



AGENDA

REGULAR CITY COUNCIL MEETING

Tuesday, October 6, 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 Janet Abelson.*

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. **PRESENTATIONS** – *None*

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

A. Minutes for Approval

Approve the September 15, 2015 Regular City Council meeting minutes.

B. Tobacco Retailer Licensing Program Ordinance

First reading September 15, 2015 with amendments. Vote Unanimous: Ayes – Councilmembers Abelson, Bridges, Lyman, Quinto and Mayor Friedman; Noes – None; Abstain – None; Absent – None.

Adopt Ordinance 2015–08 amending El Cerrito Municipal Code Title 6 “Business Permits and Regulations” by adding a new Chapter 6.100 “Tobacco Retailer License Program, repealing Section 19.20.210, amending Section 19.46.060(D) and Table 19.07-A.

C. Proclamation Declaring October 18-24, 2015 as Freedom from Workplace Bullies Week

Approve a proclamation declaring October 18-24, 2015 as Freedom from Workplace Bullies Week in the City of El Cerrito and commending the California Healthy Workplace Advocates and the Workplace Bullying Institute, which raise awareness of the impacts of, and solutions for, workplace bullying in the United States; and encouraging all residents in the City of El Cerrito to recognize this special observance.

D. Proclamation Declaring October 2015 Domestic Violence Awareness Month

Approve a proclamation declaring October 2015 as Domestic Violence Awareness Month in the City of El Cerrito and urging all residents to actively participate in efforts to end violence in our homes, in our schools, and in our communities.

E. Grant Co-Sponsorship to the El Cerrito Library Foundation

Adopt a resolution authorizing the City Manager or his designee to grant co-sponsorship status to the El Cerrito Library Foundation.

F. Contract with New World Systems for Licensing, Maintenance and Support

Adopt a resolution authorizing the City Manager to enter into a Standard Software Maintenance Agreement (SSMA) with New World Systems (NWS) to provide software licensing, maintenance and support services in an amount not to exceed \$314,580 through October 31, 2020.

6. PUBLIC HEARINGS

Adoption of an Active Transportation Plan, Including Mitigated Declaration and Mitigation Monitoring and Reporting Program

Conduct a public hearing and upon conclusion adopt a resolution approving the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and adopting the Active Transportation Plan.

7. POLICY MATTERS - None

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, October 20, 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). Assistive listening devices are available for use at the meeting.
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

EL CERRITO CITY COUNCIL

MINUTES

REGULAR CITY COUNCIL MEETING
Tuesday, September 15, 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

Councilmembers Abelson, Bridges, Lyman, Quinto and Mayor Friedman.

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 Gabriel Quinto.

2. COUNCIL / STAFF COMMUNICATIONS

Lance Maples, Fire Chief, provided an update on El Cerrito's participation in the various fires that have occurred throughout the state this summer. Chief Maples reported that the Fire Department is happy to participate in fire-fighting efforts during this extreme fire season and support other agencies throughout the state. El Cerrito firefighters have returned safely without injuries or equipment damage. El Cerrito Fire currently has several personnel deployed at the Butte Fire and the Rough Fire. Chief Maples thanked the City Manager and the City Council for giving the Fire Department the flexibility it needs to assist other agencies throughout the state.

Councilmember Quinto invited all to participate in Constitution Day: A Talk with Christine Pelosi. The event is sponsored by Contra Costa College and the League of Women Voters on September 17. Ms. Pelosi, an attorney with a long and varied history of public service, will speak on the importance of the Constitution, grassroots organizing and public policy.

Mayor Pro Tem Lyman invited all to participate in the following events: 1) El Cerrito Green Team and Friends of Five Creeks Clean-up of Cerrito Creek and Albany Hill on September 19; 2) Music for Madera Open Space on September 20; 3) an Environmental Quality Committee sponsored event on a plant pathogen that threatens native plants on September

30; and 4) the Citywide Garage Sale on October 25, 2015. More information is available on the City's website www.el-cerrito.org.

Mayor Friedman announced that there will be a public forum on the minimum wage increase on September 21 in the Council Chambers. The forum is sponsored by the Economic Development Committee and the Chamber of Commerce. Mayor Friedman also reported on the August 25 unveiling of the Anza Expedition banners and commemoration plaque.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Cordell Hindler, Richmond, announced the following events in Richmond: 1) Spirit and Soul Festival & Fundraiser on September 19; and 2) EdFund's Getting Ready for College Conference on September 26. Mr. Hindler also expressed appreciation for the City Council and stated that he hoped the Richmond City Council could take a lesson from them.

Tom Panas, El Cerrito, thanked the City Council for its discussion of a minimum wage ordinance last month. Mr. Panas also stated that the comment on the business model of Kevin and Jenny on Stockton Avenue involving exploiting employees was one of the lowest points in public discussion that the City has experienced. Mr. Panas stated that he was surprised that no one on the Council set the record straight. Mr. Panas suggested that there ought to be a provision for small employers, perhaps based on the wages reported on the state DE-9 form, and stated that if Council wants to encourage small business in town then it should direct staff to craft such a provision.

Avash Shrestha, El Cerrito, stated that his rent has been raised by 50% and that he received a 30 day notice. His apartment is located at 511 Oak Street. Mr. Shrestha asked if there were rent control laws in El Cerrito and said the landlord does not fix problems at the apartment.

Al Miller, El Cerrito, announced that the El Cerrito Library Foundation is coordinating a voter registration drive on September 22 in conjunction with National Voter Registration Day at the Library. Mr. Miller also invited all to attend the 2015 Annual Rotary Sip and Savor fundraising event on November 11, 2015 at Mira Vista Golf and Country Club. Tickets are available by contacting amil@sonic.net. Additionally, on September 22, two Bay Area Rapid Transit Directors (BART) will be attending the El Cerrito Democratic Club meeting. The public is invited to voice its opinions about BART. Mr. Miller stated that he supports the Council intention to join the East Bay Municipal Utility District's (EBMUD) pledge to conserve water and encouraged all to visit the NEBIA website at www.nebia.com for information regarding innovation in a water saving shower nozzle that uses 70 per cent less water.

4. PRESENTATIONS

Presentation and Report on the 2015 EC Stars Program – *Presentation by Suzanne Iarla, Assistant to the City Manager and Corey Mason, West Contra Costa Unified School District.*

Receive a presentation regarding the 2015 El Cerrito Students Training and Ready for Success ("EC STARS") Internship Program.

Presenters: Suzanne Iarla, Assistant to the City Manager, Corey Mason, West ContraCosta Unified School District. Interns Danielle Garnett, Wei Cheng Chen, Manuel Espinoza, Katushka Aburto, Chelsea Martinez, Andres Montes Clemens, each highlighted knowledge and skills learned and projects completed while working at the City.

Speakers: Cordell Hindler, Richmond, expressed appreciation for the EC Stars program.

Action: Received presentation.

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

Moved, seconded (Bridges/Abelson) and carried unanimously to approve Consent Calendar Item Nos. 5A through 5E in one motion as indicated below.

CITY COUNCIL ITEMS

A. Minutes for Approval

Approve the August 18, 2015 Regular City Council meeting minutes. *Joint Special Meetings of Planning Commission, Design Review Board and City Council were convened on August 18 and August 25, 2015 for the limited purpose of touring the Ohlone Gardens Apartments, 6495 Portola Drive, however no quorum of the City Council was present at either special meeting therefore no minutes were prepared.*

Action: Approved minutes.

B. Proclamation Pledging Partnership with the East Bay Municipal Utility District to Save Water

Approve a proclamation pledging to partner with EBMUD to work together to reduce 2015 water use in the EBMUD service area by twenty percent compared to use in 2013. Together the City and EBMUD can meet local and state water conservation mandates.

Action: Approved proclamation.

C. Contract for Summit K2 High School Environmental Review

Adopt a resolution authorizing the City Manager to execute a contract with Lamphier-Gregory in an amount not to exceed \$73,650 and approving up to \$7,400 in contingency tasks to perform environmental review services for the Summit K2 High School project.

Action: Adopted Resolution No. 2015–61.

D. Economic Development Committee Appointment

Approve an Economic Development Committee recommendation to appoint Shanti Corrigan to the Economic Development Committee, effective September 16, 2015.

Action: Approved recommendation.

SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY ITEM

E. Review and Authorization to Submit the Draft Recognized Obligations Payment Schedule 15-16B (January – June 2016)

Adopt a Successor Agency resolution reviewing and authorizing submittal of the draft Recognized Obligations Payment Schedule 15-16B covering the period January to June 2016.

Action: Approved Successor Agency Resolution No. 2015–02.

6. PUBLIC HEARINGS

A. Abatement of Fire Hazard Public Nuisances on Eight Properties Pursuant to El Cerrito Municipal Code Chapter 16.26

Conduct a public hearing and upon conclusion adopt a resolution confirming the cost of abatement of public nuisance conditions resulting from the presence of weeds, rubbish, litter and other flammable material on private property designated in Exhibit A to the resolution as authorized by El Cerrito Municipal Code Chapter 16.26.

Presenter: Christopher Renshaw, Fire Prevention Officer.

Mayor Friedman opened the public hearing. No speakers.

Moved, seconded (Lyman/Quinto) to close the public hearing.

Action: Moved, seconded (Lyman/Bridges) and carried unanimously to adopt Resolution No. 2015–62.

B. Ordinance Establishing a Tobacco Retailer License Program

Conduct a public hearing and upon conclusion, introduce by title, waive any further reading, and approve an ordinance amending El Cerrito Municipal Code (ECMC) Title 6 “Business Permits and Regulations” by adding a new Chapter 6.100 “Tobacco Retailer License Program,” repealing Section 19.20.210, amending Section 19.46.060(D) and Table 19.07-A.

Presenter: Suzanne Iarla, Assistant to the City Manager.

Mayor Friedman opened the public hearing. 9 speakers.

Speakers: Cordell Hindler, Richmond, stated that cigarettes are bad for adults and encouraged the City Council to think the ordinance through.

Sarah & Alejandra, El Cerrito, stated that they support the ban on the sale of all tobacco products including little cigars and e-cigarettes. Sarah and Alejandra said they are concerned about the availability of low cost, cheap, candy and fruit flavored tobacco products and e-cigarettes in their neighborhoods and near their school. Low cost cigar brands like “Good Times” and “Swisher Sweets” are especially harmful and enticing to youth. Sarah and Alejandra asked that El Cerrito be a safe and healthy community for kids and adults to live and shop and urged the City Council to establish a tobacco licensing program that reduces access to harmful products.

Brian Davis, Tri-City Health Center, Fremont. Mr. Davis stated Hayward and Union City have passed ordinances similar to what the City Council is considering. Hayward and Union City require the Police Department to conduct youth decoy operations, that are funded by tobacco retailer licenses, to prevent the sale of tobacco to underage youth. Higher tobacco prices result in lower youth smoking rates. Cities and Counties all over California that have passed tobacco retail licenses and used these funds to conduct youth decoy operations often see dramatic drops in illegal sales to youth.

Janna Katz, Albany, American Cancer Society Network, commended the students who spoke previously. Ms. Katz stated that young people, once addicted [to tobacco], become tomorrow’s public health problem. Strong enforcement will show better statistics of retailers who are selling tobacco products to youth. Ms. Katz stated that she commends the City for looking to public health, thinking about future smokers and saving lives. Ms. Katz pointed out that ten years is a long time for retailers to come to terms with the fact that they have some restrictions. Laws should be strengthened and loopholes should not be allowed. There are many things that can be done with development rather than balancing budgets on the backs of those who are addicted or who will be a future addict of tobacco. Ms. Katz said 80% of smokers started to smoke before they were 18.

Mary Jaccodine, El Cerrito, Co-chair, Contra Costa Tobacco Prevention Coalition, thanked the City Council for taking on this issue. Ms. Jaccodine stated that the tobacco industry spends over \$1 billion each year promoting its products in California. Research has shown that advertising has a greater effect on teen tobacco use than peer pressure. The Tobacco Prevention Coalition supports tobacco retailer licensing laws, density restrictions and a 1000 foot buffer zone around schools, parks and places where young people gather. This needs to be put in place without exception and without long implementation periods. The Coalition also supports laws restricting the sale of tobacco products and e-cigarettes that appeal to kids. There has been an alarming growth in the use of flavored products. Ms. Jaccodine asked the Council to refrain from letting the interests of businesses trump the health of youth in El

Cerrito.

Denise Dennis, Contra Costa Health Services Tobacco Prevention Project, informed the City Council that the Contra Costa Board of Supervisors and the City of Berkeley is considering policies similar to what the City Council is considering. Ms. Dennis stated that a tobacco retailers licensing ordinance is the most effective tool available to address illegal sales to minors and monitor compliance with sales laws. Ms. Dennis suggested that the fee that it is set for licensing be sufficient to fund enforcement of the ordinance, including annual decoy operations conducted by law enforcement. It is important that if there is a violation of law that the retailer license be suspended. A fine has not been proven to reduce tobacco sales to minors or to bring retailers into compliance with tobacco laws.

Bill Kuhlman, El Cerrito, encouraged the City Council to delete the restrictions on the sale of flavored tobacco and single and small cigar packs because it will also ban the sale of these products to adults. Mr. Kuhlman stated that everyone agrees on prohibiting the sale of tobacco to minors. We can be tough on tobacco and help kids make better choices without forcing adult citizens of the City into illegal transactions.

Al Miller, El Cerrito, spoke about his experience at a recent Parent Teacher Student Association (PTSA) meeting. The tobacco industry has gone out of its way to design products that circumvent existing constraints. The retailers are presented with an industry that does not care about people and just wants to make money. Mr. Miller stated that he supports the regulations and asked that the ordinance be enforced after it is passed, and that data be gathered to determine how [the program] is working and whether the ordinance needs revision in the future to make it as tough as it can be.

Moved, seconded (Bridges/Abelson) and carried unanimously to close the public hearing.

Action: Moved, seconded (Lyman/Abelson) and carried unanimously to approve Ordinance No. 2015-08 as amended on the floor to include the following changes:

- 1) Add subsection 6.100.320(7) to read 7. The tobacco retailer is required to post signs restricting the age of customers to the state mandated minimum age for purchasing tobacco;
- 2) Amend subsection 6.100.340(2) to read, 2. The tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days; unless required to close or suspend tobacco retailing to comply with other laws in which case the sixty (60) day period shall be tolled until the tobacco retailer is legally allowed to re-open or resume tobacco sales; and
- 3) Delete Section 6.100.700 ("Agreed Penalty In Lieu of Hearing") from the ordinance.

Additionally, text references for Footnotes 3 and 4 which did not appear in the version of the ordinance included in the Council packet were added administratively by staff to the ordinance that the City Council will consider for adoption at its October 6, 2015 meeting.

7. POLICY MATTERS - None

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

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

Mayor Pro Tem Lyman reported on several items from his attendance at Marin Clean Energy (MCE) Board meetings. MCE is the City Community Choice Aggregation provider for electricity. Pacific Gas & Electric Company (PG&E) is petitioning the California Public Utilities Commission to increase rates which will have the following three effects on El

Cerrito residents: 1) A request to increase the Power Charge Indifference Adjustment (PCIA) rate fee for residents; 2) A request to change the rates to reduce peak pricing benefits for solar photovoltaic systems; and 3) A request to reduce energy discounts to CARE Program customers. CARE customers are low income customers that receive discounted rate structures as a result of their fixed income.

Additionally, the MCE Board authorized the filing of MCE's business and implementation plans with the PUC. MCE is hoping that the business plan will lock in some of the community choice aggregation choices that PG&E and some of the other companies are opposing. Councilmember Quinto will be attending MCE's annual all-day meeting on behalf of Mayor Pro Tem Lyman. Topics will include how to add new communities and the shape and look of the decision body.

The West County Integrated Waste Management Authority (WCIWMA) Board is in the process of evaluating the future of the WCIWMA including establishing policies on reserves. A portion of the reserve, approximately \$500,000 or more, is due back to El Cerrito and will be dispersed back to El Cerrito at some point.

The Financial Advisory Board (FAB) received a presentation regarding the local housing program and staffing reductions. The Environmental Quality Committee (EQC) met last week and is going through its annual workplan. Mayor Pro Tem Lyman also attended an event with Tony Thurmond related to the State of the Estuary Conference. Three reports are being released about the state of the estuary and the state of San Francisco Bay. One report advised that the water quality of San Francisco Bay is improving. Mercury and PCB is slowly improving however individuals should not eat fish from the Bay. Another report discusses the future of tide rims around the Bay. With sea level rise there will be a reduction in tidal marshes around the Bay but there are actions that decision-makers can take to reverse the trend. A third report on the State of Estuary, which includes the Delta, includes terms such as "crises," "dire," and "ecosystem crash" due to significant alterations in the Bay-Delta ecosystem. Scientists have documented that the Delta is suffering and is in need of the same type of attention that has been given to Bay water quality. The report says that Delta water quality is in the same state that the San Francisco Bay water quality was in thirty years ago prior to enacting efforts such as stormwater management, to clean it up.

Councilmember Abelson attended the September Contra Costa Mayors Conference in Orinda. The presenter, who had been trained by the Al Gore program, spoke about Climate Change.

Councilmember Quinto reported that he attended a panel at the City of San Pablo's Senior Center with Congressman DeSaulnier, Assemblymember Thurmond and Supervisor Gioia regarding senior issues. Councilmember Quinto stated that it is his hope that the Congressman, Assemblymember and Supervisor Gioia will come to El Cerrito to inform the public about programs that are threatened and need to be renewed.

Mayor Friedman reported that he hosted a meeting with Assemblymember Thurmond, former School Director Glen Price, and others to look at reforming the Alliance for Public Education. Mayor Friedman helped start the Alliance over twenty years ago to support quality public education.

9. ADJOURNED REGULAR CITY COUNCIL MEETING at 9:21 p.m. in memory of Dr. Joel Fort, a long-time stalwart member of the community and national leader in public health.

SUPPLEMENTAL REPORTS AND COMMUNICATIONS

Item No. 4 Presentation and Report on the 2015 EC Stars Program

1. Powerpoint Presentation – *Submitted by Suzanne Iarla, Assistant to the City Manager.*

Item No. 6(B) Ordinance Establishing a Tobacco Retailer License Program

2. Comments on Tobacco Retailer Licensing Program – Submitted by Steven J. Duffy for National Association of Tobacco Outlets, Inc.
3. Urging adoption of a strong local tobacco retailer licensing ordinance to protect youth – Submitted by Kimberly Amazeen, Vice President, Programs & Advocacy, American Lung Association.
4. Concerns about the proposed tobacco retail license ordinance – Submitted by Saud Sous, Owner, San Pablo Discount Cigarette, El Cerrito.
5. Request that the ban on flavored tobacco and single cigars be deleted from the tobacco license ordinance or exempt stores already in operation – Submitted by Amrik Johal, Super Stop Gas and Mart, El Cerrito.
6. Request to exempt current retailers entirely from the tobacco sales restrictions – Submitted by Del Norte Liquor, El Cerrito.
7. Opposition to revised draft ordinance. Request to remove the ban on flavors and single cigars on existing businesses – Submitted by Omar Esmatyar, Co-Owner, Tobacco Outlet, El Cerrito.
8. Comments opposing the proposed ordinance which include a request to delete the provisions restricting flavored tobacco products and the sale of single and small pack cigars – Submitted by J.P. Sethi, Chairman, American Petroleum and Convenience Store Association.
9. Comments on the Proposed Tobacco Retailers Licensure Ordinance including a request to remove Sections 6.100.160 and 6.100.180 from the ordinance – Submitted by James C. Jack, IV on behalf of The Cigar Association of American.
10. Support for the e-cigarette language included in the Tobacco Retail License ordinance and comments regarding advertising restrictions and the omission of menthol cigarettes – Submitted by Lynda Barbour, MPH, Southern California Government Relations Director, American Cancer Society Cancer Action Network, Inc.
10. Opposition to proposed tobacco ordinance – Submitted by Angie Manetti, Director, Government Affairs, California Retailers Association.
11. Powerpoint presentation – *Submitted by Suzanne Iarla, Assistant to the City Manager.*
12. Benefits of tobacco retailer licensing – *Submitted by Daniel Peddycord, Public Health Director, Contra Costa Health Services.*

Other:

13. Contra Costa College, Law Club, Pathway to Law School & the League of Women Voters Announcement: Constitution Day: A Talk with Christine Pelosi – *Submitted by Councilmember Quinto.*
14. Comments on minimum wage – *Submitted by Tom Panas, El Cerrito.*
15. edFUND “Getting Ready for College Conference” postcard – *Submitted by Cordell Hindler.*

16. 7th Annual Spirit & Soul Festival postcard – *Submitted by Cordell Hindler.*

ORDINANCE NO. 2015-08

AN ORDINANCE OF THE CITY OF EL CERRITO REQUIRING THE LICENSURE OF TOBACCO RETAILERS AND AMENDING THE EL CERRITO MUNICIPAL CODE BY REPEALING SECTION 19.20.210, AMENDING SECTION 19.46.060(D) AND TABLE 19.07-A AND ADDING A NEW CHAPTER 6.100 (“TOBACCO RETAILER LICENSE PROGRAM”)

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge; and

WHEREAS, society is becoming more aware of the harms of smoking, particularly in El Cerrito, where a majority of participants in surveys and community meetings indicated a need to regulate smoking within the City limits; and

WHEREAS, the City Council recently adopted Ordinance 2014-05 to regulate smoking within the City of El Cerrito and protect the public and environment from secondhand smoke; and

WHEREAS, nationally, the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare and therefore is a threat to the public health, safety, and welfare of the residents of the City of El Cerrito; and

WHEREAS, a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City of El Cerrito, to protect the health, safety, and welfare of our residents; and

WHEREAS, approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation’s leading cause of preventable death;¹ and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

1. The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950);
2. State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code § 308);
3. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952); and

4. State law prohibits the sale or furnishing of electronic cigarettes to minors (Cal. Health & Safety Code § 119405).

WHEREAS, the density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates;² and

WHEREAS, a California study found that the density of tobacco retailers near schools was positively associated with the prevalence of students reporting experimental smoking;³ and

WHEREAS, a high density of tobacco retailers has been associated with increased smoking rates, particularly among youth;⁴ and

WHEREAS, over 8 percent of all tobacco retailers statewide were witnessed unlawfully selling to minors in 2012, and tobacco stores (defined as businesses in which at least 80 percent of merchandise was tobacco products) sold to minors at a much higher rate than the statewide average, as high as 20.5 percent;⁵ and

WHEREAS, many cigarette, tobacco, and retail outlets specializing in tobacco paraphernalia (sometimes called “head shops”) sell items that are commonly known to be drug paraphernalia, including bongs and pipes used to smoke methamphetamine and other illicit drugs, and claim that such items are intended for tobacco use; and

WHEREAS, state law prohibits sales of “drug paraphernalia”;⁶ yet many retailers nevertheless sell items that are commonly known to be “drug paraphernalia,” including bongs and pipes used to smoke methamphetamine and other illicit drugs, claiming that such items are intended for tobacco use; and

WHEREAS, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and

WHEREAS, California courts have affirmed the power of the City of El Cerrito to regulate business activity to discourage violations of law. See, e.g., *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010); and

WHEREAS, despite the state’s efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that 19 percent of seniors in West Contra Costa Unified School District have smoked a whole cigarette;⁷ and in California, 64 percent of adult smokers started by the age of 18;⁸ and

WHEREAS, “little cigars” look nearly identical to cigarettes;⁹ and

WHEREAS, although the sale of flavored and individual cigarettes is banned by federal

law, neither federal nor California law restrict the sale of flavored cigar products or the sale of individual cigar products;¹⁰ and

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy and fruit-flavored cigarettes,¹¹ largely because these flavored products were marketed to youth and young adults,¹² and younger smokers were more likely to have tried these products than older smokers;¹³ and although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,¹⁴ neither federal nor California laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic smoking devices and the nicotine solutions used in these devices; and

WHEREAS, flavored non-cigarette tobacco products have become increasingly common and are available in a variety of flavors that appeal to children and young adults,¹⁵ including apple, cherry, chocolate, grape, peach, strawberry, and vanilla; and

WHEREAS, the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;¹⁶ and

WHEREAS, data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;¹⁷ and

WHEREAS, tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a “graduation strategy” to encourage new users to start with products with lower levels of nicotine and progress to products with higher levels of nicotine;¹⁸ and

WHEREAS, the U.S. Centers for Disease Control and Prevention has reported current e-cigarette use (use on at least 1 day in the past 30 days) among high school students increased from 4.5 percent in 2013 to 13.4 percent in 2014, rising from approximately 660,000 to 2 million students. Among middle school students, current e-cigarette use more than tripled from 1.1 percent in 2013 to 3.9 percent in 2014—an increase from approximately 120,000 to 450,000 students;¹⁹ and

WHEREAS, nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;²⁰ and

WHEREAS, the California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products;²¹ and

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes. For example:

1. A review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the

ordinances were enacted, with an average decrease of 26 percent in the youth sales rate;²²

2. License suspension or revocation after repeated violations is recognized as an effective strategy to reduce youth access to tobacco;²³ and

3. A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85 percent in 1994 to 43 percent in 1998;²⁴

4. A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8 percent to 4.9 percent in the number of youth able to purchase tobacco;²⁵ and

WHEREAS, over 148 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from using tobacco;²⁶ and

WHEREAS, the City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the City Council finds that the regulations imposed by this chapter provide a reasonable opportunity for tobacco retailers to operate within the City of El Cerrito. In the establishment of these regulations, the City Council considered their effects on the number and suitability of locations for tobacco retailers.

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

The City Council of the City of El Cerrito does hereby ordain as follows:

SECTION 1. FINDINGS.

The above recitals are hereby declared to be true and correct and are findings of the City Council of the City of El Cerrito.

SECTION 2. AMENDMENT OF TITLE 19 OF THE EL CERRITO MUNICIPAL CODE

A. Section 19.20.210 ("Tobacco Sales") of the El Cerrito Municipal Code is hereby repealed.

B. Section 19.46.060 (D) of the El Cerrito Municipal Code is hereby amended to read as follows: *(strikeout indicating deleted text)*

Section 19.46.060(D) – **Industry, Medium.** Manufacturing or assembly of products from extracted, raw or finished materials or recycled or secondary materials, or bulk storage and handling of such products and materials. This classification includes: ~~tobacco product~~

~~manufacturing~~ textile mills, textile product mills, apparel manufacturing, leather and allied product manufacturing, wood product manufacturing, paper manufacturing, chemical manufacturing, plastics and rubber products manufacturing, nonmetallic mineral product manufacturing, primary metal manufacturing, and fabricated metal product manufacturing.”

C. Table 19.07-A (“Use Regulations-Commercial And Transit-Oriented Mixed-Use Districts”) under the heading Commercial Use Types is hereby amended to read as follows (*strikeout indicates deleted text and underlined text is to be added*):

	CN	CC	TOM	Additional Regulations
Tobacco Sales	C <u>L</u>	A <u>L</u>	A-L	See <u>Section 19.20.210</u> <u>Chapter 6.100</u>

D. 19.46.050.X.2 (Use Classifications *strikeout indicates deleted text and underlined text is to be added*):

~~Tobacco Sales. Retail establishments deriving 50 percent or more of gross sales receipts from the sale or exchange of tobacco-related products, including but not limited to, cigarettes, cigars, chewing tobacco and dipping tobacco, cigarette papers, pipes, or any other instrument or paraphernalia for the smoking or ingestion of tobacco and products prepared from tobacco.~~

“Tobacco Retailer” means any person that sells tobacco, tobacco products, electronic smoking devices, smoking paraphernalia, or any combination thereof, including retail or wholesale sales. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products or smoking paraphernalia sold, offers for sale, exchanged, or offered for exchange.

SECTION 3. AMENDMENT OF EL CERRITO MUNICIPAL CODE TITLE 6
Title 6 (“Business Permits and Regulations”) of the El Cerrito Municipal Code is hereby amended to add a new Chapter 6.100 (“Tobacco Retailer License Program”) to read as follows:

TOBACCO RETAILER LICENSE PROGRAM

Article 1 – Title and Definitions

6.100.010 – Title.

6.100.020 – Definitions.

Article 2. Requirements and Prohibitions

6.100.040 - Tobacco Retailer License Required.

6.100.060 - Lawful Business Operation.

6.100.080 - Display of License.

6.100.100 - Positive Identification Required.

- 6.100.120 - Minimum Age for Persons Selling Tobacco.**
- 6.100.140- Self-Service Displays Prohibited.**
- 6.100.160 - Flavored Tobacco Products Prohibited.**
- 6.100.180 - Single and Small-Pack Cigars Prohibited.**
- 6.100.200 - Original Labeling and Packaging.**
- 6.100.220 - No Tobacco Product or Electronic Smoking Device Use on Premises.**
- 6.100.240 - Mobile Vending.**
- 6.100.260 - Tobacco Samples Prohibited.**
- 6.100.280 - False and Misleading Advertising Prohibited.**
- 6.100.300 - Drug Paraphernalia Laws.**
- 6.100.320 - Significant Tobacco Retail Establishments Prohibited.**
- 6.100.340 - Consideration for Existing Retailers.**

Article 3. Location Requirements

- 6.100.360 - Schools and Youth-Populated Areas.**
- 6.100.380 - Proximity to Other Retailers.**
- 6.100.390 - Distances**

Article 4. License Application and Procedures.

- 6.100.400 - Application Form.**
- 6.100.420 - Issuance Procedure.**
- 6.100.440 - Appeal.**
- 6.100.460 - Renewal of License.**
- 6.100.480 - Delinquency—Installments.**
- 6.100.500 - Licenses Nontransferable.**
- 6.100.520 - License Conveys a Limited, Conditional Privilege.**
- 6.100.540 - Fee for License.**
- 6.100.560 - Compliance Monitoring.**
- 6.100.580 - Inspection And Right Of Entry.**
- 6.100.600 - Suspension or Revocation of License for Violation.**
- 6.100.620 - Product Removal During Suspension or Revocation.**
- 6.100.640 - Appeal of Suspension or Revocation.**

Article 5. Penalties

- 6.100.660 – Penalties.**
- 6.100.680 - Tobacco Retailing Without a License.**

Article 1. Title and Definitions

6.100.010 Title. This Chapter shall be known as the Tobacco Retailer License Program. The City of El Cerrito hereinafter shall be called "City."

6.100.020 Definitions. The following definitions apply to this Chapter:

A. “Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm’s Length Transaction. The City may require tobacco retailers to provide documentation that demonstrates that a transaction was at arm’s length.

B. “Cigar” means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this Chapter, “Cigar” includes, but is not limited to, tobacco products known or labeled as “cigar,” “cigarillo,” “tiparillo,” “little cigar,” “blunt,” “blunt wrap,” or “cigar wrap.”

C. “Cigar Lounge” means any facility, building, structure or location, where customers consume cigars or similar smoking products

D. “Characterizing Flavor” means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.

E. “Distinguishable” means perceivable by an ordinary consumer by either the sense of smell or taste.

F. “Drug Paraphernalia” has the meaning set forth in California Health & Safety Code section 11014.5, as that section may be amended from time to time.

G. “Electronic Smoking Device” means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. “Electronic smoking device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. “Electronic smoking device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

H. “Flavored Tobacco Product” means any tobacco product (other than cigarettes as defined by the U.S. Food and Drug Administration) that contains a constituent that imparts a characterizing flavor. This includes cigars, little cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, and electronic cigarettes or electronic smoking devices containing nicotine.

1. For purposes of this definition, “constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

2. Further, a tobacco product is presumed to be a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:

a. Made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the product's labeling or packaging that are used explicitly or implicitly to communicate information about the flavor, taste, or aroma of a tobacco product; or

b. Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.

I. "Gross Receipts" includes the total of amounts actually received or receivable from sales and the total of amounts actually received or receivable for the performance of any act or service of whatever nature it may be for, for which a charge is made or credit allowed, in connection with the sale of materials, goods, wares, or merchandise. Refer to ECMC 4.32.010 for the full definition.

J. "Hookah Lounge" means any facility, building, structure or location, where customers share tobacco or a similar smoking product from a communal hookah placed throughout the establishment.

K. "Imitation Tobacco Product" means any edible non-tobacco product designed to resemble a tobacco product or any non-edible non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic smoking device is not an imitation tobacco product.

L. "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.

M. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

N. "Self-Service Display" means the open display or storage of tobacco products, electronic smoking devices or smoking paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.

O. "Significant Tobacco Retail Establishment" means any tobacco retail business for which the principal or core business is selling tobacco products, smoking paraphernalia, or both, as evidenced by any one of the following:

1. Twenty percent (20%) or more of floor or display area is devoted to tobacco products, smoking paraphernalia, or both;
2. Fifty percent (50%) or more of gross sales receipts are derived from tobacco products, smoking paraphernalia, or both;

3. Self-disclosure

P. “Smoking Lounge” means any facility, building, structure or location, where customers consume tobacco or a similar smoking product, or where customers use an electronic smoking device or other apparatus to deliver an inhaled dose of nicotine or other substance within the establishment. This includes cigar lounge, hookah lounge, vapor bar, and similar establishments.

Q. “Smoking Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the consumption or preparation of tobacco products; electronic smoking devices and item specifically designed for the preparation, charging, or use of Electronic Smoking Devices including cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device chargers, and any other Electronic Smoking Device Paraphernalia.

R. “Tobacco Product” means any of the following:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus; and
2. Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, cigar, pipe, or hookah.
3. Notwithstanding any provision of subsections (a) and (b) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

S. “Tobacco Retailer” or “Retailer” means any person that sells tobacco, tobacco products, electronic smoking devices, smoking paraphernalia, or any combination thereof, including retail or wholesale sales. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products or smoking paraphernalia sold, offers for sale, exchanged, or offered for exchange.

T. “Tobacco Retailer License” means the license issued pursuant to Article 4 that authorizes retail sales of tobacco, tobacco products, electronic smoking devices, smoking paraphernalia, or any combination thereof, at a certain, fixed location and by a certain tobacco retailer.

U. “Vapor Lounge” or “Vape Lounge” or “Vapor Bar” (also referred to as “smoking device bar” or “electronic smoking device lounge”) means any facility, building, structure or

location where customers use an electronic smoking device or other apparatus to deliver an inhaled dose of nicotine or other substance within the establishment.

Article 2. Requirements and Prohibitions

6.100.040 Tobacco Retailer License Required. It shall be unlawful for any person to engage in the retail sales of tobacco in the City of El Cerrito without first obtaining and maintaining a valid tobacco retailer license pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer license is a nuisance as a matter of law.

6.100.060 Lawful Business Operation. It shall be a violation of this chapter for any person, or any of the person's agents or employees, to violate any local, state, and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or smoking paraphernalia.

6.100.080 Display of License. A current tobacco retailer license shall be prominently displayed in a publicly visible location at each licensed location.

6.100.100 Positive Identification Required. No person engaged in tobacco retailing shall sell or transfer any tobacco product or smoking paraphernalia to another person who appears to be under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco product, electronic smoking device or smoking paraphernalia.

6.100.120 Minimum Age for Persons Selling Tobacco. No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in the sales transaction of tobacco products.

6.100.140 Self-Service Displays Prohibited. Tobacco retailing, including sales of any tobacco product, electronic smoking device, or smoking paraphernalia, by means of a self-service display is prohibited.

6.100.160 Flavored Tobacco Products Prohibited. No tobacco retailer, nor any of the retailer's agents or employees, shall sell or offer for sale, or possess with intent to sell or offer for sale, any imitation tobacco products or flavored tobacco product.

1. There shall be a presumption that a tobacco retailer in possession of four (4) or more flavored tobacco products, which shall include individual flavored tobacco products, packages of flavored tobacco products, or any combination thereof, possesses such flavored tobacco products with intent to sell or offer for sale.

6.100.180 Single and Small-Pack Cigars Prohibited. No tobacco retailer, nor any of the retailer's agents or employees, shall sell or offer for sale, or possess with intent to sell or offer for sale:

1. Any single cigar, whether or not packaged for individual sale;

2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;
3. Any package of cigars containing fewer than five (5) cigars.
4. Subsection one does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars (\$5.00). This minimum retail amount may be adjusted from time to time by a resolution of the City Council.

6.100.200 Original Labeling and Packaging. Every tobacco retailer shall maintain on the premises the original labeling and packaging provided by the manufacturer for all tobacco products that are sold or offered for sale by the retailer separately from the original packaging designed for retail sale to the consumer. The original labeling and packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

6.100.220 No Tobacco Product or Electronic Smoking Device Use on Premises. A Cigar lounge, hookah bar, vape bar or similar establishment is prohibited in the City of El Cerrito. No retailer shall operate a smoking lounge, or any facility, building, structure or location, where customers consume any amount of tobacco product, or where customers use an electronic smoking device or other apparatus to deliver an inhaled dose of nicotine or other substance.

6.100.240 Mobile Vending. No license for a tobacco retailer may be issued to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles is prohibited.

6.100.260 Tobacco Samples Prohibited. Except as allowed in adult-only businesses per State and Federal law, no person shall knowingly distribute, furnish without charge, or cause to be furnished without charge for a commercial purpose, cigarettes or other tobacco products including and smoking paraphernalia, or coupons for discounts on the purchase of cigarettes or other tobacco products including and smoking paraphernalia, at any event open to the public or in any public place, including but not limited to any public way, mall or shopping center, park, playground, or any property owned by the City or any other public agency.

6.100.280 False and Misleading Advertising Prohibited. A person selling tobacco products without a valid tobacco retailer license or a licensee whose privilege to sell tobacco has been suspended or revoked:

1. Shall keep all tobacco products and smoking paraphernalia out of public view. The public display of tobacco products or smoking paraphernalia in violation of this provision shall constitute tobacco retailing without a license; and
2. Shall not display any advertisement relating to tobacco products or smoking paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

6.100.300 Drug Paraphernalia Laws. It shall be a violation of this chapter for any retailer or any of the retailer's agents or employees to violate any local, state, or federal law

regulating controlled substances or drug paraphernalia, such as, for example, California Health and Safety Code section 11364.7, except that conduct authorized pursuant to the state Medical Marijuana Program (California Health and Safety Code sections 11362.7 *et seq.*) shall not be a violation of this chapter.

6.100.320 Significant Tobacco Retail Establishments Prohibited. No tobacco retailer shall operate as a “significant tobacco retail establishment.”

1. No license for a tobacco retail establishment may be issued if the retailer intends to operate a significant tobacco retail establishment.
2. No tobacco retailer may utilize more than twenty percent (20%) of the store display area for tobacco products, smoking paraphernalia or both.
3. No tobacco retailer may derive fifty percent (50%) or more of gross receipts from tobacco products, smoking paraphernalia, or both.

Existing tobacco retailers operating at the time this chapter goes into effect may seek an exception to this section for up to ten (10) years) by demonstrating that use of a larger display area or percentage of gross receipts preceded the effective date of this chapter. The tobacco retailer shall make this showing to the satisfaction of the City. Such tobacco retailers will be allowed to continue to devote the same amount of display area and/or receive up to the same percent of gross receipts from tobacco products as demonstrated so long as:

1. A tobacco retailer license and exception to this section are obtained in a timely manner;
2. The tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days;
3. The tobacco retailer does not substantially change the business premises or business operation, as determined by the City;
4. The tobacco retailer does not increase the percent of display area and/or gross receipts beyond that store’s previously declared percentages, or the aforementioned limits, whichever is greater;
5. The tobacco retailer does not receive three or more citations for any reason within a five year period;
6. The tobacco retailer retains the right to operate under other applicable laws; and
7. The tobacco retailer is required to post signs restricting the age of customers to the state mandated minimum age for purchasing tobacco.

This exception will sunset ten (10) years from adoption of this ordinance.

6.100.340 Consideration for Existing Retailers. Existing tobacco retailers have 24 months from adoption of this chapter to comply with sections 6.100.120 through 6.100.200 inclusive so long as:

1. The tobacco retailer license is obtained and renewed annually in a timely manner. The license will be considered delinquent if payment is past due by more than 30 days;
2. The tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days, unless required to close or suspend tobacco retailing to comply with other laws, in which case the sixty (60) day period shall be tolled until the tobacco retailer is legally allowed to re-open or resume tobacco sales;

3. The tobacco retailer does not substantially change the business premises or business operation;
4. The tobacco retailer does not receive three or more violations within a twenty-four month period; and
5. The tobacco retailer retains the right to operate under other applicable laws.

Article 3. Location Requirements.

6.100.360 Schools and Youth-Populated Areas. No new license may be issued to authorize tobacco retailing within five hundred (500) feet of public and private schools and areas with youth populations as follows:

1. A private or public kindergarten, elementary, middle, junior high, or high school;
2. A library open to the public; or
3. A publically-owned park (excluding the Ohlone Greenway and pocket parks as defined in the San Pablo Avenue Specific Plan) or recreation facility including, but not limited to, clubhouses, the Community Center, the Senior Center, and the Swim Center.

EXCEPTION: Tobacco retailers operating at the time this chapter goes into effect may remain in their current location. In addition, if, within ten (10) years of adoption of this ordinance, such businesses are sold in an arm's length transaction, as determined by the City, the location exception will continue to apply to the new owner.

6.100.380 Proximity to other Retailers. No new license may be issued to authorize tobacco retailing within one thousand (1,000) feet of a tobacco retailer location already licensed pursuant to this chapter.

EXCEPTIONS:

1. Tobacco retailers operating at the time this chapter goes into effect may remain in their current location. In addition, if, within ten (10) years of adoption of this ordinance, such businesses are sold in an arm's length transaction, as determined by the City, the location exception will continue to apply to the new owner.
2. Any new retailer may request an exception to this section. If the body of approval is the Planning Commission, they will hear the exception request; If the Planning Commission is not the body of approval for the use, the Zoning Administrator will hear the exception request at an administrative hearing. In making a decision on an exception, the approving body will consider whether there are specific economic, legal, social, environmental or other benefits of the proposed retail operation that will outweigh the harms. (For example, the decision to grant the exception will take into account if the proposed use will provide a public benefit which will further one or more of the goals of the San Pablo Avenue Specific Plan or other adopted city policy document related to economic development.) The benefits will be stated in a finding(s) that the approving body makes when approving the exception.

6.100.390 Distances. The distances set forth in section 6.100.360 shall be measured as a straight line, without regard to intervening structures or objects, from the property line of the property containing the tobacco retail business to the property line of the other property. The

distances set forth in section 6.100.380 between tobacco retailers shall be measured from the outside wall of the tenant space of each tobacco retailer.

Article 4. License Application and Procedures.

6.100.400 Application Form.

Applications for a tobacco retailer license shall be submitted on a form provided by the City.

6.100.420 Issuance Procedure.

Upon the receipt of a complete application for a tobacco retailer license and the license fee required by this chapter, the City shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter;
2. Tobacco retailing is not an allowed use at the stated location;
3. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter, that is unlawful pursuant to any portion of the El Cerrito Municipal Code or that is unlawful pursuant to any other law;
4. The location for which a tobacco retailer license is sought lacks a valid state tobacco retailer license issued by the California Board of Equalization; or
5. The applicant has been found in violation of three (3) or more regulations within the last five years pertaining to any local, state, and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or smoking paraphernalia.

6.100.440 Appeal.

Any person aggrieved by any decision of the license administrator with respect to the issuance or refusal to issue such license may follow the process described in ECMC 4.32.150

6.100.460 Renewal of License.

The initial tobacco retailer license will expire at the same time as the retailer's business license, therefore, the initial license may have a term shorter than one year.

The renewal term of a tobacco retailer license is one year. Each tobacco retailer shall apply for the annual renewal of his or her tobacco retailer license and the license fee shall be due and payable in advance of the time the retailer's business license expires. The applicant for the renewal of a tobacco retailer license shall submit the renewal form, including a sworn statement setting forth such information concerning the applicant's business as may be required by the license administrator to enable the administrator to ascertain if tobacco retail was the principal or core business during the preceding year and if the applicant or an employee has been found in violation pertaining to any local, state, and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, flavored tobacco products, imitation tobacco products and/or smoking paraphernalia.

6.100.480 Delinquency—Installments.

For failure to pay a renewal fee of the license when due, the license administrator shall add a penalty at the rate set forth for business license taxes per ECMC 4.32.210, using the tobacco license cost as the basis to determine the penalty amount.

No license shall be issued, nor one which has been suspended or revoked, shall be reinstated or reissued to any person who, at the time of applying therefore, is indebted to the City for any delinquent license fees, unless such licensee, with the consent of the license administrator, enters into a written agreement with the City through the license administrator to pay such delinquent fees in at least monthly installments extending over a period not to exceed one year.

Such agreement must acknowledge the obligation owed to the City by the licensee, and provide that upon failure to make timely payment of any installment, the whole amount unpaid shall become immediately due and payable and that the current license shall be revocable by the license administrator upon thirty days' notice and, in the event legal action is brought by the City to enforce collection of any amount included in the agreement, such licensee shall pay all costs of suit incurred by the city or its assignee, including reasonable attorney fees. The execution of such an agreement shall not prevent the prior accrual of penalties on unpaid balances at the rate provided in this section, but no penalties shall accrue on account of fees included in the agreement after the execution of the agreement and the payment of the first installment and during such time as such licensee shall not be in breach of the agreement.

6.100.500 Licenses Nontransferable.

A. A tobacco retailer license may not be transferred from one person to another or from one location to another. A new tobacco retailer license is required whenever a tobacco retailing business has a change in owner(s).

B. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

1. The location has been transferred to new owner(s) in an arm's length transaction; and
2. The new owner(s) provide the City with convincing evidence that the new owner(s) have acquired or are acquiring the location in an arm's length transaction.

6.100.520 License Conveys a Limited, Conditional Privilege. Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the City identified on the face of the permit. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a tobacco retailer license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

6.100.540 Fee for License. The fees for the annual tobacco retailer license shall be established by the City Council and included in the City's Master Fee Schedule. Fees are payable at the time the retailer obtains or renews its business license. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and enforcement, but shall not exceed the cost of the regulatory program authorized by this chapter. Annual fees shall not be pro-rated or refunded during the course of the year. Upon adoption of this chapter, the following fees will be included in the City's Master Fee Schedule as amended by Council resolution and reviewed annually thereafter:

\$485 for tobacco retailer license (initial license)

\$439 for tobacco retailer license renewal

The City may charge a re-inspection fee to offset the additional staff time required to handle non-compliant businesses. Additional inspections will be billed based on actual costs incurred.

To encourage compliance in a timely manner, tobacco retailers operating at the time this chapter is adopted who are able to demonstrate full compliance with Article 2 (Requirements and Prohibitions) of this chapter at the time of initial application for a tobacco retailer license shall have the license fee for the first year reduced by fifty percent (50%). Tobacco retailers operating at the time this chapter is adopted who are able to demonstrate full compliance with Article 2 of this chapter at the time of license renewal in 2016 shall have that year's license renewal fee reduced by twenty five percent (25%).

6.100.560 Compliance Monitoring. Compliance with the regulations in this chapter shall be enforced by the City's Community Development Department, in conjunction with the El Cerrito Police Department. The City Manager may designate another position responsible for these duties. The Code Enforcement Officer or his/her designee shall use reasonable efforts to conduct a compliance check visit to each tobacco retailing location at least once during the initial twelve (12) month period, and thereafter on a periodic basis to determine if the tobacco retailer is in compliance with these regulations. Nothing in this section shall create a right of action in any tobacco retailer or other person against the City or its agents in conducting these annual inspections.

Retailers may be subject to additional inspections based on random selection, past violations or complaints. Nothing in this paragraph shall create a right of action in any licensee or other person against the City or its agents.

The City's Police Department shall develop and carry out inspections in an effort to enforce any local, state or federal law related to tobacco sales, especially those related to a minimum age for tobacco purchases or possession.

6.100.580 Inspection and Right of Entry. To the extent permissible by law, the Community Development Director, Chief of Police and their designees shall have the right to enter and inspect any tobacco retailer for the purpose of ensuring compliance with the regulations in this chapter, provided that any such entry and inspection shall be conducted in

a reasonable manner and when there is reason to suspect a violation of any of the provisions of the tobacco retailer regulations.

Whether in plain clothes or uniform, peace officers have the right to visit and inspect any tobacco retailing location at any time during business hours without a search warrant upon presentation of appropriate credentials. This includes inspecting the bar and back bar, store room, office, closed or locked cabinets, safes, kitchen, or any other area within the premises. Inspections will be requested or conducted no more than once in a 24-hour period. Refusal to allow inspection will be a violation of this chapter.

6.100.600 Suspension or Revocation of License for Violation. In addition to any other penalty authorized by law, a tobacco retailer license shall be suspended or revoked if any court of competent jurisdiction determines, or the City finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in this chapter.

1. Upon a finding by the City of a first violation of this chapter, at a location within any five (5) year period, the privilege to sell tobacco, tobacco products, electronic smoking devices and smoking paraphernalia shall be suspended for ten (10) days.
2. Upon a finding by the City of a second violation of this chapter at a location within any five (5) year period, the privilege to sell tobacco, tobacco products, electronic smoking devices and smoking paraphernalia shall be suspended for thirty (30) days.
3. Upon a finding by the City of a third violation of this chapter at a location within any five (5) year period, the privilege to sell tobacco, tobacco products, electronic smoking devices and smoking paraphernalia shall be suspended for sixty (60) days.
4. Upon a finding by the City of four (4) or more violations of this chapter at a location within any five year period, the tobacco retailer license shall be revoked.

Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

1. The location has been transferred to new owner(s) in an arm's length transaction; and
2. The new owner(s) provide the City with evidence that the new owner(s) have acquired or are acquiring the location in an arm's length transaction.

6.100.620 Product Removal During Suspension or Revocation. To ensure customers and the public are aware of periods of suspension or revocation, all tobacco-related products, paraphernalia, and advertising must be removed from public view during periods of suspension or revocation.

1. During periods of suspension or revocation, the City shall post a notice to the public on the property that states "This retailer has violated important public health laws regulating tobacco. Tobacco sales are currently banned at this location." The notice will be at least 22" wide and placed nearby the main entrance to the store

6.100.640 Appeal of Suspension or Revocation. Any person found to be in violation of this chapter shall have the right to a hearing in accordance with ECMC Chapter 1.14, “Administrative Penalties.”

Article 5. Penalties

6.100.660 Penalties.

- A. Violations of this chapter are hereby declared to be public nuisances.
- B. Violations of this chapter may be prosecuted as infractions or misdemeanors when the interests of justice so require.
- C. Violations of this chapter are subject to a civil action brought by the City Attorney, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.
- D. Any person who is found to have violated this chapter shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Re-inspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the establishment, as may be set by the City Council in the Master Fee Schedule.

6.100.680 Tobacco Retailing Without A License.

A. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the City finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer license, either directly or through the person’s agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer license as follows:

1. After a first violation of this section at a location within any five (5) year period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm’s length transaction), until thirty (30) days have passed from the date of the violation.
2. After a second violation of this section at a location within any five (5) year period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm’s length transaction), until ninety (90) days have passed from the date of the violation.
3. After of a third or subsequent violation of this section at a location within any five (5) year period, the tobacco retailer license will be revoked and no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm’s length transaction), until two (2) years have passed from the date of the violation.

B. For the purposes of the civil remedies provided in this chapter:

1. Each day on which a tobacco product or smoking paraphernalia is offered for sale is a violation of this chapter; or
2. Each individual retail tobacco product and each individual retail item of smoking paraphernalia that is distributed, sold, or offered for sale in violation of this chapter shall constitute a separate violation of this chapter.

SECTION 4. SEVERABILITY If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. NOTICING, POSTING AND PUBLICATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given and the public hearing has been properly held and conducted.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect on January 1, 2016.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on September 15, 2015 and passed by the following vote:

AYES: Councilmembers Abelson, Bridges, Lyman, Quinto and Mayor Friedman
NOES: None
ABSENT: None
ABSTAIN: None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on _____, 2015 and passed by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

Mark Friedman, Mayor

ATTEST:

Cheryl Morse, City Clerk

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

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2015-XX of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ____ day of _____, 2015; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ____ day of _____, 2015.

Cheryl Morse, City Clerk

¹ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking — 50 Years of Progress. A Report of the Surgeon General*, www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf

² Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47: 210-214.

³ McCarthy WJ, Mistry R, Lu Y, et al. 2009. "Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students." *American Journal of Public Health*, 99(11): 2006-2013.⁴ Henriksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventive Medicine* 47:210-214.⁵ Chapman R. 2012. *State Health Officer's Report on Tobacco Use and Promotion in California*. California Department of Public Health, California Tobacco Control Program, p. 8, www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf

⁶ Cal. Health & Safety Code §§ 11014.5, 11364.7.

⁷ West Contra Costa Unified School District. California Healthy Kids Survey, 2014-15: Main Report. San Francisco: WestEd Health & Human Development Program for the California Department of Education., http://www.wccusd.net/cms/lib03/CA01001466/Centricity/Domain/11/West_Contra_Costa_Unified_1415_Sec_CHKS.pdf

⁸ Chapman, R. 2012. *State Health Officer's Report on Tobacco Use and Promotion in California*. California Department of Public Health, California Tobacco Control Program, p. 6, www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf

⁹ Answers About Black & Milds, Swisher Sweets, and Other Little Cigars and Cigarillos. Available at: <http://smokefree.gov/tob-cigarillo.aspx>.

¹⁰ 21 C.F.R. § 1140.14(d).

¹¹ 21 U.S.C. § 387g.

¹² Carpenter CM, Wayne GF, Pauly JL, et al. 2005. "New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies." *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. "Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands."

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- American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.
- ¹³ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.
- ¹⁴ 21 U.S.C. § 387g.
- ¹⁵ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 164, 205, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf; Morris DS and Fiala SC. 2013. “Flavoured, Non-cigarette Tobacco for Sale in the USA: An Inventory Analysis of Internet Retailers.” *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/08/08/tobaccocontrol-2013-051059.full>.
- ¹⁶ Food and Drug Administration. 2011. *Fact Sheet: Flavored tobacco products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.
- ¹⁷ King BA, Tynan MA, Dube SR, et al. 2013. “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students.” *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.
- ¹⁸ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.
- ¹⁹ Centers for Disease Control & Prevention. April 17, 2015. “Tobacco Use Among Middle and High School Students — United States, 2011–2014,” *Morbidity and Mortality Weekly Report (MMWR)* 64(14);381-385 http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a3.htm?s_cid=mm6414a3_w
- ²⁰ Cameron JM, Howell DN, White JR, et al. 2013. “Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions.” *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.
- ²¹ Press Release, State of California Department of Justice, Office of the Attorney General, Brown Announces Electronic Cigarette Maker's Agreement to Stop Deceptive Marketing and Sales to Minors (Aug. 3, 2010), oag.ca.gov/news/press-releases/brown-announces-electronic-cigarette-makers-agreement-stop-deceptive-marketing.

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- ²² American Lung Association in California, Center for Tobacco Policy & Organizing. 2013. *Tobacco Retail Licensing is Effective*, <http://center4tobaccopolicy.org/wp-content/uploads/2013/09/Tobacco-Retailer-Licensing-is-Effective-September-2013.pdf>
- ²³ California Department of Health Services, Tobacco Control Section. 2003. *Final Report, Independent Evaluation of the California Tobacco Control Prevention & Education Program: Waves 1, 2, and 3 (1996-2000)*, p. 110, www.cdph.ca.gov/programs/tobacco/Documents/WavesComplete.pdf
- ²⁴ Ma GX, Shive S and Tracy M. 2001. "The Effects of Licensing and Inspection Enforcement to Reduce Tobacco Sales to Minors in Greater Philadelphia, 1994-1998." *Addictive Behaviors* 26(5): 677-687.
- ²⁵ Forster JL, Murray DM, Wolfson M, et al. 1988. "The Effects of Community Policies to Reduce Youth Access to Tobacco." *American Journal of Public Health* 88(8): 1193-1197.
- ²⁶ American Nonsmokers' Rights Foundation. 2012. *California Municipalities with Laws Restricting Youth Access to Tobacco*, <http://changelabsolutions.org/publications/anrf-list>

EL CERRITO CITY COUNCIL PROCLAMATION

October 18-24, 2015 is Freedom from Workplace Bullies Week

WHEREAS, the City of El Cerrito has an interest in promoting the social and economic well-being of its residents, employees and employers; and

WHEREAS, that well-being depend upon the existence of healthy and productive employees working in safe and abuse-free work environments; and

WHEREAS, research has documented the stress-related health consequences for individuals caused by exposure to abusive work environments; and

WHEREAS, abusive work environments are costly for employers, with consequences including reduced productivity, absenteeism, turnover and injuries; and

WHEREAS, protection from abusive work environments should apply to every worker, and not be limited to legally protected class status based only on race, color, gender, national origin, age or disability.

NOW THEREFORE, the City Council of the City of El Cerrito hereby proclaims October 18-24, 2015 as “Freedom from Workplace Bullies Week” in the City of El Cerrito and commends the California Healthy Workplace Advocates and the Workplace Bullying Institute, which raise awareness of the impacts of, and solutions for, workplace bullying in the United States; and encourages all residents to recognize this special observance.

Dated: October 6, 2015

Mark Friedman, Mayor

A WEEK FOR SUPPORT, INSPIRATION, PEACE & HEALTH



FREEDOM
FROM WORKPLACE BULLIES
WEEK OCT 18-24, 2015
WORKPLACEBULLYING.ORG

Bullying is a systematic campaign of interpersonal destruction that jeopardizes employee health, shatters careers, and strains families.

Bullying is non-physical, non-lethal workplace violence. It is abusive, causing psychological injuries and stress-related diseases.

It is costly to businesses.
Bullies are too expensive to keep.

The destructive power of workplace bullying comes from secrecy.

The Workplace Bullying Institute celebrates its 7th annual
FREEDOM FROM WORKPLACE
BULLIES WEEK.

The week is a chance to break through the silence and secrecy. It is a week to be daring and bold. To take courageous action. To do the right thing.

Everyone deserves a safe, healthy, and dignified workplace.

Find advice, tips and activities at **freedomfrombullies.org** for:

WORKPLACE
BULLYING
INSTITUTE

- Employers
- Family
- Coworkers
- Friends
- Unions

- Mental Health Professionals
- School Administrators
- Public Policy Makers
- Community Leaders
- Medical Professionals

EL CERRITO CITY COUNCIL PROCLAMATION

OCTOBER 2015 IS DOMESTIC VIOLENCE AWARENESS MONTH

WHEREAS, family violence continues to be prevalent as a social problem due to the imbalance of power in gender and age and the problems of domestic violence are not confined to any group or groups of people but cross all economic, racial, affectional preference and societal barriers and are supported by societal indifference; and

WHEREAS, the crime of domestic violence violates an individual's privacy, dignity, security and humanity due to the systematic use of physical, emotional, sexual, psychological and economic control and/or abuse and the impact of domestic violence is wide-ranging, directly affects men, women, and children, and society as a whole; and

WHEREAS, it is survivors of domestic violence themselves who have been in the forefront of efforts to bring peace and equality to the home and all residents of Contra Costa County should feel safe in their homes, their schools, and their communities; and

WHEREAS, STAND! for Families Free of Violence provides domestic violence services to families and individuals in Contra Costa County, serving over 15,000 clients annually; and

WHEREAS, STAND! for Families Free of Violence is a multi-service agency, providing: 24 hour crisis line, emergency and transitional shelter, legal advocacy, children and teen programs, counseling, support groups, employment training, batterer's treatment program, and educational prevention programs; and

WHEREAS, STAND! for Families Free of Violence works to raise awareness through education, so individuals will become advocates, and will take action to end violence in their communities.

NOW THEREFORE, the City Council of the City of El Cerrito hereby proclaims October 2015 as Domestic Violence Awareness Month in the City of El Cerrito, and urges all residents to actively participate in the efforts to end violence in our homes, in our schools, and in our communities.

Dated: October 6, 2015

Mark Friedman, Mayor



AGENDA BILL

Agenda Item No. 5(E)

Date: October 6, 2015
To: El Cerrito City Council
From: Christopher Jones, Recreation Director
Subject: Grant Co-Sponsorship for the El Cerrito Library Foundation

ACTION REQUESTED

Adopt a resolution authorizing the City Manager or his designee to grant co-sponsorship status to the El Cerrito Library Foundation.

BACKGROUND

The El Cerrito Library Foundation (ECLF) is a 501(c)(3), El Cerrito based non-profit organization. The purpose of the ECLF is to support the building of a safe and modern library in El Cerrito by raising awareness and funds to provide resources for the library furnishings, programs, and services.

The ECLF incorporated as a non-profit in November of 2013. Prior to that, the group operated as the New El Cerrito Library Committee since 2011.

On February 7, 1977 the City Council established a co-sponsorship policy that would assist community non-profit organizations in providing leisure services to El Cerrito residents. The policy provided provisions that would assist community organizations in making public facilities and other services available for the growth and continuation of programs, and to insure that public facilities are being used for the best welfare of the community.

On October 6, 1980, the City Council amended the co-sponsorship policy on the recommendation of the Park and Recreation Commission. This policy governed the relationship between the City and non-profit organizations in the provision of recreation programs in the community. The policy was adopted to formalize a procedure in which groups would receive the use of public facilities at a reduced cost and provide priority usage of City facilities.

On March 19, 2001, the City Council approved a process to review all requests from community based organizations, co-sponsored facility use and funding. The process differentiated co-sponsorship from asking for funds.

ANALYSIS

Staff has reviewed the attached co-sponsorship application and has determined that this request conforms with the City's Administrative Policy/Procedure I(A)(5) "City Co-Sponsorship and Grants."

FINANCIAL CONSIDERATIONS

Use of City Facilities for meetings by the group would be subject to the co-sponsorship rates established in the City's Master Fee Schedule.

Reviewed by:



Scott Hanin, City Manager

Attachment:

1. Resolution
2. Co-Sponsorship Application for the El Cerrito Library Foundation

RESOLUTION NO. 2015 – XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING APPROVAL OF CO-SPONSORSHIP STATUS FOR THE EL CERRITO LIBRARY FOUNDATION AND AUTHORIZING APPLICATION OF CO-SPONSORSHIP RATES ASSOCIATED WITH THE USE OF PARK AND RECREATION FACILITIES AS ESTABLISHED IN THE CITY'S MASTER FEE SCHEDULE

WHEREAS, on March 19, 2001 the City Council approved a process to review all requests from community based organizations for facility use and funding; and

WHEREAS, the El Cerrito Library Foundation desires use of and access to City Park and Recreation facilities to further their goal of supporting the building of a safe and modern library; and

WHEREAS, the El Cerrito Library Foundation will work closely with City and Library Staff to identify needed furnishings and other resources for the library; and

WHEREAS, the City provides support for community based organizations that have made successful applications to the City for co-sponsored facility use or grants; and

WHEREAS, community organizations through their design, improve and enhance the quality of life in El Cerrito; and

WHEREAS, public facilities are to be used to benefit the El Cerrito Community.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby approves co-sponsorship status for the use of park and recreation facilities by the El Cerrito Library Foundation and authorizes application of the co-sponsorship rates as established by the City's Master Fee Schedule for the use of City facilities.

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

I CERTIFY that at a regular meeting on October 6, 2015, the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

Agenda Item No. 5(E)
Attachment 1

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

Cheryl Morse, City Clerk

APPROVED:

Mark Friedman, Mayor

**CITY OF EL CERRITO
CO-SPONSORSHIP & COMMUNITY BASED,**

CO-SPONSORED FACILITY USE AND GRANT APPLICATION

Submit to:
City of El Cerrito
Recreation Department
7007 Moeser Lane
El Cerrito, CA 94530

Deadline:

Please complete the following application using the instructions provided on the last page of this application. You may attach additional pages if necessary.

Name of Applicant THE EL CERRITO LIBRARY FOUNDATION (ELLF)
Address: PO BOX 2611, EL CERRITO 94530-3651 Email: INFO@ELClibraryfoundation.org

Phone: (510) 526-AB74

Contact 1. (Name) AL Miller
Phone: [REDACTED]

Contact 2. (Name) MARLENE KELLER
Phone: [REDACTED]

Federal Tax ID # [REDACTED]

Request: FOR CO-SPONSORSHIP and CO-SPONSORED FACILITY USE

Eligibility Requirements: Please answer the following questions:

Have you or will you be receiving funding in ²⁰¹⁵ ~~2003~~ for this program from other sources?
No

Yes

Are you aware of any other City program providing this service? If so, which one?
NONE

Program Description / Scope (please use additional pages if necessary)

Describe your program:
TO SUPPORT THE BUILDING OF A SAFE, MODERN LIBRARY IN EL CERRITO BY RAISING AWARENESS AND RAISING FUNDS THAT PROVIDES on-going resources for LIBRARY FURNISHINGS, PROGRAMS, and SERVICES
How does or will this program benefit the El Cerrito Community?
THE ELLF WORKS WITH THE COMMUNITY TO ENHANCE CULTURAL AND EDUCATIONAL OPPORTUNITIES FOR ALL.

% of El Cerrito Residents Served 100

Applicant Background: A 501(C)(3) INCORPORATED IN NOV 2013, PRIOR TO
INCORPORATION, OPERATED AS THE NEW EL CERRITO LIBRARY COMMITTEE
SINCE 2011

This applicant is a (n): Non-Profit For Profit Local Public Agency
State Public Agency Other _____

Years In Business: 1 1/2 Number of Employees: 0

Number of Volunteers: 10 (Please attach an organization chart, if available.)

Names of Officers and Board Directors: See ATTACHED LIST for Complete Listing

Name:	Title:
<u>AL MILLER</u>	<u>PRESIDENT</u>
<u>STEVEN POULOS</u>	<u>VICE PRESIDENT</u>
<u>GARY POKORNY</u>	<u>SECRETARY</u>
<u>MARLENE KELLER</u>	<u>FINANCIAL OFFICER</u>

Experience In Program Area:

AS A FOUNDATION, SINCE 2013. AS LIBRARY PATRONS AND
MEMBERS OF FRIENDS OF THE EL CERRITO LIBRARY, MUCH LONGER

Financial Capabilities / Budget:
Current funding sources and levels:

CONTRIBUTIONS ~ \$ 200K per year estimated

Previous City funding received or requested in the past three years:

NONE AND DO NOT INTEND TO REQUEST FUNDING IN
FUTURE

(Please attach a budget for program request including funding schedule.) N/A

Reporting Requirements:

A report on how the funds were spent will be required to be filed with the City annually, or when funds are spent, whichever comes first. Proof of program expenses are required to be held for two years, during which time the City reserves the right to audit the records.

☒ Yes

We agree to adhere to the reporting requirements described above.

☐ No

Certification:

We, the undersigned, do hereby attest that the above information is true and correct to the best of our knowledge.

(Two signatures required)

AC Miller
Signature

PRESIDENT
Title

6/29/15
Date

Marlene Keller
Signature

Financial officer
Title

6/24/15
Date



AGENDA BILL

Agenda Item No. 5(F)

Date: October 6, 2015

To: El Cerrito City Council

From: Lisa Malek-Zadeh, Finance Director/City Treasurer

Subject: Contract with New World Systems for Licensing, Maintenance and Support.

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to enter into a Standard Software Maintenance Agreement (SSMA) with New World Systems (NWS) to provide software licensing, maintenance and support services in an amount not to exceed \$314,580 through October 31, 2020.

BACKGROUND/ANALYSIS

In 2002, NWS was selected as the City's new Finance management system. In addition to the initial purchase, there is an annual cost for maintenance of the software that includes licensing, upgrades, new releases and telephone support.

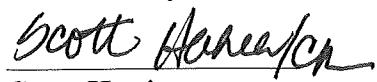
The current SSMA will expire at the end of October and needs to be renewed to continue maintenance of the system. The cost for an additional 5 years for maintenance and technical support totals \$165,740 and will extend the agreement through October 2020. In addition to maintenance of the system, this agreement includes 80 prepaid hours to allow for ongoing training and professional services needed to implement several of the planned upgrades that were included in the FY 2015-16 budget. The cost of the prepaid hours is included in the first year of the agreement, but any unused hours can be rolled into the following year to be used at that time. By prepaying at this time, the City realizes savings as the hourly rate is discounted when the hours are included in the SSMA.

The Police department also uses NWS through the City's contract with the City of Richmond. The use is for Records Management System and Computer Aided Dispatch which are essential technologies for the classification of police reports, calls for service, and analytical functions to address crime and disorder in our community. The cost of this technology is included in the master agreement with Richmond; however, the City pays a separate fee for ongoing maintenance. The cost for the 5 year SSMA totals \$148,840 and will expire in June 2019.

FINANCIAL CONSIDERATIONS

Funding for the agreement is included in the FY 2015-16 adopted budget in the Finance and Police Department's General Fund budget. Future year's funding will be included in the proposed budget and is subject to Council approval of annual appropriations.

Reviewed by:



Scott Hanin
City Manager

Attachment:

1. Resolution

RESOLUTION NO. 2015-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO ENTER INTO A STANDARD SOFTWARE MAINTENANCE AGREEMENT WITH NEW WORLD SYSTEMS IN AN AMOUNT NOT TO EXCEED \$314,580 FOR A TERM ENDING OCTOBER 31, 2020

WHEREAS, in 2002, the City selected New World Systems (NWS) as the City's financial system; and

WHEREAS, there is an annual cost for ongoing maintenance that includes licensing, upgrades, new releases and telephone support; and

WHEREAS, the cost for a new 5-year agreement totals \$165,740; and

WHEREAS, the Police Department also uses NWS through an agreement with the City of Richmond; and

WHEREAS, there is a separate cost for the Police Department's 5-year maintenance agreement that totals \$148,840; and

WHEREAS, funding of the current year's contract for both agreements totals \$63,136 and is included in the FY 2015-16 adopted budget in the General Fund; and

WHEREAS, future year's contract cost is subject to the City Council's approval of the annual appropriations.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito hereby authorizes the City Manager to enter into a standard software maintenance agreement with New World Systems in an amount not to exceed \$314,580 for a term ending October 31, 2020.

I CERTIFY that at the regular meeting on October 6, 2015, the El Cerrito City Council 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 October XX, 2015.

Cheryl Morse, City Clerk

APPROVED

Mark Friedman
Mayor



AGENDA BILL

Agenda Item No. 6

Date: October 6, 2015

To: El Cerrito City Council

From: Yvetteh Ortiz, Public Works Director
Melanie Mintz, Community Development Director

Subject: Adopt an Active Transportation Plan, including Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program

ACTION REQUESTED

Conduct a public hearing and upon conclusion, adopt a resolution adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and adopting the Active Transportation Plan.

DISCUSSION

In June 2007, the City Council adopted (Resolution No. 2007-56) the City's first Circulation Plan for Bicyclists and Pedestrians ("Circulation Plan") to guide future investments and improvements for bicyclists and pedestrians. Since adoption, the City has completed a variety of improvements including the first city bike lanes on Carlson Boulevard, numerous city sidewalk and pedestrian safety projects, rehabilitated the Ohlone Greenway, upgraded Ohlone Greenway crossings and striped bicycle sharrows on several streets as called for in the Circulation Plan.

In 2012, the City successfully applied for funding from the Metropolitan Transportation Commission's (MTC) Transportation Development Act funds (MTC-TDA Article 3) to update the Circulation Plan to an Active Transportation Plan (ATP/Plan). The Plan is intended to provide a blueprint for continuing the City's investment in improving safety and providing facilities and infrastructure for bicyclists and pedestrians, based on the changing demands and standards as well as the current goals of the City. More specifically, the update is intended to:

- Update and enhance the 2007 bicycle and pedestrian networks and projects to serve the needs of users of all ages and abilities
- Focus on 2007 routes that required additional evaluation
- Incorporate recent design best practices
- Develop several grant-ready project concepts
- Support the City's Climate Action Plan (2013)
- Coordinate with various other City planning efforts

In 2013, City staff selected Fehr & Peers, one of the City's on-call transportation consultants, to prepare the update based on their extensive experience with planning and design for bicycling and walking improvements as well as their involvement with developing plans for adjacent cities. The Plan was then developed in conjunction with the San Pablo Avenue Specific Plan (2014) and the Urban Greening Plan (in development) to ensure consistent goals, policy direction and coordinated public engagement.

The primary objective of the report before City Council (Council) this evening is to provide an overview of the entire Plan; its development process and public engagement; as well as to review the Initial Study and Mitigated Negative Declaration (IS/MND), in order for the Council to consider adopting the MND, Mitigation Monitoring and Reporting Program, and the Plan. Included in the Council's packet are the draft City Council Resolution (Attachment 1), final draft Plan (August 2015) (Attachment 2), Environmental Documents (Attachment 3) – including Mitigated Negative Declaration (Attachment 3, Exhibit A), Response to Comments (Attachment 3, Exhibit B) and the Mitigation Monitoring & Reporting Program (Attachment 3, Exhibit C).

Plan Development Process and Public Engagement

City staff and the consultant team hosted two community workshops in the summer and fall of 2013 for several concurrent planning efforts, including the San Pablo Avenue Specific Plan, Urban Greening Plan, and Active Transportation Plan. For the ATP, the first workshop, held in July 2013, reviewed the 2007 Circulation Plan and surveyed participants on their goal and policy priorities for the Plan update. Staff and the consultant team then hosted a Walking Audit and a Bike Audit in August 2013 to tour proposed improvement sites and identify significant barriers and opportunities for improved circulation. Based on these audits and the results of the first workshop, the consultant team developed conceptual designs for focus area projects and presented them at the second workshop held in October 2013.

City staff and the consultant team then developed a Plan based on this early community engagement, common best practices, and to meet the city's Climate Action Plan goals. The Plan essentially continues the successful policies of the 2007 Circulation Plan, which was thoroughly vetted by the community and the City Council at the time of its adoption. The community input that was received throughout the Plan process confirmed the desire to continue and build upon the policies of the 2007 plan.

The Plan includes six major sections:

- 1) A listing of goals, policies and programs to support increased walking and biking in El Cerrito;
- 2) An inventory of existing conditions, including the existing walking and biking network, number of biking and walking trips, and collision statistics;

Agenda Item No. 6

- 3) Proposed bicycle and pedestrian networks, including bicycle facilities and pedestrian improvements to increase accessibility and close important sidewalk and trail gaps;
- 4) Prioritized projects, including fact sheets for nine specific ‘focus area’ projects and a listing of other priority projects;
- 5) Performance measures to analyze the impacts of the Plan; and
- 6) A funding and implementation section that summarizes available funding sources and an approach to implementation.

The nine focus area projects include fact sheets and conceptual plans intended to prepare them for future grant applications. The nine projects are:

- 1) BART to Bay Trail Access Improvements
- 2) Ohlone Greenway Crossing Improvements
- 3) Citywide Wayfinding
- 4) Arlington Boulevard Pedestrian Improvements
- 5) East Side Bicycle Boulevard
- 6) East Side Bicycle Boulevard Wayfinding
- 7) Key Boulevard Improvements
- 8) Fairmount Avenue Improvements
- 9) Potrero Avenue Improvements

In addition, the Plan includes several appendices to ensure and confirm compliance with the California Transportation Commission’s adopted Active Transportation Program Guidelines. This program is currently the primary state funding source for biking, walking, and Safe Routes to School funding. Compliance with the Guidelines will make the City more competitive for these types of funding sources.

City staff released the draft Plan (June 2015) for public comment from June 16 through July 17, 2015 and held a third and final community workshop on July 1, 2015 to receive community input and provide information on the public comment period. A summary of the public comments received and how they were responded to in the final draft Plan (August 2015) are included later in this report.

The City presented the final draft Plan, Initial Study and Mitigated Negative Declaration to the Planning Commission on August 19, 2015. The Commission heard public comment on the Plan and unanimously voted to recommend City Council adoption of the final draft with some changes to Policy 3-1, to read as follows:

As a condition of project approval, ~~consider requiring~~ development projects to construct adjacent bicycle facilities included in the proposed bicycle system as well as bicycle parking and amenities. **when a nexus exists, it is practical from an engineering standpoint, and proportional to the impact of the development project.** Consider requiring large development projects to provide

accessible mid-block cut throughs (or “mews”) identified in this and other adopted plans¹.

Consistency with the General Plan and other City Planning Documents

The Plan directly implements a number of City goals as indicated below.

- El Cerrito General Plan (1999): The Circulation Element addresses the movement of people and materials by transit, automobiles, trucks, bicycles, and walking within the City and establishes the goals and policies for future transportation needs. The ATP helps implement these goals by promoting transportation systems that allow safe and efficient travel by a variety of modes and promotes the use of alternatives to the single-occupant vehicle, and that maintains and improves the livability of the City.
- Climate Action Plan (2013): Based on the vehicle miles travelled (VMT) reduction goals of the City’s Climate Action Plan, the ATP combined with the previously adopted San Pablo Avenue Specific Plan and Complete Streets Plan, will provide comfortable, accessible walking and biking facilities that will have the greatest ability to attract new walking and biking trips throughout the City. In order to achieve these goals, there must be a seven percent shift from autos to active modes and transit by 2040. The bicycle mode share is expected to double during that time with the build out of the ATP and San Pablo Avenue Complete Streets Plan.
- Ohlone Greenway Master Plan (2009): The Plan identifies the Greenway as an important transportation corridor that provides a secure, separated trail connection to major destinations throughout the City and beyond. The ATP references the Ohlone Greenway Master Plan design guidelines to improve security, safety and continued improvement of the Greenway. The ATP further identifies improvements at street crossings of the Ohlone Greenway.
- ADA Transition Plan (2009): The City’s Americans with Disabilities Act (ADA) Transition Plan ensures accessibility for individuals with disabilities by examining buildings, parks, and major pedestrian routes and identifying physical barriers. The ADA Transition Plan estimates the cost of mitigating barriers to accessibility, sets priorities, and provides a schedule for eliminating them. The major pedestrian routes identified in the ADA Transition Plan are the same as those in the Circulation Plan and, for the most part, the ATP with some minor additions.
- San Pablo Avenue Specific Plan (2014): The ATP supports the Specific Plan’s vision of a compact, walkable and bikable urban form. In addition, the ATP

¹ Strikeout means deletion, while Bold means addition.

identifies bicycle and pedestrian facilities and strategies that have the potential to be implemented as part of projects within the Specific Plan Area (whether as project mitigations or otherwise) once the ATP is adopted.

Public Comment on Draft Plan (June 2015)

City staff received eight sets of written comments on the draft Plan. Comments were also received at the third community workshop held in July 2015. Together with the consultant team, staff reviewed and incorporated response to comments in the final draft Plan. Below is a summary of the main comment themes expressed by members of the public and responses by City staff.

Over-reliance on Bike Routes

Comment: The proposed Bicycle Network depends heavily on bicycle routes, which do little to change the on-street environment and do not provide a protected bicycle facility for unsure riders.

Response: Choosing the type of bikeway for a given roadway requires evaluating the characteristics of the roadway, such as its width, volume, speed, land uses, and presence of on-street parking. There are two basic types of bikeways: shared travel lanes and dedicated bicycle facilities. Shared lanes are designated bicycle routes or bicycle boulevards which typically have sharrows² marked on the pavement, asking bicyclists and autos to share the travel lane, while dedicated bicycle facilities may be typical bicycle lanes or cycle tracks, such as those approved for the mid-town section of San Pablo Avenue. At the existing bicycle ridership levels, it is difficult to prioritize dedicated bicycle facilities over other amenities, such as vehicle parking in residential areas. The Plan, therefore, relies on bicycle routes with sharrows to underline a bicyclist's right to use the roads. While sharrows do not create dedicated bicycle facilities, they do reiterate that cars must share the road, which in turn supports a culture of cycling in El Cerrito. In the proposed Bicycle Network, for streets where bike routes with sharrows have been identified to close circulation gaps, alternatives such as bicycle boulevards, bike lanes or cycle tracks will be considered in the future, as projects are designed and implemented. Over time and with changing priorities and demands, a dedicated facility may be a more appropriate solution. The final draft Plan includes a description of the bicycle routes with sharrows and the required conditions to consider a dedicated facility in lieu of these bicycle routes. As the Plan evolves in future updates and as community priorities shift overtime, there will be opportunities to revisit some roadways that are currently bike route sharrows and/or are proposed to be.

² "Sharrows", also referred to as "Shared Lane Markings", are stencils on the pavement showing a bicycle symbol and two directional arrows or "chevrons". They denote bicycle routes where bicyclists and autos share the travel lane. They also demonstrate where bicyclists should ride in the travel lane, which is typically in or near the middle of travel lane.

East-West Bicycle Connections

Comment: The Plan does not include enough east-west bicycle facilities, and where it does, it relies too heavily on bicycle routes with sharrows, particularly along Fairmount and Central Avenues. At least one of these streets should have a dedicated bicycle facility, such as a bicycle lane.

Response: The completion of the Fairmount Streetscape Project in 2005 essentially prioritized pedestrians along Fairmount Avenue west of Richmond Street. Most recently, the City implemented several pedestrian and traffic calming improvements east of Richmond Street as part of the Upper Fairmount Streetscape and Fairmount & Ashbury Avenues Intersection Safety Improvements Project, which benefit both pedestrians and bicyclists by slowing vehicle speeds. Several sections of Central Avenue have relatively high volumes of traffic during peak hours and high parking demand from both the BART station and the neighboring residential and commercial neighborhoods, and some sections already have parking prohibitions on one side of the street, making it a difficult roadway on which to implement a dedicated bicycle facility. City staff is currently working with the Creekside Walk Development to improve the east-west pedestrian and bicycle connections through the El Cerrito Plaza to provide an improved east-west connection at the south end of town. In the mid-section of town, bicycle lanes have recently been added on Moeser Lane, while bicycle lanes are proposed on sections of Cutting Boulevard and Hill Street on the north end of town. Finally, most of the east-west streets in the City have sections that are very steep making them difficult routes for bicyclists. Recognizing these recent investments, street characteristics and on-going efforts, the final draft Plan provides guidance on how the City can analyze the use of dedicated facilities, in lieu of bicycle route sharrows, on east-west routes in the future as noted above.

Ohlone Greenway Crossings

Comment: The draft Plan had proposed a switch from “Stop” signs to “Yield” signs for bicyclists along the Ohlone Greenway at low-volume streets such as Lincoln Avenue, Portola Drive, and Blake Street, while adding traffic calming devices on the intersecting low-volume streets in an attempt to formalize safe behavior that already takes place at these types of crossings. The existing “Stop” signs at high traffic volume streets and locations with limited sight distance, such as Fairmount Avenue, Moeser Lane and Potrero Avenue, were proposed to be maintained. At the third community workshop and through public comments received, several bicyclists, pedestrians and drivers voiced their concerns that this could further confuse motorists and bicyclists.

Response: Trail crossings in suburban and urban areas with multiple street crossings continue to be a difficult design problem for communities across the United States, and are a subject of on-going transportation research. Bicyclists required to stop too frequently, particularly on roads without high volumes of traffic, can tend to eventually treat “Stop” signs like “Yield” signs. Motorists may also be confused as to when they should yield to pedestrians versus bicyclists. The design solution for the Ohlone Greenway is not clear at this time. Staff and the consultant team believe that further analysis of existing behavior patterns, as well as additional trail crossing best practice

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research is still needed. Concerns about sight lines and traffic volumes may mean that different solutions are likely appropriate at each intersection. Staff has removed the proposed solution of switching “Stop” signs to “Yield” signs and will continue to evaluate appropriate solutions.

East Side Bicycle Boulevard Alignment

Comment: The alignment of the East Side Bicycle Boulevard is too circuitous and does not follow more direct major streets, such as Richmond and Ashbury.

Response: Major, higher-traffic volume streets are not appropriate streets for bicycle boulevards. While these streets may be the more direct option for confident cyclists, who are allowed to use these streets, the design of low stress bikeways, such as bicycle boulevards on parallel streets will help less confident cyclists travel across town. This route, evaluated as part of the Bicycle Audit, includes traffic calming and traffic control solutions that are proposed to prioritize bicyclists. The alignment remains the same as in the draft Plan, but additional information about the importance of bicycle boulevards has been included in the final draft Plan.

Data Collection

Comment: Bicycle and pedestrian counts should occur on a more regular basis with the help of both local volunteers from Bike East Bay and data collection devices at signalized intersections. Data collection will be beneficial for grant applications, data tracking, and performance measures.

Response: Staff added language about completing annual bike counts with volunteers from Bike East Bay and with automated data collectors at signalized intersections to the Policies and Programs matrix.

Initial Study and Mitigated Negative Declaration

California Environmental Quality Act (“CEQA”) Guidelines require preparation of an Initial Study to identify whether a plan or project will have a significant effect on the environment. For projects with potentially significant impacts, proposed mitigations may be included as part of the environmental review process to ensure that such impacts are mitigated to a less than significant level where possible. The City prepared an Initial Study and Mitigated Negative Declaration (IS/MND) for the Plan to evaluate the impacts of the proposed programs and projects to facilitate streamlined implementation in the future. The Plan did not require an Environmental Impact Report as no impacts were identified which could not be mitigated to a less than significant level as part of the project.

The Draft IS/MND was made available for public and agency review and comment from June 26 through July 27, 2015. The City only received one comment from the Department of Transportation (Caltrans). This comment and the City’s response have been included in this packet (Attachment 3, Exhibit B). The City then prepared a Mitigation Monitoring & Reporting Program (Attachment 3, Exhibit C) to summarize the mitigations required during implementation of this Plan.

Potentially significant impacts and corresponding mitigation measures were identified in the following eight areas:

- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Noise
- Traffic and Transportation

On August 19, 2015, the Planning Commission voted affirmatively to recommend adoption of the MND to the City Council.

Summary

The proposed Plan before the Council reflects revisions based on public comments made on the June 2015 draft (summarized above) and, if adopted, the final Plan will incorporate the Planning Commission revision. The policies and programs defined in the Plan build on policies from the 2007 Circulation Plan, as well as recent City planning efforts, and common best practices. The projects identified would be implemented over time and may require additional analysis and planning. The bicycle and pedestrian networks define priority streets and connections to improve walking and biking and will be used to inform street projects and other design efforts. The proposed projects, including the nine focus area projects and the medium and low priority projects, have gone through early community engagement and some preliminary design. In most cases, these projects will require some level of additional analysis and will be dependent on available funding. Projects on the medium and low priority lists may be implemented prior to a focus area project if a unique funding source or the opportunity to include some of the design elements in another project occurs. The Plan will inform the Capital Improvements Program and will serve as a work plan for bicycle and pedestrian improvements over the next five to seven years.

STRATEGIC PLAN CONSIDERATIONS

The City's Strategic Plan articulates the mission of the City to serve, lead, and support our diverse and transit-rich community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety, and creating an economically and environmentally sustainable future. The ATP directly implements several of the goals and strategies, and is consistent with the overall Strategic Plan. The primary goals and strategies furthered by the ATP include:

- *Goal E: Ensure the public's health and safety*

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- o Continue to work with local partners (i.e. BART, the school district, other communities, East Bay Regional Park District) on a coordinated approach to public safety.
 - o Explore innovative and best practices for promoting public health (e.g., smoking ordinances, nutrition, obesity prevention, living wage, and strategies to promote walking/biking).
- *Goal F: Foster environmental sustainability citywide*
 - o Encourage alternative modes of transportation to the single occupancy vehicle
 - o Implement the City's Climate Action Plan by reducing vehicle miles traveled (by creating a well connected pedestrian, bicycle and transit-oriented urban form that will make it easier for residents and visitors to leave their car behind.)

ENVIRONMENTAL CONSIDERATIONS

In accordance with CEQA, as described above, the City prepared an Initial Study and Mitigated Negative Declaration (IS/MND) for the Plan to evaluate the impacts of the proposed programs and projects to allow for streamlined implementation in the future. The Plan did not require an Environmental Impact Report as no impacts were identified which could not be mitigated to a less than significant level as part of the project. The CEQA actions before the City Council tonight include adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Active Transportation Plan.

FINANCIAL CONSIDERATIONS

There are no direct costs associated with the action requested tonight. Implementation of the Plan will require funding over many years as the total cost of improvements identified is estimated to be just under \$34 million including about \$13 million for the focus area projects. The City will need to utilize a combination of federal, state and local funds, as well as work with developers to contribute to improvements associated with their projects. Some project costs may be integrated into other project costs, such as bike lane striping during a paving project, installation of bike racks during construction or improvement of a facility, or the inclusion of pedestrian improvements during a streetscape beautification project.

Specific cost estimates were developed for the nine focus area projects to assist in grant applications and external funding requests. These are planning-level estimates that will need to be refined as projects are further developed and exclude additional environmental costs and any potential right-of-way acquisitions. Subsequent City Council actions would be needed to allocate funding to any of the proposed projects, as well as, include them in the City's Capital Improvement Program.

Adoption of the Plan positions the City to be more competitive for external funding sources.

LEGAL CONSIDERATIONS

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

Reviewed by:

A handwritten signature in black ink, appearing to read "Scott Hanin", is written over a horizontal line.

Scott Hanin, City Manager

Attachments

- 1) Draft Resolution adopting the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program, and adopting the Active Transportation Plan.
- 2) Attachment 2 Draft Active Transportation Plan (August 2015)
- 3) Attachment 3 Environmental Documents
 - a. Exhibit A: Mitigated Negative Declaration
 - b. Exhibit B: Response to Comments
 - c. Exhibit C: Mitigation Monitoring and Reporting Program

RESOLUTION NO. 2015-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATING
MONITORING AND REPORTING PROGRAM, AND ADOPTING THE ACTIVE
TRANSPORTATION PLAN

WHEREAS, in June 2007, the City Council adopted the City's first Circulation Plan for Bicyclists and Pedestrians, Resolution No. 2007-56, ("Circulation Plan") to guide future investments and improvements for bicyclists and pedestrians; and

WHEREAS, as called for in the Circulation Plan, the City has completed a variety of improvements including the first bike lanes on Carlson Boulevard, numerous sidewalk and pedestrian safety projects throughout the City, rehabilitated the Ohlone Greenway, upgraded Ohlone Greenway crossings and provided bicycle routes with sharrows on several streets; and

WHEREAS, in 2012, the City successfully applied for funding from the Metropolitan Transportation Commission's (MTC) Transportation Development Act funds (MTC-TDA Article 3) to update the Circulation Plan as part of an Active Transportation Plan ("Plan"); and

WHEREAS, the Plan is intended to provide a blueprint for continuing the City's investment in improving safety and providing facilities and infrastructure for bicyclists and pedestrians, based on changing demands and standards, and in accordance with the current goals of the City; and

WHEREAS, the planning process began in 2013 and included substantial public engagement, including a community workshop in July 2013 to evaluate existing and proposed conditions, a bike audit in August 2013 to ride some of the proposed bicycle facilities, a walking audit in August 2013 to tour a series of facilities, a second community workshop in October 2013 to present conceptual designs for focus area projects, and a final community workshop in July 2015 to present the draft plan for public comment; and

WHEREAS, the Plan was developed to incorporate community input and common best practices, to meet the city's Climate Action Plan goals, and to be consistent with various City plans, including the San Pablo Avenue Specific Plan, Urban Greening Plan, Ohlone Greenway Master Plan, and ADA Transition Plan; and

WHEREAS, the Plan is in compliance with the California Transportation Commission's adopted Active Transportation Program Guidelines; and

WHEREAS, the draft Plan was released for public review in June 2015 and was revised based on public comments and presented to the Planning Commission as a final draft in August 2015; and

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Attachment 1

WHEREAS, the Planning Commission heard public comment on the final draft Plan and unanimously voted to recommend City Council adoption of the final draft Plan with changes to Policy 3-1, to read as follows: “As a condition of project approval, require development projects to construct adjacent bicycle facilities included in the proposed bicycle system when a nexus exists, it is practical from an engineering standpoint, and proportional to the impact of the development project. Consider requiring large development projects to provide accessible mid-block cut throughs (or “mews”) identified in this and other adopted plans;” and

WHEREAS, on June 26, 2015, the City released for a 30-day public review period a Draft Initial Study and Mitigated Negative Declaration, which identified and evaluated the potential environmental impacts of the proposed Plan; and

WHEREAS, the City received one comment on the draft Initial Study from the Department of Transportation and prepared a Response to Comments and Mitigation Monitoring and Reporting Program available for review on August 13, 2015.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito, based on its review and consideration of the final draft Active Transportation Plan and associated Final Initial Study, Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and all public testimony:

1. Finds that the Active Transportation Plan is in the public interest and will advance the health, safety, and general welfare of the City of El Cerrito.
2. Finds that the Active Transportation Plan is consistent with the El Cerrito General Plan.
3. Hereby adopts the Mitigated Negative Declaration and Mitigating Monitoring and Reporting Program, and adopts the Active Transportation Plan, as attached hereto in Attachment 2 to the staff report and hereby incorporated by reference as Exhibit A to this resolution.

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

I CERTIFY that at a regular meeting on October 6, 2015, the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

Agenda Item No. 6
Attachment 1

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

Cheryl Morse, City Clerk

APPROVED:

Mark Friedman, Mayor



**October 6, 2015
City Council Meeting**

**Agenda Item 7(A) Active Transportation Plan
Attachment 2**

The final draft (August 2015) of the Active Transportation Plan, including appendices is available for review at <http://el-cerrito.org/atp>.

Below are direct links to the document, which has been divided for easier downloading:

- Final Draft Plan: <http://el-cerrito.org/DocumentCenter/View/4974>
- Appendix A: Crosswalk Policy at <http://el-cerrito.org/DocumentCenter/View/4975>
- Appendix B: Relationship to Other Plans at <http://el-cerrito.org/DocumentCenter/View/4976>
- Appendix C: Conformance with ATP Guidelines at <http://el-cerrito.org/DocumentCenter/View/4977>
- Appendix D: Active Transportation & Transit at <http://el-cerrito.org/DocumentCenter/View/4978>
- Appendix E: Grant Funding Sources at <http://el-cerrito.org/DocumentCenter/View/4979>
- Appendix F: Additional Fact Sheet at <http://el-cerrito.org/DocumentCenter/View/4980>
- Appendix G: Comments Received at Public Workshops at <http://el-cerrito.org/DocumentCenter/View/4981>



**October 6, 2015
City Council Meeting**

**Agenda Item 7(A) Active Transportation Plan
Attachment 3**

The Environment Documents for Active Transportation Plan are available for review at <http://el-cerrito.org/atp>.

Below are direct links to the documents:

- Initial Study and Mitigated Negative Declaration (IS/MND): <http://el-cerrito.org/DocumentCenter/View/5105>
- Response to Comments Memo: <http://ca-elcerrito.civicplus.com/DocumentCenter/View/5106>
- Mitigation Monitoring & Reporting Program: <http://ca-elcerrito.civicplus.com/DocumentCenter/View/5107>

Hardcopies are also available for review at:

The Office of the City Clerk, 10890 San Pablo Avenue, El Cerrito

and

The El Cerrito Library, 6510 Stockton Avenue, El Cerrito