required by Section 19.24.040, Required Off-Street Parking Spaces. If required off-street spaces to serve the primary unit are eliminated in conjunction with development of the Accessory Dwelling Unit, they shall be replaced. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an Accessory Dwelling Unit, or is converted to an Accessory Dwelling Unit, the replacement parking spaces are not required to be covered **and may consist of a simple parking pad; to the satisfaction of the Zoning Administrator.** The Planning Commission added this notation to ensure that the most basic level of parking pad should be considered sufficient for this purpose.

Amending Level of Review

ECMC allows some ADUs to be permitted "by-right" (or ministerial review) if they met certain development standards and either an Administrative Use Permit or a Conditional Use Permit; if relief from some development standards were required. Staff recommends considering changing the body of decision for the discretionary review to only Administrative Use Permits.

The goal of this suggestion was primarily to bring the ECMC into compliance with the spirit of the State law, although it was not technically mandated. Streamlining and facilitating the creation of ADUs was also in keeping with Implementation Item H2.3 of the Housing Element and a task to facilitate ADUs included in the Planning Commission's Work Plan.

For these reasons, staff is recommending that the amendment include a revision to allow relief from any of the stipulated regulations with an Administrative Use Permit to be heard by the Zoning Administrator.

This style of hearings is:

- Discretionary public hearings, but they are held at the staff level and allow for a more informal discussion to be established.
- Can be set whenever a project is ready for review, instead of waiting for the next regular meeting of the Planning Commission.
- Approximately \$247.00 less expensive than full Planning Commission hearings.

In addition, Staff is recommending increasing noticing requirement from ten to twenty-one days to allow surrounding neighbors time to more completely consider the project. (This is the noticing requirement for projects in the San Pablo Avenue Specific Plan area.) And, since ADUs are currently the purview of the Planning Commission, staff recommends that any appeal of the Zoning Administrator should go directly to them. These changes afford a significant cost and time savings for applicants interested in ADUs.

Short-term Rentals

State law allows cities to limit or prohibit the use of ADUs as short-term rentals (e.g., Air BnB).

Staff has already made the interpretation that pursuant to current code short-term rentals of thirty days or less are not allowed in the city. Bed and Breakfasts are allowed and their specific regulations are located in Section 19.20.050.

Code Changes for Internal Consistency

In addition to Section 19.20.190, the section that contains most of the regulations for ADUs, various other sections of the municipal code need to be amended for internal consistency and for consistency with the State law. Specifically, the term “Secondary Unit” will be replaced with “Accessory Dwelling Unit” wherever it appears. In addition, the above-described amendments to the parking requirements will be incorporated into Chapter 19.24, Off-Street Parking and Loading.

ECMC—SECTIONS TO BE AMENDED		
SECTION NUMBER	SECTION NAME	REQUIRED CHANGES
8.6.020.I..2	DEFINITIONS	CHANGE "SECOND UNIT" TO "ACCESSORY DWELLING UNIT."
19.06.020	LAND USE REGULATIONS	CHANGE "SECOND UNIT" TO "ACCESSORY DWELLING UNIT."
19.06.030	TABLE 19.06.B DEVELOPMENT STANDARDS	CHANGE "SECOND UNIT" TO "ACCESSORY DWELLING UNIT."
19.07.020	LAND USE REGULATIONS	CHANGE "SECOND UNIT" TO "ACCESSORY DWELLING UNIT."
19.24.040	TABLE 19.24-A REQUIRED PARKING	CHANGE "SECOND UNIT" TO "ACCESSORY DWELLING UNIT.".
19.24.040.F	ACCESS TO SPACES	CHANGE "SECOND UNIT" TO "ACCESSORY DWELLING UNIT.".
19.24.050	TABLE 19.24-A PARKING REDUCTIONS	CHANGE "SECOND UNIT" TO "ACCESSORY DWELLING UNIT."
19.25.090. B.3	BUFFER YARDS	CHANGE "SECOND UNIT" TO "ACCESSORY DWELLING UNIT."
19.46.030	RESIDENTIAL USE CLASSIFICATIONS	CHANGE "SECOND UNIT" TO "ACCESSORY DWELLING UNIT.".
19..47.010	TERMS AND DEFINITIONS	CHANGE "ACCESSORY LIVING UNIT" TO "ACCESSORY DWELLING UNIT.".
19.47.020	LIST OF TERMS	CHANGE " ACCESSORY LIVING UNIT " TO "ACCESSORY DWELLING UNIT.".

STRATEGIC PLAN CONSIDERATIONS

This action is consistent with the El Cerrito Strategic Plan Goal A - Deliver exemplary government services by allowing additional design flexibility, lower cost and swifter service to community members that would like to construct an ADU.

ENVIRONMENTAL CONSIDERATIONS

Pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), the adoption of an ordinance regarding accessory dwelling units in a single-family or multifamily residential zone by a city to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from the requirements of CEQA. Similarly, the ministerial approval of ADUs would not be a "project" for CEQA purposes, and environmental review would not be required prior to

approving individual applications. (Individual ADU applications would be categorically exempt under Existing Facilities (Sec. 15301), Replacement or Reconstruction (Sec. 15302), or Construction or Conversion of Small Structures (Sec. 15303).)

FINANCIAL CONSIDERATIONS

There is no anticipated fiscal impact as the costs would be recovered through existing application fees.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the ordinance and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Ordinance
2. Planning Commission Resolution 17-03

ORDINANCE NO. 2017-XX

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING VARIOUS SECTIONS OF THE EL CERRITO MUNICIPAL CODE RELATED TO ACCESSORY DWELLING UNITS

WHEREAS, Senate Bill (SB) 1069 and Assembly Bill (AB) 2099 became effective on January 1, 2017, adding sections 65852.1 and 6582.2 to the Government Code and modifying the requirements for second units or “accessory dwelling units” related to unit size, parking, and fees; and

WHEREAS, El Cerrito Zoning Ordinance allows for the establishment of a second unit on any lot in the RS, RD or RM zoning district where a primary single family dwelling has been previously established or is proposed to be established in conjunction with construction of a second unit; and

WHEREAS, accessory dwelling units are an effective way to increase housing options without changing neighborhood character; they can provide affordable housing for renters, a source of income for homeowners, and a housing resource for extended families, seniors, college students, and others; they represent a form of infill development that can be relatively affordable to construct and/or rent and offer innovative housing choices within existing neighborhoods; and

WHEREAS, at a properly noticed public hearing held on April 19, 2017, the Planning Commission adopted Resolution PC-17-03 recommending City Council adoption of an ordinance to: 1) amend the maximum unit size requirements and the parking standards in specific instances consistent with State law; 2) clarify certain development standards; and 3) amend requirements for obtaining an Administrative Use Permit for structures that do not conform to the Ordinance (collectively referred to as “Municipal Code Amendments”); and

WHEREAS, a Staff Report was submitted to the City of El Cerrito City Council recommending approval of the proposed Municipal Code Amendments; and

WHEREAS, the City Council held a public hearing on the proposed Municipal Code Amendments on May 17, 2016, at which time all interested parties had the opportunity to be heard; and

WHEREAS, proper notice of said hearing was given in all respects as required by law; and

WHEREAS, the City Council did hear and consider all said reports, recommendations and testimony herein above set forth and used its independent judgment to evaluate the project.

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

1. Incorporation of Recitals. The City Council finds that the above Recitals are true and correct and are incorporated herein by reference.
2. Amendment of Section 19.20.190 of the Municipal Code. Title 19, Zoning, Section 19.20.190 of the El Cerrito Municipal Code is hereby deleted in its entirety and replaced with a new Section 19.20.190 to read as follows:

Section 19.20.190 Accessory Dwelling Units.

The following regulations are intended to comply with Government Code Sections 65852.150 and 65852.2, or any successor statutes on Accessory Dwelling Units, and implement the General Plan by allowing Accessory Dwelling Units subject to the following requirements:

- A. Where Allowed. An Accessory Dwelling Unit may be established on any lot in RS, RD or RM zoning district, as identified in Chapter 19.06, where a primary single-family dwelling has been previously established or is proposed to be established in conjunction with construction of an Accessory Dwelling Unit. Only one Accessory Dwelling Unit is permitted per primary single-family dwelling on the same lot.
- B. Owner Occupancy. A legal owner of the property shall occupy either the primary dwelling or Accessory Dwelling Unit as the owner's primary residence. Prior to the issuance of a building permit for an Accessory Dwelling Unit, the applicant shall record notice of this requirement as a deed restriction, in accordance with Subsection G, in the Contra Costa County Recorder's Office.
- C. Type of Unit. An Accessory Dwelling Unit may be attached to the primary dwelling, located within the living area of the primary dwelling, or detached from but located on the same lot as the primary dwelling.
- D. Development Standards. Accessory Dwelling Units shall conform to setback, height, lot coverage, and other development standards applicable to the primary dwelling unit in the zoning district where the Accessory Dwelling Unit is proposed, subject to the following additional standards.
 1. Location on Lot.
 - a. Detached Units—Interior Lots. A detached Accessory Dwelling Unit shall be located behind the primary dwelling in relation to the front lot

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line. For the purpose of this regulation, “behind” shall mean that at least one of the following criteria is met:

- i. All portions of the Accessory Dwelling Unit are located behind all portions of the primary unit.
 - ii. The Accessory Dwelling Unit is located partially behind the primary dwelling unit, and the front façade of the Accessory Dwelling Unit is at least 20 feet farther from the front lot line than is the front façade of the primary unit.
 - iii. The Accessory Dwelling Unit is located entirely in the rear half of the lot.
 - b. Detached Units—Corner Lots. On corner lots, the standard of Subsection (a) above shall be met on the front of the property. In addition, a detached Accessory Dwelling Unit shall not be located closer than the primary dwelling unit to the street-facing side lot line.
 - c. Attached Units.
 - i. The exterior entry to the Accessory Dwelling Unit shall be located at least 10 feet behind the exterior entry to the primary unit, or shall be located on the side or rear of the dwelling.
 - ii. If an attached ADU is created through an addition to an existing single-family dwelling at the second or higher story of the dwelling, such ADU shall be located in the rear half of the structure.
2. Conversion of Garages. An Accessory Dwelling Unit that is created through the conversion of an existing attached or detached garage and is located entirely within the footprint of such garage may maintain the existing garage setback, irrespective of whether the setback conforms to the required.
 3. Maximum Floor Area. The habitable floor area of an attached or detached Accessory Dwelling Unit shall not exceed 50 percent of the habitable floor area of the primary dwelling unit, up to a maximum of 1,200 square feet. These shall be the resulting habitable floor areas of each unit after construction, addition, or conversion to create the Accessory Dwelling Unit.
 4. Minimum Floor Area. An Accessory Dwelling Unit must have a floor area of at least 150 square feet.

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5. Height—Detached Units. The maximum height of a detached Accessory Dwelling Unit is 15 feet.
6. Entries/Access. An Accessory Dwelling Unit shall have exterior access that is independent from that of the primary dwelling unit. No specific path or passageway is required in conjunction with the construction of an Accessory Dwelling Unit, but the project must meet the requirements of Title 16, Buildings and Construction, of the El Cerrito Municipal Code.

E. Parking.

1. Parking Required. One off-street parking space shall be provided for each Accessory Dwelling Unit. The required parking space to serve the Accessory Dwelling Unit may be in tandem with parking serving the principal dwelling unit and may be uncovered.
2. Parking Exceptions. No parking space shall be required in conjunction with the creation of an Accessory Dwelling Unit if one or more of the following conditions exist:
 - a. The Accessory Dwelling Unit is located within one-half mile of:
 - i. A Bay Area Rapid Transit (BART) station; or
 - ii. A stop that serves one or more public transit lines that cumulatively provide both 15-minute or more frequent peak-hour service on weekdays and 60 minute or more frequent service on Saturdays, Sundays, and holidays.
 - A. For the purpose of determining weekday peak-hour service frequency, “peak hour” shall mean 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m. In cases in which headways vary during these time periods, peak-hour frequency shall be the average headway during these periods.
 - B. In order to determine whether an Accessory Dwelling Unit is located within one-half mile of public transit, the distance shall be measured as a straight line, without regard to intervening structures or objects, from the property line of the property containing the Accessory Dwelling Unit to the qualifying transit station or stop. In the case of a BART station, the distance shall be measured to the nearest edge of the outer wall of the primary station building. It need not be measured to the nearest passenger entrance to the station building. It shall not be measured to the edge of the BART property or parking lot.

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- b. The Accessory Dwelling Unit is located within a designated architecturally and historically significant historic district.
 - c. The Accessory Dwelling Unit is attached to and does not increase the footprint of the existing primary residence or an existing accessory structure.
 - d. On-street parking permits are required but not offered to the occupant of the Accessory Dwelling Unit.
 - e. There is a designated car share vehicle pick-up location within one block of the Accessory Dwelling Unit.
 - f. The applicant has conducted an inventory of on-street parking that consists of identifying two twenty foot long spaces along the curb, within three hundred feet of the front property line that are vacant at 7:00 pm on any weeknight. If these two spaces are identified then it is believed that there is sufficient on-street parking to serve the proposed Accessory Dwelling Unit.
3. Parking Maintenance. The development of an Accessory Dwelling Unit shall not reduce required parking for the primary dwelling unit below that which is required by Section 19.24.040, Required Off-Street Parking Spaces. If required off-street spaces to serve the primary unit are eliminated in conjunction with development of the Accessory Dwelling Unit, they shall be replaced. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an Accessory Dwelling Unit, or is converted to an Accessory Dwelling Unit, the replacement parking spaces are not required to be covered and may consist of a simple parking pad; to the satisfaction of the Zoning Administrator.
- F. Architectural Compatibility. The architectural design, exterior materials and colors, roof pitch and style, type of windows, and trim details of the Accessory Dwelling Unit shall be substantially the same as, and visually harmonious and or compatible with the primary dwelling, as determined by the Zoning Administrator.
- G. Exceptions. Exceptions to Subsections D, E and F above shall require an Administrative Use Permit, according to the procedures of Chapter 19.34, Use Permits. In addition to the findings for approval of Section 19.34.040, the decision-making authority shall only grant approval if it finds the Accessory Dwelling Unit is compatible with, and preserves, the applicable residential character of the primary dwelling and the surrounding neighborhood. Additionally:

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1. The hearing shall be publically noticed not less than twenty-one days in the local newspaper and to all property owners located within a 300 foot radius.
 2. Any decision of the Zoning Administrator shall be appealed directly to the Planning Commission.
- H. Deed Restriction. An Accessory Dwelling Unit shall not be sold, transferred, or assigned separately from the primary dwelling. Before obtaining a building permit for an Accessory Dwelling Unit, the owner of the lot or parcel shall file with the County Recorder a declaration or agreement of restrictions that has been approved by the City Attorney as to its form and content, containing a reference to the deed under which the property was acquired by the owner and stating that:
1. The Accessory Dwelling Unit shall not be sold separately;
 2. The Accessory Dwelling Unit shall be considered legal only as long as either the Primary Dwelling or the Accessory Dwelling Unit is occupied by an owner of record of the property; and
 3. The restrictions shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against the property owner.
- I. Building Code Compliance. Notwithstanding any other provision of this section, Accessory Dwelling Units shall be developed in compliance with Title 16, Buildings and Construction, of the El Cerrito Municipal Code.
3. Amendment of Other Sections of the Municipal Code. The following sections of the Municipal Code are hereby amended as follows:
- 8.6.020.I.2 DEFINITIONS: change "SECOND UNIT" to "ACCESSORY DWELLING UNIT."
- 19.06.020 LAND USE REGULATIONS: change "SECOND UNIT" to "ACCESSORY DWELLING UNIT."
- 19.06.030 TABLE 19.06.B DEVELOPMENT STANDARDS: change "SECOND UNIT" to "ACCESSORY DWELLING UNIT."
- 19.07.020 LAND USE REGULATIONS: change "SECOND UNIT" to "ACCESSORY DWELLING UNIT."
- 19.24.040 TABLE 19.24-A REQUIRED PARKING change: "SECOND UNIT" to "ACCESSORY DWELLING UNIT."

19.24.040.F ACCESS TO SPACES change: "SECOND UNIT" to "ACCESSORY DWELLING UNIT."

19.24.050 TABLE 19.24-A PARKING REDUCTIONS change: "SECOND UNIT" to "ACCESSORY DWELLING UNIT."

19.25.090. B.3 BUFFER YARDS change: "SECOND UNIT" to "ACCESSORY DWELLING UNIT."

19.46.030 RESIDENTIAL USE CLASSIFICATIONS change: "SECOND UNIT" to ACCESSORY DWELLING UNIT."

19.47.010 TERMS AND DEFINITIONS change: "ACCESSORY LIVING UNIT" to ACCESSORY DWELLING UNIT."

19.47.020 LIST OF TERMS change: "ACCESSORY LIVING UNIT" to "ACCESSORY DWELLING UNIT."

4. 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.

5. Compliance with the California Environmental Quality Act. The proposed amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15282(h), which states that the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from the requirements of CEQA.

6. Effective Date. This Ordinance shall take effect and be enforced thirty (30) days after the date of its adoption, and prior to the expiration of fifteen (15) days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on May 16, 2017 and passed 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 xxxxx __, 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 xxxxx __, 2017.

Cheryl Morse, City Clerk

PLANNING COMMISSION RESOLUTION PC-17-03
(PLANNING COMMISSION MODIFICATIONS IN ~~STRIKEOUT~~ AND **BOLD**)

A RESOLUTION OF THE EL CERRITO PLANNING COMMISSION RECOMMENDING CITY COUNCIL APPROVAL OF AMENDMENTS TO EL CERRITO MUNICIPAL CODE CHAPTER 19.20 RELATED TO ACCESSORY DWELLING UNITS

WHEREAS, Senate Bill (SB) 1069 and Assembly Bill (AB) 2099 became effective on January 1, 2017, adding sections 65852.1 and 6582.2 to the Government Code and modifying the requirements for second units or “accessory dwelling units” related to unit size, parking, and fees; and

WHEREAS, El Cerrito Zoning Ordinance allows for the establishment of a second unit on any lot in the RS, RD or RM zoning district where a primary single family dwelling has been previously established or is proposed to be established in conjunction with construction of a second unit; and

WHEREAS, accessory dwelling units are an effective way to increase housing options without changing neighborhood character; they can provide affordable housing for renters, a source of income for homeowners, and a housing resource for extended families, seniors, college students, and others; they represent a form of infill development that can be relatively affordable to construct and/or rent and offer innovative housing choices within existing neighborhoods; and

WHEREAS, in response to the change in state law, at a properly noticed public hearing held on April 19, 2017, the Planning Commission considered an ordinance to: 1) amend the maximum unit size requirements and the parking standards in specific instances consistent with State law; 2) clarify certain development standards; and 3) amend requirements for obtaining an Administrative Use Permit for structures that do not conform to the Ordinance (the “Accessory Dwelling Ordinance”). The Accessory Dwelling Unit Ordinance is attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the El Cerrito Planning Commission, based on its review and consideration of the facts, the staff report, and all public testimony, hereby recommends that the City Council approve the Accessory Dwelling Ordinance, based on the following findings:

1. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

The proposed zoning text amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15282(h), which states that the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from the requirements of CEQA.

2. The Accessory Dwelling Ordinance is in the public interest and will advance the health, safety, and general welfare of the City of El Cerrito.

As proposed, the amendment will not be detrimental to the public interest, health, safety, convenience or welfare of the city because it will allow new and innovative housing production while ensuring compliance with all applicable building and safety codes in effect. Basic building and fire code compliance will be part of the building permit review of each new Accessory Dwelling Unit.

3. The Accessory Dwelling Ordinance is consistent with the El Cerrito General Plan.

The Zoning Text Amendment is consistent with the El Cerrito General Plan. By allowing flexibility in size, location and parking requirements, this action will allow these new units suitable for all age groups to be developed in locations throughout the City's residential zones. They will also allow the staff to ensure that issues such as architectural compatibility, scale and character are brought into the design of the project. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the city.

Further, it will allow more home owners to take advantage of adding an ADU to their primary residence. This opportunity will enable them to reinvest in their homes while providing new housing stock to the community. It will also allow for considerable streamlining of some of the barriers for ADUs in the current process , by easing parking requirements, allowing garage conversions and easing floor area restrictions. Finally, moving the discretionary process to the Zoning Administrator level will also decrease time and costs of housing production.

SECTION 1.

The following section of Title 19, Zoning, Chapter 19.20.190 of the El Cerrito Municipal Code is hereby deleted in its entirety and replaced with a new Chapter 19.20.190 to read as follows:

Section 19.20.190 Accessory Dwelling Units

The following regulations are intended to comply with Government Code Sections 65852.150 and 65852.2, or any successor statutes on Accessory Dwelling Units, and implement the General Plan by allowing Accessory Dwelling Units subject to the following requirements:

- A. Where Allowed. An Accessory Dwelling Unit may be established on any lot in RS, RD or RM zoning district, as identified in Chapter 19.06, where a primary single-family dwelling has been previously established or is proposed to be established in conjunction with construction of an Accessory Dwelling Unit. Only one Accessory Dwelling Unit is permitted per primary single-family dwelling on the same lot.
- B. Owner Occupancy. A legal owner of the property shall occupy either the primary dwelling or Accessory Dwelling Unit as the owner's primary residence. Prior to the issuance of a building permit for an Accessory Dwelling Unit, the applicant shall record notice of this requirement as a deed restriction, in accordance with Subsection G, in the Contra Costa County Recorder's Office.
- C. Type of Unit. An Accessory Dwelling Unit may be attached to the primary dwelling,

located within the living area of the primary dwelling, or detached from but located on the same lot as the primary dwelling.

- D. Development Standards. Accessory Dwelling Units shall conform to setback, height, lot coverage, and other development standards applicable to the primary dwelling unit in the zoning district where the Accessory Dwelling Unit is proposed, subject to the following additional standards.
1. Location on Lot.
 - a. Detached Units—Interior Lots. A detached Accessory Dwelling Unit shall be located behind the primary dwelling in relation to the front lot line. For the purpose of this regulation, “behind” shall mean that at least one of the following criteria is met:
 - i. All portions of the Accessory Dwelling Unit are located behind all portions of the primary unit.
 - ii. The Accessory Dwelling Unit is located partially behind the primary dwelling unit, and the front façade of the Accessory Dwelling Unit is at least 20 feet farther from the front lot line than is the front façade of the primary unit.
 - iii. The Accessory Dwelling Unit is located entirely in the rear half of the lot.
 - b. Detached Units—Corner Lots. On corner lots, the standard of Subsection (a) above shall be met on the front of the property. In addition, a detached Accessory Dwelling Unit shall not be located closer than the primary dwelling unit to the street-facing side lot line.
 - c. Attached Units.
 - i. The exterior entry to the Accessory Dwelling Unit shall be located at least 10 feet behind the exterior entry to the primary unit, or shall be located on the side or rear of the dwelling.
 - ii. If an attached ADU is created through an addition to an existing single-family dwelling at the second or higher story of the dwelling, such ADU shall be located in the rear half of the structure.
 2. Conversion of Garages. An Accessory Dwelling Unit that is created through the conversion of an existing attached or detached garage and is located entirely within the footprint of such garage may maintain the existing garage setback, irrespective of whether the setback conforms to the required.
 3. Maximum Floor Area. The habitable floor area of an attached or detached Accessory Dwelling Unit shall not exceed 50 percent of the habitable floor area of the primary dwelling unit, up to a maximum of 1,200 square feet. These shall be the resulting habitable floor areas of each unit after construction, addition, or conversion to create the Accessory Dwelling Unit.
 4. Minimum Floor Area. An Accessory Dwelling Unit must have a floor area of at least 150 square feet.

5. Height—Detached Units. The maximum height of a detached Accessory Dwelling Unit is 15 feet.
6. Entries/Access. An Accessory Dwelling Unit shall have exterior access that is independent from that of the primary dwelling unit. No specific path or passageway is required in conjunction with the construction of an Accessory Dwelling Unit, but the project must meet the requirements of Title 16, Buildings and Construction, of the El Cerrito Municipal Code.

E. Parking.

1. Parking Required.

No parking spaces are required for Accessory Dwelling Units. Or,

One off-street parking space shall be provided for each Accessory Dwelling Unit. The required parking space to serve the Accessory Dwelling Unit may be in tandem with parking serving the principal dwelling unit and may be uncovered.

2. Parking Exceptions. No parking space shall be required in conjunction with the creation of an Accessory Dwelling Unit if one or more of the following conditions exist:
 - a. The Accessory Dwelling Unit is located within one-half mile of:
 - i. A Bay Area Rapid Transit (BART) station; or
 - ii. A stop that serves one or more public transit lines that cumulatively provide both 15-minute or more frequent peak-hour service on weekdays and ~~20~~—60 minute or more frequent service on Saturdays, Sundays, and holidays.
 - (1) For the purpose of determining weekday peak-hour service frequency, “peak hour” shall mean 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m. In cases in which headways vary during these time periods, peak-hour frequency shall be the average headway during these periods.
 - (2) In order to determine whether an Accessory Dwelling Unit is located within one-half mile of public transit, the distance shall be measured as a straight line, without regard to intervening structures or objects, from the property line of the property containing the Accessory Dwelling Unit to the qualifying transit station or stop. In the case of a BART station, the distance shall be measured to the nearest edge of the outer wall of the primary station building. It need not be measured to the nearest passenger entrance to the station building. It shall not be measured to the edge of the BART property or parking lot.
 - b. The Accessory Dwelling Unit is located within a designated architecturally and historically significant historic district.
 - c. The Accessory Dwelling Unit is attached to and does not increase the footprint of the existing primary residence or an existing accessory structure.
 - d. On-street parking permits are required but not offered to the occupant of the Accessory Dwelling Unit.

- e. There is a designated car share vehicle pick-up location within one block of the Accessory Dwelling Unit.
 - f. The applicant has conducted an inventory of on-street parking ~~in the vicinity of the project and demonstrated, to the satisfaction of the Zoning Administrator,~~ **that consists of identifying two twenty foot long spaces along the curb, within three hundred feet of the front property line that are vacant at 7:00 pm on any weeknight. If these two spaces are identified then it is believed that there is sufficient** on-street parking to serve the proposed Accessory Dwelling Unit.
3. **Parking Maintenance.** The development of an Accessory Dwelling Unit shall not reduce required parking for the primary dwelling unit below that which is required by Section 19.24.040, Required Off-Street Parking Spaces. If required off-street spaces to serve the primary unit are eliminated in conjunction with development of the Accessory Dwelling Unit, they shall be replaced. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an Accessory Dwelling Unit, or is converted to an Accessory Dwelling Unit, the replacement parking spaces are not required to be covered **and may consist of a simple parking pad;** to the satisfaction of the Zoning Administrator.
- F. **Architectural Compatibility.** The architectural design, exterior materials and colors, roof pitch and style, type of windows, and trim details of the Accessory Dwelling Unit shall be substantially the same as, and visually harmonious ~~and~~ **or** compatible with the primary dwelling, as determined by the Zoning Administrator.
- G. **Exceptions to Subsections D, E and F above** shall require an Administrative Use Permit, according to the procedures of Chapter 19.34, Use Permits. In addition to the findings for approval of Section 19.34.040, the decision-making authority shall only grant approval if it finds the Accessory Dwelling Unit is compatible with, and preserves, the applicable residential character of the primary dwelling and the surrounding neighborhood. Additionally:
- 1. The hearing shall be publically noticed not less than twenty-one days in the local newspaper and to all property owners located within a 300 foot radius.
 - 2. Any decision of the Zoning Administrator shall be appealed directly to the Planning Commission.
- H. **Deed Restriction.** An Accessory Dwelling Unit shall not be sold, transferred, or assigned separately from the primary dwelling. Before obtaining a building permit for an Accessory Dwelling Unit, the owner of the lot or parcel shall file with the County Recorder a declaration or agreement of restrictions that has been approved by the City Attorney as to its form and content, containing a reference to the deed under which the property was acquired by the owner and stating that:
- 1. The Accessory Dwelling Unit shall not be sold separately;
 - 2. The Accessory Dwelling Unit shall be considered legal only as long as either the Primary Dwelling or the Accessory Dwelling Unit is occupied by an owner of record of the property; and

3. The restrictions shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against the property owner.
- I. Building Code Compliance. Notwithstanding any other provision of this section, Accessory Dwelling Units shall be developed in compliance with Title 16, Buildings and Construction, of the El Cerrito Municipal Code.

The following sections of Title 19, Zoning, of the El Cerrito Municipal Code is hereby amended to read as follows:

- 19.06.020 Land Use Regulations Change "Second Unit" to "Accessory Dwelling Unit."
- 19.06.030 Development Standards Change "Second Unit" to "Accessory Dwelling Unit."
- 19.07.020 Land Use Regulations Change "Second Unit" to "Accessory Dwelling Unit."
- 19.24.040 Required Off-Street Parking Spaces Change "Second Unit" to "Accessory Dwelling Unit."
- 19.24.050 Parking Reductions Change "Second Unit" to "Accessory Dwelling Unit."
- 19.25.090 Buffer Yards Change "Second Unit" to "Accessory Dwelling Unit."
- 19.46.030 Residential Use Classifications Change "Second Unit" to "Accessory Dwelling Unit."

CERTIFICATION

I CERTIFY that this resolution was adopted by the El Cerrito Planning Commission at a regular meeting held on April 19, 2017 upon motion of Commissioner Lucas, second by Commissioner Mendez:

AYES: Bloom, Hansen, Lucas, Mendez, Motoyama
NOES: Colin
ABSTAIN: None
ABSENT: Iswalt

Margaret Kavanaugh-Lynch
Development Services Manager