



AGENDA

REGULAR CITY COUNCIL MEETING
Tuesday, February 17, 2015 – 7:00 p.m.
City Council Chambers

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

Mark Friedman – Mayor

Mayor Pro Tem Greg Lyman
Councilmember Jan Bridges

Councilmember Janet Abelson
Councilmember Gabriel Quinto

ROLL CALL

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

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – *Councilmember Jan Bridges.*

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. PRESENTATION

Richmond Elks Recognition of Officer Chi Lee

Approve a proclamation commending Officer Chi Lee on the occasion of his recognition by the Richmond Elks Lodge No. 1251 on Police Officer Appreciation Night.

5. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 5A through 5F
CITY COUNCIL ITEMS

A. Minutes for Approval

Approve the February 3, 2015 regular City Council meeting minutes.

B. Agreement with City of Berkeley for Year-Round Automatic Aid

Adopt a resolution authorizing the City Manager to execute an updated Memorandum of Understanding with the City of Berkeley for the exchange of fire and emergency response on a year-round basis.

C. East Bay Corridor Initiative Memorandum of Understanding

Adopt a resolution approving entering into a Memorandum of Understanding to participate in the East Bay Corridor Initiative.

D. Joint Application with Eden Housing for State Proposition 1C Infill Infrastructure Grant Funds for the San Pablo Avenue Senior Housing Development

Adopt a resolution amending Resolution No. 2014-76 to authorize a Proposition 1C Infill Infrastructure Grant application for the San Pablo Avenue Senior Housing Development located at 10848-10860 San Pablo Avenue for a grant in an amount not to exceed \$1,399,547.

E. Board of Equalization Contracts for City of El Cerrito Measure R

Adopt a resolution authorizing the City Manager to execute a “Preparatory Agreement” and an “Administrative Agreement” with the California State Board of Equalization to administer and collect the twelve-year one-cent transactions and use tax approved by the voters in the November 4, 2014 General Election and to appropriate up to \$175,000 for the preparatory costs incurred by the Board necessary to administer the City’s transactions and use tax.

CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY

F. Draft Recognized Obligations Payment Schedule 15-16A and the Redevelopment Successor Agency’s Fiscal Year 2015-16 Administrative Budget

Adopt a El Cerrito Redevelopment Successor Agency resolution reviewing and authorizing submittal of the draft Recognized Obligations Payment Schedule 15-16A covering the period July to December 2015 and the Successor Agency’s Fiscal Year 2015-16 administrative budget.

6. PUBLIC HEARINGS – *None*

7. POLICY MATTERS

A. Appointment of Marin Clean Energy Board of Directors

Adopt a resolution appointing a delegate and one alternate to the Marin Clean Energy (MCE) Board of Directors. *Exempt from CEQA.*

B. Massage Establishment Moratorium

Staff recommends that the City Council adopt a moratorium on the establishment or relocation of massage establishments to provide time to study and plan an approach to massage regulation following the Governor’s approval of Assembly Bill 1147. The moratorium will prohibit the issuance of all City permits to new and existing massage establishments except for renewals and for emergency repairs and associated permits. The moratorium will be effective immediately for forty-five days upon adoption, unless extended by the City Council through a future public hearing and action.

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

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

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regular City Council meeting is Tuesday, March 3, 2015 at 7:00 p.m. at City Hall, 10890 San Pablo Avenue, El Cerrito, California.

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

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT-Channel 28 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/ind-ex.aspx?NID=114>. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

EL CERRITO CITY COUNCIL PROCLAMATION

Commending and Congratulating Officer Chi Lee for his recognition by the Richmond Elks Lodge No. 1251 Police Officer Appreciation Program

WHEREAS, Officer Chi Lee assumed the position of Reserve Police Officer on January 3, 2012 with the El Cerrito Police Department; and

WHEREAS, Officer Chi Lee was appointed to Police Officer on February 17, 2013; and

WHEREAS, Officer Chi Lee was selected for the Mutual Aid Mobile Field Force in September 2013; and

WHEREAS, Officer Chi Lee received the El Cerrito Police Department Life Saving Award on January 7, 2014; and

WHEREAS, Officer Chi Lee received recognition from Mothers Against Drunk Driving earning State recognition on April 9, 2014; and

WHEREAS, Officer Chi Lee was selected as a School Resource Officer and assumed those duties on July 9, 2014; and

WHEREAS, Officer Chi Lee has displayed his dedication to his fellow men and women in Law Enforcement by assisting the Contra Costa County District Attorney's Office with a broad investigation into Human Trafficking; and

WHEREAS, Officer Chi Lee, through his performance during the year, has indeed been exemplary, and he was selected by his peers for recognition.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby commend Officer Chi Lee on the occasion of his recognition by the Richmond Elks Lodge No. 1251 – Police Officer Appreciation Night. The City Council extends sincere appreciation to Officer Chi Lee for his devotion to the mission, vision and values of the El Cerrito Police Department.

Dated: February 17, 2015

Mark Friedman, Mayor

EL CERRITO CITY COUNCIL

MINUTES

REGULAR CITY COUNCIL MEETING Tuesday, February 3, 2015 – 7:00 p.m. City Council Chambers

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

Mark Friedman – Mayor

Mayor Pro Tem Greg Lyman
Councilmember Jan Bridges

Councilmember Janet Abelson
Councilmember Gabriel Quinto

ROLL CALL

Present: Councilmembers Abelson, Lyman, Quinto and Mayor Friedman
Absent: Councilmember Bridges

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

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

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

2. COUNCIL / STAFF COMMUNICATIONS

Mayor Friedman reported that he attended the January 31 grand opening of Dolly's Boutique, a new business located between Cutting Boulevard and Potrero Avenue on San Pablo Avenue. Earlier today, Mayor Friedman moderated a panel at the East Bay Broadband Consortium regarding expanding broadband access to citizens.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Alex DiGiorgio, Community Development Manager, Marin Clean Energy (MCE), stated that MCE is thrilled to welcome El Cerrito to its new energy options and reported that the community outreach process has begun. Community presentations will be organized wherever MCE is invited. Over the next five months all commercial and residential electric account holders in the City will receive approximately one notice per month informing them of new energy options. Interested individuals can call 1-888-632-3674 or email info@mcecleanenergy.org for more information. The first community meeting will be held on February 17, 2015 at St. Johns at 11:30 a.m.

Al Miller, El Cerrito, Citizens Street Oversight Committee, reported that the Committee has had some heated discussions regarding the proper funding of city street projects under Measure A. There was a difference of opinion amongst the Committee whether some of the projects should have been funded by Measure A. Mr. Miller thanked the City Council for

agenda Item No. 5C on the Consent Calendar this evening, particularly the clear identification of Measure A funding in the staff report. The City Council's approval of Measure A funds should be clear to everyone and makes the Committee's oversight of Measure A funds easier.

Howdy Goudey, El Cerrito, stated that there will be a Design Review Board hearing on February 4, 2015 for a proposed Chevrolet dealership in the San Pablo Avenue Area Specific Plan Area. Mr. Goudey said he wanted to express his questions about the project and ask others to come up with a solution for the facility that would have a more consistent adherence to the Specific Plan Area goals. The project, located on the former OSH site, provides a great opportunity for a high sales tax revenue business however a four acre site is underutilized when it is used as a parking lot for cars. 1715 Elm Street is a 0.4 acre site with a 45 foot building. The proposal on the former OSH site is a smaller building on a four acre site. There are exciting opportunities. Mr. Goudey queried whether the City could explore having an auto dealership with housing on the same site or have an indoor playing field built into the site?

Tom Panas, El Cerrito, informed the City Council about the threat to seed libraries across the Country. El Cerrito has two seed libraries in El Cerrito. Recently, several states have required seed libraries to purchase commercial seed distribution licenses. Seed libraries need to be appropriately recognized under the law to protect their ability to continue to share seeds freely in communities across the country. If it becomes necessary, the El Cerrito Community Garden Network may request that the Council adopt a resolution in support of seed libraries at a future date.

Mr. Panas also stated that he recently learned that non-profit organizations in El Cerrito owe business taxes each year. Mr. Panas asked the Council to consider a resolution that waives past business taxes and penalties on all non-profit organizations that register and pay their current year taxes by June 30, 2015 and also perhaps change the fee schedule to something similar to what the City of Richmond uses for non-profits.

4. PRESENTATION

A. Crime Year in Review – *Presentation by Sylvia Moir, Chief of Police and Samantha Wendling, Administrative Analyst.*

Action: Received presentation.

B. Planning Commission Workplan Presentation – *Presentation by Andrea Lucas, Planning Commission Chair.*

Receive a presentation regarding the Planning Commission's accomplishments, goals and workplan.

Action: Received presentation.

C. Financial Advisory Board Workplan Presentation – *Presentation by Peter Vranich, Financial Advisory Board Chair.*

Receive a presentation regarding the Financial Advisory Board's accomplishments, goals and workplan.

Action: Received presentation.

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

Moved, seconded (Lyman/Abelson; Ayes – Councilmembers Abelson, Lyman, Quinto and Mayor Friedman; Noes – None; Absent – Councilmember Bridges) and carried to approve the Consent Calendar in one motion as indicated below.

A. Minutes for Approval

Approve the January 20, 2015 regular City Council meeting minutes.

Action: Approved minutes.

B. Amend Agreement with MIG, Inc. for the Urban Greening Plan

Adopt a resolution authorizing the City Manager to amend the professional services agreement between the City of El Cerrito and Moore Iacofano Goltsman, Inc. (MIG) in an amount not to exceed \$31,000, bringing the total contract to \$200,400, and to extend the term of the Agreement through August 31, 2015 to complete the grant-funded Urban Greening Plan.

Action: Adopted Resolution No. 2015-05.

C. 2014 Pavement Rehabilitation Project, City Project No. C3074, Federal Project No. RSTP 5239(024)

Adopt a resolution approving the following actions: 1) Approve plans for the 2014 Pavement Rehabilitation Project, City Project No. C3074; 2) Reject one submitted bid from Interstate Grading and Paving, Inc. as non-responsive; 3) Accept the six remaining submitted bids; 4) Authorize the City Manager to execute a contract in the amount of \$664,200 with Gallagher & Burk, Inc. and to approve change orders in an amount not to exceed \$53,136 for the construction of the 2014 Pavement Rehabilitation Project; and 5) Amend the Fiscal Year 2014-15 Adopted Budget to appropriate an additional amount of \$69,000 in the Measure A Street Improvement Fund (Fund 211) for the 2014 Pavement Rehabilitation Project, City Project No. C3074. *Exempt from CEQA.*

Action: Adopted Resolution No. 2015-06.

D. 2015 City Council Meeting Schedule

Approve a recommendation to amend the 2015 City Council regular meeting schedule by adding a special meeting on Saturday, February 14, 2015 beginning at 8:30 a.m. for the purposes of conducting commission interviews, add a special meeting on Saturday, March 28, 2015 beginning at 9:00 a.m. for a City Council Strategic Planning Work Session and also approve a reduced City Council summer meeting schedule consisting of the third Tuesday in July, August and September. City Council meeting dates in July, August and September 2015 would be July 21, August 18 and September 15, 2015 with an additional request to keep the first Tuesday in July, August and September reserved for additional meetings as needed.

Action: Approved recommendation.

E. Committee on Aging Appointment

Approve a Committee on Aging recommendation to appoint Jennifer Haller to the Committee on Aging, effective February 17, 2015.

Action: Approved recommendation.

6. PUBLIC HEARING

Planning Application PL14-0107(Choi) for an Exception to the Subdivision Ordinance to Permit the Creation of a Parcel without Street Frontage

Conduct a public hearing and upon conclusion adopt a resolution approving Planning Application PL 14-0107 for an exception to the Subdivision Ordinance (El Cerrito Municipal Code Section 18.32.050) for a minor subdivision in which frontage on a public street is not provided. *Exempt from CEQA.*

Presenter: Noel Ibalio, Senior Planner.

Mayor Friedman opened the public hearing. One speaker.

Speakers: Howdy Goudey, El Cerrito, stated that he does not have a strong opinion on the lot split. Mr. Goudey stated that he is concerned that the environmental impacts associated with the project were not sufficiently noted and stated that environmental impacts need to be clearly stated.

Moved, seconded (Abelson/Lyman; Ayes – Councilmembers Abelson, Lyman, Quinto and Mayor Friedman; Noes – None; Absent – Councilmember Bridges) and carried to close the public hearing.

Action: Moved, seconded (Abelson/Lyman; Ayes – Councilmembers Abelson, Lyman, Quinto and Mayor Friedman; Noes – None; Absent – Councilmember Bridges) and carried to adopt Resolution No. 2015–07 as amended to include an additional condition of approval to require that a permeable material be used for the driveway that is acceptable to the Fire Department as sufficient to support fire trucks and is also approved by the City Engineer/Public Works Director to ensure that it doesn't result in improper storm drain run-off.

7. POLICY MATTERS

Agreement with Godbe Research to Perform Voter Research on a Future Revenue Measure for a Library Facility

Adopt a resolution authorizing the City Manager to enter into an agreement with Godbe Research to undertake a voter survey to ascertain voter opinions related to a future revenue measure to fund a new library facility.

Presenter: Karen Pinkos, Assistant City Manager.

Mayor Pro Tem Lyman stated for the record that he is currently the treasurer for a campaign committee that has been formed in support of a funding measure for a new El Cerrito Library and has been advised by the City Attorney that he does not have a conflict of interest as long as he is acting in the best interests of the public. Mayor Pro Tem Lyman stated that his decision on the survey will be based on what he believes to be in the public's best interests. He will reserve judgment on the final measure that will be placed on the ballot until the final text of the measure comes before the Council for a final decision.

Speakers: Al Miller, El Cerrito, stated that Godbe Research, through its surveys, has allowed the residents of El Cerrito to clearly identify projects that they would like and support in the City. The success of all the previous measures reflects on the professional skills of Godbe Research. Mr. Miller urged the City Council to approve the resolution authorizing the survey related to funding of a new library.

Tom Panas, El Cerrito, thanked staff, particularly the City Manager and Assistant City Manager, for the carefully planned steps they have taken over the past years to help the city reach its goal of building a new library. Mr. Godbe has been a trusted partner for a number of years and his careful and thorough work has led to a number of important projects and major successes. Mr. Panas urged the City Council to adopt the resolution.

Action: Moved, seconded (Abelson/Quinto; Ayes – Councilmembers Abelson, Lyman, Quinto and Mayor Friedman; Noes – None; Absent – Councilmember Bridges) and carried to adopt Resolution No. 2015–08.

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

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

Councilmember Abelson reported that she was officially elected as President of the East Bay

Division of the League of California Cities. The last meeting was highly attended and represented by each state legislator from the city's assembly and senate district. There was a good discussion of legislative priorities in the upcoming legislative session.

9. ADJOURNED REGULAR CITY COUNCIL MEETING at 8:15 p.m.

SUPPLEMENTAL REPORTS AND COMMUNICATIONS

Item No. 4(A) Crime Year in Review

1. Revised powerpoint presentation – *Submitted by Samantha Wendling, Administrative Analyst.*

Item No. 7(A) Agreement with Godbe Research to Perform Voter Research on a Future Revenue Measure for a Library Facility

2. Comments in support of a new library and the work done by the City Manager and Assistant City Manager for the planning and steps taken to date – *Submitted by Tom Panas, El Cerrito.*
3. Comments in support of the Godbe library survey – *Submitted by Marlene Keller, El Cerrito.*

Other:

4. Letter that will be sent to El Cerrito residents notifying them of options for purchasing electrical energy – *Submitted by Alex DiGiorgio, Marin Clean Energy (MCE).*
5. Comments regarding the concentrated control of the world's seeds by four companies and comments regarding business license taxes for non-profit organizations including a request to waive past business taxes and penalties on all non-profit organizations that register and pay their current year taxes by June 30, 2015 – *Submitted by Tom Panas, El Cerrito.*



AGENDA BILL

Agenda Item No. 5(B)

Date: February 17, 2015
To: El Cerrito City Council
From: Lance Maples, Fire Chief
Subject: Agreement with the City of Berkeley for Year-round Automatic Aid

ACTION REQUESTED

Adopt a Resolution authorizing the City Manager to execute an updated Memorandum of Understanding with the City of Berkeley for the exchange of fire and emergency response on a year-round basis.

BACKGROUND

The Fire Chiefs of the cities of Berkeley and El Cerrito desire to update a 1997 Memorandum of Understanding to provide automatic aid for fire and other emergency call responses and station coverage during greater alarm fires.

This updated agreement will provide year-round response and improve response times of the first alarm fire companies in the cities of Berkeley and El Cerrito and will also provide for automatic coverage of fire stations and/or response to reported emergencies.

The Berkeley Fire Department may respond with two engines and a chief officer to reported structure or vegetation fires in the San Pablo ridge area. Conversely, the El Cerrito Fire Department may respond with their chief officer and one engine company to reports of fire in the Berkeley Hills north of Marin on a year-round basis.

The El Cerrito and Berkeley Fire Departments are members of the East Bay Regional Emergency Communications System Authority (EBRCSA) and have the capability to communicate on each agency's dispatch, command, or tactical radio channels. The ability to communicate on each agency's radio channels improves the coordination and response efforts on emergency calls. It should also be noted that this agreement will require an annual joint training exercise to ensure common operations for both agencies are known by staff.

STRATEGIC PLAN CONSIDERATIONS

Approval of the proposed resolution and execution of the Memorandum of Understanding between the Cities of El Cerrito and Berkeley are consistent with *El Cerrito Strategic Plan* Goal A- Deliver exemplary government services and Goal E- Ensure the public's health and safety.

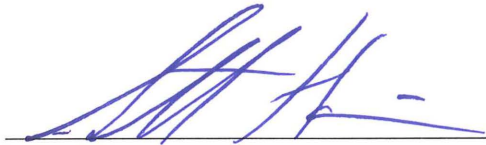
FINANCIAL CONSIDERATIONS

None

LEGAL CONSIDERATIONS

This MOU is executed pursuant to the provisions of the California Emergency Services Act, Title 2, Division 1, Chapter 7 of the Government Code, Government Code sections 8615-8619, Government Code section 53000 et seq., Government Code Section 55630 et seq., Health & Safety Code 13050 et seq., Health & Safety Code section 13800 et seq. and Public Resources Code section 5561.6. The City Attorney has reviewed and commented on this staff report and associated resolution.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. Memorandum of Understanding with the City of Berkeley

RESOLUTION 2015-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ADOPTING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF BERKELEY AND THE CITY OF EL CERRITO FOR AUTOMATIC AID RESPONSE AND EXCHANGE OF FIRE AND EMERGENCY SERVICES

WHEREAS, the City Council adopted Resolution No. 97-37 authorizing a Memorandum of Understanding (MOU) in 1997 with the City of Berkeley to provide automatic aid for fire and emergency call responses and station coverage during greater alarm fires; and

WHEREAS, the Fire Chief of Berkeley and the Fire Chief of El Cerrito desire to update and modify the previous MOU to establish protocols and automatic aid response to each other's jurisdiction to include structure fire response, station coverage, and response to other emergency calls; and

WHEREAS, the El Cerrito and Berkeley Fire Departments are members of the East Bay Regional Emergency Communications System Authority (EBRCSA) and have the capability to communicate on each agency's dispatch, command or tactical radio channels; and

WHEREAS, the El Cerrito and Berkeley Fire Departments will participate in an annual joint training exercise to ensure common operations for both agencies.

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 updated Memorandum of Understanding with the City of Berkeley for the exchange of fire and emergency response on a year-round basis.

I CERTIFY that at a regular meeting on February 17, 2015 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February XX, 2015.

Cheryl Morse, City Clerk

APPROVED:

Mark Friedman, Mayor

MEMORANDUM OF UNDERSTANDING

EXCHANGE OF FIRE PROTECTION AND EMERGENCY SERVICES BETWEEN THE CITY OF BERKELEY AND THE CITY OF EL CERRITO

This Memorandum of Understanding ("MOU") is entered into on _____, 2015, by and between the City of BERKELEY on the one hand and the City of El Cerrito on the other hand. BERKELEY and EL CERRITO shall be referred to as "Party" or "Parties".

This MOU is made with reference to the following facts and objectives:

The City of BERKELEY and EL CERRITO each maintain and operate fire protection organizations in and for their respective jurisdictions; and

Certain of the lands protected by each Party herein are adjacent to the lands protected by the other Party; and

The Cities of BERKELEY and EL CERRITO each desire to furnish fire and emergency assistance to the other when such aid is required as set forth below; and

This MOU is executed pursuant to the provisions of the California Emergency Services Act, Title 2, Division 1, Chapter 7 of the Government Code, Government Code sections 8615-8619, Government Code section 53000 et seq., Government Code Section 55630 et seq., Health & Safety Code 13050 et seq., Health & Safety Code section 13800 et seq. and Public Resources Code section 5561.6.

The Parties mutually agree as follows:

1. The Chief of the Berkeley Fire Department and the Chief of the El Cerrito Fire Department are hereby authorized to develop, execute and implement this MOU, which shall set forth the specific procedures and protocol to be used to effect a mutual and coordinated response to reports of fire in established automatic aid areas.
2. Berkeley Fire Department shall communicate on El Cerrito Fire Department's designated command and tactical channel when responding into EL CERRITO. El Cerrito Fire Department shall communicate on Berkeley Fire Department's designated command and tactical channel when responding into BERKELEY.
3. Joint training exercises shall be carried out annually or as needed under the direction of the Fire Chiefs of the cities of Berkeley and El Cerrito.
4. The Berkeley Fire Department and El Cerrito Fire Department shall use the Incident Command System (ICS), the standard organization system, to govern emergency operations.

5. The jurisdictional department having authority shall be responsible for obtaining information and completing required reports. All reports which include automatic or mutual aid under this MOU shall be shared between the Parties.
6. The Parties shall furnish fire protection, apparatus, personnel, equipment, materials, or supplies and render such fire protection services or station coverage to each other in the manner described in this MOU.
 - a. El Cerrito Fire Department may respond with an engine company for station coverage at Berkeley Fire Station 4, 1900 Marin Avenue, for BERKELEY upon request by the Berkeley Fire Department. El Cerrito Fire Department may respond to emergency calls in BERKELEY while performing station coverage duties.
 - b. The El Cerrito Fire Department may respond with one Engine Company as part of an initial first alarm assignment to Berkeley Fire Quadrants 79, 80, 81, 82, and 83.
 - c. The El Cerrito Fire Department may respond with up to two engines (any combination of a Type I, III, or XI) and a Battalion Chief for a vegetation fire within Berkeley Fire Quadrants 76, 79, 80, 81, 82, and 83.
 - d. The BERKELEY Fire Department may respond with one Engine Company for station coverage at El Cerrito from Fire Station 65, 217 Arlington Avenue, for EL CERRITO upon request by the El Cerrito Fire Department. The Berkeley Fire Department may respond to emergency calls in El Cerrito response area while performing station coverage duties.
 - e. The Berkeley Fire Department may respond with one Engine Company as part of an initial first alarm assignment to El Cerrito Fire Quadrants 65A and 65B
 - f. The Berkeley Fire Department may respond with up to two engines (any combination of a Type I, III, or XI) and a Battalion Chief for a vegetation fire within the City of El Cerrito Fire Quadrant 72A which includes a geographical area previously referred to as the San Pablo Ridge MRA.
 - g. Each Party shall ensure responding personnel don full personal protective equipment when responding to a vegetation or structure fire call in each party's jurisdiction.
7. In the event that the aiding Party is unable to dispatch, in whole or in part, an agreed-upon response as described above, the aiding Party shall immediately

- notify the requesting Party of the inability to respond or provide station coverage.
8. The services provided pursuant to this MOU shall not be used by either Party as a substitute for day-to-day full and continuing fire protection within its own borders. The rendering of aid by one party to the other hereunder is voluntary. Neither Party shall be required to reduce its own fire protection resources, personnel, services or facilities to the detriment of its normal fire protection capability within its borders.
 9. Neither Party to this agreement shall be required to provide compensation to the other for services rendered hereunder. The advantage and protection of mutual aid responses afforded by this agreement shall constitute the sole and adequate consideration for the performance hereof.
 10. The City of BERKELEY shall defend, indemnify and hold harmless the City of El Cerrito from and against all claims, expenses, losses, liability or damages resulting from the acts or omissions to act by the City of BERKELEY in the performance of this MOU. The City of El Cerrito shall defend, indemnify, and hold harmless the City of BERKELEY from and against all claims, expenses, losses, liability or damages resulting from the acts or omissions to act by the City of El Cerrito in the performance of this MOU.
 11. Notwithstanding anything else stated to the contrary in this MOU, each Party shall be solely responsible for the actions of its respective officers, agents, and employees while they are performing work, services or functions for said Party under this MOU. While performing work, services, or functions under this MOU, the officers, agents and employees of each Party are not officers, agents, or employees of the other Party, regardless of the nature and extent of the acts performed by them. In this regard, Section 10 above shall in no way obligate the indemnifying Party to provide such protection, defense or indemnification to the extent of the acts or omissions of the other Party, its officers, agents or employees.
 12. Each Party shall be solely liable to provide Workers' Compensation insurance coverage and pay valid claims for injuries or death to any of its officers, agents, or employees performing work, services or functions under this MOU, regardless of whether the other Party was directly or indirectly supervising the conduct of such person(s). To this end, no Party shall assume any liability under Workers' Compensation laws or any other employers' liability laws on account of any work, service or function performed by the other Party's officers, agents or employees under this MOU.
 13. In the event of any conflict between this MOU and any other mutual aid agreement between either party hereto and any county, state or federal government entity or division thereof, said other agreement shall take precedence.

Agenda Item No. 5(B)

14. This agreement may be amended at any time by a written amendment hereto executed by both parties. Any reduction, contracting or sub-contracting of day-to-day full and continuing fire protection services or resources by either Party shall be cause for renegotiation of this agreement.

15. This MOU executed hereunder may be terminated on action by either the BERKELEY City Manager or El Cerrito Fire Department Fire Chief upon thirty days' written notice to the other.

16. This MOU shall supersede any and all prior agreements, oral or written, regarding the subject matter between the City of Berkeley and the City of El Cerrito.

IN WITNESS WHEREOF, the City of BERKELEY and the City of EL CERRITO have executed this Memorandum of Understanding as of the date first written above.

CITY OF BERKELEY

CITY OF EL CERRITO

Christine Daniel, City Manager

Scott Hanin, City Manager

Approved as to form:

Approved as to form:

Michael Woo, Deputy City Attorney

Sky Woodruff , City

Attorney Registered:

City Auditor

Attest:

City Clerk



AGENDA BILL

Agenda Item No. 5(C)

Date: February 17, 2015

To: El Cerrito City Council

From: Melanie Mintz, Interim Community Development Director

Subject: East Bay Corridor Initiative Memorandum of Understanding

ACTIONS REQUESTED

Adopt a resolution entering into a Memorandum of Understanding to participate in the East Bay Corridor Initiative.

BACKGROUND

Plan Bay Area (Plan) is the San Francisco Bay Area's integrated land use and transportation plan developed in response to California Senate Bill 375 (The California Sustainable Communities and Climate Protection Act of 2008). The Plan, adopted in 2013, outlines a regional strategy for accommodating the projected population, housing and job growth between 2010-2040. Central to the Plan is the success of Priority Development Areas (PDAs) throughout the region, including the El Cerrito-San Pablo Avenue PDA that was designated by Council in 2007 (Resolution 2007-63). Development policies for the city's PDA were adopted through the San Pablo Avenue Specific Plan (Resolution 2014-52). The Association of Bay Area Governments (ABAG) has initiated the East Bay Corridor Initiative (Initiative) as an implementation strategy for realizing Plan Bay Area and to support the development of the region's PDAs.

The Initiative provides a framework for collaboration among the local and regional agencies involved in PDA implementation. The Initiative involves 15 East Bay jurisdictions and ABAG. To develop more place-appropriate strategies, the participants are grouped into two segments, the Oakland-Union City Corridor and the San Pablo Avenue Corridor. The San Pablo Avenue Corridor includes Oakland, Emeryville, Berkeley, Albany, El Cerrito, Richmond, San Pablo, Pinole, Hercules and Contra Costa County. The Memorandum of Understanding (MOU) for the East Bay Corridors Initiative (Exhibit A to the Resolution) provides information regarding the purpose, proposed activities, responsibilities, and structure and governance of the Initiative.

DISCUSSION

Successful implementation of the City's PDA will necessitate collaboration and coordination with numerous stakeholders in both the private and public sector. Achieving the housing, transportation, economic and environmental goals of Plan Bay Area and the San Pablo Avenue Specific Plan will require both public and private

investment of resources. The East Bay Corridor Initiative provides a framework of collaboration for identifying and supporting implementation of the City's and adjacent cities' PDAs.

FINANCIAL CONSIDERATIONS

There are no direct financial obligations associated with entering into the Memorandum of Understanding. However, the MOU does commit City resources through the dedication of a staff representative to the Initiative's Steering Committee and to participate in the fulfillment of the Initiative's goals and strategies. The Initiative will be coordinated by ABAG.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the Memorandum of Understanding-East Bay Corridors Initiative.

Reviewed by:



Scott Hanin, City Manager

Attachments:

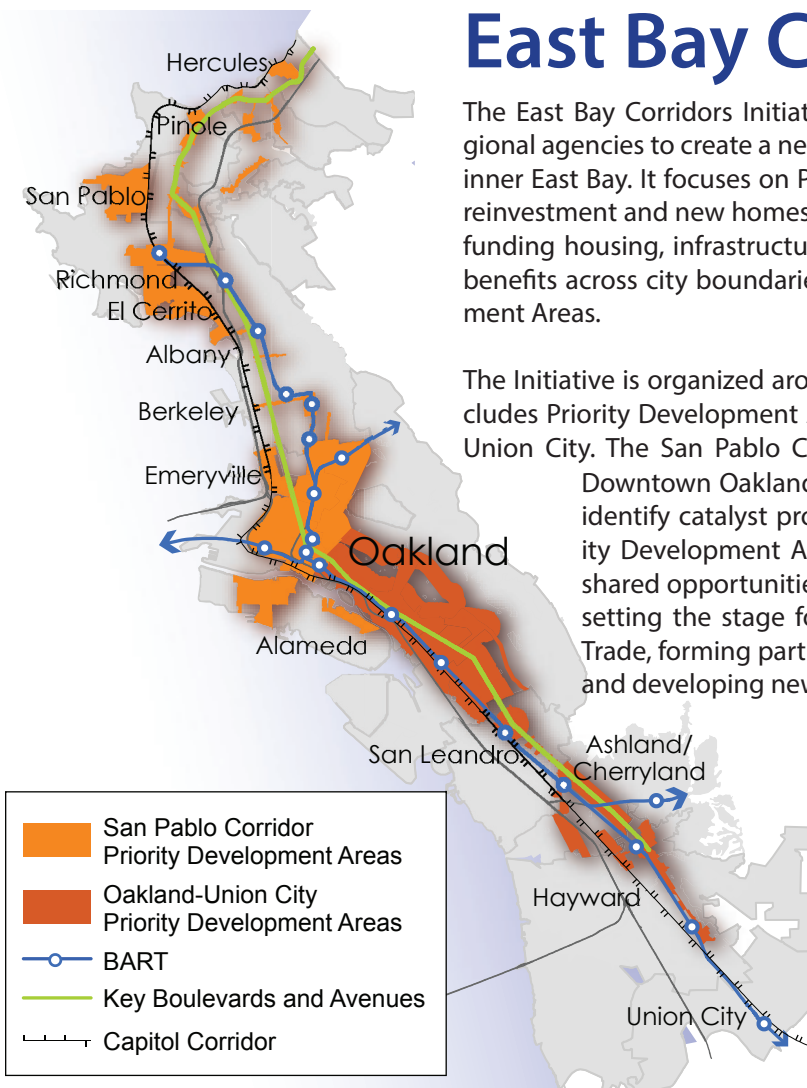
1. East Bay Corridors Initiative One-Page Overview
2. Resolution
 - A. Memorandum of Understanding-East Bay Corridors Initiative

East Bay Corridors I

The East Bay Corridors Initiative is a collaboration between cities, counties and regional agencies to create a network of thriving neighborhoods and downtowns in the inner East Bay. It focuses on Priority Development Areas, places planned by cities for reinvestment and new homes and jobs. The Initiative is a platform for prioritizing and funding housing, infrastructure, and community development projects that provide benefits across city boundaries while implementing local plans for Priority Development Areas.

The Initiative is organized around two corridors. The Oakland-Union City Corridor includes Priority Development Areas between International Boulevard in Oakland and Union City. The San Pablo Corridor includes Priority Development Areas between

Downtown Oakland and Hercules. Cities are currently working together to identify catalyst projects that build on the unique assets of corridor Priority Development Areas to address common challenges and capitalize on shared opportunities. During 2015, the Initiative will solidify these projects, setting the stage for pursuing existing funding sources as state Cap and Trade, forming partnerships with the business and non-profit communities, and developing new funding sources.



Oakland-Union City Corridor Jurisdictions

- Oakland
- San Leandro
- Unincorporated Alameda County (Ashland/Cherryland)
- Hayward
- Union City

Regional and County Partners

- Alameda and County Public Health Department
- Alameda and Contra Costa County Transportation Authorities
- Alameda-Contra Costa Transit District (AC Transit)
- Association of Bay Area Governments
- Bay Area Air Quality Management District

San Pablo Corridor Jurisdictions

- Oakland
- Emeryville
- Berkeley
- Alameda
- Albany
- El Cerrito
- Richmond
- San Pablo
- Pinole
- Hercules
- Unincorporated Contra Costa County

- Bay Area Rapid Transit (BART)
- Contra Costa Health Services
- Western Contra Costa County Transit Authority (WestCAT)

Timeline 1995-Today

- Corridor jurisdictions adopt plans for 26 Priority Development Areas

2013

- Plan Bay Area adopted, region's first integrated housing, jobs and transportation plan; growth and investment focused in the inner East Bay
- ABAG Executive Board prioritizes implementation of local plans and regional goals in the East Bay Corridors

2014

- Workshops held to identify key challenges and opportunities related to realizing local PDA plans
- Working groups create draft implementation priorities and catalyst projects

Next Steps

Q1 2015

- Solidify priorities and catalyst projects
- Create partnerships and identify funders

Q2 2015

- Pursue immediate funding opportunities such as Cap & Trade and federal grants

Q3 2015-

- Integrate corridor priorities into regional Land Use Strategy and Plan Bay Area update
- Continue to pursue funding; initiate and complete projects

RESOLUTION 2015-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING ENTERING INTO A MEMORANDUM OF UNDERSTANDING FOR PARTICIPATION IN THE EAST BAY CORRIDORS INITIATIVE

WHEREAS, Plan Bay Area is the San Francisco Bay Area's integrated land use and transportation plan adopted by the Association of Bay Area Governments and Metropolitan Transportation Commission in 2013; and

WHEREAS, Plan Bay Area relies on Priority Development Areas to accommodate the projected population, housing and job growth between 2010-2040; and

WHEREAS, the City of El Cerrito designated the San Pablo Avenue corridor as a Priority Development Area in 2007 by Resolution 2007-63, and adopted the San Pablo Avenue Specific Plan (Resolution 2004-52) as the Priority Development Area's development policy; and

WHEREAS, the East Bay Corridors Initiative has been developed by the Association of Bay Area Governments and fifteen local jurisdictions as a Plan Bay Area implementation strategy; and

WHEREAS, the Memorandum of Understanding (Exhibit A) for the East Bay Corridors Initiative outlines the purpose, proposed activities, responsibilities and structure and governance of the East Bay Corridors Initiative and asks each participating agency to designate a Steering Committee representative; and

WHEREAS, there are no direct financial implications of participating in the East Bay Corridors Initiative; and

WHEREAS, implementation of the City's Priority Development Area and San Pablo Avenue Specific Plan will require coordination and collaboration with both private and public sector stakeholders and neighboring jurisdictions;

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito hereby authorizes entering into the Memorandum of Understanding for participation in the East Bay Corridors Initiative.

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

* * * * *

Agenda Item No. 5(C)

Attachment 2

I CERTIFY that at a regular meeting on February 17, 2015 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February _____, 2015.

Cheryl Morse, City Clerk

APPROVED:

Mark Friedman, Mayor

Exhibit A: Memorandum of Understanding- East Bay Corridors Initiative

MEMORANDUM OF UNDERSTANDING
- EAST BAY CORRIDORS INITIATIVE -

This Memorandum of Understanding (“MOU”) is entered into by and between the following participating entities (Participant; collectively, Participants):

Association of Bay Area Governments (ABAG)
City of Alameda (Alameda)
City of Albany (Albany)
City of Berkeley (Berkeley)
City of El Cerrito (El Cerrito)
City of Emeryville (Emeryville)
City of Hayward (Hayward)
City of Hercules (Hercules)
City of Oakland (Oakland)
City of Pinole (Pinole)
City of Richmond (Richmond)
City of San Leandro (San Leandro)
City of San Pablo (San Pablo)
City of Union City (Union City)
County of Alameda (Alameda County)
County of Contra Costa (Contra Costa)

A. Purpose. The activities undertaken under this MOU will constitute the East Bay Corridor Initiative (Initiative). The purpose of this MOU is to define and formalize the working relationship among regional and local agencies whose geographical boundaries include a portion or all of the East Bay Corridors, as further described below. This MOU defines the shared goals and objectives of these local and regional agencies working collaboratively to enhance livability, mobility and economic prosperity within the Corridors, and establishes the necessary administrative and governance structure to promote a cooperative relationship and for ensuring success of the Initiative.

B. Background. Plan Bay Area is an integrated land use and transportation strategy to accommodate the region’s projected population, housing and job growth between 2010 and 2040 which, if implemented, would achieve State targets for reductions in greenhouse gas emissions. Plan Bay Area is based primarily on the PDAs in the nine county San Francisco Bay Region, including those in the East Bay Corridor (Corridor PDAs). ABAG and the Metropolitan Transportation Commission (MTC) adopted Plan Bay Area in 2013. The strategy for implementation of Plan Bay Area includes investment of existing and anticipated resources in PDAs.

Reflecting strong transit access and a local commitment to planning and investment, Plan Bay Area projects that Corridor PDAs will grow at a faster rate than the region as a whole. Many of the investments included in Plan Bay Area connect and/or serve the cities and counties within the Corridor (Corridor Jurisdictions).

Compared to the region as a whole, residents of Corridor PDAs have lower household incomes; suffer more from poor air quality and other adverse environmental impacts; are at a higher risk during natural disasters; and are subject to displacement risk from rising housing costs. Many Corridor PDAs face obstacles to realizing the development envisioned in adopted plans. These range from limited local resources to build infrastructure and public spaces to a lack of funding for affordable housing and difficulties attracting private investment. At the same time, the Corridor PDAs are located in close proximity to jobs and institutions of higher education. Further, numerous economic clusters appear to be growing in, or near the Corridor PDAs. Given this opportunity, the potential positive impact of a complementary approach to planning and investment is substantial, and can potentially provide a model for other Bay Area sub-regions with similar challenges.

Between 2000 and 2014, Alameda, Albany, Berkeley, El Cerrito, Emeryville, Hayward, Hercules, Oakland, Pinole, Richmond, San Leandro, San Pablo, Union City, Alameda County and Contra Costa (Corridor Jurisdictions) have adopted 25 land use plans for Priority Development Areas (PDAs), a locally-driven land use planning program of ABAG for sustainable development. All of these PDAs are located within the geography of East Bay Corridor (see Attachment 1).

In September 2013, the East Bay Corridors Initiative was presented to ABAG's Executive Board as a top implementation strategy for realizing Plan Bay Area. Between September and November 2013, staff from Participants, ABAG, and other public agencies met to identify obstacles to achieving the level and quality of growth planned for PDAs in these jurisdictions. To develop strategies, the group divided the East Bay Corridor into two segments: the Oakland-Union City Corridor and the San Pablo Corridor (see Attachment 1). The Oakland-Union City Corridor includes Oakland, San Leandro, Hayward, and Union City, as well as the Alameda County. The San Pablo Corridor includes Oakland, Emeryville, Berkeley, Albany, El Cerrito, Richmond, San Pablo, Pinole, Hercules and Contra Costa.

During 2014, staff from Participant jurisdictions, ABAG and other public agencies held workshops to identify a preliminary set of inter-jurisdictional strategies for implementing local PDAs and regional planning objectives for each segment of the corridor. In 2015, Participants, ABAG and other public agencies will engage in working groups to solidify these strategies. This will set the stage for engagement with city leadership, development of partnerships with the non-profit and business communities, and obtaining funding to carry out the strategies.

C. Proposed Activities. The Participants will undertake the following activities.

1. Continue to coordinate with Planning and Community Development Directors the development of multi-jurisdictional strategies to create a network of thriving neighborhoods and downtowns in Corridor PDAs. This coordination can include all Participants or subgroups, including but not limited to the subgroups that comprise the Oakland-Union City Corridor and the San Pablo Corridor.
2. Identify and develop funding sources to implement agreed upon strategies.
3. Endorse joint applications by Participants for grants and other funding that support agreed upon multi-jurisdictional strategies.

D. Responsibilities. Each Participant will have the following responsibilities:

1. Each Participant will assign a representative to the Steering Committee.
2. Each Participant will participate in the development and/or review of relevant multi-jurisdiction strategies.
3. ABAG will coordinate the East Bay Corridors Initiative. This will not limit or supersede any other activities undertaken collaboratively by Participants.

E. Structure and Governance. For ease of formation and administration and to maintain flexibility, the East Bay Corridor Initiative is structured as an unincorporated association of local and regional public entities. The Participants agree that this MOU is independent of any other contract(s) or agreement(s) between or among the Participants, or the contract(s) or agreement(s) between or among any Corridor Jurisdiction that are promulgated to implement a grant or local PDA plan.

A Steering Committee made up of one representative from each Participant will coordinate activities undertaken pursuant to this MOU. Every Participant will appoint as its representative(s) to the Steering committee or any subcommittee, a staff person with expertise and experience land use planning and development, presumably the local Planning Director. The Steering Committee may establish subcommittees to undertake activities that advance the East Bay Corridor Initiative that affect less than all Participants.

Through a unanimous vote of all Steering Committee representatives, the Steering Committee may establish rules related to decision-making for the entire Steering Committee or Subcommittees, including but not limited to voting and participation.

Every Participant also has the right, but not the obligation, to appoint an alternate to the Steering Committee or subcommittee. The alternate may attend any meeting of the Steering Committee or subcommittee. However, the alternate is not included in the quorum count, is not entitled to vote and may not participate in the deliberations of the Steering Committee or subcommittee, except in the absence of the representative for whom he/she is an alternate.

F. Participant Resources. The Participants acknowledge that the East Bay Corridor Initiative is likely to require some investment of resource for it to be effective. Each Participant will assign staff, at no cost, to act as its representative to the Steering Committee and any relevant subcommittee.

G. Other Matters. Each Participant shall indemnify and hold harmless the other Participants from the indemnifying Participant's share of liability, as determined by a court of law, for any and all claims, costs and liability for any damage caused by the negligence or willful misconduct of the indemnifying Participant and its officers, employees or agents in the indemnifying Participant's performance under this MOU. The obligations of the indemnifying Participant under this section shall not apply to any claim, cost or liability caused by the negligence or willful misconduct of any other Participant. Under no circumstances shall the indemnifying Participant be liable to any other Participant or any other person or entity for consequential or special damages, or for any damages based on loss of use, revenue, profits or business

opportunities arising from or in any way relating to performance of the indemnifying Participant under this MOU.

H. Withdrawal and Termination. This MOU will continue until terminated by majority vote of the Steering Committee, but Participants may withdraw from this MOU on 60 days' notice to other Participants. New Participants may be added by majority vote of the current Participants.

I. Amendments. This MOU may be amended by a written agreement executed by the Participant in the same manner as this MOU.

J. Counterparts. This MOU may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

K. Effective Date. This MOU is effective upon the date a minimum of nine Participants have executed the MOU.

IN WITNESS WHEREOF, the Participants have caused this Memorandum of Understanding to be effective with the approval of their authorized representatives on the dates indicated below.



AGENDA BILL

Agenda Item No. 5(D)

Date: February 17, 2015
To: El Cerrito City Council
From: Hilde Myall, Housing Program Manager
Melanie Mintz, Interim Community Development Director
Subject: Joint Application with Eden Housing for State Proposition 1C Infill Infrastructure Grant Funds for the San Pablo Avenue Senior Housing Development

ACTION REQUESTED

Adopt a resolution amending Resolution No. 2014-76 to authorize a Proposition 1C Infill Infrastructure Grant application for the San Pablo Avenue Senior Housing Development located at 10848-10860 San Pablo Avenue for a grant in an amount not to exceed \$1,399,547.

BACKGROUND

On December 2, 2014, City Council approved Resolution No. 2014-76 authorizing the City as co-applicant with Eden Housing, Inc. to apply for up to \$1,200,000 in Proposition 1C Infill Infrastructure Grant funds for the San Pablo Avenue Senior Housing Development at 10848-10860 San Pablo Avenue.

On January 16, 2015, as part of its review of the project's funding application, the State Department of Housing and Community Development (HCD) informed the City and Eden Housing that, although the project qualified for up to \$1,399,547 of IIG funds, the resolutions for both co-applicants authorized a grant amount not to exceed \$1,200,000. The action requested by this item is to adopt an updated resolution authorizing a grant amount not to exceed \$1,399,547. The proposed resolution before Council tonight would amend Resolution No. 2014-76.

On April 22, 2014 the City Council approved a Disposition, Development and Loan Agreement (DDLA) with Eden Housing, Inc. for the proposed mixed-use affordable senior housing project located at 10848-10860 San Pablo Avenue. As part of the project financing, Eden Housing, Inc. proposes to apply for State Infill Infrastructure Grant funds from the California Department of Housing and Community Development in an amount not to exceed \$1.2 million. Eden Housing has requested that the City be a co-applicant and co-recipient of the grant funds on behalf of the project. In the event the application is successful, the City would in turn loan the Infill Infrastructure Grant funds to Eden Housing, or its affiliate, for the purpose of developing and constructing the project. In the past, the City and Resources for Community Development were co-applicants and co-recipients for this same funding source to help fund the Ohlone Gardens Housing Development, and successfully utilized the same pass-through loan arrangement.

STRATEGIC PLAN CONSIDERATIONS

Approval of the proposed resolution and submittal of the application for grant funds is consistent with *El Cerrito Strategic Plan* Goal A – Deliver exemplary government services, Goal B – Achieve long-term financial sustainability, and Goal C – Deepen a sense of place and

community identity. Specifically, approval of the submittal of the joint application for grant funds will support the “develop and strengthen relationships with public and private partners” strategy (Goal A), and the “explore opportunities for public/private partnerships” and “pursue opportunities for...outside grants” strategies (Goal B). The San Pablo Avenue Senior Housing Development fulfills “re-imagining and reinvesting in underutilized properties” strategy (Goal C). The multi-year effort to develop the San Pablo Avenue Senior Housing Development demonstrates the City’s aim to work collaboratively with private non-profit partners and local, state and federal agencies to leverage the City’s investment in the project, preserve unique historic resources and help meet sustainability goals around transit-oriented development as well as General Plan Housing Element programs to assist in the development of affordable housing for seniors.

ENVIRONMENTAL CONSIDERATIONS

The application and potential award of grant funds is not a project under the California Environmental Quality Act (CEQA). The proposed San Pablo Avenue Senior Housing Development itself has already been reviewed and received CEQA certification as part of the project discretionary approvals.

FINANCIAL CONSIDERATIONS

Any award of funds from the State Infill Infrastructure Grant Program would be grant funds and thus the City would not incur any debt obligation as a result of receiving these funds. There is not a match requirement for these funds. The City would incur some staff time in the administration of these funds. Staff time for project management of the Eden Housing project, including any grant administration associated with a potential award of these funds, is budgeted within the Low and Moderate Income Housing Asset Fund.

LEGAL CONSIDERATIONS

The City Attorney has reviewed this staff report and associated resolution.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution

RESOLUTION 2015-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY EL CERRITO AMENDING CITY COUNCIL RESOLUTION NO. 2014-76 AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE INFILL INFRASTRUCTURE GRANT PROGRAM; THE EXECUTION OF A STANDARD AGREEMENT IF SELECTED FOR SUCH FUNDING AND ANY AMENDMENTS THERETO; AND ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE INFILL INFRASTRUCTURE GRANT PROGRAM

WHEREAS, the former El Cerrito Redevelopment Agency (the “Agency”) and the City of El Cerrito (“City”) have 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, pursuant to City Council Resolution No. 2014-10, the City has entered into a Disposition Development and Loan Agreement (the “DDLA”) with Eden Housing, Inc. (the “Developer”) pursuant to which the City will sell 10848 and 10860 San Pablo Avenue (the “Property”) to the Developer and the Developer will develop a mixed use development consisting of 63 residential units and ground floor commercial, including 62 units of affordable rental housing with resident services for seniors, a medical clinic and the renovation of the Contra Costa Florist structure (the “Project”); and

WHEREAS, the City of El Cerrito, a general law city, wishes to apply, with Eden Housing, Inc., for and receive an allocation of funds through the Infill Infrastructure Grant Program for the Project; and

WHEREAS, the California Department of Housing and Community Development (hereinafter referred to as “HCD”) has issued a Notice of Funding Availability (“NOFA”) for the Infill Infrastructure Grant Program established under the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C) pursuant to the Infill Infrastructure Grant Program established Part 12 of Division 31 of the Health and Safety Code, commencing with Section 53545.12. Pursuant to the statute, HCD is authorized to approve funding allocations utilizing monies made available by the State Legislature, subject to the terms and conditions of the statute and the Infill Infrastructure Grant Program Guidelines implemented September 25, 2014; and

WHEREAS, pursuant to Resolution No. 2014-76, the City approved submittal of an application to participate in the Infill Infrastructure Grant Program in response to the HCD NOFA issued on September 25, 2014 which requested a funding allocation in an amount not to exceed \$1,200,000 for the following activities: eligible construction and construction-related work located in or as part of the Project; and

WHEREAS, the City wishes to amend Resolution No. 2014-76 to submit an application to obtain from HCD an allocation of the Infill Infrastructure Grant Program funds in an amount not to exceed \$1,399,547.

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

1. That the City amends Resolution 2014-76 to request an Infill Infrastructure Grant Program funding allocation in an amount not to exceed \$1,399,547 for the following activities: eligible construction and construction-related work located in or as part of the Project.
2. If the application for funding is approved, the City hereby agrees to use the Infill Infrastructure Grant Program funds for eligible activities in the manner presented in the application as approved by HCD and in accordance with program Guidelines cited above. It also may execute any and all other instruments necessary or required by HCD for participation in the Infill Infrastructure Grant Program.
3. The City authorizes the City Manager to execute in the name of the City of El Cerrito the application, the Standard Agreement, and all other documents required by HCD for participation in the Infill Infrastructure Grant Program, and any amendments thereto.

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

I CERTIFY that at a regular meeting on February 17, 2015 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February XX, 2015.

Cheryl Morse, City Clerk

APPROVED:

Mark Friedman, Mayor



AGENDA BILL

Agenda Item No. 5(E)

Date: February 17, 2015
To: El Cerrito City Council
From: Lisa Malek-Zadeh, Finance Director/City Treasurer
Subject: Board of Equalization Contracts for City of El Cerrito Measure R

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute a “Preparatory Agreement” and an “Administrative Agreement” with the California State Board of Equalization to administer and collect the twelve-year one-cent transactions and use tax approved by the voters in the November 4, 2014 General Election and to appropriate up to \$175,000 for the preparatory costs incurred by the Board necessary to administer the City’s transactions and use tax.

BACKGROUND

With the passage of Measure R - The El Cerrito Transactions and Use Tax Measure at the General Election held on November 4, 2014, Ordinance 2014-08 was approved amending the El Cerrito Municipal Code and imposing a twelve-year one-cent transactions and use tax, operative April 1, 2015, to be administered by the State Board of Equalization (Board).

ANALYSIS

The Board requires two contracts to be in place prior to administration and collection of these taxes as well as an address information document. Exhibit A to the Resolution is the “Preparatory Agreement” required by the Board that sets forth the scope of work required to prepare to administer and operate a transactions and use tax. Exhibit B to the Resolution is the “Administrative Agreement” that presents the Boards terms for ongoing administration of the transactions and use tax.

The Preparatory Agreement presents a cost not to exceed \$175,000 to be paid to the Board for developing procedures, programming for data processing, developing and adopting regulations, designing and printing forms, developing instructions for the Board’s staff and taxpayers, and other appropriate and necessary costs. This amount is anticipated to be actually significantly lower. For example, the Measure A Street Improvement Transaction and Use Tax cost was \$51,675.

The Administration Agreement discusses the procedures for ongoing collection and distribution of the money. The Agreement also presents the procedures and costs that would occur if the ordinance was challenged as being invalid. No specific cost amount is presented in this agreement pertaining to the potential costs associated with any legally

Agenda Item No. 5(E)

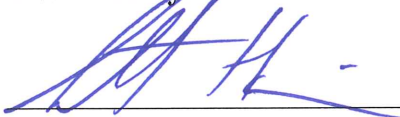
required rebates or refund; however the Board retains the right to recover reasonably appropriate and necessary costs to make those refunds or rebates.

Attachment 2 is a required listing of City Officials who will receive correspondence.

FINANCIAL CONSIDERATIONS

The one-cent sales tax will go into effect April 1, 2015. In order for the Board to be able to do the preparation necessary to begin collection of the tax, these documents and the Council's resolution approving the contracts need to be transmitted as soon as possible. Council is also requested to approve an appropriation for the not to exceed contract amount of \$175,000 for the costs of preparation. This amount will come from the increased proceeds (approximately \$400,000) from Measure R which have not been included in the current fiscal year revenue projections; therefore, no new appropriation is necessary.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
Exhibit A Preparatory Agreement
Exhibit B Administration Agreement
2. Address Information Document

RESOLUTION NO. 2015-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH THE STATE BOARD OF EQUALIZATION FOR IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX

WHEREAS, on December 2, 2014, the City Council confirmed the approval of Ordinance No. 2014-08 amending the El Cerrito Municipal Code and providing for a local transactions and use tax, operative April 1, 2015; and

WHEREAS, the State Board of Equalization (Board) administers and collects the transactions and use taxes for all applicable jurisdictions within the state; and

WHEREAS, the Board will be responsible for administering and collecting the transactions and use tax for the City; and

WHEREAS, the Board requires that the City enter into a "Preparatory Agreement" and an "Administration Agreement" prior to implementation of said taxes; and

WHEREAS, the Board requires that the City Council authorize the agreements.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of El Cerrito that the "Preparatory Agreement" attached as Exhibit A and the "Administrative Agreement" attached as Exhibit B to this resolution are hereby approved and the City Manager is hereby authorized to execute each agreement.

BE IT FURTHER RESOLVED that the City Council appropriates up to \$175,000 from the General Fund pursuant to these agreements.

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of El Cerrito held on February 17, 2015, by the following vote, to wit:

AYES: Councilmembers

NOES: Councilmembers

ABSENT: Councilmembers

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February XX, 2015.

Cheryl Morse, City Clerk

APPROVED:

Mark Friedman, Mayor

**AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE
CITY'S TRANSACTIONS AND USE TAX ORDINANCE**

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the City of El Cerrito, hereinafter called *City*, and the STATE BOARD OF EQUALIZATION, hereinafter called *Board*, do agree as follows:

1. The Board agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the City and whose ordinance has been adopted by the City.

2. City agrees to pay to the Board at the times and in the amounts hereinafter specified all of the Board's costs for preparatory work necessary to administer the City's transactions and use tax ordinance. The Board's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Board's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Board. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the City.

4. Any dispute as to the amount of preparatory costs incurred by the Board shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Board shall be billed by the Board periodically, with the final billing within a reasonable time after the operative date of the ordinance. City shall pay to the Board the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

6. The amount to be paid by City for the Board's preparatory costs shall not exceed one hundred seventy-five thousand dollars (\$175,000) (Revenue and Taxation Code Section 7272.)

Resolution No. 2015-XX
Exhibit A

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879
Sacramento, California 94279-0032
Attention: Administrator, RAAS

Communications and notices to be sent to City shall be addressed to:

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

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Board has received all payments due from City under the terms of this agreement.

CITY OF EL CERRITO

STATE BOARD OF EQUALIZATION

By _____
Scott Hanin
City Manager

By _____
Brian Manuel, Administrator
Return Analysis & Allocation Section

(Rev. 11/14)

**AGREEMENT FOR STATE ADMINISTRATION
OF CITY TRANSACTIONS AND USE TAXES**

The City Council of the City of El Cerrito has adopted, and the voters of the City of El Cerrito (hereafter called "City") have approved by the required majority vote, the City of El Cerrito Transactions and Use Tax Ordinance (hereafter called "Ordinance"), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the State Board of Equalization, (hereinafter called the "Board") and the City do agree as follows:

ARTICLE I
DEFINITIONS

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7285.9, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No. 2014-08, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

ARTICLE II
ADMINISTRATION AND COLLECTION
OF CITY TAXES

A. Administration. The Board and City agree that the Board shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

B. Other Applicable Laws. City agrees that all provisions of law applicable to the administration and operation of the State Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Board pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

C. Transmittal of money.

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by City's self-imposed limits or by final judgment of any court of the State of California holding that City's ordinance is invalid or void, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the City designated and authorized by the City. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

D. Rules. The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City Ordinance and the distribution of the district taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Board shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.

F. Security. The Board agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of City for district taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it, and City shall not participate in any security now held by the Board.

G. Records of the Board. When requested by resolution of the legislative body of the City under section 7056 of the Revenue and Taxation Code, the Board agrees to permit authorized personnel of the City to examine the records of the Board, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the City, pertaining to the ascertainment of transactions and use taxes collected for the City. Information obtained by the City from examination of the Board's records shall be used by the City only for purposes related to the collection of transactions and use taxes by the Board pursuant to this Agreement.

H. Annexation. City agrees that the Board shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Board. The notice shall include the name of the county or counties annexed to the extended City boundary. In the event the City shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the City showing the area annexed and the location address of the property nearest to the extended City boundary on each side of every street or road crossing the boundary.

ARTICLE III

ALLOCATION OF TAX

A. Allocation. In the administration of the Board's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Board, to all districts with which the Board has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Board, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

B. Vehicles, Vessels, and Aircraft. For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Board in determining the place of use.

ARTICLE IV

COMPENSATION

The City agrees to pay to the Board as the Board's cost of administering the City Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Board for the City.

ARTICLE V

MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879
Sacramento, California 94279-0032
Attention: Administrator, RAAS

Communications and notices to be sent to the City shall be addressed to:

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

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2015. This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Board completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. City shall give the Board written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

ARTICLE VI
ADMINISTRATION OF TAXES IF THE
ORDINANCE IS CHALLENGED AS BEING INVALID

A. Impoundment of funds.

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the City shall transmit to the Board the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

B. Costs of administration. Should a final judgment be entered in any court of the State of California, holding that City's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Board may retain all payments made by City to Board to prepare to administer the City Ordinance.

2. City will pay to Board and allow Board to retain Board's cost of administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

3. City will pay to Board or to the State of California the amount of any taxes plus interest and penalties, if any, that Board or the State of California may be required to rebate or refund to taxpayers.

4. City will pay to Board its costs for rebating or refunding such taxes, interest, or penalties. Board's costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Board's staff for use in making these rebates or refunds and any other costs incurred by Board which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Board's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Board. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by City.

6. Any dispute as to the amount of costs incurred by Board in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Board in connection with such refunds shall be billed by Board on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Board shall bill City on or before the 25th of each month for all costs incurred by Board for the preceding calendar month. City shall pay to Board the amount of such costs on or before the last day of the succeeding month and shall pay to Board the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Board costs incurred in making those refunds.

CITY OF

STATE BOARD OF EQUALIZATION

By _____

Scott Hanin
City Manager

By _____

Brian Manuel, Administrator
Return Analysis & Allocation Section

EL CERRITO 2015 TRANSACTIONS AND USE TAX

All legal correspondence should be mailed to the following address:

Jurisdiction: City of El Cerrito

Title: City Attorney

Address: 10890 San Pablo Avenue, El Cerrito CA, 94530

Financial correspondence (Non-confidential information) should be mailed to the following address:

Note: Confidential information may be sent only to positions authorized by resolution

Jurisdiction: City of El Cerrito

Title: Finance Director

Address: 10890 San Pablo Avenue, El Cerrito CA, 94530

Paper warrants (if issued) and Monthly/quarterly statements of transactions and use tax payments should be mailed to the following address:

Jurisdiction: City of El Cerrito

Title: Finance Director

Address: 10890 San Pablo Avenue, El Cerrito CA, 94530

Name: Scott Hanin

Signature:

Title: City Manager

Date: February 18, 2015



AGENDA BILL

Agenda Item No. 5(F)

Date: February 17, 2015

To: City Council of the City of El Cerrito
El Cerrito Redevelopment Successor Agency

From: Hilde Myall, Housing Program Manager
Lisa Malek-Zadeh, Finance Director/City Treasurer
Melanie Mintz, Interim Community Development Director

Subject: Draft Recognized Obligations Payment Schedule 15-16A and the Redevelopment Successor Agency's FY 2015-16 Administrative Budget

ACTION REQUESTED

Adopt a Successor Agency resolution reviewing and authorizing submittal of the draft Recognized Obligations Payment Schedule 15-16A covering the period July to December 2015 and the Successor Agency's FY 2015-16 administrative budget.

BACKGROUND

Recognized Obligation Payment Schedules

ABx1 26 (Dissolution Act) dissolved the El Cerrito Redevelopment Agency (RDA) and established the El Cerrito Redevelopment Successor Agency (Successor Agency) on February 1, 2012. Under the Dissolution Act, the portion of property tax revenues collected in the City of El Cerrito Redevelopment Project Area (Project Area) that was considered Tax Increment prior to the RDA's dissolution are called Redevelopment Property Tax and are deposited by the County Auditor-Controller (Auditor-Controller) into the Redevelopment Property Tax Trust Fund (RPTTF). The Auditor-Controller distributes the funds in the RPTTF with the following priority:

1. Auditor-Controller's administrative costs;
2. Pass-through payments to the taxing entities affected by the Redevelopment Plan for the Project Area, calculated the same as prior to RDA dissolution;
3. Distribution to the Successor Agency to retire the former RDA's obligations;
4. Repayment of loans from the Housing Fund (starting in FY 2014-15); and
5. Distribution of residual funds to taxing entities.

The Successor Agency must review and authorize submittal of a Recognized Obligation Schedule (ROPS) for each six-month period. Each ROPS must then be approved by the Oversight Board to the Successor Agency (Oversight Board) and the California Department of Finance (DOF) before the Auditor-Controller disburses funding for payments on the approved ROPS.

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The schedule being reviewed this evening is the draft ROPS 15-6A covering payments due during the period of July to December 2015. The Successor Agency must submit ROPS 15-16A approved by the Oversight Board to DOF no later than March 3, 2015. The Oversight Board is scheduled to consider ROPS 15-16A at its upcoming special meeting on February 25, 2015. After submittal, DOF then has 45 days to review the ROPS and approve or disapprove of any items. The Successor Agency can request additional review by DOF and an opportunity to meet and confer on disputed items, and must make that request within five business days of receiving a DOF determination. The DOF is required to notify the Successor Agency and Auditor-Controller of its final determination of the approved payments at least 15 days prior to the date of distributions from the RPTTF. For ROPS 15-16A, the notification date is May 15, 2015 for the June 1, 2015 disbursement.

Successor Agency Administrative Budget

Pursuant to the Dissolution Act, the Successor Agency must prepare a budget for administrative expenses each fiscal year to be approved by the Oversight Board and DOF. The Successor Agency is entitled to an administrative allowance of \$250,000 annually. The budget being considered this evening is for FY 2015-16.

ROPS 15-16A

The proposed ROPS 15-16A is Exhibit A to the attached Successor Agency resolution, authorizing its submittal. It includes: 1) A summary of the funding request; 2) An itemized listing of obligations; 3) A report of cash balances; 4) A reconciliation of prior payments and resulting adjustments; and 5) Notes of explanation.

Obligations with remaining outstanding balances are included on ROPS 15-16A, whether previously approved by DOF or in dispute. They are as follows:

- Tax Allocation Bond Debt Service. Payments are due to the trustee Union Bank by December 27, 2015.
- Valente Note. No payment is due during the ROPS 15-16A period.
- Litigation Costs. The Successor Agency's litigation expenses are an enforceable obligation. The Successor Agency is estimating litigation costs of \$72,350 in the July through December 2015 period.
- Eden Housing Loan Agreement Post-DDA. While the Oversight Board has repeatedly approved obligations to Eden Housing, DOF has continued to deny that portion of the loan agreement that was contingent on negotiation of a Disposition and Development Agreement (DDA) with Eden, in the amount of \$250,000, stating that the Successor Agency did not have the authority to negotiate a DDA. However, the City as Housing Successor does have the authority to negotiate a DDA with Eden Housing on a property that was listed on the DOF-approved Housing Asset Transfer List and the Successor Agency retained the obligation to fund the loan agreement. DOF stated that the Successor Agency can terminate the agreement due to dissolution, but the Successor Agency is not required to terminate under the Dissolution Act and the DOF cannot require the Successor Agency to do so. Eden Housing and the City as Housing Successor entered into a DDLA as of April 2014 and therefore this obligation is included on ROPS 15-16A for funding.

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- San Pablo Avenue Streetscape and Streetlights. In the process of closing out multi-year capital improvement projects, it was determined that commitments of tax increment by the RDA to the City were not transferred to the Capital Improvement Fund, but were relied upon for letting construction contracts. While the commitment of tax increment not transferred by the RDA totaled \$956,511, the City was able to reduce project costs and only \$431,599 of the commitment remains outstanding.
- ERAF and SERAF Loans. The payment amount listed is an estimate based on calculations in Health & Safety Code Section 34176 and an estimate of residual funds in the RPTTF after other obligations are paid and is consistent with the approved SERAF/ERAF Loan Repayment Schedule pursuant to Successor Agency Resolution No. 201401 and Oversight Board Resolution No. 2014-03.
- FY 2015-16 Administrative Allowance. One half of the Successor Agency's administrative allowance is included on the ROPS.

The total amount of RPTTF funding required for ROPS 15-16A is estimated to be \$2,213,510. Because there was \$72,350 of unspent RPT from ROPS 14-15A, there is a Prior Period Adjustment of negative \$72,350 to the requested RPT funding for ROPS 15-16A. The unspent RPT from ROPS 14-15A can be used to pay approved ROPS 15-16A enforceable obligations, so the combined total funding requested equals \$2,213,510 (\$2,141,160 plus \$72,350). Based on the amount received during the prior ROPS period, the estimated amount to be distributed from the RPTTF is approximately \$2,197,051. There may be insufficient RPTTF for all obligations due during the ROPS 15-16A period.

SERAF/ERAF LOAN REPAYMENT

The State of California shifted tax increment revenues from redevelopment agencies statewide into the Educational Revenue Augmentation Fund (ERAF) in 2005 and 2006, and into the Supplemental ERAF (SERAF) in 2009 and 2010. Redevelopment agencies that did not have sufficient tax increment to make their ERAF and SERAF payments were permitted to borrow from their housing funds in order to do so. The RDA had borrowed funds from its Low and Moderate Income Housing Fund (LMIHF) and was in the process of repaying the loans when the agency was dissolved. The obligation was assumed by the Successor Agency and is payable to the City's Low Income Housing Asset Fund.

The Dissolution Act allows repayment of SERAF and ERAF loans beginning in FY 2014-15. The maximum repayment amount authorized each fiscal year is limited to one half of the increase between the amount distributed to the taxing entities in the fiscal year and the amount distributed to taxing entities in the 2012-13 base year. The DOF has advised successor agencies that SERAF and ERAF loans are enforceable obligations provided that the Oversight Board approves a repayment schedule.

In February 2014, pursuant to Successor Agency Resolution No. 2014-01 and Oversight Board Resolution No. 2014-03, the Successor Agency and the Oversight Board approved a repayment schedule in which the FY 14-15 maximum repayment of \$75,284 was based on an estimated RPTTF residual of \$150,568. The approved repayment schedule allows the actual repayment amount for each ROPS period to vary so long as the amount does not exceed the maximum amount allowed pursuant to the formula

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contained in the Dissolution Act (Health and Safety Code Section 34176(e)(6)(B)). The actual RPTTF residual for the FY 14-15 period was \$1,631,717, which would allow a maximum repayment of \$815,859. A comparison of the original estimated repayment schedule and the requested repayment for ROPS 15-16A based on actual FY 14-15 residual is contained in the Tables A and B, below. In light of the actual residual, the allowed maximum amount of repayment and other enforceable obligations on the ROPS 15-16A, staff is recommending a loan repayment request of \$250,000 on ROPS 15-16A.

Table A – Original February 2014 Estimated Repayment Schedule

Estimated Residual Redevelopment Property Tax for SERAF/ERAF Obligation									
Repayment by the El Cerrito Redevelopment Agency Successor Agency									
ROPS Period	RPTTF Available	County Admin	Pass-Thru Payments	Projected ROPS	Residual	Difference from Base Year	Maximum Payment	Sample Payment Schedule	Loan Balance
II	2,221,333	(48,673)	(223,412)	(1,949,250)	-				1,247,318
III	2,606,039	(48,009)	(482,915)	(2,075,115)	-	-			1,247,318
13-14A	2,759,863	(31,230)	(1,251,240)	(1,427,787)	49,606				1,247,318
13-14B	2,632,518	(30,945)	(529,090)	(2,072,483)	-	49,606	24,803		1,247,318
14-15A	2,632,518	(30,932)	(526,504)	(2,075,082)	-			24,803	1,222,515
14-15B	2,711,494	(31,860)	(542,299)	(1,986,767)	150,568	150,568	75,284		1,222,515
15-16A	2,711,494	(31,860)	(542,299)	(1,584,845)	552,490			75,284	1,147,231
15-16B	2,792,839	(32,816)	(558,568)	(1,797,776)	403,679	956,169	478,085		1,147,231
16-17A	2,792,839	(32,816)	(558,568)	(1,823,109)	378,346			250,000	897,231
16-17B	2,876,624	(33,800)	(575,325)	(1,861,324)	406,175	784,521	392,261		897,231
17-18A	2,876,624	(33,800)	(575,325)	(1,647,242)	620,257			250,000	647,231
17-18B	2,962,923	(34,814)	(592,585)	(1,685,457)	650,067	1,270,324	635,162		647,231
18-19A	2,962,923	(34,814)	(592,585)	(1,716,192)	619,332			250,000	397,231
18-19B	3,051,811	(35,859)	(610,362)	(1,754,407)	651,183	1,270,515	635,258		397,231
19-20A	3,051,811	(35,859)	(610,362)	(1,235,586)	1,170,004			250,000	147,231
19-20B	3,143,365	(36,935)	(628,673)	(1,273,801)	1,203,956	2,373,960	1,186,980		147,231
20-21A	3,143,365	(36,935)	(628,673)	(1,351,082)	1,126,675			147,231	-
20-21B	3,237,666	(38,043)	(647,533)	(1,492,066)	1,060,024	2,186,699	1,093,350		-

Table B – Updated Repayment Schedule with Actual FY 13-14 & FY 14-15 Residual

Updated Estimate of Residual Redevelopment Property Tax for SERAF/ERAF Obligation									
Repayment by the El Cerrito Redevelopment Agency Successor Agency									
ROPS Period	RPTTF Available	County Admin	Pass-Thru Payments	Projected ROPS	Residual	Difference from Base Year	Maximum Payment	Sample Payment Schedule	Loan Balance
II	2,221,333	(48,673)	(223,412)	(1,949,250)	-				1,247,318
III	2,606,039	(48,009)	(482,915)	(2,075,115)	-	-			1,247,318
13-14A	2,759,863	(31,230)	(1,251,640)	(1,427,787)	49,206				1,247,318
13-14B	2,632,518	(30,945)	(529,090)	(2,072,483)	-	49,206	24,603		1,247,318
14-15A	2,744,482	(40,733)	(499,231)	(1,303,419)	901,099			24,603	1,222,715
14-15B	2,856,815	(45,903)	(558,463)	(1,521,831)	730,618	1,631,717	815,859		1,222,715
15-16A	2,788,276	(32,762)	(558,463)	(2,186,160)	10,891			250,000	972,715
15-16B	2,723,760	(32,004)	(544,752)	(1,797,776)	349,228	360,119	180,060		972,715
16-17A	2,723,760	(32,004)	(544,752)	(1,878,169)	268,835			180,060	792,655
16-17B	2,786,930	(32,746)	(557,386)	(1,736,324)	460,474	729,309	364,655		792,655
17-18A	2,786,930	(32,746)	(557,386)	(1,772,242)	424,556			250,000	542,655
17-18B	2,851,363	(33,504)	(570,273)	(1,560,457)	687,129	1,111,685	555,843		542,655
18-19A	2,851,363	(33,504)	(570,273)	(1,841,192)	406,394			250,000	292,655
18-19B	2,917,085	(34,276)	(583,417)	(1,629,407)	669,985	1,076,379	538,190		292,655
19-20A	2,917,085	(34,276)	(583,417)	(1,360,586)	938,806			250,000	42,655
19-20B	2,984,121	(35,063)	(596,824)	(1,148,801)	1,203,433	2,142,239	1,071,120		42,655
20-21A	2,984,121	(35,063)	(596,824)	(1,371,306)	980,928			42,655	-
20-21B	3,052,498	(35,867)	(610,500)	(1,367,066)	1,039,065	2,019,993	1,009,997		-

SUCCESSOR AGENCY FY2015-16 ADMINISTRATIVE BUDGET

A proposed FY 2015-16 Administrative Budget is Exhibit B to the attached Successor Agency Resolution. Note that this budget does not include litigation costs, as provided

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in the Dissolution Act. This budget is included within the City's overall FY 2015-16 Budget and the City will be reimbursed once the Successor Agency receives its allowance. Regardless of the Successor Agency's actual administrative expenses, it receives the administrative allowance of \$250,000 annually.

LEGAL CONSIDERATIONS

All actions being requested are consistent with the Dissolution Act, as amended.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Successor Agency Resolution

SUCCESSOR AGENCY RESOLUTION 2015-XX

RESOLUTION OF THE EL CERRITO REDEVELOPMENT AGENCY SUCCESSOR AGENCY AUTHORIZING SUBMITTAL OF THE DRAFT RECOGNIZED OBLIGATION PAYMENT SCHEDULE 15-16A, AS REQUIRED UNDER THE DISSOLUTION ACT; AND APPROVING ITS FY 2015-16 ADMINISTRATIVE BUDGET

WHEREAS, pursuant to the California Community Redevelopment Law (the “Redevelopment Law”), the City Council (the “City Council”) of the City of El Cerrito (the “City”) adopted the Redevelopment Plan for the City of El Cerrito Redevelopment Project Area by Ordinance No. 77-17, as amended by Ordinances No. 80-13; No. 89-5; No. 94-4; No. 2004-3; No. 2005-01; and No. 2006-10 (collectively, the “Redevelopment Plan”); and

WHEREAS, the El Cerrito Redevelopment Agency (the “RDA”) was responsible for implementation of the Redevelopment Plan; and

WHEREAS, as part of the 2011-12 State budget bill, ABx1 26 (the “Dissolution Act”) was enacted significantly modifying the Redevelopment Law to require the dissolution of redevelopment agencies throughout California and the establishment of successor agencies to wind down the former redevelopment agencies’ affairs; and

WHEREAS, on August 15, 2011, pursuant to the Dissolution Act, the City elected to serve as the El Cerrito Redevelopment Agency Successor Agency (the “Successor Agency”), should the RDA be dissolved; and

WHEREAS, California redevelopment agencies were dissolved on February 1, 2012; and

WHEREAS, pursuant to the Dissolution Act, upon dissolution, the RDA transferred as a matter of law all remaining liabilities, debts and obligations to the Successor Agency; and transferred all unencumbered funds and assets to the Successor Agency’s Redevelopment Obligation Retirement Fund (the “RORF”), for disposition and/or use by the Successor Agency to retire RDA debt and pay for RDA obligations; and

WHEREAS, pursuant to the Dissolution Act, the Contra Costa County Auditor Controller (the “Auditor-Controller”) established the Redevelopment Property Tax Trust Fund (the “RPTTF”) to hold Redevelopment Property Tax collected from the City of El Cerrito Redevelopment Project Area to be disbursed to the Successor Agency for payment of its enforceable obligations and to taxing entities affected by the Redevelopment Plan; and

WHEREAS, AB 1484 (the “Trailer Bill”) was enacted on July 1, 2012 modifying the Dissolution Act to require the Successor Agency to submit an oversight board-approved Recognized Obligations Payment Schedule 15-16A (“ROPS 15-16A”) covering the period July through December, 2015 to the Department of Finance (the “DOF”) by March 3, 2015; and

WHEREAS, the Trailer Bill made clear that the Successor Agency is a separate public entity from the City; and

WHEREAS, the Oversight Board to the Successor Agency to the El Cerrito Redevelopment Agency (the “Oversight Board”) was formed on April 4, 2012; and

WHEREAS, the Successor Agency has reviewed the draft ROPS 15-16A that was prepared pursuant to the Dissolution Act and the Trailer Bill, which is attached and incorporated as Exhibit A to this Resolution, for submittal to the Oversight Board, the Auditor-Controller, and DOF; and

WHEREAS, the Successor Agency has reviewed the draft ROPS 15-6A and finds that the amount requested for repayment of funds borrowed from the Low and Moderate Income Housing Fund is consistent with the approved repayment schedule pursuant to Successor Agency Resolution No. 2014-02, Oversight Board Resolution No. 2014-03 and with Health and Safety Code Section 34176(e)(6)(B); and

WHEREAS, the Successor Agency wishes to authorize Successor Agency staff to amend the ROPS 15-16A administratively to account for any additional changes made by the DOF to the ROPS form that occur after the Successor Agency’s consideration; and

WHEREAS, the Successor Agency is not a component unit of the City, but the City is providing administrative services for the Successor Agency; and

WHEREAS, pursuant to the Dissolution Act, the Successor Agency is entitled to an administrative allowance of \$250,000 annually to be paid from the property tax revenues collected in the Project Area, regardless of its actual administrative expenses; and

WHEREAS, the Successor Agency must prepare a budget for those administrative expenses each fiscal year to be approved by the Oversight Board, as required in the Dissolution Act; and

WHEREAS, an Administrative Budget prepared for FY 2015-16 is attached as Exhibit B and incorporated into this Resolution.

NOW THEREFORE, BE IT RESOLVED that the City El Cerrito Redevelopment Agency Successor Agency hereby finds the above recitals to be true and accurate.

BE IT FURTHER RESOLVED that the El Cerrito Redevelopment Agency Successor Agency authorizes the submittal of the draft Recognized Obligation Payment Schedule 15-16A as required under the Dissolution Act, subject to such changes as may be necessary to accommodate changes in the DOF approved form, any such changes to be approved by the City Manager.

BE IT FURTHER RESOLVED that the El Cerrito Redevelopment Successor Agency approves its Administrative Budget for FY 2015-16.

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

Agenda Item No. 5(F)
Attachment 1

I CERTIFY that at the regular meeting on February 17, 2015, the City Council of the City of El Cerrito acting as the El Cerrito Redevelopment Agency Successor Agency passed this resolution by the following vote:

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

IN WITNESS of this action, I sign this document on February __, 2015.

Cheryl Morse, City Clerk

APPROVED:

Mark Friedman, Successor Agency Chair

Recognized Obligation Payment Schedule (ROPS 15-16A) - Summary
Filed for the July 1, 2015 through December 31, 2015 Period

Name of Successor Agency:	El Cerrito
Name of County:	Contra Costa

Current Period Requested Funding for Outstanding Debt or Obligation		Six-Month Total
Enforceable Obligations Funded with Non-Redevelopment Property Tax Trust Fund (RPTTF) Funding		
A	Sources (B+C+D):	\$ -
B	Bond Proceeds Funding (ROPS Detail)	-
C	Reserve Balance Funding (ROPS Detail)	-
D	Other Funding (ROPS Detail)	-
E	Enforceable Obligations Funded with RPTTF Funding (F+G):	\$ 2,213,510
F	Non-Administrative Costs (ROPS Detail)	2,088,510
G	Administrative Costs (ROPS Detail)	125,000
H	Current Period Enforceable Obligations (A+E):	\$ 2,213,510

Successor Agency Self-Reported Prior Period Adjustment to Current Period RPTTF Requested Funding		
I	Enforceable Obligations funded with RPTTF (E):	2,213,510
J	Less Prior Period Adjustment (Report of Prior Period Adjustments Column S)	(72,350)
K	Adjusted Current Period RPTTF Requested Funding (I-J)	\$ 2,141,160

County Auditor Controller Reported Prior Period Adjustment to Current Period RPTTF Requested Funding		
L	Enforceable Obligations funded with RPTTF (E):	2,213,510
M	Less Prior Period Adjustment (Report of Prior Period Adjustments Column AA)	-
N	Adjusted Current Period RPTTF Requested Funding (L-M)	2,213,510

Certification of Oversight Board Chairman:
Pursuant to Section 34177 (m) of the Health and Safety code, I
hereby certify that the above is a true and accurate Recognized
Obligation Payment Schedule for the above named agency.

Name	Title
/s/	
Signature	Date

Recognized Obligation Payment Schedule (ROPS 15-16A) - ROPS Detail
July 1, 2015 through December 31, 2015
(Report Amounts in Whole Dollars)

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Item #	Project Name / Debt Obligation	Obligation Type	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Retired	Funding Source					Six-Month Total
										Non-Redevelopment Property Tax Trust Fund (Non-RPTTF)			RPTTF		
										Bond Proceeds	Reserve Balance	Other Funds	Non-Admin	Admin	
								\$ 24,243,364		\$ -	\$ -	\$ -	\$ 2,088,510	\$ 125,000	\$ 2,213,510
1	Tax Allocation Bonds 1997 A	Bonds Issued On or Before 12/31/10	12/17/1997	7/1/2019	Union Bank	Refunding of prior TAB for Redev Projs	City of El Cerrito	2,024,250	N				254,875		\$ 254,875
2	Tax Allocation Bonds 1998 B	Bonds Issued On or Before 12/31/10	12/17/1997	7/1/2015	Union Bank	Refunding of prior TAB for L&M Hsg Projs	City of El Cerrito	-	Y						\$ -
3	Tax Allocation Bonds 2004 A	Bonds Issued On or Before 12/31/10	10/21/2004	7/1/2023	Union Bank	Tax-exempt TAB for Infrastructure Projs	City of El Cerrito	10,364,435	N				577,576		\$ 577,576
5	Tax Allocation Bonds 2004 B Hsg	Bonds Issued On or Before 12/31/10	10/21/2004	7/1/2023	Union Bank	Taxable TAB for L&M Hsg Projs	City of El Cerrito	4,443,290	N				252,110		\$ 252,110
6	2009-10 SERAF Loan	SERAF/ERAF	2/16/2010	11/24/2024	City L&M Housing Fund	Funds advanced for SERAF payment	City of El Cerrito		N						\$ -
7	2005-06 ERAF Loan	SERAF/ERAF	4/17/2006	11/24/2024	City L&M Housing Fund	Funds advanced for ERAF payment	City of El Cerrito		N						\$ -
9	Valente Promissory Note	Third-Party Loans	3/5/2009	3/5/2024	George Valente	Loan for land acquisition	City of El Cerrito	1,897,925	N						\$ -
11	Eden Housing Loan Agreement	OPA/DDA/Construction	5/17/2011	11/24/2024	Eden Housing	Undisbursed loan commitment	City of El Cerrito		N						\$ -
12	Cooperation Agreement	Project Management Costs	3/7/2011	11/24/2024	El Cerrito MSC	Implementation of City of El Cerrito Redevelopment Plan	City of El Cerrito		N						\$ -
18	Eden Housing Loan Agreement Post DDA	OPA/DDA/Construction	5/17/2011	11/24/2024	Eden Housing	Undisbursed loan commitment contingent on DDA	City of El Cerrito		N						\$ -
19	Cooperation Agreement	Project Management Costs	3/7/2011	11/24/2024	El Cerrito MSC	Implementation of Redevelopment Plan	City of El Cerrito		N						\$ -
21	Litigation Cost/Cash Flow Loan Agreement	Legal	10/1/2013	6/30/2015	City of El Cerrito	Successor Agency litigation costs funded by ROPS 14-15B RPT and/or by City of El Cerrito Cash Flow Loan pursuant to H&S Code Section 34173(h).	City of El Cerrito	72,350	N				72,350		\$ 72,350
22	Eden Housing Loan Agreement Post DDA	OPA/DDA/Construction	5/17/2011	11/24/2024	Eden Housing	Undisbursed loan commitment contingent on DDA		250,000	N				250,000		\$ 250,000
23	Cooperation Agreement	Project Management Costs	3/7/2011	11/24/2024	El Cerrito MSC	Implementation of Redevelopment Plan		3,287,000	N						\$ -
24	San Pablo Avenue Streetscape	OPA/DDA/Construction	7/1/2004	11/24/2024	City of El Cerrito	Undisbursed commitment for public improvements constructed in 2004-2011		431,599	N				431,599		\$ 431,599
25	FY 14-15 Administrative Allowance	Admin Costs	6/1/2014	7/31/2015	City of El Cerrito	Annual allowance		250,000	N					125,000	\$ 125,000
26	2009-10 SERAF Loan	SERAF/ERAF	2/16/2010	11/24/2024	City L&M Housing Fund	Funds advanced for SERAF payment		975,941	N				100,000		\$ 100,000
27	2005-06 ERAF Loan	SERAF/ERAF	4/17/2006	11/24/2024	City L&M Housing Fund	Funds advanced for ERAF payment		246,574	N				150,000		\$ 150,000
28									N						\$ -
29									N						\$ -
30									N						\$ -
31									N						\$ -
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46									N						\$ -
47									N						\$ -
48									N						\$ -
49									N						\$ -

Recognized Obligation Payment Schedule (ROPS 15-16A) - Report of Cash Balances
(Report Amounts in Whole Dollars)

Pursuant to Health and Safety Code section 34177 (I), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation. For tips on how to complete the Report of Cash Balances Form, see https://rad.dof.ca.gov/rad-sa/pdf/Cash_Balance_Agency_Tips_Sheet.pdf .								
A	B	C	D	E	F	G	H	I
	Cash Balance Information by ROPS Period	Fund Sources						Comments
		Bond Proceeds		Reserve Balance		Other	RPTTF	
		Bonds Issued on or before 12/31/10	Bonds Issued on or after 01/01/11	Prior ROPS period balances and DDR RPTTF balances retained	Prior ROPS RPTTF distributed as reserve for future period(s)	Rent, Grants, Interest, Etc.	Non-Admin and Admin	
ROPS 14-15A Actuals (07/01/14 - 12/31/14)								
1	Beginning Available Cash Balance (Actual 07/01/14)			16,592		1,277		
2	Revenue/Income (Actual 12/31/14) RPTTF amounts should tie to the ROPS 14-15A distribution from the County Auditor-Controller during June 2014						1,303,419	
3	Expenditures for ROPS 14-15A Enforceable Obligations (Actual 12/31/14) RPTTF amounts, H3 plus H4 should equal total reported actual expenditures in the Report of PPA, Columns L and Q						518,569	
4	Retention of Available Cash Balance (Actual 12/31/14) RPTTF amount retained should only include the amounts distributed as reserve for future period(s)						712,500	Funds retained as debt service reserve for ROPS
5	ROPS 14-15A RPTTF Prior Period Adjustment RPTTF amount should tie to the self-reported ROPS 14-15A PPA in the Report of PPA, Column S	No entry required					72,350	
6	Ending Actual Available Cash Balance C to G = (1 + 2 - 3 - 4), H = (1 + 2 - 3 - 4 - 5)	\$ -	\$ -	\$ 16,592	\$ -	\$ 1,277	\$ -	
ROPS 14-15B Estimate (01/01/15 - 06/30/15)								
7	Beginning Available Cash Balance (Actual 01/01/15) (C, D, E, G = 4 + 6, F = H4 + F4 + F6, and H = 5 + 6)	\$ -	\$ -	\$ 16,592	\$ 712,500	\$ 1,277	\$ 72,350	
8	Revenue/Income (Estimate 06/30/15) RPTTF amounts should tie to the ROPS 14-15B distribution from the County Auditor-Controller during January 2015						1,521,831	
9	Expenditures for ROPS 14-15B Enforceable Obligations (Estimate 06/30/15)			15,455	712,500	1,175	1,521,831	
10	Retention of Available Cash Balance (Estimate 06/30/15) RPTTF amount retained should only include the amounts distributed as reserve for future period(s)							
11	Ending Estimated Available Cash Balance (7 + 8 - 9 -10)	\$ -	\$ -	\$ 1,137	\$ -	\$ 102	\$ 72,350	

ROPS 14-15A Successor Agency (SA) Self-reported Prior Period Adjustments (PPA):Pursuant to HSC Section 34186 (a), SAs are required to report the differences between their actual available funding and their actual expenditures for the ROPS 14-15A (July through December 2014) period. The amount of Redevelopment Property Tax Trust Fund (RPTTF) approved for the ROPS 15-16A (July through December 2015) period will be offset by the SA's self-reported ROPS 14-15A prior period adjustment. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by SAs are subject to audit by the county auditor-controller (CAC) and the State Controller.																			ROPS 14-15A CAC PPA: To be completed by the CAC upon submittal of the ROPS 15-16A by the SA to Finance and the CAC. Note that CACs will need to enter their own formulas at the line item level pursuant to the manner in which they calculate the PPA. Also note that the Admin amounts do not need to be listed at the line item level and may be entered as a lump sum.										
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB		
	Project Name / Debt Obligation	Non-RPTTF Expenditures						RPTTF Expenditures											SA Comments	RPTTF Expenditures							CAC Comments		
				Non-RPTTF Expenditures									RPTTF Expenditures							Non-Admin CAC			Admin CAC			Net CAC Non-Admin and Admin PPA (Amount Used to Offset ROPS 15-16A Requested RPTTF)			
		Bond Proceeds		Reserve Balance		Other Funds		Non-Admin					Admin							Net SA Non-Admin and Admin PPA (Amount Used to Offset ROPS 15-16A Requested RPTTF)									
		Authorized	Actual	Authorized	Actual	Authorized	Actual	Authorized	Available RPTTF (ROPS 14-15A distributed + all other available as of 07/1/14)	Net Lesser of Authorized / Available	Actual	Difference (If K is less than L, the difference is zero)	Authorized	Available RPTTF (ROPS 14-15A distributed + all other available as of 07/1/14)	Net Lesser of Authorized / Available	Actual	Difference (If total actual exceeds total authorized, the total difference is zero)	Net Difference (M+R)											
Item #		\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-		Net Lesser of Authorized / Available	Actual	Difference	Net Lesser of Authorized / Available	Actual	Difference	Net Difference		
		\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-	\$	-				\$	-		\$	-		
1	Tax Allocation	-	-	-	-	-	-	281,125	281,125	\$	281,125	281,125	\$	-					\$	-									
2	Tax Allocation	-	-	-	-	-	-	113,144	113,144	\$	113,144	113,144	\$	-					\$	-									
3	Tax Allocation Bonds 2004 A	-	-	-	-	-	-	535,249	535,249	\$	535,249	535,249	\$	-					\$	-									
5	Tax Allocation Bonds 2004 B Hsg	-	-	-	-	-	-	134,098	134,098	\$	134,098	134,098	\$	-					\$	-									
6	2009-10 SERAF Loan	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
7	2005-06 ERAF Loan	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
9	Valente Promissory Note	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
11	Eden Housing Loan Agreement	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
12	Cooperation Agreement	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
14	Due Diligence Review	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
18	Eden Housing Loan Agreement Post-DDA	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
19	Cooperation Agreement	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
21	Litigation Cost/Cash Flow Loan Agreement	-	-	-	-	-	-	90,000	90,000	\$	90,000	17,650	\$	72,350					\$	72,350									
22	Eden Housing Loan Agreement Post-DDA	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
23	Cooperation Agreement	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
24	San Pablo Avenue Streetscape	-	-	-	-	-	-	-	-	\$	-	\$	-	125,000					\$	-									
25	FY 14-15 Administrative Allowance	-	-	-	-	-	-	-	-	\$	-	\$	-						\$	-									
26	2009-10 SERAF Loan	-	-	-	-	-	-	19,800	19,800	\$	19,800	19,800	\$	-					\$	-									
27	2005-06 ERAF Loan	-	-	-	-	-	-	5,003	5,003	\$	5,003	5,003	\$	-					\$	-									
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[illegible]

Exhibit B
Successor Agency Administrative Budget
Fiscal Year 2015-6

Entity/Activity	Successor Agency	Oversight Board
<i>Staffing Functions (Total Compensation plus Overhead for Indirect Costs)</i>		
Administration	\$55,000	\$35,000
Finance	\$60,000	\$30,000
Community Development	\$20,000	\$10,000
City Clerk	\$15,000	\$10,000
Legal Services	\$50,000	
Financial & Audit Services	\$10,000	
Bond-related Costs	\$10,000	
Supplies	\$1,000	\$500
Postage	\$100	\$100
Copies	\$100	\$100
Website	\$1,000	\$1,000
Advertising/Legal Notices	\$500	\$500
Property Management	\$1,000	
Total	\$223,700	\$87,200
Combined Total		\$310,900
Funding Source		
Redevelopment Property Tax Trust Fund		\$250,000
Unfunded		\$60,900



AGENDA BILL

Agenda Item No. 7(A)

Date: February 17, 2015

To: El Cerrito City Council

From: Maria Sanders, Interim Operations and Environmental Services Division Manager
Yvetteh Ortiz, Public Works Director/City Engineer

Subject: Appointment of Marin Clean Energy Board of Directors

ACTION REQUESTED

Adopt a resolution appointing a delegate and alternate to the Marin Clean Energy (MCE) Board of Directors.

BACKGROUND

On December 15, 2014 the City Council unanimously approved Resolution 2014-79 requesting membership in the MCE Joint Powers Authority (JPA) in order to provide clean energy options for electricity account holders in El Cerrito. The MCE Board of Directors adopted their Resolution 2014-08 approving El Cerrito's membership. On January 6, 2014, the City Council further adopted Ordinance 2015-02 authorizing the implementation of MCE's Community Choice Aggregation (CCA) program and approving the MCE JPA Agreement. MCE is governed by a Board of Directors consisting of elected officials from all participating jurisdictions in MCE. These directors serve at the pleasure of the governing board that they represent. The next step is for the City Council to designate a delegate and an alternate delegate to represent the City of El Cerrito on the MCE Board of Directors.

DISCUSSION

The MCE Board of Directors provides direction on general administrative, financial, and programmatic matters concerning the CCA and other MCE energy services. Article 4 under the *Marin Energy Authority*¹ *JPA Agreement* (Attachment 2) and Article 3 of the *Marin Energy Authority Operating Rules and Regulations* (Attachment 3), outline the expectations and operating procedures of the Board. The MCE Board meets on the first Thursday of each month at 7:00 p.m. in San Rafael, Marin County. Board packet materials are made available one week in advance of the meeting. Meetings typically last between two to three hours. Board meeting minutes, videos, and other key documents are available at www.marincleanenergy.org.

¹ On December 5, 2013 the Marin Energy Authority, the governing agency running the Marin Clean Energy Program, formally adopted Marin Clean Energy as the name of the agency in order to avoid public confusion.

STRATEGIC PLAN CONSIDERATIONS

Goal F, “Foster environmental sustainability citywide,” of the El Cerrito Strategic Plan contains an objective to implement the City’s *Climate Action Plan* (CAP) by facilitating “energy and water efficiency and greater adoption of clean energy.” Because MCE was formed to procure electricity from renewable energy sources, joining MCE is one of the more powerful and cost-effective strategies for reducing greenhouse gas emissions in El Cerrito. MCE estimates an emission reduction of 2,500 tons of CO2 in the first year of full enrollment. By 2020, this reduction is likely to increase and was estimated by the CAP to provide reductions of between 4,200 and 6,700 tons of CO2 per year.

ENVIRONMENTAL CONSIDERATIONS

Joining MCE is an administrative action that will not result in a direct physical change to the environment or a reasonably foreseeable indirect change to the environment, and thus is not a project as defined by the California Environmental Quality Act (CEQA) Guideline Section 15378. The City filed a Notice of Exemption with the County Clerk on December 22, 2014.

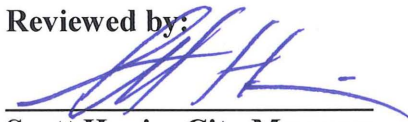
FINANCIAL CONSIDERATIONS

There are no direct financial impacts to the City’s General Fund. MCE electricity and programs are funded by ratepayers that choose to participate in MCE. However, there will be minimal internal expenses related to staff time supporting El Cerrito as a JPA member that will be covered by the current operating budget

LEGAL CONSIDERATIONS

Legal considerations associated with joining MCE and serving on its Board of Directors were considered by the City Council during the public hearings considering adoption of Resolution 2014-79 and Ordinance 2015-02 authorizing membership in MCE.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. Marin Energy Authority JPA Agreement
3. Marin Energy Authority Operating Rules and Regulations

RESOLUTION 2015-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ELECTING AND APPOINTING A DIRECTOR AND ALTERNATE DIRECTOR TO SERVE ON THE BOARD OF DIRECTORS OF THE MARIN CLEAN ENERGY JOINT POWERS AUTHORITY

WHEREAS, Marin Clean Energy (MCE), formerly known as Marin Energy Authority, was established as a joint powers authority pursuant to a Joint Powers Agreement, as amended from time to time (“MCE Joint Powers Agreement”); and

WHEREAS, the City Council adopted Resolution 2014-79 requesting membership in MCE, and the MCE Board of Directors adopted Resolution 2014-08 approving the City of El Cerrito as an MCE member; and

WHEREAS, on January 6, 2015 the El Cerrito City Council by Ordinance 2015-02 approved the MCE Joint Powers Agreement and authorized the City Manager to execute the Agreement; and

WHEREAS, MCE is governed by a Board of Directors consisting of the elected officials from each member jurisdiction, and that each Director serves at the pleasure of the governing board that they represent; and

WHEREAS, the City Council desires to elect and appoint one delegate and one alternate delegate to the MCE Board of Directors.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CERRITO AS FOLLOWS:

1. The City Council finds that the above recitals are true and correct.
2. The City Council hereby elects and appoints Councilmember _____ to serve as Director and Councilmember _____ to serve as Alternate Director on the MCE Board of Directors.
3. The MCE Board of Director appointments shall be reviewed on an annual basis and confirmed by the City Council when it considers all other regional and liaison appointments.

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

* * * * *

Agenda Item No. 7(A)

Attachment 1

I CERTIFY that at a regular meeting on February 17, 2015 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on _____, 2015.

Cheryl Morse, City Clerk

APPROVED:

Mark Friedman, Mayor

**MARIN ENERGY AUTHORITY
JOINT POWERS AGREEMENT**

This **Joint Powers Agreement** (“Agreement”), effective as of December 19, 2008, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the parties set forth in Exhibit B (“Parties”). The term “Parties” shall also include an incorporated municipality or county added to this Agreement in accordance with Section 3.1.

RECITALS

1. The Parties are either incorporated municipalities or counties sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.
2. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local government to develop programs to reduce greenhouse emissions.
3. The purposes for the Initial Participants (as such term is defined in Section 2.2 below) entering into this Agreement include addressing climate change by reducing energy related greenhouse gas emissions and securing energy supply and price stability, energy efficiencies and local economic benefits. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production.
4. The Parties desire to establish a separate public agency, known as the Marin Energy Authority (“Authority”), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) in order to collectively study, promote, develop, conduct, operate, and manage energy programs.
5. The Initial Participants have each adopted an ordinance electing to implement through the Authority Community Choice Aggregation, an electric service enterprise agency available to cities and counties pursuant to California Public Utilities Code Section 366.2 (“CCA Program”). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program. Regardless of whether or not Program Agreement 1 is approved and the CCA Program becomes operational, the parties intend for the Authority to continue to study, promote, develop, conduct, operate and manage other energy programs.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

ARTICLE 1 CONTRACT DOCUMENTS

- 1.1 **Definitions.** Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.
- 1.2 **Documents Included.** This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

Exhibit A:	Definitions
Exhibit B:	List of the Parties
Exhibit C:	Annual Energy Use
Exhibit D:	Voting Shares

- 1.3 **Revision of Exhibits.** The Parties agree that Exhibits B, C and D to this Agreement describe certain administrative matters that may be revised upon the approval of the Board, without such revision constituting an amendment to this Agreement, as described in Section 8.4. The Authority shall provide written notice to the Parties of the revision of any such exhibit.

ARTICLE 2 FORMATION OF MARIN ENERGY AUTHORITY

- 2.1 **Effective Date and Term.** This Agreement shall become effective and Marin Energy Authority shall exist as a separate public agency on the date this Agreement is executed by at least two Initial Participants after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(10). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 7.4, subject to the rights of the Parties to withdraw from the Authority.
- 2.2 **Initial Participants.** During the first 180 days after the Effective Date, all other Initial Participants may become a Party by executing this Agreement and delivering an executed copy of this Agreement and a copy of the adopted ordinance required by Public Utilities Code Section 366.2(c)(10) to the Authority. Additional conditions, described in Section 3.1, may apply (i) to either an incorporated municipality or county desiring to become a Party and is not an Initial Participant and (ii) to Initial Participants that have not executed and delivered this Agreement within the time period described above.

- 2.3 Formation.** There is formed as of the Effective Date a public agency named the Marin Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 8.4 of this Agreement, this Section 2.3 may not be amended unless such amendment is approved by the governing board of each Party.
- 2.4 Purpose.** The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate as a group in the CCA Program, as further described in Section 5.1. The Parties intend that subsequent agreements shall define the terms and conditions associated with the actual implementation of the CCA Program and any other energy programs approved by the Authority.
- 2.5 Powers.** The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following:
- 2.5.1** make and enter into contracts;
 - 2.5.2** employ agents and employees, including but not limited to an Executive Director;
 - 2.5.3** acquire, contract, manage, maintain, and operate any buildings, works or improvements;
 - 2.5.4** acquire by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;
 - 2.5.5** lease any property;
 - 2.5.6** sue and be sued in its own name;
 - 2.5.7** incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Section 53850 et seq. and authority under the Act;
 - 2.5.8** issue revenue bonds and other forms of indebtedness;
 - 2.5.9** apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;

- 2.5.10 submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;
 - 2.5.11 adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority (“Operating Rules and Regulations”); and
 - 2.5.12 make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.
- 2.6 **Limitation on Powers.** As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by the County of Marin.
- 2.7 **Compliance with Local Zoning and Building Laws.** Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed.

ARTICLE 3 AUTHORITY PARTICIPATION

- 3.1 **Addition of Parties.** Subject to Section 2.2, relating to certain rights of Initial Participants, other incorporated municipalities and counties may become Parties upon (a) the adoption of a resolution by the governing body of such incorporated municipality or such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 4.9.1, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(10) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board. Notwithstanding the foregoing, in the event the Authority decides to not implement a CCA Program, the requirement that an additional party adopt the ordinance required by Public Utilities Code Section 366.2(c)(10) shall not apply. Under such circumstance, the Board resolution authorizing membership of an additional incorporated municipality or county shall be adopted in accordance with the voting requirements of Section 4.10.

- 3.2 **Continuing Participation.** The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 3.1. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

ARTICLE 4

GOVERNANCE AND INTERNAL ORGANIZATION

- 4.1 **Board of Directors.** The governing body of the Authority shall be a Board of Directors ("Board") consisting of one director for each Party appointed in accordance with Section 4.2.
- 4.2 **Appointment and Removal of Directors.** The Directors shall be appointed and may be removed as follows:
- 4.2.1 The governing body of each Party shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party also shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the Director or the alternate Director shall be a member of the governing body of the Party.
- 4.2.2 The Operating Rules and Regulations, to be developed and approved by the Board in accordance with Section 2.5.11, shall specify the reasons for and process associated with the removal of an individual Director for cause. Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its Director and/or alternate Director has been removed may appoint a replacement.
- 4.3 **Terms of Office.** Each Director shall serve at the pleasure of the governing body of the Party that the Director represents, and may be removed as Director by such governing body at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director in accordance with the provisions of Section 4.2 within 90 days of the date that such position becomes vacant.
- 4.4 **Quorum.** A majority of the Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.

- 4.5 Powers and Function of the Board.** The Board shall conduct or authorize to be conducted all business and activities of the Authority, consistent with this Agreement, the Authority Documents, the Operating Rules and Regulations, and applicable law.
- 4.6 Executive Committee.** The Board may establish an executive committee consisting of a smaller number of Directors. The Board may delegate to the executive committee such authority as the Board might otherwise exercise, subject to limitations placed on the Board's authority to delegate certain essential functions, as described in the Operating Rules and Regulations. The Board may not delegate to the Executive Committee or any other committee its authority under Section 2.5.11 to adopt and amend the Operating Rules and Regulations.
- 4.7 Commissions, Boards and Committees.** The Board may establish any advisory commissions, boards and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement.
- 4.8 Director Compensation.** Compensation for work performed by Directors on behalf of the Authority shall be borne by the Party that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.
- 4.9 Board Voting Related to the CCA Program.**
- 4.9.1.** To be effective, on all matters specifically related to the CCA Program, a vote of the Board shall consist of the following: (1) a majority of all Directors shall vote in the affirmative or such higher voting percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage vote") and (2) the corresponding voting shares (as described in Section 4.9.2 and Exhibit D) of all such Directors voting in the affirmative shall exceed 50%, or such other higher voting shares percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage voting shares"), provided that, in instances in which such other higher voting share percentage would result in any one Director having a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter.
- 4.9.2.** Unless otherwise stated herein, voting shares of the Directors shall be determined by combining the following: (1) an equal voting share for each Director determined in accordance with the formula detailed in Section 4.9.2.1, below; and (2) an additional voting share determined in accordance with the formula detailed in Section 4.9.2.2, below.
- 4.9.2.1 Pro Rata Voting Share.** Each Director shall have an equal voting share as determined by the following formula: (1/total number of

Directors) multiplied by 50, and

4.9.2.2 Annual Energy Use Voting Share. Each Director shall have an additional voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 50, where (a) “Annual Energy Use” means, (i) with respect to the first 5 years following the Effective Date, the annual electricity usage, expressed in kilowatt hours (“kWhs”), within the Party’s respective jurisdiction and (ii) with respect to the period after the fifth anniversary of the Effective Date, the annual electricity usage, expressed in kWhs, of accounts within a Party’s respective jurisdiction that are served by the Authority and (b) “Total Annual Energy” means the sum of all Parties’ Annual Energy Use. The initial values for Annual Energy use are designated in Exhibit C, and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year

4.9.2.3 The voting shares are set forth in Exhibit D. Exhibit D may be updated to reflect revised annual energy use amounts and any changes in the parties to the Agreement without amending the Agreement provided that the Board is provided a copy of the updated Exhibit D.

4.10 Board Voting on General Administrative Matters and Programs Not Involving CCA. Except as otherwise provided by this Agreement or the Operating Rules and Regulations, each member shall have one vote on general administrative matters, including but not limited to the adoption and amendment of the Operating Rules and Regulations, and energy programs not involving CCA. Action on these items shall be determined by a majority vote of the quorum present and voting on the item or such higher voting percentage expressly set forth in Sections 7.2 and 8.4.

4.11 Board Voting on CCA Programs Not Involving CCA That Require Financial Contributions. The approval of any program or other activity not involving CCA that requires financial contributions by individual Parties shall be approved only by a majority vote of the full membership of the Board subject to the right of any Party who votes against the program or activity to opt-out of such program or activity pursuant to this section. The Board shall provide at least 45 days prior written notice to each Party before it considers the program or activity for adoption at a Board meeting. Such notice shall be provided to the governing body and the chief administrative officer, city manager or town manager of each Party. The Board also shall provide written notice of such program or activity adoption to the above-described officials of each Party within 5 days after the Board adopts the program or activity. Any Party voting against the approval of a program or other activity of the Authority requiring financial contributions by individual Parties may elect to opt-out of participation in such program or activity by

providing written notice of this election to the Board within 30 days after the program or activity is approved by the Board. Upon timely exercising its opt-out election, a Party shall not have any financial obligation or any liability whatsoever for the conduct or operation of such program or activity.

- 4.12 Meetings and Special Meetings of the Board.** The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of California Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.).

4.13 Selection of Board Officers.

- 4.13.1 Chair and Vice Chair.** The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The term of office of the Chair and Vice Chair shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board or (b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement.
- 4.13.2 Secretary.** The Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority.
- 4.13.3 Treasurer and Auditor.** The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom needs to be a member of the Board. If the Board so designates, and in accordance with the provisions of applicable law, a qualified person may hold both the office of Treasurer and the office of Auditor of the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depository of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Board may require the Treasurer and/or Auditor to

file with the Authority an official bond in an amount to be fixed by the Board, and if so requested the Authority shall pay the cost of premiums associated with the bond. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 6.

- 4.14 Administrative Services Provider.** The Board may appoint one or more administrative services providers to serve as the Authority's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of a written agreement between the Authority and the appointed administrative services provider or providers that will be known as an Administrative Services Agreement. The Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program.

ARTICLE 5

IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

5.1 Preliminary Implementation of the CCA Program.

- 5.1.1 Enabling Ordinance.** Except as otherwise provided by Section 3.1, prior to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(10) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.
- 5.1.2 Implementation Plan.** The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 4.9.

5.1.3 Effect of Vote On Required Implementation Action. In the event that two or more Parties vote to approve Program Agreement 1 or any earlier action required for the implementation of the CCA Program (“Required Implementation Action”), but such vote is insufficient to approve the Required Implementation Action under Section 4.9, the following will occur:

5.1.3.1 The Parties voting against the Required Implementation Action shall no longer be a Party to this Agreement and this Agreement shall be terminated, without further notice, with respect to each of the Parties voting against the Required Implementation Action at the time this vote is final. The Board may take a provisional vote on a Required Implementation Action in order to initially determine the position of the Parties on the Required Implementation Action. A vote, specifically stated in the record of the Board meeting to be a provisional vote, shall not be considered a final vote with the consequences stated above. A Party who is terminated from this Agreement pursuant to this section shall be considered the same as a Party that voluntarily withdrew from the Agreement under Section 7.1.1.1.

5.1.3.2 After the termination of any Parties pursuant to Section 5.1.3.1, the remaining Parties to this Agreement shall be only the Parties who voted in favor of the Required Implementation Action.

5.1.4 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

5.2 Authority Documents. The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution, including but not necessarily limited to the Operating Rules and Regulations, the annual budget, and specified plans and policies defined as the Authority Documents by this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such Authority Documents that may be adopted by the Board, subject to the Parties’ right to withdraw from the Authority as described in Article 7.

ARTICLE 6 FINANCIAL PROVISIONS

6.1 Fiscal Year. The Authority's fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.

6.2 Depository.

6.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

6.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

6.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

6.3 Budget and Recovery Costs.

6.3.1 Budget. The initial budget shall be approved by the Board. The Board may revise the budget from time to time through an Authority Document as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of the Authority shall be prepared and approved by the Board in accordance with the Operating Rules and Regulations.

6.3.2 County Funding of Initial Costs. The County of Marin shall fund the Initial Costs of the Authority in implementing the CCA Program in an amount not to exceed \$500,000 unless a larger amount of funding is approved by the Board of Supervisors of the County. This funding shall be paid by the County at the times and in the amounts required by the Authority. In the event that the CCA Program becomes operational, these Initial Costs paid by the County of Marin shall be included in the customer charges for electric services as provided by Section 6.3.4 to the extent permitted by law, and the County of Marin shall be reimbursed from the

payment of such charges by customers of the Authority. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of Marin shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

6.3.3 CCA Program Costs. The Parties desire that, to the extent reasonably practicable, all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric services under the CCA Program, including the establishment and maintenance of various reserve and performance funds, shall be recovered through charges to CCA customers receiving such electric services.

6.3.4 General Costs. Costs that are not directly or indirectly attributable to the provision of electric services under the CCA Program, as determined by the Board, shall be defined as general costs. General costs shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

6.3.5 Other Energy Program Costs. Costs that are directly or indirectly attributable to energy programs approved by the Authority other than the CCA Program shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

ARTICLE 7 WITHDRAWAL AND TERMINATION

7.1 Withdrawal.

7.1.1 General.

7.1.1.1 Prior to the Authority's execution of Program Agreement 1, any Party may withdraw its membership in the Authority by giving no less than 30 days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. To permit consideration by the governing body of each Party, the Authority shall provide a copy of the proposed Program Agreement 1 to each Party at least 90 days prior to the consideration of such agreement by the Board.

7.1.1.2 Subsequent to the Authority's execution of Program Agreement 1, a Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than 6

months advance written notice of its election to do so, which notice shall be given to the Authority and each Party, and upon such other conditions as may be prescribed in Program Agreement 1.

7.1.2 Amendment. Notwithstanding Section 7.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement in the manner provided by Section 8.4.

7.1.3 Continuing Liability; Further Assurances. A Party that withdraws its membership in the Authority may be subject to certain continuing liabilities, as described in Section 7.3. The withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in the Authority. The Operating Rules and Regulations shall prescribe the rights if any of a withdrawn Party to continue to participate in those Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party.

7.2 Involuntary Termination of a Party. This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or the Authority Documents upon an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%, excluding the vote and voting shares of the Party subject to possible termination. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or the Authority Documents that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its membership in the Authority terminated may be subject to certain continuing liabilities, as described in Section 7.3. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.

7.3 Continuing Liability; Refund. Upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or liabilities arising from the Party's membership in the Authority through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities arising after the date of the Party's withdrawal or involuntary termination. In addition, such

Party also shall be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party's liability for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to the Party.

- 7.4 **Mutual Termination.** This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 7.1.
- 7.5 **Disposition of Property upon Termination of Authority.** Upon termination of this Agreement as to all Parties, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 8 MISCELLANEOUS PROVISIONS

- 8.1 **Dispute Resolution.** The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Should such efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be settled by binding arbitration in accordance with policies and procedures established by the Board.
- 8.2 **Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 et seq. Nothing in this section shall be construed to limit the defenses

available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

- 8.3 Indemnification of Parties.** The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties and the public. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.
- 8.4 Amendment of this Agreement.** This Agreement may be amended by an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments. A Party shall be deemed to have withdrawn its membership in the Authority effective immediately upon the vote of the Board approving an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in the Authority should the amendment be approved by the Board. As described in Section 7.3, a Party that withdraws its membership in the Authority in accordance with the above-described procedure may be subject to continuing liabilities incurred prior to the Party's withdrawal. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.
- 8.5 Assignment.** Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 8.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.
- 8.6 Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

- 8.7 Further Assurances.** Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.
- 8.8 Execution by Counterparts.** This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.
- 8.9 Parties to be Served Notice.** Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

MARIN ENERGY AUTHORITY
OPERATING RULES AND REGULATIONS

(As Amended)

ARTICLE I

FORMATION

The Marin Energy Authority (the “Authority”) was established on December 19, 2008 pursuant to the execution of the Marin Energy Authority Joint Powers Agreement (the “Agreement”) by the County of Marin, the Town of Fairfax and the Town of Tiburon. The Initial Participants in the Authority who executed the Agreement within 180 days of the establishment of the Authority are the following:

The members of the Authority are referred to as Party or Parties in these Operating Rules and Regulations. As defined by the Agreement, these Operating Rules and Regulations consist of rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

ARTICLE II

PURPOSES

The Authority is formed to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. These programs include but are not limited to the establishment of a Community Choice Aggregation Program known as Marin Clean Energy in accordance with the terms of the Agreement.

ARTICLE III

BOARD OF DIRECTORS

Section 1. The Authority shall be governed by a Board of Directors composed of one representative of each of the Parties. The Board may delegate specified functions or actions to the Executive Committee or other committees that may be established by the Board. The governing body of each Party shall appoint and designate in writing to the Authority one regular Director who shall be authorized to act for and on behalf of the Party on all matters within the power of the Authority. The governing body of each Party also shall appoint and designate in writing to the Authority one alternate Director who may vote on all matters when the regular Director is absent for a Board meeting. Both the Director and the Alternate Director shall be members of the governing body of the Party.

Section 2. Each Director and Alternate Director shall serve at the pleasure of the governing body of the Party that the Director represents and may be removed as Director or Alternate Director by such governing body at any time.

Section 3. A Director may be removed by the Board for cause. Cause shall be defined for the purposes of this section as follows:

- a. Unexcused absences from three consecutive Board meetings.
- b. Unauthorized disclosure of confidential information or documents from a closed session or the unauthorized disclosure of information or documents provided to the Director on a confidential basis and whose public disclosure may be harmful to the interests of the Authority.

Written notice shall be provided to the Director proposed for removal and the governing body that appointed such Director at least thirty days prior to the meeting at which the proposed removal will be considered by the Board. The notice shall state the grounds for removal, a brief summary of the supporting facts, and the date of the scheduled hearing on the removal. The Director proposed for removal shall be given an opportunity to be heard at the removal hearing and to submit any supporting oral or written evidence. A Director shall not be removed for cause from the Board unless two-thirds of all Directors (excluding the Director subject to removal) vote in favor of the removal.

Section 4. If at any time a vacancy occurs on the Board, for whatever reason, a replacement shall be appointed by the governing body of the subject Party to fill the position of the previous Director within ninety days of the date that such position becomes vacant.

ARTICLE IV

OFFICERS AND TERMS OF OFFICE

Section 1. There shall be a Chairperson, a Vice-Chairperson, a Secretary and a Treasurer.

- a. Chairperson. The Chairperson of the Authority shall be a Director. Duties of the Chairperson are to supervise the preparation of the business agenda, preside over Authority meetings, and sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board. The term of office of the Chairperson shall be for one year.
- b. Vice-Chairperson. The Vice-Chairperson shall be a Director. The Vice-Chairperson shall perform the duties of Chairperson in the absence of such officer. The term of office of the Vice-Chairperson shall be for one year.
- c. Secretary. The Secretary will supervise the preparation of the meeting minutes and the maintenance of the records of the Authority. The term of the Secretary shall be for one year. The Secretary does not need to be a Director.
- d. Treasurer and Auditor. The Treasurer shall have custody of all the money of the Authority and shall have all of the duties and responsibilities specified in Government Code Section 6505.5. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The positions of Treasurer and Auditor may be combined into one position known as the

Treasurer/Auditor of the Authority. Neither the Treasurer nor the Auditor needs to be a Director. The term of the Treasurer and Auditor shall be for one year. The Board may transfer the responsibilities of the Treasurer and Auditor to any person or entity permitted by law.

- e. Initial Terms of Office. Notwithstanding the one-year term generally established for officers above, the terms of the initial officers elected by the Board shall not expire until the annual meeting of the Board held in June 2010.
- f. No Term Limits. There are no limits on the numbers of terms that an officer of the Authority may serve.
- g. Removal. An officer of the Board shall be subject to removal with or without cause at any time by a majority vote of the full Board.
- h. Committees. The Executive Committee and all other Committees of the Board shall be selected as provided by Sections 4.6 and 4.7 of the Agreement. Each duly established Committee may establish any Standing or Ad Hoc Committees determined to be appropriate or necessary. The duties and authority of all Committees shall be subject to the approval and direction of the Board.
- i. Committee of the Whole. To allow full participation by Board members at meetings of Standing Committees, each Standing Committee meeting except the Executive Committee also shall be noticed as a “Committee of the Whole” meeting. In the event that a quorum of Board members are present at a Standing Committee meeting, the Standing Committee will automatically convert into a Committee of the Whole. Likewise, if there is no longer a quorum of the Board present, then the Committee of the Whole will automatically convert back into a Standing Committee. The chair of the Standing Committee will serve as Chair of the Committee of the Whole. Any item acted upon by the Committee of the Whole will be considered advisory to the Board of Directors and require consideration and action by the Board of Directors at a noticed Board meeting before adoption or approval of the item.

The agenda for each Standing Committee, other than the Executive Committee, shall include the following statement:

“This Committee may be attended by Board Members who do not serve on this Committee. In the event that a quorum of the entire Board is present, this Committee shall act as a Committee of the Whole. Any item acted upon by the Committee of the Whole will be considered advisory to the Board of Directors and require consideration and action by the Board of Directors at a noticed Board meeting before adoption or approval of the item.”

ARTICLE V

MEETINGS

Section 1. Commencing in 2010, an annual meeting of the Board shall be held in June of each year to elect the officers of the Authority. The Board by resolution shall establish the date, time and meeting location of all regular meetings of the Board. Special meetings may be called upon the request of a majority of the members of the Board or by the Chairperson.

Section 2. The meetings of the Board, the Executive Committee and all other committees established by the Board shall be governed by the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.).

ARTICLE VII

VOTING

Section 1. Voting on Authority matters shall be held in accordance with the requirements of Sections 4.9 and 4.10 of the Agreement.

Section 2. Under Section 4.10 of the Agreement, each member of the Board shall have one vote on general administrative matters and energy programs not involving Community Choice Aggregation unless otherwise provided by the Agreement or these Operating Rules and Regulations. Unless the Agreement or these Operating Rules and Regulations require a two-thirds vote, action on these items shall be determined by a majority vote of the quorum present and voting on the item except for the following matters which shall be approved only by a majority vote of the full membership of the Board:

- a. The approval of the issuance of bonds or any other financing even if program revenues pay for such financing.
- b. The hiring of an Executive Director and General Counsel.
- c. The appointment or removal of an officer.
- d. The adoption of the Annual Budget.
- e. The adoption of an ordinance.
- f. The initiation of litigation where the Authority will be the plaintiff, petitioner or cross complainant or cross petitioner.
- g. The adoption and amendment of the Operating Rules and Regulations.
- h. The approval of any program or other activity requiring financial contributions by individual Parties subject to the right of any Party who votes

against the program or activity to opt-out of such program or activity pursuant to Section 4 of this Article.

Section 3. The approval of an Administrative Services Agreement under Section 4.13 of the Agreement for planning, implementing, operating and administering the CCA Program shall be subject to the voting requirements of Section 4.9 of the Agreement.

Section 4. The Board shall provide at least 45 days prior written notice to each Party before it considers a program or activity for adoption at a Board meeting not involving CCA that requires financial contributions by individual Parties. Such notice shall be provided to the governing body and the chief administrative officer, city manager or town manager of each Party. The Board also shall provide written notice of such program or activity adoption to the above-described officials of each Party within 5 days after the Board adopts the program or activity. Any Party voting against the approval of such program or activity may elect to opt-out of participation in the program or activity by providing written notice of this election to the Board within 30 days after the program or activity is approved by the Board. Upon timely exercising its opt-out election, a Party shall not have any financial obligation or any liability whatsoever for the conduct or operation of such program or activity.

ARTICLE VIII

DEBTS, LIABILITIES AND OBLIGATIONS

As provided by Section 2.3 of the Agreement, the debts, liabilities and obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority.

ARTICLE IX

AMENDMENTS

These Operating Rules and Regulations may be amended by a majority vote of the full membership of the Board but only after such amendment has been proposed at a regular meeting and acted upon at the next or later regular meeting of the Board for final adoption. The proposed amendment shall not be finally acted upon unless each member of the Board has received written notice of the amendment at least 10 days prior to the date of the meeting at which final action on the amendment is to be taken. The notice shall include the full text of the proposed amendment.



DRAFT AGENDA BILL

Agenda Item No. 7(B)

Date: February 17, 2015
To: El Cerrito City Council
From: Sky Woodruff, City Attorney
Subject: Massage Establishment Moratorium

ACTION REQUESTED

Staff recommends that the City Council adopt a moratorium on the issuance of any City permits related to massage establishments to provide time to study and plan an approach to massage regulation following the Governor's approval of Assembly Bill 1147. The moratorium will prohibit the issuance of all City permits to new and existing massage establishments except for renewals and for emergency repairs and associated permits. The moratorium will be effective immediately for forty-five days upon adoption, unless extended by the City Council through a future public hearing and action.

BACKGROUND

Cities have traditionally had local control over local zoning and land use authority related to massage establishments. In 2009, the California Legislature adopted Senate Bill 731, which added the Massage Therapy Act to state law. The Massage Therapy Act effectively eliminated local zoning authority over massage establishments and limited El Cerrito's ability to regulate massage establishments as it relates to business licensing, zoning, and promotion of public health, safety, and welfare.

Cities throughout California, including neighboring cities, have received numerous complaints regarding illicit activity, including prostitution, at massage establishments. Massage establishments in neighboring cities have also actively attempted to elude enforcement actions.

The Governor recently signed Assembly Bill 1147, which is effective January 1, 2015. Assembly Bill 1147 will amend the California Business and Professions Code to return land use authority over all massage establishments to cities. The City wishes to review its massage regulations in light of the new legislation.

In addition, as applications for business licenses for massage establishments are submitted to the City, there is currently no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance. Absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of massage establishments in locations within the City, without appropriate controls in place to regulate the impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City.

This moratorium will allow the City Council to (1) address concerns regarding the establishment and operation of all massage establishments, (2) study the potential impacts massage

establishments may have on the residents' public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for massage establishments, (4) study and determine the appropriate zoning and location for massage establishments, and (5) determine appropriate controls for protection of public health and welfare.

With the return of local land use authority pursuant to Assembly Bill 1147, staff will commence steps to conduct a study of the potential impacts of massage establishments, and possible amendments to the City's Municipal and Zoning Codes for clear, consistent and uniform regulations related to the establishment, location and operation of massage establishments.

Pursuant to Government Code section 65858, the City may establish a moratorium prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is considering or studying or intends to study within a reasonable time. The City may adopt a moratorium on an urgency basis provided that the City finds that there exists a threat to the public health, safety and welfare.

Staff and the City Attorney have prepared the attached urgency ordinance for the City Council's consideration. As described in more detail below, this urgency ordinance would establish a temporary moratorium on the issuance of business licenses or building permits for massage establishments and the relocation of existing massage establishments. The moratorium would not prohibit:

- The renewal of a business license for an existing massage establishment that seeks to maintain the massage establishment in its current location, in a manner, and housed within a building, which complies with all City, State, Federal or otherwise applicable, codes, rules, regulations or laws; and
- Issuance of permits for emergency and emergency-related repairs; and
- Massage establishments operated as Home Occupations; and
- Persons engaged as: (a) physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice within the scope of their licenses; (b) employed at hospitals, nursing homes, sanitariums, or any other health facility licensed by the state; (c) coaches or trainers acting within the scope of their employment at accredited schools, and (d) trainers of amateur, semi-professional or professional athletes or athletic teams while engaged in their training responsibilities for and with athletes, and working in conjunction with a specific athletic event.

If a massage establishment were approved in the City, prior to the City having an opportunity to study and adopt massage establishment regulations, it could create conflicts among land uses, or conflict with the City's long-term planning goals. Also, multiple jurisdictions have seen a proliferation of massage establishments and criminal activity at massage locations. Accordingly, establishment or relocation of massage establishments in the City at this time, before the City can adopt regulations or determine how best to address potential secondary effects of these types of uses presents a current and immediate threat to the public health, safety, and welfare. Therefore, the City Attorney recommends adoption of the urgency ordinance in order to avoid this current and immediate threat to the public health, safety, and welfare, which could occur if parties seeking to evade the adoption of regulations were permitted to obtain approval for uses that

might defeat the ultimate objective of the adoption of regulations.

In order to ensure that the City's zoning provisions are adequate and that massage establishments will be located and regulated in a manner that protects the public and satisfies the policies, goals and objectives of the General Plan, staff and the City Attorney recommend that the City Council direct staff to study and provide recommendations to the City Council on what Municipal Code and/or Zoning Code amendments and regulations are necessary in order to protect against any potential primary and secondary impacts of massage establishments on the community.

In summary, this Ordinance would approve a 45-day moratorium on the establishment or relocation of new and existing massage establishments in the City upon a four-fifths vote of the City Council. The moratorium may be extended up to two times, once for 10 months, 15 days, and once more for one year, so that the moratorium could ultimately be in effect for a total of two years. This moratorium is needed in order to conduct a study on how best to address the potential threats to public safety, health and welfare resulting from massage establishments in light of pending changes in state law that will re-establish local control over massage establishments. The act of adopting the moratorium is not a review or determination on the merits of allowing such use or not; instead, it will allow the City time to study the issue.

STRATEGIC PLAN CONSIDERATIONS

Adoption of the Massage Establishment moratorium would fulfill the City's Strategic Plan Goal E: Ensure the public's health and safety.

LEGAL CONSIDERATIONS

The City Attorney drafted the urgency ordinance.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Ordinance

ORDINANCE NO. 2015-XX

AN URGENCY ORDINANCE OF THE CITY OF EL CERRITO MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR RELOCATION OF NEW AND EXISTING MASSAGE ESTABLISHMENTS TO BECOME EFFECTIVE IMMEDIATELY

WHEREAS, the City of El Cerrito has an interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods. Without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with tragic consequences to social, environmental, and economic values; and

WHEREAS, cities have traditionally had a high degree of local control related to local zoning and land use authority over massage establishments; and

WHEREAS, the California Legislature adopted Senate Bill 731, effective July 1, 2009, adding and repealing Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, relating to massage therapy ("Massage Therapy Act"); and

WHEREAS, the Massage Therapy Act placed limits on cities' regulation of massage establishments as it relates to business licensing, zoning, and health, safety, and welfare regulation; and

WHEREAS, cities throughout California have received numerous complaints regarding illicit activity, including prostitution, at massage establishments.

WHEREAS, the City values local business and recognizes that most massage establishments throughout the City are operated lawfully and professionally and staffed by massage therapists who uphold professional and community standards; and

WHEREAS, despite the lawfulness of most massage establishments, there is evidence to show that others serve as fronts for illegal activity that could potentially have negative secondary effects on commercial areas by creating or contributing to crime, calls for police service, code enforcement, and thereby creating an uninviting and potentially dangerous environment, which ultimately could adversely affect the City's economic vitality and ability to attract and retain businesses and shoppers to the City; and

WHEREAS, El Cerrito, consistent with the Massage Therapy Act, has no existing zoning regulations that address the location of California Massage Therapy Council ("CAMTC") certified massage establishments near potentially sensitive areas throughout the City; and

WHEREAS, the California Legislature recently passed Assembly Bill 1147, which is effective January 1, 2015, amending Section 460 of, and adding and repealing Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, and amending Section 51034 of the Government Code; and

WHEREAS, Assembly Bill 1147 will return land use authority over massage establishments to cities; and

WHEREAS, as applications from CAMTC certified massage establishments for business licenses are submitted to the City, there is no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance and unregulated massage establishments conflict with contemplated zoning and with the public health, safety, and welfare; and

WHEREAS, there is a threat to the public health, safety and welfare of the community if massage establishments locate in the City without proper regulations in place. Absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of massage establishments in locations within the City, without appropriate controls in place to regulate the impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, Government Code Section 65858, subdivision (a) provides that the legislative body of a city may, to protect the public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal the City Council is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum of two times for a total duration of two years; and

WHEREAS, the City desires to address community concerns regarding the establishment and operation of massage establishments within the City and intends to (1) study the potential impacts massage establishments may have on the public health, safety and welfare, (2) determine what local regulations, including but not limited to zoning regulations, may be appropriate to limit the negative impacts of massage establishments, and (3) determine appropriate controls for the protection of public health, safety and welfare; and

WHEREAS, consistent with the return of local land use authority pursuant to Assembly Bill 1147, staff shall commence steps to conduct a study of the potential impacts of massage establishments, and possible amendments to the City's Municipal Code and Zoning Code for clear, consistent and uniform regulations related to the establishment, location and operation of such businesses; and

WHEREAS, the City will take steps to update its Municipal Code and Zoning Code to ensure that the City's laws are consistent with the goals, policies and standards of the General Plan and the goals of the City Council to protect the public health, safety, and welfare; and

WHEREAS, the City seeks a moratorium on the issuance of permits to massage establishments to provide the City time to study and plan its approach to massage regulation following the Governor's approval of Assembly Bill 1147; and

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following:

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

NOW, THEREFORE, the City Council of the City of El Cerrito does ordain as follows:

Section 1. RECITALS MADE FINDINGS. The above recitals are hereby declared to be true and correct and findings of the City Council of the City of El Cerrito.

Section 2. MORATORIUM IMPOSED

A. Scope. For the purposes of this ordinance, "massage establishment" shall have the same meaning as in section 8.10.010 of the Municipal Code. In accordance with the authority granted the City of El Cerrito under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this ordinance:

1. No person, partnership, corporation, or other entity shall commence doing business as, or operations of, a massage establishment, nor shall a business license or operator's permit be issued to a massage establishment owner unless specifically excluded herein.

2. No building permit shall be issued pursuant to Title 16 of the El Cerrito Municipal Code for the construction of a new building or the modification of an existing building for use as a massage establishment.

3. If a business license or permit to operate has been issued but the business has not yet initiated operation prior to the effective date of this ordinance, then the business may seek a refund for business license tax paid.

B. Exceptions. This moratorium shall not prohibit the following: 1) the renewal of a business license for an existing massage establishment provided that the renewal seeks to maintain the massage establishment in its current location, and the massage establishment is operating in a manner, and housed within a building, which complies with all City, State, Federal or otherwise applicable, codes, rules, regulations or laws; 2) massage establishments operated as home occupations in accordance with the El Cerrito Municipal Code; 3) the issuance of permits for emergency or emergency-related repairs; and 4) persons engaged as follows: (a) physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice within the scope of their licenses; (b) employed at hospitals, nursing homes, sanitariums, or any other health facility licensed by the state; (c) coaches or trainers acting within the scope of their employment at accredited schools, and (d) trainers of amateur, semi-professional or professional athletes or athletic teams while engaged in their training responsibilities for and with athletes, and trains working in conjunction with a specific athletic event.

C. Statutory Findings and Purpose. This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council as set forth in the recitals incorporated by Section 1 of this ordinance, and the additional information set forth below:

1. The purpose of this ordinance is to protect the public safety, health and welfare from a current and immediate threat posed by the establishment or relocation of new and existing massage establishments within the City of El Cerrito, in light of the State Legislature's recent passage of Assembly Bill 1147 which reinstates significant local control over massage establishments to local jurisdictions, until such reasonable time as a detailed study of the possible adverse impacts such establishments might have on commercial and residential uses and the general public health, safety, and welfare. The facts constituting the urgency are: a) Cities throughout California, including neighboring cities, have received complaints regarding illicit activity occurring at massage establishments; b) there are no existing regulations within the City of El Cerrito that address the location of California Massage Therapy Council ("CAMTC") certified massage establishments, and massage operations, which are near potentially sensitive areas throughout the City; c) such locations can be particularly sensitive to potential harmful effects of massage establishments; d) as applications for business licenses are submitted to the City, there is no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance; e) unregulated massage establishments conflict with contemplated zoning and with the public health, safety, and welfare; and f) the State Legislature recently passed Assembly Bill 1147, which became law on January 1, 2015, and which changes the state statutory structure for local regulation of massage establishments and practitioners.

2. Absent the adoption of this urgency ordinance, the establishment and operation of massage establishments in the City would result in the harmful secondary effects identified above.

3. It is necessary to study the possible adoption of amendments to the City's Municipal Code and Zoning Code in order to adopt legislation pursuant to the return of local land use control over massage establishments authorized by Assembly Bill 1147.

4. Issuing business licenses or building permits for new or relocating massage establishments prior to the completion of the City's study of the potential impact of such facilities poses a current and immediate threat to the public health, safety, and welfare.

5. In light of the harmful secondary effects associated with massage establishments and the current and immediate threat such secondary effects pose to the public health, safety and welfare, it is necessary, in accordance with Government Code Section 65858, to impose a moratorium on the issuance of entitlements for and the establishment or relocation of massage establishments in the City to provide time for the City Council to further evaluate and consider possible adoption of legislation, guidelines and/or policies as required to avert the potential impacts of massage establishments.

Section 3. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of El Cerrito hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4. EFFECTIVE DATE AND DURATION. This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for 45 days therefrom unless extended by the City in accordance with California Government Code Section 65858.