



AGENDA

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

**Tuesday, July 15, 2014 – 6:30 p.m.
Hillside Conference Room**

SPECIAL CONCURRENT CITY COUNCIL MEETING / PUBLIC FINANCING AUTHORITY AND EMPLOYEE PENSION BOARD MEETING

**Tuesday, July 15, 2014 – 7:00 p.m.
City Council Chambers**

Meeting Location

El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Janet Abelson – Mayor

Mayor Pro Tem Rebecca Benassini
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Greg Lyman

6:30 p.m. ROLL CALL

CONVENE SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

ANNOUNCEMENT OF CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATORS (*Pursuant to Government Code Section 54957.6*)

Agency Designated Representatives: Scott Hanin, City Manager, Karen Pinkos, Assistant City Manager, Glenn Berkheimer, Labor Negotiator, and Sky Woodruff, City Attorney.

Employee Organizations: Service Employees International Union Local 1021

International Association of Fire Fighters Local 1230

El Cerrito Police Employees Association

El Cerrito Public Safety Management

Unrepresented Employees

ORAL COMMUNICATIONS FROM THE PUBLIC (*Comments are limited to three minutes per speaker and to items listed on this special agenda only.*)

RECESS INTO CLOSED SESSION

ADJOURN SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

ROLL CALL

7:00 p.m.

CONVENE SPECIAL CONCURRENT CITY COUNCIL MEETING / PUBLIC FINANCING AUTHORITY AND EMPLOYEE PENSION BOARD MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – Mayor 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. PRESENTATION

A. Proclamation in Memory of John Umemoto

Approve a proclamation recognizing the many contributions Mr. Umemoto made to the El Cerrito Community and offering condolences to Mr. Umemoto's wife Saliann, his family and many friends on behalf of the grateful residents of the City of El Cerrito.

B. El Cerrito Wall of Fame Ceremony

Adopt a resolution recognizing the leadership, contributions and achievements of Tom Panas and inducting Mr. Panas into the El Cerrito Wall of Fame.

5. ADOPTION OF THE CONSENT CALENDAR – Item No. 5A through 5D

A. Minutes for Approval

Approve the following meeting minutes: 1) June 17, 2014 Special City Council – Closed Session and Special Concurrent City Council/Public Financing Authority and Employee Pension Board meeting minutes; and 2) June 23, 2014 Special City Council meeting minutes.

B. National Night Out Proclamation

Approve a proclamation calling upon all residents in the City of El Cerrito to participate in "National Night Out" on Tuesday, August 5, 2014 in the City of El Cerrito.

C. Authorize Marin Clean Energy to Conduct Membership Analysis for the City to Participate in their Community Choice Aggregation Programs

Adopt a resolution which takes the following actions: 1) Authorizes the Mayor to submit a letter to Marin Clean Energy (MCE) requesting that they conduct an analysis of the feasibility of El Cerrito becoming a member of its Community Choice Aggregation (CCA) programs; 2) Authorizes the City Manager to execute a contract with MCE in an amount not to exceed \$18,000 as well as other necessary documents required by PG&E, to conduct a Membership Analysis for El Cerrito; and 3) Authorizes the City Manager to execute a grant agreement for \$15,000 with the World Wildlife Fund to fund the analysis. *Exempt from CEQA.*

D. “Pick Up” of Employee Contributions to CalPERS under Internal Revenue Code Section 414(H)(2)

Adopt a resolution providing for the “Pick Up” of employee contributions to CalPERS under the Internal Revenue Code Section 414(H)(2), allowing those contributions to be pre-tax.

6. PUBLIC HEARINGS

Fire Hazard Abatement Public Hearing

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

7. POLICY MATTERS

A. Memorandum of Understandings between the City and the United Professional Firefighters Association, Local 1230 and the El Cerrito Police Employees’ Association

Staff requests that the City Council approve the following actions: 1) Adopt a resolution approving a side letter agreement to the Memorandum of Understanding between the City of El Cerrito and the United Professional Firefighters Association, Local 1230 to modify language on salaries and retirement; 2) Adopt a resolution approving a side letter agreement to the Memorandum of Understanding between the City of El Cerrito and the El Cerrito Police Employees’ Association to modify language on salaries and retirement; 3) Adopt a resolution modifying reporting and payment of employer paid member contributions for the United Professional Firefighters Association, Local 1230; and 4) Adopt a resolution modifying reporting and payment of employer paid member contributions for the El Cerrito Police Employees Association.

B. Direction on November 2014 Sales Tax Ballot Measure for the Maintenance of City Services

Adopt a resolution: 1) Approving an ordinance (Exhibit A to the resolution) extending existing local funding at the one-cent (1.0%) sales tax rate in order to maintain and/or increase the current level of services provided by the City, which would become effective only if adopted by 50 percent plus one vote of the El Cerrito electorate; 2) Submitting to the El Cerrito electorate a measure to extend existing local funding at the one-cent (1.0%) sales tax rate in order to maintain and/or increase the current level of services provided by the City; and 3) Requesting that the Contra Costa Board of Supervisors consent to the consolidation of this election with the statewide general election to be held on November 4, 2014 and direct the Registrar of Voters to provide all services necessary to conduct the election and print a measure on the ballot as described in Section 3 of the resolution. *Exempt from CEQA.*

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

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

9. ADJOURN SPECIAL CONCURRENT CITY COUNCIL / PUBLIC FINANCING AUTHORITY AND EMPLOYEE PENSION BOARD MEETING.

The next City Council meeting is Tuesday, August 19, 2014 at 7:00 p.m. at City Hall, 10890 San Pablo Avenue, El Cerrito, California.

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

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

***EL CERRITO CITY COUNCIL PROCLAMATION
IN RECOGNITION AND IN MEMORY OF JOHN UMEMOTO***

WHEREAS, the El Cerrito Community mourns the loss of long-time Crime Prevention Committee member and dedicated volunteer, John Umemoto, who passed away on March 19, 2014; and

WHEREAS, John, a 35 year resident of El Cerrito, is remembered for his many contributions to the City of El Cerrito, particularly, his service on the Crime Prevention Committee for over thirty years and as an Earth Day Site Coordinator whose projects always lasted all day, not just during the morning. On Earth Day in 2013, John led a ten member crew that pulled weeds, raked leaves and did general clean up around the Contra Costa Civic Theater; and

WHEREAS, if something needed to get done, John was the first to raise his hand, whether it was staffing a booth at the City's annual July 4th Festival, one of the Crime Prevention Committee's outreach functions, various civic improvement projects or other special projects too innumerable to count; and

WHEREAS, in addition to serving his city, John is also remembered for being an avid bicyclist and for riding his bike to work. In fact, he was one of the first civilians to ride his bicycle on National Night Out with the Police Department's Bike Patrol Unit. He also served his community as a parent of Boy Scout Troop 104; and

WHEREAS, John had a great smile and a way about him that made people feel encouraged and very comfortable talking with him. He was committed to making El Cerrito a safe place and loved this city; and

WHEREAS, it was an honor to know John and to work with him over the years. The Community will continue to miss John very much.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby recognize John Umemoto for his many contributions to the City and joins with the El Cerrito Community in offering condolences and extending its deepest sympathies to Mr. Umemoto's wife, Saliann and family and many friends on behalf of the grateful residents of El Cerrito.

Dated: July 15, 2014

Janet Abelson, Mayor

RESOLUTION NO. 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO INDUCTING
TOM PANAS INTO THE EL CERRITO WALL OF FAME**

WHEREAS, Mr. Tom Panas has a long distinguished record of service to the El Cerrito community, volunteering his time in the community and is most known for his work in preserving El Cerrito's history; and

WHEREAS, Mr. Panas has been an active member of the El Cerrito Historical Society since 2000, helping to make it an active and engaged part of the community. He has served four terms as President of the Historical Society and is now serving his fifth term as Treasurer; and

WHEREAS, Mr. Panas has worked diligently to ensure that properties and sites within the City of El Cerrito that have historic significance are recognized, including leading the Historical Society effort that qualified the Chung Mei Home campus for listing on the National Register of Historic Places, working with the Arts and Culture Commission to develop the San Pablo Avenue Historic Pavers, serving as a resource to the City on certain development projects including the former Rodini property and the former Contra Costa Florist site and working with others in the community to establish a seed library at the City's Recycling and Environmental Resource Center; and

WHEREAS, Mr. Panas's work has included interviewing people across the county, recording images and documents, negotiating collection sharing agreements and conducting historical research to provide residents and surrounding communities with artifacts and documents that illustrate and interpret the City's past, including El Cerrito's historic Japanese-American neighborhoods and Italian-American neighborhoods; and

WHEREAS, part of this research and collection has helped to make the El Cerrito Historical Society a renown primary repository in America of historical information regarding the Chung Mei Home and its successor institutions, the family and adobe of Victor Ramon Castro and the settlement of Rancho San Pablo, and the Japanese Nursery Community in West Contra Costa County; and

WHEREAS, Mr. Panas also devotes time to the El Cerrito Library, serving as an active and dedicated member of the Friends of El Cerrito Library and is currently in his second term as a Contra Costa County Library Commissioner Alternate. Mr. Panas also volunteers his time during the annual El Cerrito Community Foundation's Sundar Shadi Holiday display.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito hereby appoints Tom Panas to the El Cerrito Wall of Fame in recognition of his significant contributions and efforts in preserving the history of El Cerrito, educating the Community and making El Cerrito's history come alive and available to the community.

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Agenda Item No. 4(B)

I CERTIFY that at a regular meeting on July 15, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July _____, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

EL CERRITO CITY COUNCIL EL CERRITO PUBLIC FINANCING AUTHORITY EMPLOYEE PENSION BOARD

MINUTES

**SPECIAL CONCURRENT CITY COUNCIL MEETING /
PUBLIC FINANCING AUTHORITY AND EMPLOYEE PENSION BOARD MEETING
Monday, June 17, 2014 – 7:00 p.m.
City Council Chambers**

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

Janet Abelson – Mayor

Mayor Pro Tem Rebecca Benassini
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Greg Lyman

ROLL CALL

Present: Councilmembers Bridges, Friedman, Lyman and Mayor Pro Tem Benassini
Absent: Mayor Abelson

7:00 p.m.

CONVENE SPECIAL CONCURRENT CITY COUNCIL MEETING / PUBLIC FINANCING AUTHORITY AND EMPLOYEE PENSION BOARD MEETING

Mayor Pro Tem Benassini convened the Special Concurrent City Council / Public Financing Authority and Employee Pension Board meeting at 7:02 p.m.

- 1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE** was led by Mayor Pro Tem Benassini.
- 2. COUNCIL / STAFF COMMUNICATIONS** - None
- 3. ORAL COMMUNICATIONS FROM THE PUBLIC**

Al Miler, El Cerrito, expressed support for: 1) Consent Calendar Item Nos. 5(B) City Council and City Manager PERS contributions; and 2) 5(C) West Contra Costa Unified School District School Resource Officers.

Howdy Goudey, El Cerrito, thanked the City Council for the lengthy June 2, 2014 public hearing regarding the proposed project located at 1715 Elm Street. Mr. Goudey informed the City Council that new information was released after the public hearing that affects the site, such as the release of the San Pablo Specific Plan on June 3 which calls out the creek

running through the property and references the Creek Overlay District and setback regulations. Mr. Goudey also expressed concerns over the developer's offer to donate the historic house to a non-profit organization.

4. PRESENTATION – None

5. ADOPTION OF THE CONSENT CALENDAR – Item No. 5A through 5C

Moved, seconded (Bridges/Friedman; Ayes – Councilmembers Bridges, Friedman, Lyman and Vice-Mayor Benassini; Noes – None; Absent – Mayor Abelson) and carried to adopt Consent Calendar Item Nos. 5A through 5C in one motion as indicated below.

A. Minutes for Approval

Approve the following City Council meeting minutes: 1) June 2, 2014 Special City Council and; 2) June 9, 2014 Special City Council – Closed Session and June 9, 2014 Special City Council.

Action: Approved minutes.

B. Employer Paid Member Contributions for City Council and City Manager

Adopt a resolution modifying the paying and reporting of the value of employer paid member contributions for the City Council and City Manager.

Action: Adopted Resolution No. 2014–24.

C. Agreement with the West Contra Costa Unified School District Regarding Funding of School Resource Officers

Adopt a resolution authorizing the City Manager to finalize and enter into an agreement with the West Contra Costa Unified School District (WCCUSD) to partially fund three School Resource Officer Positions (SRO) in the amount of \$520,000 per year, to be paid by the School District. The new agreement would supersede previous agreements between the City and WCCUSD related to SRO's. Two SRO's will continue to be assigned to El Cerrito High School and one will be assigned to Portola Middle School. If authorized, the agreement would become effective immediately upon finalization and execution, and would continue at least through June 30, 2015.

Action: Adopted Resolution No. 2014–25.

6. PUBLIC HEARINGS – None

7. POLICY MATTERS

CONCURRENT CITY COUNCIL / PUBLIC FINANCING AUTHORITY AND EMPLOYEE PENSION BOARD ITEM

A.1 Presentation of Financial Advisory Board Recommendations – Submitted on behalf of the Financial Advisory Board by Peter Vranich, Chair.

Mr. Vranich stated the Financial Advisory Board's (FAB) recommendations to the City Council as identified in the report provided as Agenda Item No. 7(A)(1) this evening.

A.2 Adoption of the City's Biennial Budget for Fiscal Years 2014–15 and FY 2015-16, Approve FY 2014-15 Spending Authority by Fund for the City, Employee Pension Board and Public Financing Authority and Approve the FY 2014-15 Annual Gann Appropriation Limit

Staff requests that the City Council approve the following actions this evening:

- 1) Adopt a resolution approving the Biennial Budget for Fiscal Years 2014-15 and FY 2015-16 and authorizing FY 2014-15 spending authority by fund for the City of El Cerrito;
- 2) Adopt a resolution approving the Biennial Budget for Fiscal Years 2014-15 and FY 2015-16 and authorizing FY 2014-15 spending authority by fund for the El Cerrito Public

Financing Authority;

- 3) Adopt a resolution approving the Biennial budget for Fiscal Years 2014-15 and FY 2015-16 and authorizing FY 2014-15 spending authority by fund for the El Cerrito Employee Pension Board; and
- 4) Adopt a resolution approving the calculation and establishing the FY 2014-15 annual Gann Appropriation Limit.

Speaker: Angela Osayande, Field Representative and Chief Negotiator for SEIU 1021, stated that SEIU members bring the majority of the revenue into the City through childcare, summer camps and the Recycling Center. Ms. Osayande asked that the City to consider the fact that SEIU members are the lowest paid workers in the City when the City asks for concessions. SEIU is ready to bargain in good faith.

Actions:

CITY COUNCIL ITEMS

- 1) Moved, seconded (Friedman/Lyman; Ayes – Councilmembers Bridges, Friedman, Lyman and Vice-Mayor Benassini; Noes – None; Absent – Mayor Abelson) and carried to adopt Resolution No. 2014–26 approving the Biennial Budget for Fiscal Years 2014-15 and FY 2015-16 and authorizing FY 2014-15 spending authority by fund for the City of El Cerrito. With the exception of FAB’s recommendation to undertake a separate discussion, motion and vote on compensation, the Council directed staff to modify the budget book to include all of FAB’s comments and recommendations as stated in FAB’s June 11, 2014 report to Council, included as Agenda Item No. 7(A)(1).
- 2) Moved, seconded (Lyman/Friedman; Ayes – Councilmembers Bridges, Friedman, Lyman and Vice-Mayor Benassini; Noes – None; Absent – Mayor Abelson) and carried to adopt Resolution No. 2014–27 to approve the calculation and establish FY 2014-15 annual Gann Appropriation Limit.

PUBLIC FINANCING AUTHORITY ITEM

- 3) Moved, seconded (Friedman/Bridges; Ayes – Councilmembers Bridges, Friedman, Lyman and Vice-Mayor Benassini; Noes – None; Absent – Mayor Abelson) and carried to adopt Public Financing Authority Resolution No. 2014–01 approving the Biennial Budget for Fiscal Years 2014-15 and FY 2015-16 and authorizing FY 2014-15 spending authority by fund for the El Cerrito Public Financing Authority. With the exception of FAB’s recommendation to undertake a separate discussion, motion and vote on compensation, the Council directed staff to modify the budget book to include all of FAB’s comments and recommendations as stated in FAB’s June 11, 2014 report to Council, included as Agenda Item No. 7(A)(1).

EMPLOYEE PENSION BOARD ITEM

- 4) Moved, seconded (Lyman/Friedman; Ayes – Councilmembers Bridges, Friedman, Lyman and Vice-Mayor Benassini; Noes – None; Absent – Mayor Abelson) and carried to adopt Employee Pension Board Resolution No. 2014–01 approving the Biennial Budget for Fiscal Years 2014-15 and FY 2015-16 and authorizing FY 2014-15 spending authority by fund for the El Cerrito Employee Pension Board. With the exception of FAB’s recommendation to undertake a separate discussion, motion and vote on compensation, the Council directed staff to modify the budget book to include all of FAB’s comments and recommendations as stated in FAB’s June 11, 2014 report to Council, included as Agenda Item No. 7(A)(1).

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 Benassini reported that she attended the King of the County BBQ in

Martinez on June 14. She enjoyed representing El Cerrito with other councilmembers throughout Contra Costa County.

9. ADJOURNED SPECIAL CONCURRENT CITY COUNCIL / PUBLIC FINANCING AUTHORITY AND EMPLOYEE PENSION BOARD MEETING at 7:31p.m.

SUPPLEMENTAL COMMUNICATIONS

1. Written statement regarding the June 2, 2014 1715 Elm Street project public hearing and the San Pablo Specific Plan released on June 3, 2014 – *Submitted by Howdy Goudey, El Cerrito.*

EL CERRITO CITY COUNCIL

MINUTES

SPECIAL CITY COUNCIL MEETING

Monday, June 23, 2014 – 7:00 p.m.

City Council Chambers

Meeting Location

El Cerrito City Hall

10890 San Pablo Avenue, El Cerrito

Janet Abelson – Mayor

Mayor Pro Tem Rebecca Benassini
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Greg Lyman

ROLL CALL

Councilmembers Benassini, Bridges, Friedman, Lyman and Mayor Abelson all present.

7:00 p.m.

CONVENE SPECIAL CITY COUNCIL MEETING

Mayor Abelson convened the special City Council meeting at 7:01 p.m.

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

2. **COUNCIL / STAFF COMMUNICATIONS** – No comments.

3. **ORAL COMMUNICATIONS FROM THE PUBLIC**

Tom Panas, El Cerrito, reported that the seed library which is located at the Recycling Center gets good traffic. A branch of the seed library is being considered for the El Cerrito Library. The Community Garden at Fairmount Park is producing many delicious things to eat. The Community Garden is open to the public. Everyone is invited to partake in what grows there. At Eureka and Liberty during the prime growing season, there is a vegetable swap for home gardeners every Thursday at 6:00 p.m. Everyone is invited.

4. **PRESENTATION** – *None*

5. **ADOPTION OF THE CONSENT CALENDAR** – *None*

6. **PUBLIC HEARINGS** – *None*

Project at 1715 Elm Street – Planned Development and Appeal

On June 2, 2014, the City Council convened a consolidated public hearing to consider both the approval of a General Plan Amendment, Planned Development rezoning, and development agreement for the Project, as well as an appeal of the Planning Commission's approval of a Planned Development Use Permit for the Project. The Project includes 14 new multi-family residential units in a 42-foot tall structure, preservation and partial restoration of a historic residence, 15 on-site parking spaces tucked under the multi-family structure, planting of creek-related vegetation, and the creation of private open space. The City

Council closed the public hearing on June 2, 2014 and continued deliberations regarding the Project, including the appeal, to its June 23, 2014 meeting.

Staff recommends that, at the conclusion of its deliberations, the City Council take the following actions:

- 1) Adopt a resolution approving the Initial Study/Mitigated Negative Declaration for the Project;
- 2) Adopt a resolution approving a General Plan Amendment;
- 3) Introduce by title and waive any further reading of an ordinance approving the rezoning of 1715 Elm Street to a Planned Development Zoning District and amending the Zoning Map accordingly;
- 4) Adopt a resolution denying an appeal of the Planning Commission's approval of a Planned Development Use Permit for the Project; and
- 5) Introduce by title and waive any further reading of an ordinance approving a Development Agreement between the City of El Cerrito and the Edward and Loretta Biggs revocable trust for 1715 Elm Street. Application 6133.

Because the City Council closed the public hearing on this matter at its June 2, 2014 meeting, public comments will be heard after deliberations, unless the City Council votes to reopen the public hearing.

Actions: Moved, seconded (Friedman/Lyman) and carried unanimously to open the public hearing for the limited purpose of receiving comments on retaining the stone lined channel versus restoration of a riparian channel.

Council recess from 8:40 p.m. to 8:45 p.m.

Speakers: Carl Campos, LCA Architects, representing the applicant/developer, expressed concerns about the proposal for a riparian channel and stated that the developer has been on the project 9-10 years, has focused on preserving the house and rock-lined creek channel, has put over \$600,000 into the project already and has done exactly as requested by the City but has not considered re-routing the creek and making a new creek channel. It will be expensive to start all over again.

Mr. Wood, Biologist, Wood Biological Consulting, Inc., stated that a complete realignment of the channel would result in a lot more rigorous review by regulatory agencies and would need to be considered within the context of a cost-benefit analysis of the site.

Clay Smith, El Cerrito, stated that he believes a hydrology report should be prepared and looked at.

Tom Panas, El Cerrito, stated that he is supportive of staff and the developer in this project and that he is swayed by Councilmember Lyman's comments that the cultural resource is a less important resource and that he would not object to running a creek through the property.

Howdy Goudey, El Cerrito, stated that it is a good suggestion to restore and enhance the waterways as stated in the 1995 watershed goal statement and zoning in the Creek Overlay District. This planned development is the backdoor around those regulations and goals. The site is unique and features unique resources. Mr. Goudey urged the City Council to reject the proposed development on the grounds that the project doesn't meet the criteria to do what is right for the site.

Robin Mitchell, El Cerrito, expressed support for Councilmember Lyman's proposal to restore the creek and prepare a hydrology study.

Actions: Moved, seconded (Lyman/Benassini) and carried unanimously to close the public hearing.

Moved, seconded (Friedman/Lyman; Ayes – Councilmembers Bridges, Friedman and Lyman; Noes – Councilmember Benassini and Mayor Abelson; Abstain – None; Absent – None) and carried to keep the public hearing open for the purpose of obtaining more information regarding the feasibility of creek restoration at the site, in the form of a hydrology and sinuosity report.

Speaker:

Howdy Goudey, El Cerrito, expressed appreciation for the City Council's intention to look at a better outcome for the site and make it the best project possible. The Developer has made a very generous offer to donate a restored historic house that could be used instead toward restoration of the creek.

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.

Councilmember Lyman stated that the West Contra Costa Integrated Waste Management Authority Board met to discuss and pass its budget for the next year. The Board also discussed the future of the WCIWMA however no conclusions were made. Everyone is waiting for the City of Richmond to make a decision about whether it will continue to participate in the JPA going forward. A study session scheduled for August will analyze rate modeling. The Board also asked staff to move forward with bids for a waste characterization study.

Mayor Abelson reported that the Contra Costa Transportation Authority (CCTA) received the prestigious Project of the Year Award from the California Transportation Foundation. Mayor Abelson attended the League of California Cities Administrative Services and Community Services Policy Committee meetings last week which included a presentation on the state budget. Mayor Abelson stated that there is lots of state money for urban forestry from the Carbon Cap and Trade program. The program recognizes the importance of not only planting trees but taking care and maintaining them too. The West Contra Costa Transportation Advisory Committee is looking at moving into a building located at the corner of San Pablo and Potrero Avenues next to Dennys.

9. ADJOURN SPECIAL CITY COUNCIL MEETING at 9:42 p.m.

SUPPLEMENTAL REPORTS AND COMMUNICATIONS

Item No. 6 Project at 1715 Elm Street – Planned Development and Appeal

1. Comments in opposition to the proposed project – *Submitted by Clay Smith, El Cerrito.*
2. Revised Attachment 3: Ordinance Rezoning 1715 Elm Street to a planned development zoning district – Application 6133 – Submitted by Margaret Kavanaugh-Lynch, Development Services Manager.
3. Revised Attachment 4: Resolution denying an appeal and upholding the Planning Commission's Approval of a Planned Development Use Permit at 1715 Elm Street – Submitted by Margaret Kavanaugh-Lynch, Development Services Manager.
4. Powerpoint presentation – *Submitted by Councilmember Lyman.*
5. Conceptual Site Plan – Proposed area for deed restriction – *Submitted by Carl Campos, LCA Architects.*

Other:

6. Comments regarding the local seed library – *Submitted by Tom Panas, El Cerrito.*

EL CERRITO CITY COUNCIL PROCLAMATION
National Night Out 2014

WHEREAS, the National Association of Town Watch (NATW) is sponsoring a unique, nationwide crime, drug and violence prevention program on August 5, 2014 entitled “National Night Out”; and

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

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

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

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

NOW THEREFORE, the City Council of the City of El Cerrito, does hereby call upon all residents of the City of El Cerrito to participate in “National Night Out” on Tuesday, August 5, 2014 in the City of El Cerrito.

Dated: July 15, 2014

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 5(C)

Date: July 15, 2014

To: El Cerrito City Council

From: Maria Sanders, Environmental Analyst
Melanie Mintz, Interim Community Development Director

Subject: Authorize Marin Clean Energy to Conduct Membership Analysis for the City to Participate in Their Community Choice Aggregation Programs

ACTION REQUESTED

Adopt a resolution which takes the following actions:

1. Authorizes the Mayor to submit a letter to Marin Clean Energy (MCE) requesting that they conduct an analysis of the feasibility of El Cerrito becoming a member of its Community Choice Aggregation (CCA) programs; and
2. Authorizes the City Manager to execute a contract with MCE in an amount not to exceed \$18,000, as well as other necessary documents required by PG&E, to conduct a Membership Analysis for El Cerrito; and
3. Authorizes City Manager to execute a grant agreement for \$15,000 with the World Wildlife Fund to fund the analysis.

BACKGROUND

The City of El Cerrito's *Climate Action Plan* (CAP), adopted May 2013, contains a strategy to "Explore opportunities for instituting or joining a regional Community Choice Aggregation (CCA) effort" (Strategy EW-3.2). This strategy is identified in the CAP as one of the most cost-effective ways to reduce greenhouse gas emissions in El Cerrito, yielding an estimated 4,200 - 6,700 annual tons of CO₂ reductions by 2020 with relatively little investment.

In 2002, passage of Community Choice Aggregation legislation (AB 117, Migden) allowed CCAs to operate in California. This legislation enables California cities, counties, public agencies, and joint powers agencies to aggregate the electricity demand of its constituents and to procure electricity that meets their desired electricity supply portfolio, while still having the local utility provide transmission and distribution services.

For CCAs in PG&E territory, energy transmission, distribution, repair, customer service, and billing would continue to be administered by PG&E. Customers in areas served by CCAs have a choice to continue to purchase power from PG&E by opting out of the

local CCA. CCA participation rates are high due to this opt-out approach, allowing CCA agencies to fairly compete for competitive energy contracts in California's monopoly-dominated energy markets. There are currently two CCAs operating in California.

In 2010, MCE launched California's first CCA. MCE is a joint powers agency (JPA) consisting of all jurisdictions in Marin County and the City of Richmond. The mission of MCE is to address climate change by reducing energy-related greenhouse gas emissions, while securing energy supply, price stability, energy efficiencies, and local economic and workforce benefits. Currently, MCE's electricity rates are slightly less than those of PG&E. MCE sources energy from 51% renewable sources, compared to PG&E's 22% renewable energy portfolio.

Given the success of MCE to procure renewable supplies of electricity at competitive rates, many communities throughout California are taking a fresh look at instituting CCAs. Sonoma County launched their county-wide CCA this year. Nine other counties are also exploring CCAs as an option. Closer to home, the City of Richmond successfully joined MCE in 2012. The cities of Albany and San Pablo and the County of Napa are currently in the process of analyzing the feasibility of joining the MCE.

On October 2, 2012, the City Council heard a presentation by Marin Clean Energy and the City of Richmond regarding CCA, their membership process, and their program offerings. During the spring of 2014, the El Cerrito Environmental Quality Committee (EQC) hosted several presentations from various groups involved in CCAs in the Bay Area. Agreeing that joining MCE represented the least cost, lowest risk, and most time-efficient option currently available in Contra Costa County, the EQC passed a unanimous motion at its June 2014 meeting requesting that the City Council consider a resolution requesting that MCE conduct a membership analysis for El Cerrito. Finally, Community Development staff, in partnership with the City of Albany, successfully applied for a small grant (\$15,000 per city) from the World Wildlife Fund to investigate the feasibility of joining a CCA.

ANALYSIS

MCE Membership Analysis Process: At its September 25, 2013 meeting, MCE's Board of Directors approved a process and set of criteria, as outlined in Attachment 2 (MCE Affiliate Membership Process), by which communities could become a member. As a first step, MCE requires a letter from the City Council requesting consideration as a member in order for them to initiate an exploratory "Membership Analysis." See Attachment 3 for the draft letter of request. The scope of work for the analysis includes procuring energy load data from PG&E, conducting the analysis to estimate the net rate impacts that would affect MCE's existing customer base, and participating in community meetings. The contract with MCE will be in the form of the City's approved Professional Services Agreement. Associated costs will be El Cerrito's responsibility and are capped at \$18,000. In addition, PG&E requires that the City's authorized representative execute a Declaration regarding investigation of a CCA and Non-Disclosure Form (see Attachment 4) in order to release the energy load data necessary to conduct the Analysis.

Agenda Item No. 5(C)

The primary focus of the Membership Analysis is to estimate the net rate impacts that would affect MCE's existing customer base following the addition of the prospective new community. This analysis must demonstrate that the addition of the new community would result in a net rate reduction for MCE's existing customer base. In addition, this analysis addresses the projected environmental benefits (such as additional reductions in greenhouse gas emissions and increases in renewable energy being used in California's energy market) that would result from offering CCA services to the new community.

Since the analysis assumes the addition of the new community's customer base in calculating the net rate impacts and environmental benefits, the results would also pertain to the new community. For instance, if the analysis found that addition of the new community resulted in a 1% reduction in electricity rates, that rate reduction would also accrue to the new community if it became a member.

Next Steps after the Membership Analysis: The proposed actions only pertain to conducting a MCE Membership Analysis. These actions do not obligate the City to become a MCE member. If the Analysis demonstrates that MCE's criteria are met, then MCE will automatically approve El Cerrito completing the membership process. If the City Council finds the MCE membership to be beneficial, next steps would include a community engagement process, and then Council consideration of a resolution requesting membership, an ordinance authorizing CCA service through MCE, and signing onto the MCE Joint Powers Agency agreement as a party.

Upon completion of the membership process, MCE would begin procuring additional electricity supplies and begin the community outreach process to provide El Cerrito customers the option of remaining with PG&E service. The community outreach process takes several months and includes the mailing of five notices, as required by AB 117, and other community meetings as needed. Costs of community outreach during this phase would be borne by MCE.

Potential Impacts of AB 2145: On June 2, 2014 City Council approved sending a letter opposing AB 2145 (Bradford) to the author and the Senate Utility, Energy and Communications Committee. This legislation would have changed the "opt out" provisions of the original CCA legislation to an "opt in" basis, thereby significantly hampering any new CCA of its ability to enter the monopoly-dominated energy market place with any certainty. Although the Bill passed out of the Senate Committee on June 23, 2014, the central "opt in" requirement was struck from the bill and replaced with a geographic limit of three contiguous counties for any CCA. In its current form, AB 2145 poses no obstacles to El Cerrito joining MCE since communities in Contra Costa County such as Richmond are currently members of MCE. The bill is scheduled next to be heard at the Senate Appropriations Committee. Staff will continue to monitor the legislation as it moves through the process to verify it continues to provide no obstacles if the City Council chooses to move forward.

World Wildlife Fund (WWF) Grant: As part of its Earth Hour programs, the WWF launched its City Challenge Climate Leader Grants. This grant program seeks to provide resources to US cities around a different critical sustainability issue each year. For the

2013 cycle, WWF made available \$30,000 per application to support programs that helped communities transition towards renewable energy, with a preference given to cities pursuing CCA.

El Cerrito jointly submitted a grant application with the City of Albany for both cities to investigate the feasibility of joining MCE. Our application was one of 3 nationwide that were awarded. WWF has allowed the two cities to split the award into two separate \$15,000 contracts for ease of administration and reporting. The grant term is from April 1, 2014 through October 15, 2015, with the final deliverable being the Membership Analysis with Marin Clean Energy. This grant covers 83% of the cost of conducting the membership analysis, leaving a gap of \$3,000. This remaining amount will be covered by the Professional Services budget in the adopted Community Development Department budget.

STRATEGIC PLAN CONSIDERATIONS

Goal F, “Foster environmental sustainability citywide,” of the El Cerrito Strategic Plan contains an objective to implement the City’s *Climate Action Plan* by facilitating “energy and water efficiency and greater adoption of clean energy.” Because CCAs in the Bay Area are being formed to procure electricity from renewable energy sources, joining a CCA is identified in the CAP as one of the more powerful and cost-effective for reducing greenhouse gas emissions in El Cerrito. There is no other strategy in the CAP that provides a similar magnitude of reductions at a similar cost.

MCE sources energy from 51% renewable, non-nuclear sources, compared to PG&E’s 22% renewable energy portfolio. If the City joined MCE, GHG emissions reductions are estimated to be 4,200 tons of CO₂e in the first year of full enrollment – providing an additional 3 percentage points towards the City’s 2020 15% emissions reduction target. By 2020 this reduction is likely to increase. PG&E is mandated to only increase its renewable energy portfolio to 33% by 2020. MCE plans to continue procuring electricity from non-GHG emitting sources in sufficient quantities to maintain an emissions rate that is continually lower than PG&E’s.

ENVIRONMENTAL CONSIDERATIONS

There is no direct environmental impact of conducting a Membership Analysis with MCE or in accepting the World Wildlife Fund grant. The proposed actions are not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

As discussed above, if El Cerrito did ultimately join MCE, one of the main benefits would be large and cost-effective reductions in GHG emissions from community energy use.

FINANCIAL CONSIDERATIONS

The proposed actions are to (1) Submit a letter to MCE requesting it conduct a Membership Analysis for El Cerrito; (2) Authorize the City Manager to execute a contract with MCE in an amount not to exceed \$18,000 for the purposes of conducting

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the analysis; and (3) Accept a \$15,000 grant from the World Wildlife Fund. The \$15,000 grant from WWF will cover the majority of costs associated with the Membership Analysis, leaving a gap of \$3,000, which will be covered by the Professional Services budget in the Community Development Department. The adopted FY15 Budget for the Community Development Department includes both the grant funds and the Membership Analysis costs.

If the results of the Membership Analysis meet MCE criteria for adding new members and the City Council wishes to further pursue MCE membership, no additional outside expenses are anticipated. The cost of community outreach would be borne by MCE. However, there may be internal expenses related to legal review of the JPA agreement and other related documents.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the associated contract documents and PG&E forms. Other than these agreements, there are no other legal obligations associated with the proposed actions.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. MCE Affiliate Membership Process
3. Letter requesting consideration as an MCE member
4. PG&E CCA Declaration and Non-Disclosure Forms

RESOLUTION 2014-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE MAYOR TO SUBMIT A LETTER TO MARIN CLEAN ENERGY (MCE) REQUESTING IT CONDUCT A MEMBERSHIP ANALYSIS FOR EL CERRITO; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH MCE IN AN AMOUNT NOT TO EXCEED \$18,000 AND OTHER DOCUMENTS REQUIRED BY PG&E NECESSARY TO CONDUCT A MEMBERSHIP ANALYSIS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE WORLD WILDLIFE FUND FOR \$15,000 FOR THE PURPOSES OF INVESTIGATING THE FEASIBILITY OF JOINING MCE

WHEREAS, the City of El Cerrito has adopted resolutions supporting state and local actions to reduce greenhouse gas emissions, including Resolution 2006-61 endorsing the U.S. Mayors Climate Protection Agreement and Resolution 2006-93 endorsing the reduction targets of the California Global Warming Solutions Act (AB 32); and

WHEREAS, the City of El Cerrito adopted its Climate Action Plan on May 21, 2013 with the goal of reducing greenhouse gas emissions from the El Cerrito community and its own city operations by 15% below 2005 emissions levels by 2020 and 30% below 2005 levels by 2035; and

WHEREAS, on September 24, 2002, the Governor signed into law Assembly Bill 117 (Stat. 2002, Ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the “Act”), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation (CCA); and

WHEREAS, the Act expressly authorizes participation in a CCA program through a joint powers agency, and on December 19, 2008, Marin Clean Energy (MCE), formerly known as Marin Energy Authority, was established as a joint powers authority pursuant to a Joint Powers Agreement, as amended from time to time (“MCE Joint Powers Agreement; and

WHEREAS, the purpose of MCE is to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits; and

WHEREAS, the El Cerrito Climate Action Plan has identified membership in a CCA that procures from renewable energy sources to be one of the most cost-effective greenhouse gas emissions reductions strategies; and

WHEREAS, the MCE Governing Board has adopted a policy by which communities outside of Marin County can be considered for membership, which includes MCE conducting a membership impact analysis; and

WHEREAS, the City of El Cerrito has been awarded an Earth Hour Climate Leader grant from the World Wildlife Fund for the purposes of investigating the feasibility of joining a CCA.

NOW THEREFORE, BE IT RESOLVED, the City Council of the City of El Cerrito does hereby:

1. Authorize the Mayor to submit a letter to the Marin Clean Energy requesting that they conduct an analysis of the impact of El Cerrito joining its Community Choice Aggregation programs;
2. Authorize the City Manger to execute a contract with MCE in an amount not to exceed \$18,000, and other necessary documents required by PG&E, to conduct a membership analysis; and
3. Authorize the City Manager to execute a grant agreement with the World Wildlife Fund for \$15,000 for the purpose of investigating the feasibility of joining MCE.

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

I CERTIFY that at a regular meeting on July 15, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July _____, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



MCE Affiliate Membership Process

Step 1: Governing body submits letter to MEA from new community jurisdiction, requesting consideration as a member.

Step 2: Staff evaluates request timing to determine if internal resources are available to consider request, and to ensure no impact to core agency functions.

Step 3: Request submitted to MEA Board to consider adherence to criteria D, E, F and G below, and to authorize initiation of membership analysis.

Step 4: Following MEA Board approval, staff executes contract with governing body of new jurisdiction to fund costs of membership analysis. Staff undertakes and completes analysis, with primary focus on quantitative criteria A, B and C below.

Step 5: Results of membership analysis presented to governing body of new community and to MEA Board. 1). If quantitative affiliate membership criteria are met, community is automatically authorized to complete affiliate membership process. 2). If qualitative criteria are not met but other compelling criteria are present, Board may consider approval of affiliate membership.

Step 6: Governing body of new jurisdiction approves resolution requesting membership, ordinance authorizing community choice aggregation service through MCE and signs JPA Agreement as an Affiliate Party.

Step 7: MEA Board adopts resolution authorizing membership of the additional incorporated municipality and submits updated Implementation Plan to CPUC.

Affiliate Membership Criteria:

- A. Allowing for MCE service in new community will result in a projected net rate reduction for existing customer base.
- B. Offering service in new community will enhance the strength of local programs, including an increase in distributed generation, and will accelerate greenhouse gas reductions on a larger scale.
- C. Including new community in MCE service will increase the amount of renewable energy being used in California's energy market.
- D. There will be an increase in opportunities to launch and operate MCE energy efficiency programs to reduce energy consumption and reliance on fossil fuels.
- E. New opportunities are available to deploy local solar and other distributed renewable generation through the MCE Net Energy Metering Tariff and Feed in Tariff.
- F. Greater demand for jobs and economic activity is likely to result from service in new community.
- G. The addition of the new community is likely to create a stronger voice for MCE at the State and regulatory level.



OFFICE OF THE MAYOR
Janet Abelson

Agenda Item No. 5(C)
Attachment 3

July 15, 2014

Dawn Weisz, Executive Director
Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901

Dear Ms. Weisz:

I am pleased to provide this letter requesting that Marin Clean Energy (MCE) conduct a Membership Analysis to explore whether extending membership to the City of El Cerrito would be mutually beneficial.

In 2013, the City of El Cerrito adopted its Climate Action Plan (CAP) with overall greenhouse gas emissions reduction targets of 15% below 2005 levels by 2020 and 30% below 2005 levels by 2035. To achieve these targets, the City identified Community Choice Aggregation as one of the most cost-effective ways to reduce El Cerrito's greenhouse gas emissions. The CAP also identified objectives to reduce energy use in existing buildings by 20% and to facilitate greater adoption of renewable energy in both the residential and commercial sectors.

In addition to offering competitive energy rates and a high percentage of electricity coming from renewable resources, we are interested in MCE's incentive programs that encourage community members to become more energy efficient and to install solar.

We believe membership in a CCA such as MCE could go far in helping the City reach its CAP goals, as well as provide our residents with greater choice in the energy marketplace.

Sincerely,

Janet Abelson
Mayor
City of El Cerrito



Pacific Gas and Electric Company
San Francisco, California
U 39

Cancelling

Revised
Original

Cal. P.U.C. Sheet No.
Cal. P.U.C. Sheet No.

31432-E
23061-E

Agenda Item No. 5(C)
Attachment 4

Electric Sample Form No. 79-1030

Declaration by Mayor or Chief County Administrator Regarding Investigation Pursuit
or Implementation of Community Choice Aggrega

**Please Refer to Attached
Sample Form**

Advice Letter No: 4009-E
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulation and Rates

Date Filed March 5, 2012
Effective December 20, 2012
Resolution No. E-4523

**DECLARATION BY MAYOR OR CHIEF COUNTY ADMINISTRATOR
REGARDING INVESTIGATION, PURSUIT OR IMPLEMENTATION OF
COMMUNITY CHOICE AGGREGATION**

I, _____ [name], state as follows:

1. I am the mayor, chief county administrator, or chief executive officer of _____
_____ [name of city, county, or public agency,].
2. I am authorized to make this declaration on behalf of _____
_____ [check appropriate box]

☐ a city, or
☐ a county, or
☐ an eligible public agency

which is investigating, pursuing or implementing community choice aggregation as a community choice aggregator as defined by Section 331.1 of the California Public Utilities Code ("CCA" or "Potential CCA").

3. I understand that all of the confidential information provided by PG&E to the city, county, or public agency indicated above is subject to the terms and conditions of the Nondisclosure Agreement between these two entities and is provided for the sole purpose of enabling the city, county or public agency to investigate, pursue or implement community choice aggregation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this _____ day of _____, 20_____, at _____, _____ [city, state].

[Signature]



Pacific Gas and Electric Company
San Francisco, California
U 39

	Revised	Cal. P.U.C. Sheet No.	32646-E*
Cancelling	Revised	Cal. P.U.C. Sheet No.	32235-E

Electric Sample Form No. 79-1031
Community Choice Aggregator Non-Disclosure Agreement

**Please Refer to Attached
Sample Form**

Advice Letter No: 4221-E
Decision No. 12-11-015
D.12-08-045, D.11-07-056
1C7

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed	<u>May 2, 2013</u>
Effective	<u>May 2, 2013</u>
Resolution No.	<u> </u>

COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is entered into by and between Pacific Gas and Electric Company (“Utility”) and _____ [name] _____, a _____ [describe political entity] _____ (“CCA”) as of _____ (“Effective Date”). This Agreement is executed pursuant to California Public Utilities Commission (“CPUC”) Order Instituted Rulemaking (“OIR”) 03-10-003, California Public Utilities Code (“PU Code”) Section 366.2 et seq., and applicable Utility tariffs (as modified hereafter from time to time). As used herein Utility and CCA may each be referred to individually as a “Party” and collectively as “Parties.”

The CPUC has determined that CCA/Community may obtain specified confidential customer information from Utility pursuant to Tariff Schedules E-CCAINFO-Information (as modified hereafter from time to time) (“E-CCAINFO”) as a community choice aggregator, as defined by PU Code Section 331.1, solely in order to investigate, pursue or implement community choice aggregation pursuant to PU Code Section 366.2, et seq. or confidential customer electric and gas consumption data to implement energy efficiency programs pursuant to PU Code section 381.1. The provisions of this Agreement and E-CCAINFO govern the disclosure of Utility’s confidential customer information to CCA/Community (“Disclosure Provisions”) under Schedules E-CCAINFO and E-CCA.

The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of Utility regarding customers of Utility (“Utility Customers”) may be disclosed to CCA from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purpose of investigating, pursuing or implementing community choice aggregation pursuant to PU Code Section 366.2, et seq. as a community choice aggregator or to implement energy efficiency programs pursuant to PU Code section 381.1. Such disclosure is subject to the following legal continuing representations and warranties by CCA:
 - (a) CCA represents and warrants that, pursuant to PU Code Section 331.1,
 - (1) it is either (i) a city, county, or other entity as defined in PU Code Section 331.1 whose governing board has elected to combine the loads of its residents, businesses, and municipal facilities in a community wide electricity buyers program or (ii) a city, county, or other entity as defined in PU Code Section 331.1 that intends to actively investigate or pursue delivery of electric service to customers located within the geographic territory of the CCA, and
 - (2) that to investigate, pursue or implement community choice aggregation under PU Code Section 366.2 et seq., or to implement energy efficiency programs pursuant to PU Code section 381.1;

COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

- (b) CCA represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;
 - (c) CCA represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the CCA; and
 - (d) CCA confirms its understanding that the information of Utility Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes of investigating, pursuing or implementing Community Choice Aggregation under PU Code Section 366.2 as a community choice aggregator or to implement energy efficiency programs pursuant to PU Code section 381.1, and that any other use of the information may permit Utility to suspend providing further information hereunder.
 - (e) CCA represents and warrants that it will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to community choice aggregation or energy efficiency purposes without the customer's prior consent to that use.
2. The confidential and proprietary information disclosed to CCA in connection herewith may include, without limitation, the following billing information about Utility Customers: Customer-specific information from the current billing periods as well as prior 12 months consisting of: service agreement number, name on agreement, service address with zip code, mailing address with zip code, telephone number, meter number, monthly kWh usage, monthly maximum demand where available, electrical or gas consumption data as defined in PU Code Section 8380, other data detailing electricity or gas needs and patterns of usage, Baseline Zone, CARE participation, End Use Code (Heat Source) Service Voltage, Medical Baseline, Meter Cycle, Bill Cycle, Balanced Payment Plan and other plans, HP Load and Number of Units and monthly rate schedule for all accounts within the CCA's territory. In addition, PG&E will provide the CCA the following additional information regarding customers currently enrolled in its CCA service: current and historical billing information for non-CCA services provided by PG&E or other electric service providers (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by CCA or its representatives that are derived from or based on Confidential Information disclosed by Utility, regardless of the form of media in which it is prepared, recorded or retained.

COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

3. Except for electric and gas usage information provided to CCA pursuant to this Agreement, Confidential Information does not include information that CCA proves (a) was properly in the possession of CCA at the time of disclosure; (b) is or becomes publicly known through no fault of CCA, its employees or representatives; or (c) was independently developed by CCA, its employees or representatives without access to any Confidential Information.
4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by CCA, or used for any purpose other than to investigate, pursue or implement community choice aggregation under PU Code Section 366.2 et seq. as a community choice aggregator or to implement energy efficiency programs pursuant to PU Code section 381.1 as permitted under this Agreement and the Disclosure Provisions.
5. CCA shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. CCA shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for a secondary commercial purpose not related to community choice aggregation or energy efficiency. Specifically, CCA shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of CCA who have a “need to know” such Confidential Information in the course of their duties with respect to the CCA program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement, provided, however, that, an Energy Service Provider, agent, or any other entity, including entities that provide both direct access (as codified in Assembly Bill No. 1890, Stats. 1996, ch. 854) and community choice aggregation services shall limit their utilization of the information provided to the purposes for which it has been provided and shall not utilize such information, directly or indirectly, in providing other services, including but not limited to Direct Access services, in order to effectuate the obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, CCA shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree in writing to be bound by the terms of this Agreement by signing the “Non-Disclosure Agreement for CCA Employees or Representatives” form attached as Exhibit A hereto. CCA shall provide Utility with copies of the signed Exhibit A forms at Utility request. CCA shall also provide Utility with a list of the names, titles, and addresses for all persons or entities to which Confidential Information is disclosed in connection herewith (“Disclosure List”). This Disclosure List shall be updated by CCA on a regular basis, and will be provided to Utility once each quarter at a minimum.

COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

6. CCA shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Utility directly against such employees or representatives for improper disclosure and/or use. In no event shall CCA or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. CCA shall immediately notify Utility in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by CCA or any of its employees or representatives. However, nothing in this Agreement shall obligate the Utility to monitor or enforce the CCA's compliance with the terms of this Agreement.
7. CCA shall comply with the consumer protections concerning subsequent disclosure and use that are in Attachment B to CPUC Decision No. 12-08-045.
8. CCA acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Utility and/or Utility Customers, the amount of which may be difficult to assess. Accordingly, CCA hereby confirms that the Utility shall be entitled to apply to a court of competent jurisdiction or the CPUC for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by CCA or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Utility, in law or equity.
9. In addition to all other remedies, CCA shall indemnify and hold harmless Utility, its affiliates, subsidiaries, parent company, officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of CCA and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
10. If, at any time, CCA ceases its investigation, pursuit or implementation of community choice aggregation pursuant to PU Code Section 366.2 et seq., CCA shall promptly return or destroy (with written notice to Utility itemizing the materials destroyed) all Confidential Information then in its possession at the request of Utility. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
11. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent

COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

may be withheld due to the confidential nature of the information, data and materials covered.

12. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.
14. This Agreement shall, at all times, be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

PACIFIC GAS AND ELECTRIC COMPANY

(Customer)

(Signature)

(Type/Print Name)

(Title)

(Date)

(Signature)

(Type/Print Name)

(Title)

(Date)

COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

EXHIBIT A NON-DISCLOSURE AGREEMENT FOR CCA EMPLOYEES OR REPRESENTATIVES

I, _____, declare under penalty of perjury that

(1) I am employed as _____ (title) at _____
_____ (employer and address); and

(2) I have personally reviewed the attached **COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT** relating to disclosure and use of Confidential Information (as defined therein) and I agree to be bound by its provisions.

Signed: _____

Print Name: _____

Dated: _____



AGENDA BILL

Agenda Item No. 5(D)

Date: July 15, 2014
To: El Cerrito City Council
From: Karen Pinkos, Assistant City Manager
Subject: Approval of a Resolution providing for the "Pick Up" of Employee Contributions to CalPERS under Internal Revenue Code Section 414(H)(2)

ACTION REQUESTED

Adopt a resolution providing for the "Pick Up" of employee contributions to CalPERS under Internal Revenue Code Section 414(H)(2), allowing those contributions to be pre-tax.

BACKGROUND/ANALYSIS

The City of El Cerrito provides retirement benefits to eligible employees under the California Public Employees' Retirement System (CalPERS). Contributions made by employees to CalPERS occur via salary deductions that are then paid to CalPERS by the City. Under section 414(h)(2) of the Internal Revenue Code, these deductions, or "pick-ups," qualify for pre-tax status.

The attached resolution will designate the amounts deducted from employees' compensation to fund retirement benefits under CalPERS as "picked-up" by the City and therefore treated as paid by the City in lieu of contributions by the employee for tax purposes. By taking this action, the amounts deducted from employees' compensation will qualify for pre-tax treatment under section 414(h)(2) of the Internal Revenue Code.

FINANCIAL CONSIDERATIONS

This action has no financial impact to the City, does not affect in any way the amount of the City's pension obligations or employer contributions, and serves only to clarify the tax status of employee CalPERS contributions.

Reviewed by:

Scott Hanin, City Manager

Attachment:

1. Resolution providing for the "Pick Up" of Employee Contributions to CalPERS Under Internal Revenue Code Section 414(h)(2)

RESOLUTION 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
PROVIDING FOR THE PICK UP OF EMPLOYEE CONTRIBUTIONS TO THE
CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM UNDER INTERNAL
REVENUE CODE SECTION 414(H)(2)**

WHEREAS, the governing body of the City of El Cerrito has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, the City of El Cerrito has determined that even though the implementation of the provisions of section 414(h)(2) IRC is not required by law, the tax benefit offered by section 414(h)(2) IRC should be provided to all employees of the City of El Cerrito who are members of the California Public Employees' Retirement System:

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

1. The City of El Cerrito will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code Section 20691 to the California Public Employees' Retirement System on behalf of all its employees who are members of the California Public Employees Retirement System (CalPERS). "Employee contributions" shall mean those contributions to CalPERS which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.
2. Although designated as employee contributions and deducted from employees' compensation, the contributions shall, for tax purposes, be characterized as "picked up" by the City in accordance with section 414(h)(2) of the Code and shall be treated as paid by the City of El Cerrito in lieu of contributions by the employee.
3. Employees will not have the option of choosing, directly or indirectly, to receive the contributions instead of having them paid by the City of El Cerrito to CalPERS.
4. The City of El Cerrito will pay to CalPERS the contributions designated as employee contributions from the same source of funds as used in paying salary.
5. Contributions picked up under this resolution will be tax deferred to the extent provided under the Internal Revenue Code, Treasury Regulations, and other guidance issued thereunder.
6. The contributions designated as employee contributions made by the City of El Cerrito to CalPERS shall be treated for all purposes, other than taxation, in the

Agenda Item No. 5(D)

Attachment 1

same way that member contributions are treated by the California Public Employees' Retirement System.

I CERTIFY that at a regular meeting on July 15, 2014, 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 July XX, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 6

Date: July 15, 2014
To: El Cerrito City Council
From: Michael J. Bond, Fire Marshal
Lance J. Maples, Fire Chief
Subject: Public Hearing for Fire Hazard Abatement

ACTION REQUESTED

Staff requests that the City Council:

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

BACKGROUND

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

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

The fire hazard abatement program is designed to reduce fire hazards on a large number of private properties during the spring and early summer months. A process of advance notice and hearings for property owners is coupled with a public education program

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involving the promulgation of standards for vegetation management in residents' yards and vacant lots.

This program seeks to remove weeds, rubbish, litter or other flammable material from private properties where such flammable material endangers the public safety by creating a public nuisance and a fire hazard. Most property owners voluntarily abate these hazards without Fire Department involvement. Ideally, 100% of the property owners would do so. We anticipate that a small number of owners are content to have the City do the work and place the costs on their tax bill.

Over the past 20 years, the City's annual fire hazard abatement program has been very successful in reducing fire hazards throughout the hill neighborhoods of El Cerrito. What started in 1992 as a program with over \$40,000 worth of abatement actions has been transformed into a program that required six abatement actions in 2013. All but four of the property owners voluntarily complied and cleared their own fire hazards. Indeed, this program has become a model program which other fire jurisdictions have borrowed from.

ANALYSIS

In May of this year, the Fire Department conducted citywide fire hazard inspections of all properties. The inspections began May 1st and were conducted through May 20th. As a result of the primary inspections, a list of properties containing public nuisances was generated, which continues to be amended as additional properties are identified. Between June 4 and June 10, 2014, the properties determined to be in violation of El Cerrito Municipal Code Chapter 16.26 were notified in writing of the hazards on their property and to abate hazardous conditions and the El Cerrito vegetation management standards were included (Attachment 1, 2, & 3). In addition, these property owners were sent a letter informing them of the time, date and location of the upcoming Council meeting where their properties would be declared a public nuisance and abatement would be ordered (Attachment 4). A second round of inspections is scheduled July 8 through July 14 and only those properties that were not voluntarily abated with the first notice are contained within the Master Abatement List, Exhibit A to the proposed Resolutions.

This public hearing is the next step in the process to eliminate hazards on the private properties that were identified as a public nuisance and have not voluntarily abated said violations. In order to achieve full compliance, staff requests that the City Council declare the properties to be a public nuisance and direct the City Manager or his designee to abate such public nuisance conditions. Actual City-ordered abatement of fire hazards occurs only after all efforts at providing notice, information, and a public hearing have failed to induce voluntary compliance by the property owner.

The Fire Hazard Abatement process, under the direction of the Fire Department, should proceed according to El Cerrito Municipal Code Chapter 16.26, which specifies the following:

1. The Fire Department determines that hazards must be abated. Pursuant to these code sections, "hazards" are defined as weeds, rubbish, litter, or other flammable

Agenda Item No. 6

materials which create a fire hazard or are otherwise noxious or dangerous and which exist on specific parcels of property within the City.

2. The Fire Department shall post notice on each property or send notice by mail that the El Cerrito Fire Department has determined the existence of a public nuisance which must be abated and that a hearing will be held to consider any objections prior to the Council declaring the properties to be a public nuisance and ordering the City Manager or his designee to perform abatement.
3. At the July 15, 2014 City Council meeting, the City Council shall first adopt a resolution Declaring that Weeds, Rubbish, Litter, or Other Flammable Material on Certain Real Property Constitutes a Public Nuisance (Attachment 5 hereto).
4. At the same hearing, but after adoption of the first resolution, the City Council shall hear and consider all objections to the declaration of public nuisances or the procedures proposed for abatement. After the hearing, the Council shall adopt a resolution Overriding Objections by Property Owners and Ordering the City Manager or His Designee to Abate Certain Public Nuisances Pursuant to Chapter 16.26 (Attachment 6 hereto).
5. At the conclusion of the July 15, 2014 hearing, a second and final notice shall be sent to each property owner prior to abatement (Attachment 7). This notice will order the immediate abatement of nuisance conditions. This notice will clearly state that if nuisance conditions are ignored, the City shall cause abatement and costs for removal will be assessed against the property as a lien and special assessment. It will also indicate that if the conditions are voluntarily abated, the property shall be removed from the process.
6. If the nuisance is not abated between August 1, 2014 and August 14, 2014, prior to the arrival of the hazard abatement crew, the City of El Cerrito shall cause the weeds, rubbish, refuse, and other flammable material to be removed and shall keep an account of the cost of abatement for each parcel of land where such work is performed.
7. At the September 22, 2014 City Council Meeting the City Manager or his designee shall submit to the City Council for confirmation an itemized written report showing the cost of abatement work performed. A copy of this report shall be posted for at least ten days prior to its submission to the City Council. Each property owner upon whose property abatement work was performed shall be sent written notice by mail of a hearing by the City Council to consider the cost of abatement work performed on their property.
8. At the City Council Meeting on September 22, 2014, the City Council shall receive and consider the written staff report on abatement actions taken by the City and shall hear any objections from the property owners liable to be assessed for the abatement. The City Council may modify the staff report if deemed appropriate and then confirm the report by motion or resolution.

9. After City Council confirmation of the report, a certified copy of the report shall be filed with the county auditor who shall add the amount of the assessment to the next regular tax bill levied against the parcel.

FINANCIAL CONSIDERATIONS

The abatement program will be administered by Fire Department staff with minimum costs expended for printing and mailing. Abatement work will be completed by City maintenance staff or private contract labor as appropriate. Program costs will be recovered through the special assessment and lien process.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and approved the process. The Fire Hazard Abatement Program is exempt from California Environmental Quality Act (CEQA) pursuant to Sections 15304 and 15308 of the CEQA Guidelines. Therefore, no further CEQA review is required.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. June 5, 2014 Letter from Fire Marshal
2. Notice of Non-Compliant (Inspection Form)
3. Vegetation Management Standards
4. June 5, 2014 Notice to Destroy Weeds and Remove Rubbish, Refuse, and Other Flammable Material
5. Resolution Declaring that Weeds, Rubbish, Litter, or Other Flammable Material on Certain Real Property Constitutes a Public Nuisance
6. Resolution Overriding Objections by Property Owners and Ordering the City Manager or his Designee to Abate Certain Public Nuisances Pursuant to Chapter 16.26
7. July 16, 2014 Notice to Destroy Weeds and Remove Rubbish, Refuse, and Other Flammable Material

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

June 5, 2014

Dear El Cerrito Property Owner:

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

Beginning **July 8, 2014**, the Fire Department will be conducting a re-inspection of your property to evaluate if it meets our vegetation management standards. If your property meets the standards you will be removed from our list of non-compliant properties and will not be subject to further abatement actions.

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

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

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

Sincerely,

Michael J Bond
Michael J. Bond
Fire Marshal



EL CERRITO FIRE DEPARTMENT
KENSINGTON FIRE PROTECTION DISTRICT

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

_____ Fire Hazard Abatement Inspection

Owner/Tenant _____ Site Address _____ City _____ State _____ Zip Code _____

Legal Property Owner _____ Mailing Address _____ City _____ State _____ Zip Code _____

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

FIRE BREAK (ELIMINATE)

Within 30' of a structure

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

COMMENTS:

FUEL BREAK (REDUCE)

30' - 100' from structure

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

Both Fire Break & Fuel Break Requirements:

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

FIELD			
OFFICE			
OFFICE			
TOTAL			

Inspector Date

City of El Cerrito Fire Hazard Reduction Program

I. INTRODUCTION

A. Purpose of Vegetation Management Standards

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

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

The buildup of unmanaged vegetation, whether native or non-native, steep hillsides with canyons, draws, and periods of extremely hot, dry weather all combine to create in El Cerrito the potential for catastrophic fire behavior such as occurred in the Oakland/Berkeley Hills Fire of October 1991. Catastrophic fires can destroy large numbers of homes, threaten public safety and severely damage the natural areas which contribute to our high quality of living.

A key goal of local community fire protection planning is to reduce the level of fire hazards in El Cerrito's wildland intermix areas, designated as VHFHS Zones. While it is not possible to eliminate all threats of catastrophic wildfire, fire hazards can be reduced to acceptable levels and still allow a "green" El Cerrito.

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

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

Fires will continue to be a part of California urban living. By implementing vegetation management standards, El Cerrito residents can significantly reduce the potential a small fire will grow into a catastrophic event involving one or more structures. The primary method of stopping fire spread is by increasing separation distances between combustible fuels. An important component of reducing the community's fire risk requires vegetation management to be practiced by property owners.

B. Fire Safe Vegetation Management Concepts

There are three basic methods employed to manage vegetation fuels: firebreaks, fuel breaks and ornamental landscaping. A firebreak eliminates all flammable vegetation and combustible growth. Appropriate ornamental landscaping is acceptable in this area. A fuel break reduces the fuel mass of

flammable vegetation and combustible growth, thereby limiting the intensity of fire and slowing its rate of spread. Ornamental landscaping provides a yard or garden with decorative fire resistive plants that are irrigated, maintained and arranged to be aesthetically pleasing, functionally useful and enhance fire safety. Refer to the definitions listed for these terms.

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

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

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

C. Process

No person shall be prosecuted criminally under the provisions of Section 8.30.040 of the El Cerrito Municipal Code until that person has received written notice of how that property violates these standards and until that person has had the reasonable opportunity to meet with City staff concerning the procedures set forth in Chapter 8.34 or Chapter 16.26 of the El Cerrito Municipal Code. Civil procedures for fire hazard abatement include providing the property owner with (1) written notice on how the property violates these guidelines, (2) reasonable opportunity to meet with City staff to discuss this matter and (3) opportunity to be heard before the City Council.

II. FIRE HAZARD REDUCTION GUIDELINES

Many factors combine to create a fire hazard on any specific property. It is difficult to single out a specific vegetation species or configuration to declare it either fire hazardous or completely fire safe in all situations. The Fire Department has developed guidelines conforming to State Law and National Fire Protection Standards which address most situations found on private property within El Cerrito. Please read these guidelines along with the accompanying glossary. If you are still unsure of how to proceed please call the Fire Department and we will work with you to develop a fire hazard reduction plan for your property.

A. Hazard Zones

Portions of the City of El Cerrito lie adjacent or near to large wildland areas containing steep slopes and naturally growing trees, brush and grasses. Every year under certain critical weather conditions, the neighborhoods near these wildland areas are at heightened risk of seasonal wildfire sweeping into the City and burning homes. These areas at heightened risk of wildfire have been designated as Very High Fire Hazard Severity (VHFHS) Zones. The rest of the City faces a lesser risk of wildfire.

Fire hazard reduction measures common to the entire City are required on both vacant and developed lots:

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

B. Ornamental Landscaping

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

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

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

C. Vegetation Management Standards

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

1. Properties within VHFHS Zones:

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

2. Properties outside VHFHS Zones:

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

3. Vegetation Management Standards for Firebreaks:

- a. All flammable vegetation or combustible growth must be removed and cleared away, thereby eliminating fire hazardous vegetation fuels which can rapidly transmit fire.
- b. Adequately irrigated and maintained ornamental landscaping is not flammable vegetation or combustible growth, and is encouraged within a firebreak.
- c. Trees, shrubs, bushes or other vegetation adjacent to or overhanging any structure shall be maintained free of dead limbs and other combustible matter such as vines and loose papery bark. On mature trees, limbs should be removed up to 10' above the ground. Smaller trees should be limbed to 1/3rd of their height up to 6' above the ground, but in no case less than 18 inches from the ground.
- d. Trees shall be maintained so that no portion is closer than 10 feet from any chimney opening.
- e. All roof surfaces shall be maintained free of substantial accumulations of needles, twigs and any other combustible matter.
- f. All cut vegetation and debris must be disposed of either by hauling and dumping in a lawful manner, or by chipping and dispersing over the property in a manner and to a height which will not constitute a fire hazard.
- g. Chipped materials which are spread on the ground shall be of a size no greater than 1 inch by 1 inch by 3 inches.

4. Vegetation Management Standards for Fuel Breaks:

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

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

5. Additional Considerations for Vegetation Management:

- a. The Fire Hazard Abatement Program is intended to promote community fire safety by reducing the combustible vegetation fuel mass on private properties. Clearing vegetation by heavy construction methods, such as grading, discing, trenching or dozing shall require special permits from the City. **Disposal by burning is not permitted.**
- b. Any parcel where slope stability will be threatened by removal of plants may be exempt from treatment requirements or subject to alternate treatments. The property owner must submit a report documenting the probability of slope failure due to vegetation removal, prepared by a licensed civil, geotechnical or soils engineer. The report shall propose alternative treatment methods to address fire hazards. The report will be reviewed by city staff. Review and acceptance by the City of alternative treatment will supersede other requirements.
- c. Any parcel or lot which includes plant or animal species that are rare, endangered or of special concern may qualify for alternative plant treatment and spacing requirements. The property owner must submit a report from a qualified resource biologist or landscape architect describing the species, actions required to preserve its environmental value, and proposed alternative measures to address fire hazards. The report will be reviewed by the City. Review and acceptance by the City of alternative treatment will supersede other requirements.

D. Planting Considerations

Any plant will burn if the conditions are right. Some plants are considered to be extremely flammable while other plants are considered to have some resistance to fire. Verifiable tests of fire exposure characteristics for all specific ornamental landscaping plants are not available.

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

At the base of trees and shrubs, replace flammable vegetation with bark, mulch, rock, gravel or low-growing or more fire-resistant ground covers. This cover reduces the fire danger and minimizes weeds.

Avoid placing medium-sized shrubs beneath trees or taller shrubs. By breaking up the available fuel mass in ornamental landscaping, a fire will be kept at lower intensity, flame lengths will be shorter and fire will be less likely to form a continuous line or front.

E. Structural Fire Safety

The City's roofing and vegetation management standards are designed to reduce the amount of airborne burning material, limiting fire spread. Once a fire starts, it is often accelerated by wind-borne burning material. Burning embers or brands are the main source of fire spread in mixed urban-wildland areas. The roof of a house is most vulnerable to this type of ignition. Spark arresters with a maximum of ½" openings in the mesh are required over the outlet of every chimney. Class A is the top rating for fire resistive roofing, followed by Classes B and C. The City of El Cerrito requires that all roofing be Class B

or better, and wood shake shingle roofing materials are prohibited in new construction or replacement of more than 50% of the roof.

III. GLOSSARY OF TERMS

The following terms are used to describe the vegetation management standards in California State Law and in the City of El Cerrito's Fire Hazard Reduction Program.

Very High Fire Hazard Severity (VHFHS) Zones: Any geographic area designated per Government Code Section 51178 to contain the type and condition of vegetation, topography, weather and structure density to potentially increase the possibility of wildland conflagration fires. As a community adjacent to extensive wildland areas, the City of El Cerrito contains several VHFHS zones. A map of these zones is available from the Fire Department. Fire hazard reduction standards are more extensive for properties located within VHFHS zones.

Defensible space: A concept in landscape design for homes which provides a band of managed vegetation around a home that slows movement of fire by reducing or denying fuel and provides a space for firefighters to take a stand to protect the house.

Fire resistant plants: A relative term used to describe plants that are "more resistant: or "less resistant" than other plants to fire. Given enough heat, all vegetation will burn. Yet plants in fact differ in how fast they burn, how high a flame they produce and their ability to survive fire. Fire resistance is enhanced by higher amounts of moisture within twigs and foliage. Fire-resistant plants can lose this quality altogether if not properly maintained and irrigated. A partial list of fire resistant and highly flammable plants is available from EBMUD and the El Cerrito Fire Department.

Fire hazardous vegetation: Plants which can burn easily because they generate dry undergrowth, contain flammable oils or produce significant quantities of dead or dying material. Hazardous vegetation is fuel which must be removed or strictly maintained so as not to constitute a fire hazard by igniting easily and then contributing to rapid fire spread. Seasonally dry grass, weeds, brush, and unmaintained and unirrigated trees and ornamental vegetation are examples of fire hazardous vegetation. Properly chipped, mulched and disbursed material does not constitute fire hazardous vegetation. Fire hazardous vegetation is also known as **flammable vegetation and combustible growth**.

Ornamental landscaping: Decorative plants growing within a tended garden or yard which are appropriately irrigated, maintained and located to provide aesthetic decoration and functional utility, such as privacy screening, shade, weed suppression and erosion control. The use of fire-resistant plants and the removal of fire hazardous vegetation will enhance fire safety.

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

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

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

June 5, 2014

To: [OWNER NAME]
[OWNER ADDRESS], [OWNER CITY] [OWNER STATE] [OWNER ZIP]
Re: [SITE ADDRESS], [SITE CITY]. [SITE STATE], [SITE ZIP]
Parcel Number: [SITE APN]

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

Notice is hereby given that on the **5th day of June, 2014** the El Cerrito Fire Department has determined your property in the City of El Cerrito, designated above by address and parcel number, is in violation of Chapter 8.020 of the El Cerrito Municipal Code because of the presence of weeds, rubbish, litter or other flammable material which creates a fire hazard, a menace to the public health, or is otherwise noxious or dangerous.

You are hereby ordered to abate these public nuisance conditions by removing the weeds, rubbish, refuse and other flammable material. Otherwise, the City will abate these nuisance conditions and the costs for removal of the weeds, rubbish, refuse and other flammable material will be assessed against your property as a lien and special assessment. These removal costs shall then be collected at the time and in the manner of ordinary municipal taxes. Reference is hereby made to the resolution for further particulars.

If you have any objections to a declaration of your property as a public nuisance or to the proposed removal of the weeds, rubbish, refuse and other flammable material from your property by the City, you are hereby notified of and may attend this meeting of the City Council of the City of El Cerrito to be held on **July 15, 2014 at 7:00 p.m. in the Council Chambers located in the El Cerrito City Hall, 10890 San Pablo Avenue**. At this meeting, your objections will be heard and given due consideration.

At the conclusion of this meeting, the City Council may declare the conditions on your property to be a public nuisance and may order the City Manager or designee to abate the public nuisance condition on your property. The City shall perform this removal either through its own staff or through private contract sometime between **August 18, 2014 and August 29, 2014**. It is impossible to predict what it will cost the City to remove these nuisance conditions from your property. The costs depend on the severity of those conditions. In past years these abatement costs have sometimes exceeded \$5,000 per parcel for those parcels with severe nuisance conditions.

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

Michael J Bond

Michael J. Bond
Fire Marshal

RESOLUTION NO. 2014 - XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO DECLARING
THAT WEEDS, RUBBISH, LITTER OR OTHER FLAMMABLE MATERIAL ON CERTAIN
REAL PROPERTY CONSTITUTES A PUBLIC NUISANCE

WHEREAS, El Cerrito Municipal Code Chapter 16.26 provides a method by which a local legislative body may abate on private property public nuisance conditions relating to weeds, rubbish, litter or other flammable material that creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous; and

WHEREAS, the City of El Cerrito Fire Marshal has identified certain real property, by street name, lot and block number, on which the presence of weeds, rubbish, litter or other flammable material creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous as defined in Chapter 16.26 of the El Cerrito Municipal Code and therefore constitutes a public nuisance; and

WHEREAS, pursuant to El Cerrito Municipal Code Section 16.26.160 and Government Code Sections 39560-39588, the City Council shall adopt this resolution declaring that certain real property within the City constitutes a public nuisance.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that the following properties identified on Exhibit A, attached hereto, are declared to be public nuisances pursuant to El Cerrito Municipal Code Section 16.26.160.

BE IT FURTHER RESOLVED that on this same date of July 15, 2014 at 7:00 in the City of El Cerrito, the City Council shall hold a hearing at which owners of the real property identified in Exhibit A hereto may object to the designation of their properties as public nuisances and object to the abatement actions proposed by the City.

I CERTIFY that at a regular meeting on July 15, 2014 the El Cerrito City Council passed this resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July XX, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

EXHIBIT A

El Cerrito
List of Real Property Constituting Public Nuisances
7-15-2014

APN	Street Address	Property Owner
504-101-019	416 ALBEMARLE	
500-420-012	2317 ALVA AVE	
500-430-016	2332 ALVA AVE (VACANT)	
505-321-006	8629 ARBOR DR	
505-303-006	840 ARLINGTON BLVD	
504-231-050	300 ASHBURY AVE	
504-080-004	537 ASHBURY AVE	
500-190-020	6523 BARRETT AVE (VACANT)	
573-132-011	8405 BEL VIEW CT	
505-181-004	1355 BREWSTER DR (VACANT)	
503-330-024	724 COLUSA AVE	
503-340-017	790 COLUSA AVE	
501-243-008	6327 CONLON AVE (VACANT)	
501-243-016	6327 CONLON AVE (VACANT)	
505-201-009	1224 CONTRA COSTA DR	
505-181-018	1324 CONTRA COSTA DR (VACANT)	
501-110-017	7140 CUTTING BLVD (VACANT)	
505-383-026	1325 DEVONSHIRE CT	
505-103-026	7770 EARL CT (VACANT)	
505-103-027	7780 EARL CT (VACANT)	
513-372-038	1612 EASTSHORE BLVD	
510-042-019	5619 EL DORADO AVE	
510-045-006	5730 EL DORADO AVE (VACANT)	
502-212-010	1602 ELM ST	

EXHIBIT A (Page 2)

El Cerrito
List of Real Property Constituting Public Nuisances
7-15-2014

APN	Street Address	Property Owner
502-112-038	1715 ELM ST	
504-402-003	7716 EUREKA AVE	
504-062-013	517 EVERETT ST	
503-374-011	650 EVERETT ST	
503-255-024	832 EVERETT ST	
503-202-014	1001 EVERETT ST	
502-300-023	1534 EVERETT ST	
505-262-025	851 GELSTON PL	
513-413-012	5219 GORDON AVE	
501-050-004	5912 JORDAN AVE	
505-421-021	1614 JULIAN DR	
501-290-018	2101 JUNCTION AVE	
505-101-014	1009 KING DR	
505-102-001	1143 KING DR	
503-403-003	612 LEXINGTON AVE	
503-235-012	811 LEXINGTON AVE	
503-231-013	952 LEXINGTON AVE (VACANT)	
503-243-014	909 LIBERTY ST	
500-350-009	5670 LUDWIG AVE	
501-020-009	5505 MACDONALD AVE	
501-030-020	5528 MACDONALD AVE	
505-421-024	1532 MADERA CIR (VACANT)	

EXHIBIT A (Page 3)

El Cerrito
List of Real Property Constituting Public Nuisances
7-15-2014

APN	Street Address	Property Owner
505-422-004	1515 MADERA CT	-----
505-422-008	1518 MADERA CT	
505-422-005	1519 MADERA CT	
502-472-020	7111 MANILA AVE	
502-472-018	7115 MANILA AVE	
501-020-016	2312 MONO AVE	
500-120-017	2630 MONTE VISTA AVE	
500-370-004	2501 NASON AVE	
503-071-010	1220 NORVELL ST	
501-243-001	6322 OHIO ST	
513-250-024	5315 POTRERO AVE	
509-012-018	5318 POTRERO AVE	
502-300-023	6910 POTRERO AVE	
502-203-011	7019 POTRERO AVE	
505-130-011	1590 REGENCY CT	
505-302-020	1 RIDGEWAY LN	
500-302-011	5331 ROSALIND AVE	
504-012-029	10152 SAN PABLO AVE	
503-236-027	10496 SAN PABLO AVE (VACANT)	
503-291-010	7473 STOCKTON AVE	
503-321-018	7530 TERRACE DR	
503-311-023	7573 TERRACE DR	
505-262-010	8150 TERRACE DR	
505-303-003	8620 TERRACE DR	

EXHIBIT A (Page 3)

El Cerrito
List of Real Property Constituting Public Nuisances
7-15-2014

APN	Street Address	Property Owner
502-121-010	1708 WALNUT ST	

RESOLUTION NO. 2014 - XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO OVERRIDING
OBJECTIONS BY PROPERTY OWNERS AND ORDERING THE CITY MANAGER OR HIS
DESIGNEE TO ABATE CERTAIN PUBLIC NUISANCES PURSUANT TO CHAPTER 16.26**

WHEREAS, El Cerrito Municipal Code Chapter 16.26 provides a method by which a local legislative body may abate on private property public nuisance conditions relating to weeds, rubbish, litter or other flammable material that creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous; and

WHEREAS, the City of El Cerrito Fire Marshal has identified certain real property, by street name, lot and block number, on which the presence of weeds, rubbish, litter or other flammable material creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous as defined in Chapter 16.26 of the El Cerrito Municipal Code and therefore constitutes a public nuisance; and

WHEREAS, on July 15, 2014, pursuant to El Cerrito Municipal Code Section 16.26.160 and Government Code Sections 39560-39588, the City Council adopted Resolution 2014-XX declaring that certain real property within the City constitutes a public nuisance; and

WHEREAS, El Cerrito Municipal Code Chapter 16.26 provides that notice shall be sent to owners of the real property declared a nuisance pursuant to Resolution 2014-XX providing those owners with the following: description of the nuisance; explanation of how the nuisance must be abated; explanation that if the nuisance is not abated; the City shall abate the public nuisance and the cost of abatement shall be assessed against the property as a special assessment; and informing the owners that the City Council shall hold a hearing at a certain date, time, and place at which the owners may present objections to the designation of their properties as public nuisances or to the proposed abatement of the nuisance; and

WHEREAS, between June 4 and June 10, 2014, the City Fire Department sent written notice to those property owners describing the weeds, rubbish, refuse, or other flammable material that presented a fire hazard and public nuisance; explaining that the Fire Department had determined a public nuisance that must be removed; informing the owners that if they did not abate between July 8 and July 14, 2014, the City Council would hold a hearing on July 15, 2014 at which the owners could present objections to the declaration of the nuisance or the proposed abatement measures and further explained the City could abate the nuisance and collect the costs as an assessment on the property; and

WHEREAS, on July 15, 2014, the City Council adopted Resolution 2014-XX confirming the nuisance declarations of the City Fire Department and declaring a public nuisances on certain real property pursuant to Chapter 16.26; and

WHEREAS, El Cerrito Municipal Code Section 16.26.160 and Government Code Sections 39560-39588 provide that after adoption of a resolution declaring a public nuisance and notice to affected property owners of the Council's hearing of objections, the Council may overrule any objections and order the City Manager or his designee to abate the public nuisances.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that

Agenda Item No. 6

Attachment 6

it overrides any objections by owners of that certain real property on which public nuisances were declared in Exhibit A to Resolution 2014 - XX (adopted on the same date herewith).

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

BE IT FURTHER RESOLVED that pursuant to El Cerrito Municipal Code Section 16.26.160 and Government Code Section 39574, the City Manager or his designee shall keep an account of the cost of abatement for each parcel of land on which work is performed. The City Manager or designee shall then prepare an itemized written report to be presented to the City Council so that, after the notice and hearing during the City Council meeting of September 22, 2014 these abatement costs can be confirmed as a special assessment against those parcels.

I CERTIFY that at a regular meeting on July 15, 2014 the El Cerrito City Council passed this resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July XX, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

EXHIBIT A

El Cerrito
List of Real Property Constituting Public Nuisances
7-15-2014

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500-430-016	2332 ALVA AVE (VACANT)	
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504-080-004	537 ASHBURY AVE	
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505-181-004	1355 BREWSTER DR (VACANT)	
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503-340-017	790 COLUSA AVE	
501-243-008	6327 CONLON AVE (VACANT)	
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513-372-038	1612 EASTSHORE BLVD	
510-042-019	5619 EL DORADO AVE	
510-045-006	5730 EL DORADO AVE (VACANT)	
502-212-010	1602 ELM ST	

EXHIBIT A (Page 2)

El Cerrito
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7-15-2014

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503-374-011	650 EVERETT ST	
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502-300-023	1534 EVERETT ST	
505-262-025	851 GELSTON PL	
513-413-012	5219 GORDON AVE	
501-050-004	5912 JORDAN AVE	
505-421-021	1614 JULIAN DR	
501-290-018	2101 JUNCTION AVE	
505-101-014	1009 KING DR	
505-102-001	1143 KING DR	
503-403-003	612 LEXINGTON AVE	
503-235-012	811 LEXINGTON AVE	
503-231-013	952 LEXINGTON AVE (VACANT)	
503-243-014	909 LIBERTY ST	
500-350-009	5670 LUDWIG AVE	
501-020-009	5505 MACDONALD AVE	
501-030-020	5528 MACDONALD AVE	
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EXHIBIT A (Page 3)

El Cerrito
List of Real Property Constituting Public Nuisances
7-15-2014

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505-422-005	1519 MADERA CT	
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502-472-018	7115 MANILA AVE	
501-020-016	2312 MONO AVE	
500-120-017	2630 MONTE VISTA AVE	
500-370-004	2501 NASON AVE	
503-071-010	1220 NORVELL ST	
501-243-001	6322 OHIO ST	
513-250-024	5315 POTRERO AVE	
509-012-018	5318 POTRERO AVE	
502-300-023	6910 POTRERO AVE	
502-203-011	7019 POTRERO AVE	
505-130-011	1590 REGENCY CT	
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500-302-011	5331 ROSALIND AVE	
504-012-029	10152 SAN PABLO AVE	
503-236-027	10496 SAN PABLO AVE (VACANT)	
503-291-010	7473 STOCKTON AVE	
503-321-018	7530 TERRACE DR	
503-311-023	7573 TERRACE DR	
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EXHIBIT A (Page 3)

El Cerrito
List of Real Property Constituting Public Nuisances
7-15-2014

APN	Street Address	Property Owner
502-121-010	1708 WALNUT ST	

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

July 16, 2014

To: [OWNER NAME]
[OWNER ADDRESS], [OWNER CITY] [OWNER STATE] [OWNER ZIP]
Re: [SITE ADDRESS], [SITE CITY]. [SITE STATE], [SITE ZIP]
Parcel Number: [SITE APN]

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

On **July 15th, 2014** the El Cerrito City Council declared that your property in the City of El Cerrito, designated above by address and parcel number, constitutes a public nuisance because of the presence of weeds, rubbish, litter or other flammable material which creates a fire hazard, a menace to the public health, or is otherwise noxious or dangerous.

A previous notice was sent to you informing you of the July 15th, 2014 hearing and further informing you of your obligation to remove the weeds, rubbish, refuse and other flammable material from your property. **If you do not immediately abate these nuisance conditions, the City will do so and the costs for removal of the weeds, rubbish, refuse and other flammable material will be assessed against your property as a lien and special assessment.** These removal costs shall then be collected in the time and in the manner of ordinary municipal taxes.

You will not receive any further notices from the City prior to this removal. The City shall perform this removal either through its own staff or through private contract sometime between **August 18th, 2014 and August 29th, 2014.** It is impossible to predict what it will cost the City to remove these nuisance conditions from your property. The costs depend on the severity of those conditions. In past years these abatement costs have sometimes exceeded \$5,000 per parcel for those parcels with severe nuisance conditions

The City Council will conduct a public hearing on **September 22, 2014** to confirm the cost of the abatement work performed on your property. The meeting will be held in the **El Cerrito City Council Chambers at 10890 San Pablo Avenue in El Cerrito at 7:00 p.m.** During this public hearing you will be given the opportunity to voice objections regarding the report and the assessment of the abatement costs for your property. At this hearing you will also be given the opportunity to object, protest and/or present evidence to support your arguments.

If you have any questions, contact the El Cerrito Fire Department at 10900 San Pablo Avenue. The phone number is (510) 215-4450.

Michael J Bond

Michael J. Bond
Fire Marshal



AGENDA BILL

Agenda Item No. 7(A)

Date: July 15, 2014

To: El Cerrito City Council

From: Karen Pinkos, Assistant City Manager
Scott Hanin, City Manager

Subject: Adoption of modifications to the Memorandums of Understanding between the City of El Cerrito and the United Professional Firefighters Association, Local 1230 and the El Cerrito Police Employees' Association

ACTIONS REQUESTED

1. Adopt a resolution approving a side letter agreement to the Memorandum of Understanding between the City of El Cerrito and the United Professional Firefighters Association, Local 1230 to modify language on salaries and retirement.
2. Adopt a resolution approving a side letter agreement to the Memorandum of Understanding between the City of El Cerrito and the El Cerrito Police Employees' Association to modify language on salaries and retirement.
3. Adopt a resolution modifying reporting and payment of employer paid member contributions for the United Professional Firefighters Association, Local 1230.
4. Adopt a resolution modifying reporting and payment of employer paid member contributions for the El Cerrito Police Employees Association.

BACKGROUND

During the FY 2014-15 budget process, the City Council was appraised of various balancing measures proposed by staff to address shortfalls in the City's operating budget. These measures included consideration of concessions on behalf of certain employee groups, including increased employee contributions to California Public Employees Retirement System (PERS) benefits, for the unrepresented employees (Management and Confidential employees) and those bargaining units that were not subject to a current Memorandum of Understanding (MOU). To date, the unrepresented employees, the City Manager, and the City Council have all increased their employee retirement contribution to the full PERS Miscellaneous rate of 8%. The City is still in active negotiations with those bargaining units that have expired contracts.

City staff has also approached the bargaining units that are in current MOUs to discuss the possibility of modifications to assist the City in light of the financial challenges presented within this fiscal year's budget. The United Professional Firefighters Association, Local 1230 and the El Cerrito Police Employees' Association (ECPEA), agreed to discuss concessions with City representatives. The MOU between the City and both of these groups expire on June 30, 2017. Local 1230 and the ECPEA willingly

participated and positive discussions took place between members and City representatives relative to the concessions.

ANALYSIS

The City's Management team and representatives of Local 1230 and ECPEA began meeting in June 2014 to discuss the financial challenges and the balancing measures being considered for the City budget, both short- and long-term. Specifically, City representatives were interested in discussing increasing employees' contribution to PERS, similar to the unrepresented employee groups. Local 1230 and the ECPEA employees are members of the Public Safety PERS plan with a '3% at 50' retirement formula, which has a nine percent (9%) employee contribution. Non-sworn members of the ECPEA are included in the Miscellaneous PERS plan with a '2.7% at 55' retirement formula, which has an eight percent (8%) employee contribution. Within the current MOUs, the employee contribution known as the Employer Paid Member Contribution (EPMC) is paid entirely by the City. The current MOUs also provide for salary increases for the next three years: in years 2014 and 2016 an increase between 2% and 4% subject to CPI would occur; in 2015 a salary adjustment to the median rate according to a salary survey would be made.

The Public Employees' Pension Reform Act (PEPRA) stipulates that in 2018, employers are allowed to require employees to pay at least 50% of the normal cost of retirement benefits as long as the cost does not exceed 8% for miscellaneous members and 12% for police and fire members. City representatives discussed several MOU modification options with both groups, including payment of the current public safety employee contribution cost of 9%, with a corresponding 8 percent increase in salary over the remainder of the contract. However, both groups expressed a willingness to consider moving toward the full 12% cost, recognizing the City's current financial picture while looking ahead to the implementation of PEPRA. As a result, the City and both Local 1230 and ECPEA have tentatively agreed to side letter agreements that modifies salaries and retirement contributions for the last three years of the contract.

Local 1230

The modifications to Local 1230's MOU would result in a savings of approximately \$150,000 for this fiscal year and \$275,000 over the last two years of the MOU, with the long-term benefit of reducing personnel expenditures to the City. The changes are as follows:

Local 1230		
Year	Salary Increase	New PERS Contribution
2014	8.0%	9.0%
2015	4.5%	1.5%
2016	4.5%	1.5%

ECPEA

These changes to the ECPEA MOU would also result in a savings of approximately \$150,000 for this fiscal year and \$290,000 over the last two years of the MOU, with the long-term benefit of reducing personnel expenditures to the City. Further, the term of the agreement will be extended by six months in order to stagger the end dates of the public safety MOUs. The modifications to salaries and benefits are as follows:

ECPEA

Year	Salary Increase	New PERS Contribution
2014	8.0%	9.0%
2015	4.5%	1.5%
2016	4.0%	1.5%

In addition, during the discussions with ECPEA, City representatives agreed to modifications in longevity pay categories in an attempt to assist with the current retention challenges in the Police Department. Modifications to longevity pay are as follows:

ECPEA – Longevity Pay

Years of Service	Current	Proposed
5		3.0%
7	3.0%	
10		6.0%
15	5.0%	
20	7.0%	9.0%

In essence, the savings to the City for Fiscal Year 2015 is a result of the employees in both Local 1230 and ECPEA foregoing a 2.6% cost of living adjustment and reducing salaries by 1% (the net decrease of the 9% PERS contribution, offset by the 8% salary increase). Because the employee contribution to PERS is already considered “pensionable”, this shift does not result in increased pension amounts for the employees. Additionally, language is included in both side letters that states that employees that are considered “new members” in accordance with the Public Employees’ Pension Reform Act (PEPRA) will be enrolled under the PERS Public Safety Employee 2.7% at 57 retirement formula. The modifications to the MOUs outlined in the side letter agreements require that the provisions of PEPRA will now apply to those new members in both bargaining units.

Since Local 1230 and the ECPEA were both within a valid contract and not under any obligation to agree to concessions, the City's management staff recognizes the members for their willingness to assist the City with its fiscal challenges, both short- and long-term, and is appreciative of the amicable nature of the discussions that took place.

FINANCIAL CONSIDERATIONS

The concessions by the United Professional Firefighters Association, Local 1230 and the ECPEA will save the City approximately \$870,000 over the next three years.

LEGAL CONSIDERATIONS

The attached resolutions modifying reporting and payment of employer paid member contributions for both of the bargaining units are required by PERS when amending the payment of employer paid member contributions (EPMC). These resolutions notify PERS that the City has eliminated the EPMC for both bargaining units and increase the member contribution from 0% to 9%.

Reviewed by:



Scott Hanin, City Manager

Attachment:

1. Resolution adopting a side letter to the existing MOU for the United Professional Firefighters Association, Local 1230
2. Resolution adopting a side letter to the existing MOU for the El Cerrito Police Employees' Association
3. Resolution modifying reporting and payment of employer paid member contributions for the United Professional Firefighters Association, Local 1230
4. Resolution modifying reporting and payment of employer paid member contributions for the El Cerrito Employees' Association

RESOLUTION 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
MODIFYING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY
OF EL CERRITO AND THE UNITED PROFESSIONAL FIREFIGHTERS LOCAL
1230 AND ADOPTING A SIDE LETTER TO MODIFY THE LANGUAGE ON
SALARIES AND RETIREMENT**

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

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

WHEREAS, the United Professional Firefighters Local 1230 is recognized as the majority bargaining unit for firefighters, fire engineers and fire captains; and

WHEREAS, representatives of the City of El Cerrito and the United Professional Firefighters Local 1230, have met and conferred in good faith; and

WHEREAS, the City of El Cerrito and the United Professional Firefighters Local 1230 representatives have agreed to a Side Letter modifying the language of the current Memorandum of Understanding (MOU), to modify salaries and payment of employees' contribution to the California Public Employees Retirement System (PERS) for the remainder of the MOU; and

WHEREAS, the Side Letter, attached hereto and incorporated by reference as Exhibit A, replaces the Side Letters dated June 10, 2010 and June 4, 2012.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito that it does hereby adopts the Side Letter, attached hereto and incorporated by reference as Exhibit A, between the City of El Cerrito and the United Professional Firefighters Local 1230, modifying salaries and payment of employees' retirement contributions as outlined in the Side Letter.

I CERTIFY that at a regular meeting on July 15, 2014 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 July XX, 2014.

Agenda Item No. 7(A)
Attachment 1

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

SIDE LETTER AGREEMENT BETWEEN
THE CITY OF EL CERRITO
AND
UNITED PROFESSIONAL FIREFIGHTERS
LOCAL 1230

MODIFYING LANGUAGE ON SALARIES AND RETIREMENT

June 20, 2014

Representatives for the City of El Cerrito and representatives for the United Professional Firefighters of Contra Costa County, Local 1230 have agreed to the following modifications of the Memorandum of Understanding between the City of El Cerrito and United Professional Firefighters of Contra Costa County Local 1230 which expires on June 30, 2016 and was extended to June 30, 2017 by a Side Letter between the parties dated June 10, 2010 and subsequently modified by a Side Letter dated June 4, 2012. It is the intent of the parties that the Side Letter dated June 20, 2014, replaces the Side Letters dated June 10, 2014 and June 4, 2012.

The modifications to the Memorandum of Understanding between the City of El Cerrito and the United Professional Firefighters of Contra Costa County Local 1230 are as follows:

- Section 3.1 Duration of this Memorandum – This agreement shall be in full force and effect commencing July 1, 2006, through June 30, 2017. Terms and conditions of this Agreement shall remain in full force until adoption of a successor Agreement.
- Section 7.4 Retirement Plan for Fire Suppression Personnel -
 - Effective June 30, 2001, the retirement plan for fire suppression personnel shall be the 3.0% @ 50 PERS Plan, including:
 - Credit for Unused Sick leave at retirement
 - Final Compensation - Single highest year
 - 1959 Survivor Benefits Level IV
 - For fire suppression personnel who are hired after December 31, 2013, and who are not “Classic Employees” as defined by Cal PERS, the following retirement benefits shall be provided:
 - Retirement formula commonly known as 2.7% @ 57
 - Final Compensation – 3 Year Average
 - Credit for Unused Sick Leave at Retirement
 - The employee contribution shall be 50% of the normal cost as defined by PERS.
- Section 13.1 Base Monthly Salaries
 - Effective the first full pay period in July 2009, the base monthly salary for represented classifications shall be increased by 2.0%.
 - Effective the first full pay period in July 2010, the base monthly salary for

Agenda Item No. 7(A)
Attachment 1
Resolution 2014-XX, Exhibit A

- o represented classifications shall not be increased
 - o Effective the first full pay period in July 2011, the base monthly salary for represented classifications shall be increased to achieve the median level based upon the survey conducted by the City. (The survey conducted by the City shall not include the City's contributions to the employee's Retiree Health Savings Account.)
 - o Effective the first full pay period in July 2012, there shall be no increase to the base monthly salary for represented classifications.
 - o Effective July 2013 the base monthly salary for represented classifications shall be increased to achieve the median level based upon the survey conducted by the City. (The survey conducted by the City shall not include the City's contribution to the employee's Retiree Health Savings Account.)
 - o Effective the first full pay period after adoption of this Side Letter by City Council, the base monthly salary for represented classifications shall be increased by 8.0%.
 - o Effective the first full pay period in July 2015, the base monthly salary for represented classifications shall be increased by 4.5%.
 - o Effective the first full pay period in July 2016, the base monthly salary for represented classifications shall be increased by 4.5%.
- Section 13.3 - Pension Reimbursement
 - o A represented regular employee's base monthly salary shall be as stated in Section 13.1, with the employee's PERS contribution paid by the City.
 - Effective the first pay roll period after adoption by the City Council, employees shall make a 9.0% employee contribution towards PERS.
 - Effective the first full pay period in July 2015, employees shall make an additional 1.5% contribution towards PERS, for a total of 10.5% contribution towards PERS.
 - Effective the first full pay period in July 2016, employees shall make an additional 1.5% contribution towards PERS, for a total of 12.0% contribution towards PERS.

If the forgoing is in accordance with your understanding, please indicate your acceptance and approval in the space provided below.

For the City of El Cerrito

For Local 1230

DATE: _____

DATE: _____

RESOLUTION 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
MODIFYING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY
OF EL CERRITO AND THE EL CERRITO POLICE EMPLOYEES' ASSOCIATION
AND ADOPTING A SIDE LETTER TO MODIFY THE LANGUAGE ON SALARIES
AND RETIREMENT**

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

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

WHEREAS, the El Cerrito Police Employees' Association is recognized as the majority bargaining unit for police officers, corporals, sergeants and non-sworn employees; and

WHEREAS, representatives of the City of El Cerrito and the El Cerrito Police Employees' Association, have met and conferred in good faith; and

WHEREAS, the City of El Cerrito and the El Cerrito Police Employees' Association representatives have agreed to a Side Letter modifying the language of the current Memorandum of Understanding (MOU), to modify salaries and payment of employees' contribution to the California Public Employees Retirement System (PERS) for the remainder of the MOU; and

WHEREAS, the Side Letter, attached hereto and incorporated by reference as Exhibit A, replaces the Side Letters dated June 10, 2010 and June 4, 2012.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito that it does hereby adopts the Side Letter, attached hereto and incorporated by reference as Exhibit A, between the City of El Cerrito and the El Cerrito Police Employees' Association, modifying salaries and payment of employees' retirement contributions as outlined in the Side Letter.

I CERTIFY that at a regular meeting on July 15, 2014 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 July XX, 2014.

Agenda Item No. 7(A)
Attachment 2

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

Agenda Item No. 7(A)
Attachment 2
Resolution No. 2014-XX, Exhibit A

SIDE LETTER AGREEMENT BETWEEN
THE CITY OF EL CERRITO
AND
EL CERRITO POLICE EMPLOYEE'S ASSOCIATION

MODIFYING LANGUAGE ON SALARIES AND RETIREMENT

July 16, 2014

Representatives for the City of El Cerrito and representatives for the El Cerrito Police Employees' Association have agreed to the following modifications of the Memorandum of Understanding between the City of El Cerrito and the El Cerrito Police Employees' Association which expires on June 30, 2016 and was extended to June 30, 2017 by a Side Letter between the parties dated July 8, 2010 and subsequently modified by a Side Letter dated June 19, 2012. It is the intent of the parties that the Side Letter dated July 16, 2014, replaces the Side Letters dated July 8, 2010 and June 19, 2012.

The modifications to the Memorandum of Understanding between the City of El Cerrito and the El Cerrito Police Employees' Association are as follows:

- Section 3.1 Duration of this Memorandum – This agreement shall be in full force and effect commencing July 1, 2006, through December 31, 2017. Terms and conditions of this Agreement shall remain in full force until adoption of a successor Agreement.
- Section 7.1 – 7.5 Health, Dental and Retirement
 - o Maintenance of current benefits for term of MOU.
- Section 7.4 Retirement Plan for Sworn Personnel
 - o Effective June 30, 2001, the retirement plan for sworn personnel shall be the 3.0% @ 50 PERS Plan, including:
 - Credit for Unused Sick leave at retirement
 - Final Compensation - Single highest year
 - 1959 Survivor Benefits Level IV
 - o For sworn personnel who are hired after December 31, 2013, and who are not "Classic Employees" as defined by Cal PERS, the following retirement benefits shall be provided:
 - Retirement formula commonly known as 2.7% @ 57
 - Final Compensation – 3 Year Average
 - Credit for Unused Sick Leave at Retirement
 - The employee contribution shall 50% of the normal cost as defined by PERS.
- Section 8.1 Holidays
 - o Effective July 1, 2010, the City will increase the number of floating holidays from two (2) to three (3).

Agenda Item No. 7(A)
Attachment 2
Resolution No. 2014-XX, Exhibit A

- Section 13.1 Base Monthly Salaries

- o Salary increases for Non-Sworn Personnel

- Effective July 2010 – 2.0%
 - Effective January 2011 – 2.0%
 - Effective July 2011 – Survey
 - Effective the first full pay period in July 2012, there shall be no increase to the base salary for represented classifications.
 - Effective July 2013 – Survey
 - Effective the first full pay period after adoption of this Side Letter by the City Council, the base monthly salary shall be increased by 8.0%.
 - Effective the first full pay period in July 2015, the base monthly salary shall be increased by 4.5%.
 - Effective the first full pay period in July 2016, the base monthly salary shall be increased by 4.0%.

- o Salary increase for Police Sergeant

- Effective July 2010 – 3.0%
 - Effective January 2011 – 3.0%
 - Effective July 2011 – 3.0%
 - Effective January 2012 – 3.0 %
 - Effective the first full pay period in July 2012, there shall be no increase to the base salary for represented classifications.
 - Effective July 2013 – Survey
 - Effective the first full pay period after adoption of this Side Letter by the City Council, the base monthly salary shall be increased by 8.0%.
 - Effective the first full pay period in July 2015, the base monthly salary shall be increased by 4.5%.
 - Effective the first full pay period in July 2016, the base monthly salary shall be increased by 4.0%.

- o Salary increase for Police Officer/Corporal

- Effective July 2010 – 3.5%
 - Effective January 2011 – 3.5%
 - Effective July 2011 – 3.5%
 - Effective January 2012 – 3.5%
 - Effective the first full pay period in July 2012, there shall be no increase to the base salary for represented classifications.
 - Effective July 2013 – Survey
 - Effective the first full pay period after adoption of this Side Letter by the City Council, the base monthly salary shall be increased by 8.0%.
 - Effective the first full pay period in July 2015, the base monthly shall be increased by 4.5%.
 - Effective the first full pay period in July 2016, the base monthly salary shall be

Agenda Item No. 7(A)
Attachment 2
Resolution No. 2014-XX, Exhibit A

increased by 4.0%.

- Section 13.3 - Pension Reimbursement

- A represented regular employee's base monthly salary shall be as stated in Section 13.1, with the employee's PERS contribution paid by the City.
 - Effective the first pay roll period after adoption by of this Side Letter by the City Council, employees shall make a 9.0% employee contribution towards PERS.
 - Effective the first full pay period in July 2015, employees shall make an additional 1.5% contribution towards PERS, for a total of 10.5% contribution towards PERS.
 - Effective the first full pay period in July 2016, employees shall make an additional 1.5% contribution towards PERS, for a total of 12.0% contribution towards PERS.
- Effective the first pay roll period after the adoption of this Side Letter by the City Council, an employee's pension contribution shall be taxed deferred and made in accordance with IRS Section 414 H(2).

- Section 13.6 Longevity

- Effective December 1, 2014 and each December 1 thereafter, the City shall make longevity payments to those employed with the City as of the day of payment as follows:
 - For employees with 5 years of service with the City but less than 10 years, the annual longevity payment shall be three percent (3.0%) of their annual base rate of pay.
 - For employees with 10 years of service with the City but less than 20 years, the annual longevity payment shall be six percent (6.0%) of their annual base rate of pay.
 - For employees with 20 years or more years of service with the City, the annual longevity payment shall be nine percent (9.0%) of their annual base rate of pay.

- Section 13.7 A. Shift Differential

- Effective with the first full pay period in July 2010, this language replaces 13.7 A. of the MOU which expires on June 30, 2017.
 - Effective with the first full pay period in July 2010, sworn personnel assigned to night shift shall receive 2.0% of their base rate of pay as shift differential pay for all hours worked.
 - Effective with the first full pay period in January 2011, shift differential shall be eliminated.

- Section 13.8 (new) Criteria for Service Credit

- Age 50 no later than the last day of the first pay period in June 2012.
- PERS retirement eligible no later than the last day of the first pay period in June 2012.
- Employee must designate that they will retire during the term of the MOU
 - Service Credit for Sergeant Classification

Agenda Item No. 7(A)
Attachment 2
Resolution No. 2014-XX, Exhibit A

- For eligible employees effective July 2010 – 9.0%
- For eligible employees effective January 2011 – 6.0%
- For eligible employees effective July 2011 – 3.0%
- Service Credit eliminated effective the last full pay period of June 2012.
- Service Credit for Police/Corporal Classifications
 - For eligible employees effective July 2010 – 10.5%
 - For eligible employees effective January 2011 – 7.0%
 - For eligible employees effective July 2011 – 3.5%
 - Service Credit eliminated effective the last full pay period of June 2012.

If the forgoing is in accordance with your understanding, please indicate your acceptance and approval in the space provided below.

For the City of El Cerrito

Date: _____

For the ECPEA

Date: _____

RESOLUTION 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
MODIFYING REPORTING AND PAYMENT OF EMPLOYER PAID MEMBER
CONTRIBUTIONS FOR THE UNITED PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCAL 1230 BARGAINING UNIT**

WHEREAS, the City Council, as the governing body of the City of El Cerrito, has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of El Cerrito has had written agreements with the United Professional Firefighters Association, Local 1230 bargaining unit that specifically provided for a portion of the normal member contributions to be paid by the employer; and

WHEREAS, the City's contribution for the United Professional Firefighters Association, Local 1230 to the California Public Employees Retirement System (PERS) for the employer paid member contribution (EPMC) will end the first full pay period after July 16, 2014; and

WHEREAS, the City Council of City of El Cerrito has identified the following conditions:

- This resolution shall apply to all members of the United Professional Firefighters Association, Local 1230 bargaining unit
- This benefit shall consist of the City paying zero (0%) of the normal member contributions as EPMC;
- The United Professional Firefighters Association, Local 1230 will pay the entire member contribution of nine percent (9%) to PERS;
- This resolution is effective the first full pay period after July 16, 2014.

NOW THEREFORE, BE IT RESOLVED, that the City Council does hereby modify reporting and payment of employer paid member contributions to PERS as set forth in the conditions above, effective the first full pay period after July 16, 2014.

I CERTIFY that at a regular meeting on July 15, 2014, the El Cerrito City Council passed this resolution by the following vote:

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

* * * * *

Agenda Item No. 7(A)
Attachment 3

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July XX, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

RESOLUTION 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
MODIFYING REPORTING AND PAYMENT OF EMPLOYER PAID MEMBER
CONTRIBUTIONS FOR THE EL CERRITO POLICE EMPLOYEES ASSOCIATION
BARGAINING UNIT**

WHEREAS, the City Council, as the governing body of the City of El Cerrito, has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of El Cerrito has had written agreements with the El Cerrito Police Employees Association bargaining unit that specifically provided for a portion of the normal member contributions to be paid by the employer; and

WHEREAS, the City's contribution for the El Cerrito Police Employees Association to the California Public Employees Retirement System (PERS) for the employer paid member contribution (EPMC) will end the first full pay period after July 16, 2014; and

WHEREAS, the City Council of City of El Cerrito has identified the following conditions:

- This resolution shall apply to all members of the El Cerrito Police Employees Association bargaining unit
- This benefit shall consist of the City paying zero (0%) of the normal member contributions as EPMC;
- The El Cerrito Police Employees Association will pay the entire member contribution of nine percent (9%) to PERS;
- This resolution is effective the first full pay period after July 16, 2014.

NOW THEREFORE, BE IT RESOLVED, that the City Council does hereby modify reporting and payment of employer paid member contributions to PERS as set forth in the conditions above, effective the first full pay period after July 16, 2014.

* * * * *

Agenda Item No. 7(A)
Attachment 4

I CERTIFY that at a regular meeting on July 15, 2014, 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 July XXX, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 7(B)

Date: July 15, 2014

To: El Cerrito City Council

From: Scott Hanin, City Manager
Sky Woodruff, City Attorney

Subject: Direction on November 2014 Sales Tax Ballot Measure for Maintenance of City Services

ACTION REQUESTED

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

- a) Approving an ordinance (Exhibit A to the resolution) extending existing local funding at the one-cent (1.0%) sales tax rate in order to maintain and/or increase the current level of services provided by the City, which would become effective only if adopted by 50 percent plus one vote of the El Cerrito electorate;
- b) Submitting to the El Cerrito electorate a measure to extend existing local funding at the one-cent (1.0%) sales tax rate in order to maintain and/or increase the current level of services provided by the City; and,
- c) Requesting that the Contra Costa Board of Supervisors consent to the consolidation of this election with the statewide general election to be held on November 4, 2014 and direct the Registrar of Voters to provide all services necessary to conduct the election and print a measure on the ballot as described in Section 3 of the resolution.

BACKGROUND

The voters of El Cerrito have approved two transactions and use taxes (also known as “sales taxes”) in recent years. Measure A, the Pothole Repair, Local Street Improvement and Maintenance Measure, was passed in 2008 and is a 0.5% tax that generates funding exclusively for the comprehensive street repair and maintenance program in El Cerrito. Measure A has resulted in a dramatic improvement in the City’s streets and provides a dedicated funding source to maintain them in good condition.

Measure R, the Preservation of Citywide Services Measure, was approved by local voters in 2010. Measure R is a 0.5% general sales tax that generates revenues that have been essential in maintaining city services, including 9-1-1 emergency response, police patrols, and fire protection, with funds that can’t be taken by Sacramento. Measure R has generated approximately \$1.4 million per year and is scheduled to expire in 2017.

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Since 2010, however, El Cerrito's financial challenges have continued to increase largely due to events beyond the City's control. Most notably, the state of California eliminated the City of El Cerrito Redevelopment Agency resulting in a loss of over \$1 million annually to the City and greatly decreased the City's ability to promote economic development and retail growth along San Pablo Avenue. The effects of the recession, continued State takeaways, falling property values, store relocations and strained revenues have continued to take a toll on the City's operating budget.

City staff has worked diligently to deal with these challenges, including making cuts and reductions to balance the budget, and has worked to conduct City operations as efficiently as possible. Additionally, over the past few years, approximately 15% of authorized positions were eliminated or remain unfilled, including police officers, firefighters, maintenance and parks and recreation staff. As the citizens of El Cerrito are asked to increase their financial support, City staff has also made contributions to the City's fiscal sustainability. City employees have agreed to defer or forego adjustments in salary and have increased their contribution to the cost of pension benefits, even as their workloads have grown to cover the loss in productivity from the vacant positions throughout the City. Despite these efforts to control costs, the City's revenue projections have not improved, creating concerns that threaten to erode the quality of service to residents and the accomplishments that have taken years to develop.

In February 2014, staff engaged Godbe Research to conduct a telephone survey of El Cerrito residents to determine their service priorities and gauge support for a possible reauthorization of Measure R. Public safety services such as maintaining 9-1-1 emergency response times and neighborhood police patrols received a high level of support. Respondents also stated a strong desire for programs that enhance quality of life, such as community events, library programs, after-school programs for children and teens, and maintaining parks, playfields and open space.

At the March 4, 2014 City Council meeting, the Council was presented with the results of the completed Godbe Research survey. The initial and final ballot tests found 73% and 71% support, respectively, for a one-cent sales tax to protect and maintain City services and facilities. At this meeting it was moved and seconded (Friedman/Lyman) and carried unanimously to direct staff, based upon the survey results presented at the meeting, to prepare for the possibility of placing a measure on the November 2014 ballot.

To determine the approach for a potential ballot measure to enhance revenues, City staff has taken the following actions:

- At the April 22, 2014 City Council Meeting, a Budget Priority Setting study session was held that included a presentation from staff that discussed the Fiscal Year 2014 budget challenges. Staff provided projections for the next two fiscal years outlining the balancing measures that would be necessary as well as the likely projected level of the City's General Fund reserves.
- On June 9, 2014, the City Manager presented the Fiscal Years 2015 and 2016 Biennial Budget to the City Council. The budget assumptions included the

Agenda Item No. 7(B)

General Fund reserve balance projection at 5.4%, well below the desired 10% minimum. The budget presentation described the necessary balancing measures including continued use of significant vacancies, including police, fire and public works maintenance, and the need for further employee wage concessions to balance the budget.

- On June 17, 2014, the City Council adopted the Biennial Budget and appropriated funds for Fiscal Year 2015, assuming no revenue from a potential ballot measure. At the meeting, there appeared to be a City Council consensus that there was a desire to ensure revenues sufficient to meet the City's needs rather than make additional service reductions.

AB 1324

The current sales tax of 9.5% includes the two El Cerrito sales taxes and the voter-approved sales taxes for the Contra Costa Transportation Authority (0.5%) and BART (0.5%). This total of 2% in "local" sales taxes is at the cap allowed by law; therefore it is currently not possible to increase the City's rate should that be the desire of the City Council, and ultimately the voters, of El Cerrito. On February 8, 2014, the Council authorized Mayor Abelson to request support from Assemblywoman Nancy Skinner in seeking legislation that would allow the City of El Cerrito the flexibility to consider a measure that could increase the current level of transaction and use taxes above the cumulative local limit of 2%. To that end, Assemblywoman Skinner introduced Assembly Bill 1324 that would authorize the City of El Cerrito to impose a separate transactions and use tax for general purposes at a rate of no more than 0.5% that, in combination with other specified taxes, would be allowed to exceed the combined rate limit. At this point, AB 1324 is still active and has not yet been enacted into law. The City Attorney has taken this into consideration within the attached draft ordinance, providing language explaining that the new measure is not effective until AB 1324 becomes law and is in effect. The Board of Equalization has approved of this language.

ANALYSIS

El Cerrito continues to face a variety of fiscal and service delivery challenges, including continued Sacramento takeaways and the slow economic recovery. El Cerrito needs local control over local funds, for local needs.

Although the City's primary operating fund, the General Fund, is in balance, the continued reliance on vacancies is taking a toll on the City's ability to achieve the goals described in the Strategic Plan. Nearly 9% of the approved workforce will remain vacant and approximately 16% of previously approved positions are either vacant or have been eliminated. This is felt most directly in Public Works, Police, Economic Development and Code Enforcement – all areas that directly impact the health and safety of residents. Entering Fiscal Year 2015, the positions of Human Resources Manager, Economic Development Program Manager and an Accounts Receivable Clerk were added to the list of vacancies which already included four vacancies in both the Police and Fire Departments. These vacancies shift responsibilities to existing staff, hindering the ability to deliver the level of service that has come to be expected.

Measure Overview

The ballot measure under consideration has the following key components:

- Measure R would be extended, providing local funding at the one-cent sales tax rate, to sunset in twelve years
- All funds generated by the measure would be used to maintain or increase the current level of services provided by the City
- The measure would allow priority police, fire, recreation services and other positions to be filled over time
- Independent audits of revenues generated would be required
- The Financial Advisory Board would review the use of the funds as part of its annual budget review
- All revenues would be kept local

The City's Comprehensive Financial Policy sets a goal of 10% minimum General Fund reserves. The current projection for the reserves at the end of Fiscal Year 2015 is 5.4 %. Should this measure pass, under the adopted budget, new revenues collected during Fiscal Year 2015 would increase reserves by 1% to 1.5% if all other budget projections remain constant. The actual appropriation of any new funds would be completed by the City Council as part of the Fiscal Year 2016 budget process in 2015.

Because Measure R is a general tax, it can only be considered for extension by the voters at a general municipal election at which members of the City Council are elected. With that being the case, November 2014 would be the optimal time to consider a reauthorization of the measure prior to its expiration, irrespective of the City's current financial challenges.

If Measure R were to be extended at the one-cent rate for 12 years by the citizens of El Cerrito, the measure would continue to provide a protected and reliable source of revenue to prevent further cuts to critical resident services and give El Cerrito local control over local funds for local needs. No funds raised by this ballot measure could be taken by Sacramento. The City would be able to maintain current levels of fire protection and police services, and continue to provide the quality of life programs residents rely on. Revenues from this measure may be used to bring the Police and Fire Departments to full strength, continue services to children and older adults, increase park, playfield and facility maintenance, and maintain current operating hours at the Senior Center, Swim Center, and Library. Any continuation of Measure R funds would continue to require citizens' oversight, mandatory financial audits, and yearly reports to the community to continue to ensure that all voter-approved funds are spent as promised.

Next Steps

The ordinance (Exhibit A to the resolution) would be subject to voter approval and contains the details of the sales tax collection. The proposed resolution would approve the ordinance as written, and calls for the measure to be submitted to the voters of the City at an election to be consolidated with the City Council and statewide election to be held on November 4, 2014. The proposed resolution also directs the City Attorney to

prepare the impartial analysis and authorizes a member of the City Council to prepare the argument in favor of the measure.

FINANCIAL CONSIDERATIONS

If the measure as presented is passed by the voters, General Fund revenues would increase by approximately \$1.4 million annually. These funds would go to core City services such as police, fire, recreation and maintenance of park, playfields and open space.

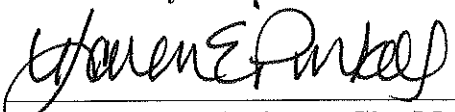
Election Costs

Contra Costa County has estimated that the actual cost of the election to the City will be approximately \$35,000. This amount was included in the adopted Fiscal Year 2015 budget.

LEGAL CONSIDERATIONS

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

Reviewed by:



Karen Pinkos, Assistant City Manager

Attachments:

1. Resolution
2. Ordinance (Exhibit A to Resolution)

RESOLUTION NO. 2014-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO CALLING AND GIVING NOTICE OF THE HOLDING OF THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 4, 2014; APPROVING AN ORDINANCE ENACTING A ONE-CENT SALES TAX FOR TWELVE YEARS FOR THE MAINTENANCE OF CITY SERVICES; ORDERING THE SUBMITTAL OF THE ORDINANCE TO THE VOTERS AT THE ELECTION; AND REQUESTING THAT THE CONTRA COSTA COUNTY BOARD OF SUPERVISORS CONSENT TO THE CONSOLIDATION OF THIS ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE AND DIRECT THE REGISTRAR OF VOTERS TO CONDUCT THE ELECTION

WHEREAS, the State began shifting property tax from local governments in 1992 and these “takes” continue, including about \$1.8 million annually from El Cerrito from a portion of the City’s property tax to the Educational Revenue Augmentation Fund that could otherwise be used for essential City services; and

WHEREAS, since 1993, El Cerrito has been required by State legislation to pay for booking fees and property tax administration, another loss of general fund revenues that would otherwise be available for essential City services; and

WHEREAS, since 2003, the State has taken an additional \$3 million of Redevelopment Agency funds that could have been spent on local projects such as a library, public safety building, senior center or economic development programs; and

WHEREAS, the State has eliminated the City of El Cerrito Redevelopment Agency resulting in a loss of over \$1 million annually to the City and greatly decreased the City’s ability to promote economic development and retail growth along San Pablo Avenue; and

WHEREAS, the recession, continued State takeaways, falling home values, store relocations and strained revenues could erode the high quality of service in the City of El Cerrito and the accomplishments that have taken years to develop; and

WHEREAS, El Cerrito has seen a reduction in sales tax revenue resulting from the closure of the Target Store, the Mitsubishi car dealership, the Guitar Center and OSH and an overall decline in consumer spending; and

WHEREAS, the City has already made cuts and reductions to balance the FY 2015 budget and operate as efficiently as possible; and

WHEREAS, to help balance the budget, approximately 15% of authorized positions are eliminated or unfilled, including police officers, firefighters, maintenance and parks and recreation staff; and

WHEREAS, City’s employees have agreed to defer or forego compensation adjustments and to increase their contributions to offset increased benefit costs to help maintain the current level of service; and

WHEREAS, while the City has made significant progress in reducing certain crimes in El Cerrito, property crimes continue to increase and the current vacancies in the Police Department could result in an overall increase in the crime rate; and

WHEREAS, supporting the services that make El Cerrito a great community are important to our residents' quality of life; and

WHEREAS, El Cerrito needs local control over local funds, for local needs; and

WHEREAS, extending existing, voter-approved funding at the one cent sales tax rate will continue to address city service and delivery needs; and

WHEREAS, additional funding will help maintain current levels of fire and police (public safety) services, including neighborhood patrols, crime prevention programs, and rapid 9-1-1 response times; and

WHEREAS, property crimes have increased in El Cerrito and we desire a fully-staffed police force to prevent crime from getting worse; and

WHEREAS, local funding would help maintain and protect city services for children and teens –including pre-school and after-school programs; and

WHEREAS, the City wishes to continue to address service priorities that the public has identified such as police and fire services, earthquake and disaster preparedness programs, and maintaining city parks, paths, playfields and open spaces; and

WHEREAS, any local funding would continue to require citizens' oversight, mandatory financial audits, and yearly reporting to the community to continue to ensure that all voter-approved funds are spent as promised; and

WHEREAS, at its June 17, 2014 meeting, the City Council adopted a budget for Fiscal Year 2015 and 2016 that recognizes the need for additional revenue to maintain and preserve the level of services and adequate reserves desired by residents of the City; and

WHEREAS, the City Council has concluded that all of the information presented indicates that, to obtain the revenue necessary to maintain and preserve service levels, the Council should call an election to ask the voters of the City to approve a 12-year local transactions and use tax ("sales tax"), the revenue from which could be used to support general municipal services; and

WHEREAS, the tax to be submitted to the voters, if approved, would be imposed on the sale of tangible personal property and the storage, use, or other consumption of such property; the tax rate would be one percent (1.0%) of the sales price of the property; the tax revenue would be collected by the State Board of Equalization and remitted to the City; the tax would be in effect for 12 years, and would then expire automatically, unless extended by the voters; and the tax shall be approved if the measure receives at least a simple majority vote of affirmative votes; and

WHEREAS, at the November 4, 2010 election, the voters of the City approved Measure R, a 0.5% transactions and use tax, to be in effect for eight years and sunset in 2018. Measure R was codified as Chapter 4.62 of the El Cerrito Municipal Code. This ordinance amends and restates

Chapter 4.62 to extend the existing tax for 12 years, until March 31, 2027, and adjust the rate to 1%.

WHEREAS, it is desirable that the election be consolidated with the statewide election to be held on the same date and that within the City, the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of Contra Costa canvass the returns of the General Election and that the election be held in all respects as if there were only one election.

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

SECTION 1. DECLARATION OF FINDINGS.

Current revenues are not sufficient to maintain the current level of services provided by the City. Therefore, the El Cerrito City Council has determined that a measure to extend an existing local sales tax at the one-cent rate be submitted to the voters for approval at a future municipal election; and the next statewide general election is scheduled for November 4, 2014.

SECTION 2. ELECTION CALLED

Pursuant to the requirements of the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of El Cerrito, California, on Tuesday, November 4, 2014, a general municipal election for submitting to the voters the El Cerrito Preservation of Citywide Services Funding Measure.

SECTION 3. MEASURE TO BE SUBMITTED TO VOTERS

The full text of the El Cerrito Preservation of Citywide Services Funding Measure, attached to this Resolution as Exhibit A, shall be completely printed in the voter pamphlet. The City Council, pursuant to its right and authority, does order the following measure to be submitted to the voters which shall appear and be printed on the ballot as follows:

CITY OF EL CERRITO	
To continue to protect/ maintain City services, including fire prevention/ emergency services; emergency response times; neighborhood police patrols; firefighter/ police staffing; crime prevention/ investigation resources; after-school programs; library hours/ programs; senior services; open space, parks, paths/ playfields; other general City services, shall El Cerrito extend the existing voter-approved sales tax and set the future rate at one cent for 12 years, with citizens' oversight, annual audits, and all funds staying local, none to Sacramento?	YES
	NO

SECTION 4. APPROVAL OF ORDINANCE. By an affirmative vote of at least a simple majority of its full membership, the City Council hereby approves the proposed ordinance

to be submitted to the voters, attached hereto as Exhibit A. The proposed measure shall not take effect unless and until approved by a vote of at least a simple majority of affirmative votes of the voters voting on the question at the election. The ordinance specifies that the rate of the transactions tax shall be one percent (1.0%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City; it specifies that the rate of the use tax shall be one percent (1.0%) of the sales price of tangible personal property stored, used or otherwise consumed in the City, and that the tax shall be in effect for 12 years . The State Board of Equalization shall collect the tax from retailers subject to the tax and remit the funds to the City.

SECTION 5. BALLOT FORMAT. The ballots to be used at the election shall be in the same form and content as required by law.

SECTION 6. IMPARTIAL ANALYSIS. The City Attorney is hereby directed to prepare an impartial analysis of the measure pursuant to Elections Code Section 9280 which shall be filed no later than July 28, 2014 at 4:00 p.m.

SECTION 7. BALLOT ARGUMENT. The City Council hereby authorizes the Mayor to submit a ballot argument in favor of the measure, pursuant to Elections Code Section 9282. The last day for filing of primary arguments is July 28, 2014 at 4:00 p.m. At the Mayor's discretion, the argument may also be signed by members of the City Council or representatives of bona fide associations or by individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure, the Mayor is also authorized to submit a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or representatives of bona fide associations or by individual voters who are eligible to vote on the measure.

SECTION 8. REQUESTING THE CONSOLIDATION OF ELECTIONS: Pursuant to Elections Code Section 10400 et seq., the City Council of the City of El Cerrito hereby requests that the Contra Costa County Board of Supervisors consent and agree to the consolidation of the its municipal election with the general election to be held on November 4, 2014 and provide all services necessary to conduct the election and print a measure on the ballot as described in Section 3 of this resolution. The county election department is authorized to canvass the returns of the special municipal election. Within the City of El Cerrito, the election precincts, election officers, hours of voting, polling places and voting booths shall in every case be the same as those selected and designated by the Contra Costa County Registrar of Voters; provided that no person not a qualified elector of the City of El Cerrito shall be permitted to vote for the measure placed on the ballot by the City Council. The City Council recognizes that the County will incur additional costs in conducting the election called by this resolution, agrees to reimburse the County for those costs, and authorizes and directs the City Manager or his designee to expend the funds necessary to pay for the costs of conducting the election.

SECTION 9. PROVISIONS FOR REBUTTAL ARGUMENTS. The provisions of Elections Code Section 9285 shall apply to this election. The last day for filing of rebuttal arguments is August 7, 2014 at 5:00 p.m.

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

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

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

SECTION 13. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). The transactions and use tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the city would undertake the required CEQA review for that particular project. Therefore, under CEQA Guidelines section 15060 review under CEQA is not required.

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

I CERTIFY that at a regular meeting on the 15th day of July 2014, the City Council of the City of El Cerrito passed this resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

ORDINANCE NO. 2014–XX

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING AND RESTATING CHAPTER 4.62 OF THE MUNICIPAL CODE TO EXTEND AND INCREASE AT THE ONE CENT RATE A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

WHEREAS, the State began shifting property tax from local governments in 1992 and these “takes” continue, including about \$1.8 million annually from El Cerrito from a portion of the City’s property tax to the Educational Revenue Augmentation Fund that could otherwise be used for essential City services; and

WHEREAS, since 1993, El Cerrito has been required by State legislation to pay for booking fees and property tax administration, another loss of general fund revenues that would otherwise be available for essential City services; and

WHEREAS, since 2003, the State has taken an additional \$3 million of Redevelopment Agency funds that could have been spent on local projects such as a library, public safety building, senior center or economic development programs; and

WHEREAS, the State has eliminated the City of El Cerrito Redevelopment Agency resulting in a loss of over \$1 million annually to the City and greatly decreased the City’s ability to promote economic development and retail growth along San Pablo Avenue; and

WHEREAS, the recession, continued State takeaways, falling home values, store relocations and strained revenues could erode the high quality of service in the City of El Cerrito and the accomplishments that have taken years to develop; and

WHEREAS, El Cerrito has seen a reduction in sales tax revenue resulting from the closure of the Target Store, the Mitsubishi car dealership, the Guitar Center and OSH and an overall decline in consumer spending; and

WHEREAS, the City has already made cuts and reductions to balance the FY 2015 budget and operate as efficiently as possible; and

WHEREAS, to help balance the budget, approximately 15% of authorized positions are eliminated or unfilled, including police officers, firefighters, maintenance and parks and recreation staff; and

WHEREAS, City’s employees have agreed to defer or forego compensation adjustments and to increase their contributions to offset increased benefit costs to help maintain the current level of service; and

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WHEREAS, while the City has made significant progress in reducing certain crimes in El Cerrito, property crimes continue to increase and the current vacancies in the Police Department could result in an overall increase in the crime rate; and

WHEREAS, supporting the services that make El Cerrito a great community are important to our residents' quality of life; and

WHEREAS, El Cerrito needs local control over local funds, for local needs; and

WHEREAS, extending existing, voter-approved funding at the one cent sales tax rate will continue to address city service and delivery needs; and

WHEREAS, additional funding will help maintain current levels of fire and police (public safety) services, including neighborhood patrols, crime prevention programs, and rapid 9-1-1 response times; and

WHEREAS, property crimes have increased in El Cerrito and we desire a fully-staffed police force to prevent crime from getting worse; and

WHEREAS, local funding would help maintain and protect city services for children and teens –including pre-school and after-school programs; and

WHEREAS, the City wishes to continue to address service priorities that the public has identified such as police and fire services, earthquake and disaster preparedness programs, and maintaining city parks, paths, playfields and open spaces; and

WHEREAS, any local funding would continue to require citizens' oversight, mandatory financial audits, and yearly reporting to the community to continue to ensure that all voter-approved funds are spent as promised; and

WHEREAS, at its June 17, 2014 meeting, the City Council adopted a budget for Fiscal Year 2015 and 2016 that recognizes the need for additional revenue to maintain and preserve the level of services and adequate reserves desired by residents of the City; and

WHEREAS, the City Council has concluded that all of the information presented indicates that, to obtain the revenue necessary to maintain and preserve service levels, the Council should call an election to ask the voters of the City to approve a 12-year local transactions and use tax ("sales tax"), the revenue from which could be used to support general municipal services; and

WHEREAS, the tax to be submitted to the voters, if approved, would be imposed on the sale of tangible personal property and the storage, use, or other consumption of such property; the tax rate would be one percent (1.0%) of the sales price of the property; the tax revenue would be collected by the State Board of Equalization and remitted to the

City; the tax would be in effect for 12 years, and would then expire automatically, unless extended by the voters; and the tax shall be approved if the measure receives at least a simple majority vote of affirmative votes;

WHEREAS, at the November 4, 2010 election, the voters of the City approved Measure R, a 0.5% transactions and use tax, to be in effect for eight years and sunset in 2018. Measure R was codified as Chapter 4.62 of the El Cerrito Municipal Code. This ordinance amends and restates Chapter 4.62 to extend the existing tax for 12 years, until March 31, 2027, and adjust the rate to 1%.

NOW THEREFORE, THE PEOPLE OF THE CITY OF EL CERRITO DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The People of El Cerrito find that all Recitals are true and correct and are incorporated herein by reference.

SECTION 2. Amendment of Municipal Code. Chapter 4.62 of the El Cerrito Municipal Code is hereby amended and restated to read as follows:

4.62.010 - Title.

This ordinance shall be known as the El Cerrito Transactions and Use Tax Ordinance. The city of El Cerrito hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

4.62.020 - Operative Date.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

4.62.030 - Purpose.

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A.** To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B.** To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the

requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

- C.** To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.
- D.** To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

4.62.040 - Contract With State.

Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

4.62.050 - Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one percent (1.0%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

4.62.060 - Place of Sale.

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

4.62.070 - Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one percent (1.0%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

4.62.080 - Adoption of Provisions of State Law.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

4.62.090 - Limitations on Adoption of State Law and Collection of Use Taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A.** Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. However, the substitution shall not be made when:
 - 1.** The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
 - 2.** The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
 - 3.** In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - a.** Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the

provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

- b.** Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
- 4.** In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B.** The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

4.62.100 - Permit Not Required.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

4.62.110 - Exemptions and Exclusions.

- A.** There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B.** There are exempted from the computation of the amount of transactions tax the gross receipts from:
 - 1.** Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 - 2.** Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

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- a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
 - b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
 3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 - C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:
 1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

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3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
 7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- D.** Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

4.62.120 - Amendments.

All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation

Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

4.62.130 - Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

4.62.140 - Annual Audit.

By no later than December 31st of each year, the city's independent auditors shall complete a report shall reviewing the collection, management and expenditure of revenue from the tax levied by this Chapter. The report shall be reviewed by the Financial Advisory Board as part of its review of the annual audit.

4.62.150 – Amendments by City Council.

The following amendments to this Chapter must be approved by the voters of the City: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of Section 12); or extending the tax. The City Council may otherwise amend this Chapter without submitting the amendment to the voters for approval.

4.62.160 - Termination Date.

The authority to levy the tax imposed by this ordinance shall expire on the twelfth anniversary of the operative date (which is anticipated to be March 31, 2027).

SECTION 3. Adjustment of Appropriations Limit. Pursuant to Article XIII B of the Constitution of the State of California and applicable laws, the appropriations limit for the City is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2014-15 and each year thereafter.

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

involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the city would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 6. Effective Date.

This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

SECTION 7. Relationship to Assembly Bill 1324 (2014).

The authority to adopt this ordinance depends in part upon the passage and effectiveness of Assembly Bill 1324 (2014), which was [pending approval in the California Legislature at the time that this ordinance was submitted to the voters of the City for approval. This ordinance shall only become effective if AB 1324 is approved by the Legislature and signed by the Governor. The operative date of the tax approved by this ordinance shall relate to the date of approval by the voters of the City regardless of the effective date of AB 1324, as long as AB 1324 is effective prior to the operative date.

The foregoing ordinance was approved by the following vote of the People of the City of El Cerrito on November 4, 2014:

YESES:

NOES:

The foregoing ordinance was adopted by Declaration of the vote at the November 4, 2014 election by the City Council of the City of El Cerrito on _____, 2014:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

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Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk