



AGENDA

CITY COUNCIL MEETING
Tuesday, August 20, 2013 – 7:00 p.m.
City Council Chambers

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

Greg Lyman – Mayor

Mayor Pro Tem Janet Abelson
Councilmember Jan Bridges

Councilmember Rebecca Benassini
Councilmember Mark Friedman

ROLL CALL

7:00 p.m.

CONVENE CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – Mayor Pro Tem 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. Please state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. PRESENTATIONS – None.

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

Consent Calendar items are considered to be routine by the City Council and will be enacted by one motion unless a request for removal for discussion or explanation is received prior to

the time Council votes on the motion to adopt the Consent Calendar.

A. Minutes for Approval

Approve the July 16, 2013, 2013 Special City Council and July 16, 2013 Concurrent City Council/Public Financing Authority and Pension Trust Board meeting minutes.

B. City Classification Plan Amendments

Adopt a resolution amending the City's Classification Plan to establish the class of Community Service Officer with an initial salary range of \$4,110 to \$4,902 per month and approve a side letter of agreement between the City and the Police Employees Association to include the classification of Community Service Officer.

C. Reject Bids for Ohlone Greenway Natural Area and Rain Garden Project – City Project No. C-3067

Adopt a resolution for the Ohlone Greenway Natural Area and Rain Garden Project, City Project No. C-3067 approving the following actions:

1. Grant the request for relief of bid from Star Construction;
2. Reject the two remaining submitted bids; and
3. Authorize City Staff to proceed with value engineering measures and re-advertise the project for public bid.

D. 2013 Street Improvement Program – City Project No. C-3072

Adopt a resolution approving the following actions:

1. Approve plans for the 2013 Street Improvement Program Project, City Project No. C-3072; and
2. Authorize the City Manager to award a contract, contingent on successful negotiations with VSS International, Inc. (the lowest responsible bidder for the project), for a deductive change order after undergoing a value engineering process which is not inconsistent with the revised budget for the 2013 Street Improvement Program, City Project No. C-3072.

E. Establish School Zone Speed Limit on Lincoln Avenue 500 Feet West of Ashbury Avenue

Adopt a resolution establishing a school zone speed limit of 15 miles per hour (mph) on Lincoln Avenue 500 feet west of Ashbury Avenue.

F. Consultant Services Agreement with Goldfarb & Lipman LLP for Legal Services

Adopt a resolution authorizing the City Manager or his designee to execute a consultant services agreement with Goldfarb & Lipman LLP for legal services related to the implementation of AB1x26 and the City's affordable housing program.

G. Authorize Short Term Cash Loan from Municipal Services Corporation

Adopt a resolution authorizing the City to enter into a short-term no interest cash loan from the Municipal Services Corporation.

H. Local Agency Investment Fund (LAIF) Authorization

Adopt a resolution authorizing the City Manager and Finance Director/City Treasurer to conduct investment transactions with the Local Agency Investment Fund (LAIF).

6. PUBLIC HEARING

Appeal of the Planning Commission's Approval of a Conditional Use Permit to Allow a Wireless Telecommunications Facility on an Existing Utility Pole Near 851 Seaview Drive

Conduct a public hearing and upon conclusion adopt a resolution denying an appeal of the Planning Commission's approval of a Conditional Use Permit to allow a wireless telecommunications facility on an existing utility pole near 851 Seaview Drive.

7. POLICY MATTERS

A. Single Use Bag Ordinance

Introduce by title, waive any further reading, and approve an ordinance amending the El Cerrito Municipal Code by adding Chapter 8.22 – El Cerrito Single-Use Bag Ordinance.

B. Foodware Ordinance

Introduce an ordinance, waive any further reading, and approve an ordinance amending the El Cerrito Municipal Code by adding Chapter 8.24 – El Cerrito Food Ware Ordinance.

C. Annual League of California Cities Conference Resolutions

Confirm Mayor Pro Tem Abelson's appointment as voting delegate at the 2013 League of California Cities Annual Conference and Councilmember Friedman as the alternate, and provide direction to Mayor Pro Tem Abelson regarding the following 2013 League of California Cities Conference resolutions:

1. Water Bond Funds [sponsored by Los Angeles County]
League Recommendation: Approve
2. Public Safety Realignment [Public Safety Committee]
League Recommendation: Approve

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

A. Mayor Lyman Assignments: Commission/Committee Rules Subcommittee, Contra Costa County Mayors' Conference, Crime Prevention Committee, East Bay Green Corridor Principal, Human Relations Commission, Municipal Services Corporation Chair, Pension Trust Board Chair, Public Financing Authority Chair, San Pablo Avenue Area Specific Plan Committee, Successor Agency to the Former Redevelopment Agency Chair, Tree Committee, West Contra Costa Transportation Advisory Committee Alternate, West County Mayors' & Supervisors' Association and West County Integrated Waste Management Authority Delegate.

B. Mayor Pro Tem Abelson Assignments: Committee on Aging, Contra Costa County Mayors' Conference Alternate, Contra Costa Transportation Authority Board Chair, League of California Cities East Bay Division Delegate (also attends as the Council's Delegate to the Annual League Conference), Environmental Quality Committee, Municipal Services Corporation Vice-Chair, Pension Trust Board Vice-Chair, Successor Agency to the Former Redevelopment Agency Vice-Chair, West Contra Costa Transportation Advisory Committee Delegate and West County Mayors' & Supervisors' Association Alternate.

C. Councilmember Benassini Assignments: Association of Bay Area Governments General Assembly Delegate, Financial Advisory Board, Planning Commission, San Pablo Avenue Area Specific Plan Committee and Tom Bates Regional Sports Field Joint Powers Authority Alternate.

D. Councilmember Bridges Assignments: Tom Bates Regional Sports Field Joint Powers Authority Delegate and Design Review Board, Park and Recreation Commission.

Councilmember Friedman Assignments: Arts and Culture Commission, Association of Bay Area Governments General Assembly Alternate, Economic Development Board, Commission/Committee Rules Subcommittee, League of California Cities East Bay Division Alternate and West County Integrated Waste Management Authority Alternate.

9. ADJOURN CITY COUNCIL MEETING

The next City Council meeting is Tuesday, September 17, 2013 at 7:00 p.m. in the City Council Chambers, 10890 San Pablo Avenue, El Cerrito, California.

- 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. 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
PUBLIC FINANCING AUTHORITY
PENSION TRUST BOARD**

MINUTES

SPECIAL CITY COUNCIL MEETING

Tuesday, July 16, 2013 – 6:15 p.m.

Hillside Conference Room

**SPECIAL CONCURRENT CITY COUNCIL / PUBLIC FINANCING AUTHORITY / PENSION
TRUST BOARD MEETING**

Tuesday, July 16, 2013 – 7:00 p.m.

City Council Chambers

Meeting Location

El Cerrito City Hall

10890 San Pablo Avenue, El Cerrito

Greg Lyman – Mayor

Mayor Pro Tem Janet Abelson
Councilmember Jan Bridges

Councilmember Rebecca Benassini
Councilmember Mark Friedman

6:15 p.m. ROLL CALL

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

Absent: Mayor Lyman

CONVENE SPECIAL CITY COUNCIL MEETING

Mayor Pro Tem Abelson convened the Special City Council meeting at 6:15 p.m.

ORAL COMMUNICATIONS FROM THE PUBLIC – No comments.

COMMISSION INTERVIEWS, STATUS AND APPOINTMENTS

Conduct interviews of candidates for city boards, commissions and committees. Interviews may result in an announcement of appointment at the meeting. The City Council may also discuss and determine the scheduling and structure of future interviews.

Action: Interviews conducted. *Mayor Pro Tem Abelson announced the City Council's appointment of Janice Woo as delegate and the reappointment of Tom Panas as alternate to the Contra Costa Library Commission during the regular City Council meeting.*

ADJOURNED SPECIAL CITY COUNCIL MEETING at 6:57 p.m.

ROLL CALL

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

Absent: Mayor Lyman

7:00 p.m. CONVENE SPECIAL CONCURRENT CITY COUNCIL / PUBLIC FINANCING AUTHORITY AND PENSION TRUST BOARD MEETING

Mayor Pro Tem Abelson convened the special concurrent City Council / Public Financing Authority and Employee Pension Trust Board meeting at 7:05 p.m.

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE was led by Mayor Pro Tem Abelson.

2. COUNCIL / STAFF COMMUNICATIONS

Councilmember Friedman reported that he had attended a workshop on the Affordable Care Act convened by Assemblymember Skinner on July 11, 2013. The workshop was very interesting. Many things have yet to be determined regarding implementation of the Affordable Care Act. The Act will have ramifications for everyone. President Obama has backed off on many mandates for businesses.

Mayor Pro Tem Abelson reported that the City's first *Off the Grid* event was a great success with over 1700 people in attendance. *Off the Grid's* gourmet food trucks occur on Wednesday evenings at Fairmont between Carlson and San Pablo Avenue. Everyone is welcome. Mayor Pro Tem Abelson also announced that the City received several awards. The Fire Department received three different grant awards consisting of \$856,000 for a new ladder truck, \$160,000 for breathing equipment and \$65,000 for automated chest compression devices. These grants are all for equipment to be used in our local community and does not have to otherwise come out of the general fund. The City also received a number of 2013 Parents Press Awards for recreation programs and services including Best Children's Care, Best Fair or Festival for the Fourth of July event, Best General and Traditional Summer Camp, Best Gymnastics Classes, Best Independent Pre-School – Casa Cerrito, Best Nature, Animals and Science Summer Camp, Best Sports-writing and Circus Summer Camp, Best Spring Break Summer Camp, Best Swim Classes, and Best Winter Camp. Mayor Pro Tem Abelson thanked everyone for doing a great job.

Mayor Pro Tem Abelson also reported that the City Council completed commission candidate interviews. Janice Woo was appointed as El Cerrito's representative to the Contra Costa Library Commission Delegate and Tom Panas was reappointed as the alternate for terms concluding on June 30, 2017.

Update on *Off the Grid* and Urban Greening Plan Survey – Melanie Mintz, Community Development Director.

Melanie Mintz, Community Development Director, reported that the city received a lot of positive feedback on *Off the Grid*. The event seems to be going smoothly. City Staff is working with local businesses to capitalize on the influx of new people coming into the area and is also encouraging the public to use public transportation and BART.

Ms. Mintz also provided an update on the City's Urban Greening Plan. The first community-wide workshop on the Urban Greening Plan and Active Transportation Plan will occur on July 23.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Diane Hall, El Cerrito, expressed her desire to sell her own baked goods at the Farmers Market for school fundraisers for art classes and requested additional information on how to do it.

Ralph Boniello, El Cerrito, expressed his support for the *Off the Grid* event and requested re-

painting of a red curb that used to exist near Chipotle to prevent cars from parking in the bike lane.

Tyra Wright, El Cerrito, spoke on behalf of the West Contra Costa County Realtors and Contra Costa Association of Realtors. Ms. Wright invited the City Council to attend a reception which honors the service of elected officials.

4. PRESENTATIONS

Update on 1800 Elm Street – Presentation by Chamberlain Associates.

Steve Chamberlain, Chamberlain Associates, introduced himself to the City Council and the public. Mr. Chamberlain stated that he and his wife acquired the Windrush School site last year. Mr. Chamberlain stated that upon retirement he and his wife have decided to focus their philanthropic efforts on public education in the area and described several of their philanthropic endeavors in the West County Community, particularly the facility located at 1800 Elm Street. Chamberlain Associates hopes to create a joint public middle and high school at the site operated by Summit Public Schools.

Kelly Garcia, Summit Schools – Everest High School, described the mission and program goals for Summit Public Schools. Ms. Garcia said that Summit Schools is a nationally recognized organization that is delighted to serve West County and noted that Summit focuses on college readiness, character and community.

Approximately ten people stood in support of the Summit Schools endeavor.

Speakers: Ben Steinberg, Mira Vista Elementary parent, said he would welcome a charter school with open arms and pledged his support to do anything to make the proposed charter school a success.

Dennis Cody, El Cerrito, stated that he is excited about the idea of a charter school that has new ideas and different options for students.

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

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

CITY COUNCIL/PUBLIC FINANCING AUTHORITY/PENSION TRUST BOARD ITEM

A. Minutes for Approval

Approve the June 18, 2013 Special City Council Closed Session and June 18, 2013 Concurrent City Council/Public Financing Authority and Pension Trust Board meeting minutes.

Action: Approved minutes.

CITY COUNCIL ITEMS

B. Establish Speed Limits for Eleven Speed Zones

Adopt a resolution establishing speed limits for eleven speed zones identified in the resolution to allow for enforcement of these limits using radar, lidar or other electronic device in conformance with State of California requirements.

Action: Adopted Resolution No. 2013–35.

C. Application for Federal Funding through the Metropolitan Transportation Commission's Portion of the OneBayArea Grant Program, for the 2013–14 Pavement Rehabilitation Project, C3074

Adopt a resolution applying for \$630,000 in federal Surface Transportation Program (STP) funding through the County portion of the Metropolitan Transportation Commission's

(MTC's) OneBayAreaGrant (OBAG) Program, committing the necessary non-federal match, and stating the assurance to complete the 2013–14 Pavement Rehabilitation Project, C-3074.

Action: Adopted Resolution No. 2013–36.

D. Committee on Aging Appointment

Approve a Committee on Aging recommendation to appoint Nola Veganes Chavez to the Committee on Aging, effective July 24, 2013.

Action: Approved recommendation.

6. PUBLIC HEARING

Fire Hazard Abatement

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.

Presenter: David Ciappara, Fire Prevention Officer.

Action: Moved, seconded (Friedman/Benassini; Ayes – Councilmembers Benassini, Bridges, Friedman and Mayor Pro Tem Abelson; Noes – None; Absent – Mayor Lyman) and carried to adopt Resolution No. 2013–37 declaring a nuisance including a revised Exhibit A.

Mayor Pro Tem Abelson opened the public hearing. No speakers.

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

Action: Moved, seconded (Friedman/Benassini; Ayes – Councilmembers Benassini, Bridges, Friedman and Mayor Pro Tem Abelson; Noes – None; Absent – Mayor Lyman) and carried to adopt Resolution No. 2013–38 including a revised Exhibit A ordering abatement of public nuisances pursuant to El Cerrito Municipal Code Chapter 16.26.

7. POLICY MATTERS

A. Agreement with The Trust for Public Land for Acquisition of Hillside Natural Area Property (APN 505-142-014, -012 and -013)

Adopt a resolution authorizing the City Manager or his designee to enter into the following: 1) Purchase and Sale Agreement; and 2) Professional Services Agreement with the Trust for Public Land for the acquisition of approximately 7.6 acres of open space property adjacent to the Hillside Natural Area for conservation and recreation purposes and for acquisition related and fundraising assistance.

Presenters: Melanie Mintz, Community Development Director, David Sutton, Northern California Director, Trust for Public Land, Brendan Moriarty, Project Manager – San Francisco Bay Area, Trust for Public Land.

Speakers: Dave Weinstein, El Cerrito, President of El Cerrito Trail Trekkers, praised the City Council, City staff and the El Cerrito High School Mountain Bike Community for their efforts and spoke in support of the land acquisition.

Approximately 25 people stood in support of the acquisition.

Michael Mejia, Richmond, President of the Bicycle Trails Council of the East Bay, spoke in support of the acquisition and offered the resources of the Bicycle Trails Council for trail building.

Seth Kaplan, El Cerrito Parks and Recreation Commissioner, spoke in support of the acquisition and noted that the Parks and Recreation Commission was divided when it considered the acquisition. The Commission discussed issues regarding competing needs within the context of limited funds and expressed concerns about the process and not having enough time to fully consider the matter.

Gary Hill, El Cerrito Parks and Recreation Commissioner and coordinator for the El Cerrito High School Mountain Biking Team, spoke in support of the land acquisition. Mr. Hill stated that the property is a critical link between the northern and southern hillside areas and stated that the property's open space will become more important as density increases and will benefit generations to come. Mr. Hill said that \$13,000 has been raised so far.

Anne Ogonowsky, El Cerrito, representing Friends of Five Creeks, spoke in support of the land acquisition.

Ralph Boniello, El Cerrito, spoke in support of the land acquisition and stated that he observed a special creek, native and rare plants and wildlife on the property. The property provides an important linkage for wildlife and for recreational and educational opportunities in the community.

Tom Panas, El Cerrito, spoke in support of the land acquisition and stated that Measure WW funds are a great use for acquisition of this property. Mr. Panas also thanked the Friends of Five Creeks and the El Cerrito Trail Trekkers for bringing the property to the staff's attention and also thanked staff and the Trust for Public Land for following up so promptly and effectively.

Howdy Goudey, El Cerrito, Environmental Quality Committee member, spoke in support of the land acquisition however he encouraged the City Council to reflect on the process undertaken to consider the acquisition. Mr. Goudey said he felt the issue did not hold up to the City's standards for openness and transparency, noted the importance of taking time to prioritize projects within the context of competing needs and asked that future projects be done in the most equitable and representative way.

Betty Buginas, El Cerrito, expressed support for the land acquisition and noted the benefit to the schools, students, families and various community groups.

Philip Martien, El Cerrito, spoke in support of the land acquisition, noted the benefits that will accrue from the purchase and commended staff and the Trust for Public Land for putting the project together.

Susanna Marshland, Kensington, Secretary of the El Cerrito High School Mountain Biking Team, spoke in support of access to trails and expressed her support for the land acquisition.

Alexander Marshland, Kensington, former rider of El Cerrito Mountain Biking team, spoke of the benefits of mountain biking and expressed support for this land acquisition.

Robin Mitchell, El Cerrito, stated that she was one of two Parks and Recreation Commissioners who voted against the project. Ms. Mitchell stated concerns that so much of Measure WW funds will be spent on the land acquisition with little money left for other projects. Ms. Mitchell stated that she believes many residents in the City are underrepresented and will never make it up to the Hillside Natural area but may use other more centrally located green spaces.

Brian Seegers, Kensington, stated that he has been a rider on the El Cerrito Mountain Biking Team for last four years. Mr. Seegers described several benefits resulting from mountain biking and expressed support for the property acquisition.

Judy Forrest, El Cerrito, addressed objections that had been raised to the property acquisition and encouraged acquisition of the property.

Action: Moved, seconded (Benassini/Friedman; Ayes – Councilmembers Benassini, Bridges, Friedman and Mayor Pro Tem Abelson; Noes – None; Absent – Mayor Lyman) and carried to adopt Resolution No. 2013–39.

B. Results of Survey by Godbe Research on Development of Future City Facilities

Receive a presentation from Godbe Research on the results of their telephone survey of El Cerrito residents to ascertain voter opinions related to the potential funding for future City facilities (library, public safety building and recreational facilities) and discuss and provide comments and feedback.

Presenter: Karen Pinkos, Assistant City Manager and Brian Godbe, Principal, Godbe Research.

Speaker: Tom Panas, El Cerrito, expressed delight for the community's support for a Library and pledged support from the Library Friends for a new library.

Action: Received presentation.

SUPPLEMENTAL COMMUNICATIONS

Item No. 4 Update on 1800 Elm Street – Presentation by Chamberlin Associates.

1. Summit Public School: K2 Mission and Background – *Submitted by Kelly Garcia, Summit Schools.*

Item No. 7(A) Agreement with The Trust for Public Land for Acquisition of Hillside Natural Area Property (APN 505-142-014, -012 and -013)

2. Comments in support of the land acquisition – *Submitted by Tom Panas, El Cerrito.*

Item No. 7(B) Results of Survey by Godbe Research on Development of Future City Facilities

3. Comments regarding polling and a new library – *Submitted by Tom Panas, El Cerrito, New Library Committee.*

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

A. Mayor Lyman – Absent.

B. Mayor Pro Tem Abelson reported that she attended the Contra Costa Mayors Conference in which those in attendance received a presentation from Grace Crunican, Executive Director of Bay Area Rapid Transit (BART). Ms. Crunican talked about work BART is doing with infrastructure improvements and upholstery replacement. BART will also be allowing more room for bicycles and standing passengers at entrances to the cars. Additionally, the West Contra Costa Transportation Advisory Committee (WCCTAC) passed its budget and made a one time reduction for dues.

C. Councilmember Benassini reported that the Planning Commission took up AT&T wireless DAS boxes which are proposed to be placed on existing utility poles. Fifteen residents from the Seaview neighborhood spoke out against the projects. It was a long and contentious meeting. The Planning Commission voted to approve and move the project forward. Subsequently, an appeal of the Planning Commission's decision was filed. The Financial Advisory Board (FAB) met and reviewed the City's investment report and the accounting and control policies. The FAB is planning to do additional research on the reserve policy in the future.

D. Councilmember Bridges summarized comments received at the Parks and Recreation Commission when they considered the Busby property and the action the Commission took in approving a recommendation. Councilmember Bridges confirmed with staff that the West Contra Costa Unified School District Joint Powers Agreement (JPA) is still being negotiated. At the Tom Bates Regional Field Joint Powers Authority meeting the group learned that repair work on artificial turf will be evaluated to see if it can be done under warranty. Additionally, a survey has been completed regarding what is being charged at neighboring cities for field use, including adult vs. youth and synthetic vs. grass. Member cities will need to contribute to the JPA in 2015-16. A fee increase is anticipated in the future for users. The Design Review Board did not meet.

E. Councilmember Friedman – No report.

9. ADJOURNED SPECIAL CONCURRENT CITY COUNCIL / PUBLIC FINANCING AUTHORITY AND PENSION TRUST BOARD MEETING at 10:03 p.m.



AGENDA BILL

Agenda Item No. 5(B)

Date: August 20, 2013
To: El Cerrito City Council
From: Sukari Beshears, Human Resources Manager
SUBJECT: City Classification Plan Amendments

ACTION REQUESTED

Adopt a resolution amending the City's Classification Plan to establish the class of Community Service Officer with an initial salary range of \$4,110 to \$4,902 per month. and approve a side letter of agreement between the City and the Police Employees Association to include the classification of Community Service Officer.

BACKGROUND

City management has reorganized and restructured several departments to align services with the City's focus on priorities and goals. Human Resources is working closely with departments to ensure that the City's Classification Plan and job descriptions are updated to reflect changes made during the budget process. Police Department Staff proposed the creation of the Community Service Officer (CSO) classification as part of the adoption of the Fiscal Year 2013-14 budget. The CSO is a non-sworn classification in the Police Department that will perform non-hazardous duties and responsibilities in support of sworn personnel.

ANALYSIS

Based on a review of the current structure and business needs within the Police Department, it is necessary to establish a non-sworn classification that would provide the flexibility to assist sworn personnel and perform duties that are not necessary to be performed by sworn officers. A survey of other cities was conducted and revealed that the Community Service Officer (CSO) classification meets the needs of the department.

Personnel assigned to CSO will work forty hours a week and receive general supervision from higher level sworn personnel. The CSO will be represented by the Police Employees Association (PEA). All non-sworn staff in the department are represented by PEA and it is appropriate for the CSO to be represented by PEA. City staff met with representatives from the PEA regarding the creation and representation of this class and PEA is in agreement.

The City Council's policy on compensation is to establish compensation ranges for all positions based on both external and internal comparisons. Staff conducted a compensation survey and reviewed the survey results in comparison with internal pay equity. As a result of the external and internal comparisons, staff is recommending that

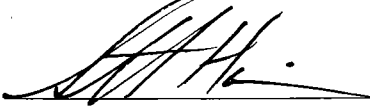
Agenda Item No. 5(B)

the compensation for the CSO classification be set at an initial salary range of \$4,110 to \$4,902 per month.

FINANCIAL CONSIDERATIONS

There will be no additional costs to the Police Department associated with this action and it is within the adopted FY 2013-14 budget.

Reviewed by:

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

Scott Hanin, City Manager

Attachments:

1. Resolution
2. Exhibit A - Class Specification – Community Service Officer
3. Exhibit B - PEA Side Letter

RESOLUTION 2013-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AMENDING THE CITY CLASSIFICATION PLAN AND ADOPTING A SIDE LETTER OF AGREEMENT BETWEEN THE CITY AND THE POLICE EMPLOYEES ASSOCIATION TO INCLUDE COMMUNITY SERVICE OFFICER

WHEREAS, the City Council of the City of El Cerrito has an adopted Classification Plan for positions in the City's service; and

WHEREAS, the current Classification Plan does not include a class description for the Community Service Officer as approved in the adopted FY 2013-14 operating budget; and

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

WHEREAS, the City must amend the Classification Plan and the Police Employees Association Memorandum of Understanding to include the Community Service Officer class and establish compensation.

NOW THEREFORE, BE IT RESOLVED, that the City Council does hereby amend the City's Classification Plan to establish the class specification of Community Service Officer, as specified in Exhibit A; and adopt the Side Letter of Agreement between the City of El Cerrito and the El Cerrito Police Employees Association to include the Community Service Officer class and establish compensation, as specified in Exhibit B, to this resolution and incorporated by reference.

I CERTIFY that at a regular meeting on August 20, 2013, 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 August XX, 2013.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

CITY OF EL CERRITO

COMMUNITY SERVICE OFFICER

*Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are **not** intended to reflect all duties performed within the job.*

DEFINITION

Under general supervision performs a variety of non-hazardous law enforcement duties in support of sworn Police Department staff.

DISTINGUISHING CHARACTERISTICS

This is a non-sworn position that is responsible for providing assistance to sworn personnel. It is distinguished from Police Officer in that the latter is a sworn peace officer and performs the full range of law enforcement duties and responds to hazardous police emergency calls.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from higher level sworn personnel.

ESSENTIAL FUNCTION STATEMENTS

Essential responsibilities and duties may include, but are not limited to, the following:

Essential Functions:

Provide support in patrol, investigations and other divisions within the police department

Assist police officers in routine non-hazardous investigations.

Respond to citizen complaints and assistance at the counter.

Respond to and investigate non-injury traffic collisions.

Prepare and file routine reports and correspondence such as burglary, stolen car, traffic accident, parking enforcement and lost and found property.

Issue citations for parking violations.

Process, collect and document property crime scenes for latent fingerprints.

Collect and document evidence from crime scenes.

Perform traffic control, non-violent crowd control and administer first aid as necessary.

Transport victims, witnesses and equipment.

Perform live scan fingerprints for detainees and the public.

Observe and report damaged street signs, inoperative traffic signals and curb markings in need of maintenance

Refer violations and complaints by citizens to proper authorities and departments.

Locate, investigate and interview victims and witnesses.

Record, analyze and evaluate statements made by victims, witnesses and non-custodial suspects.

May assist with processing cooperative detainees.

May testify in court or at hearings regarding case records and investigative activities.

Marginal Functions:

Performs related duties and responsibilities as required.

QUALIFICATIONS

Knowledge of:

General principles and practices commonly used to establish effective police community relations

English usage, spelling, punctuation and grammar

Record keeping principles and procedures

Ability to:

Learn and effectively explain the policies and procedures pertaining to non-sworn law enforcement work

Exercise sound judgment in a variety of situations

Establish and maintain confidentiality

Learn and understand the criminal and civil judicial systems

Operate modern office equipment, including computers and applicable software

Testify in court

Communicate clearly and concisely, with tact, both orally and in writing

Establish and maintain positive and effective working relationships with those contacted in the course of work

Maintain physical and mental capacities appropriate to the performance of assigned duties and responsibilities

EXPERIENCE AND TRAINING

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Successful completion of the P.O.S.T Basic Police Academy or two (2) years of experience in assisting sworn personnel in performing non-sworn municipal law enforcement duties.

Education/Training:

High school diploma or G.E.D.

License or Certificate:

Possession of, or ability to obtain, an appropriate, valid California driver's license.

PHYSICAL DEMANDS

Sitting:	Occasionally to Frequently	Lifting:	
Standing:	Occasionally		up to 10 lbs: Occasionally to Frequently
Walking:	Occasionally to Frequently		11 to 25 lbs: Occasionally
Bending:	Occasionally		26 to 50 lbs: Occasionally
Crouching:	Occasionally		51 to 75 lbs: Occasionally
Stooping:	Occasionally		76 to 100 lbs: Occasionally
Kneeling:	Occasionally		100 + lbs: Occasionally
Crawling:	Occasionally	Carrying	
Climbing:	Occasionally		up to 10 lbs: Occasionally to Frequently
Balancing:	Occasionally		11 to 25 lbs: Occasionally
Running:	Occasionally		26 to 50 lbs: Occasionally
Twisting:	Occasionally		51 to 75 lbs: Occasionally
Turning:	Occasionally		76 to 100 lbs: Occasionally
Jumping:	Occasionally		100 + lbs: Occasionally

PHYSICAL DEMANDS (continued)

Pushing/Pulling:

up to 10 lbs: Frequently to Constantly
11 to 25 lbs: Occasionally
26 to 50 lbs: Occasionally
51 to 75 lbs: Occasionally
76 to 100 lbs: Occasionally
100 + lbs: Occasionally

Grasping – firm: Occasionally
Finger dexterity: Occasionally
Reaching forward: Occasionally
Pinch grasp: Occasionally
Grasp – light: Occasionally

Coordination - Eye-hand: Frequently
Eye-hand-foot: Occasionally
Driving: Occasionally to Frequently

Talking - Face-to-face: Occasionally to Frequently
Verbal contact: Occasionally to Frequently
Public: Frequently

Vision - Acuity far: Required
Acuity, near: Required
Depth perception: Required
Field of vision: Required
Accommodation: Required
Color vision: Required

Hearing - Conversation: Occasionally to Frequently
Telephone: Occasionally to Frequently
Earplugs: Occasionally

MENTAL REQUIREMENTS

Abstract variables, Interpret instructions, Problems-standard, Detailed-uninvolved instructions, One or two-step instructions, Reading-simple, Reading-complex, Writing-simple, Writing-complex, Math skills-simple, Math skills-complex, Clerical, Synthesizing, Coordinating, Analyzing, Computing, Copying, Comparing, Supervising, Serving, Taking instructions-helping, Setting up, Operating-controlling, Comprehend/follow instructions, Perform simple repetitive tasks, maintain work pace, Relate to other people, Influence other people, Perform varied complex tasks, Generalizations/evaluations, Responsibility for direction.

WORK ENVIRONMENT

Exposure to: Indoors, Outdoors, Using computer/computer monitor screen, dust/fumes/etc., toxic/caustic chemicals, Works around others, works in a remote location alone, works with others.

SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF EL CERRITO
AND
EL CERRITO POLICE EMPLOYEES ASSOCIATION

August 8, 2013

Representatives for the City of El Cerrito and representatives for the El Cerrito Police Employees Association have met and agreed to modify the current Memorandum of Understanding between the City of El Cerrito and the El Cerrito Police Employees Association to recognize that Community Service Officer will be represented by the El Cerrito Police Employees Association as a non-sworn classification assigned to a 40 hour work week. The monthly salary range will be \$4,110-\$4,902.

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

Approved and Accepted:

Date: _____

For The City of El Cerrito

For Police Employees Association



AGENDA BILL

Agenda Item No. 5(C)

Date: August 20, 2013
To: El Cerrito City Council
From: Yvetteh Ortiz, Interim Public Works Director/City Engineer
Subject: Reject Bids for the Ohlone Greenway Natural Area and Rain Garden Project, City Project No. C-3067

ACTION REQUESTED

Adopt a resolution for the Ohlone Greenway Natural Area and Rain Garden Project, City Project No. C-3067 approving the following actions:

- 1) Grant the request for relief of bid from Star Construction;
- 2) Reject the two remaining submitted bids; and
- 3) Authorize City Staff to proceed with value engineering measures and re-advertise the project for public bid.

BACKGROUND

California voters passed the Safe Drinking Water, Water Quality and Supply, Flood Control and Coastal Protection Bond Act of 2006 (Proposition 84), authorizing the legislature to appropriate \$70 million for urban greening projects that reduce energy consumption, conserve water, improve air and water quality, and provide other community benefits. The Strategic Growth Council manages the resulting Urban Greening program which provides competitive grant funds to preserve, enhance, increase or establish community green areas. Criteria for the grant program include using natural systems and creating, enhancing or expanding community green spaces; providing multiple benefits; and maintaining consistency with the State's planning policies pursuant to Section 65041.1 of the Government Code. The specific priorities to maintain pursuant to Section 65041.1 include promoting infill development and investment in existing communities, enhancing environmental and recreational resources, and encouraging location and resource-efficient new development.

On January 18, 2011, the City was notified by the Strategic Growth Council that it had been awarded \$903,721 to implement the project. The project was one of 23 awards made by the State out of a pool of 140 applications.

The project includes improvements along the Ohlone Greenway from Brighton Avenue in Albany to Fairmount Avenue in El Cerrito. The project includes elements to treat urban stormwater runoff; create an informal play/exploration and gathering area; improve walkability; utilize and demonstrate low-maintenance, low-water and native landscaping; improve riparian habitat; and foster connection to nature in this busy, dense location adjacent to neighborhoods, schools, retail, transit and future in-fill Transit-Oriented Development. The project implements

Agenda Item No. 5(C)

the vision and goals of the Ohlone Greenway Master Plan (adopted by Council June 15, 2009) including: establishing focal points along the Greenway, providing better connections through the site to commercial and civic areas; improving safety and security; developing a more maintainable site; providing modern amenities; increasing opportunities for stewardship and community involvement.

City staff has worked with BART and the City of Albany throughout the planning and design phases of the project. Albany will maintain all improvements in its jurisdiction.

The project was advertised for bid in the West County Times on June 10 and 17, 2013. Notices were mailed directly to all contractors on our bidders list and several plan rooms.

ANALYSIS

Three bids were received on July 3, 2013 with the following results:

<u>Name</u>	<u>Location</u>		<u>Bid</u>
Star Construction, Inc.	San Bruno	\$	568,629.87
Bay Construction, Inc.	Oakland	\$	923,066.76
W.R. Forde, Inc.	Richmond	\$	930,012.50
Engineer's Estimate		\$	642,000.00

On July 8, 2013, Staff received a written request from the apparent low bidder, Star Construction, requesting to be relieved of their bid. In their request, they cited a transcription error in one of the bid item unit prices. This error resulted in a lower bid price for this item than they intended; the difference being \$180,000. Their low bid of \$568,629.87 was thus intended to be \$748,629.87. Staff reviewed their request, explanation, and entire bid proposal, along with the bid proposals of the other two bidders, in detail and found merit to their claim of a transcription error. Therefore, Staff recommends acceptance of Star Construction's request for relief of bid.

The next low bid from Bay Construction of \$923,066.76 is approximately 44% above the engineer's estimate of \$642,000. The difference between the next low bid and the third bid received is only \$6,945.74 (or 1% of the lowest bid). This suggests that the bids were reasonable for the work represented on the project plans. Staff contacted the bidders who explained that various elements of the project were very expensive and could be redesigned. The project design consultants agreed with the bidder's comments.

Staff believes that by applying value engineering principals and redesigning certain elements of the project, the project costs would be greatly reduced. However, this approach would be a significant re-design that cannot be correlated to the current bid results; therefore, an award is not recommended at this time (as has been done with other recent projects). Staff recommends rejection of the current bids, re-tooling the design, and rebidding the project in the near future. Also, Staff intends to include various prioritized alternate bid items which would facilitate a

Agenda Item No. 5(C)

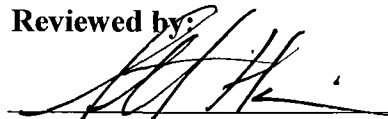
subsequent award by Council of a reduced scope project, if necessary, that would be within budget.

Staff recommends acceptance of Star Construction's request for relief of bid, rejection of all other bids, and authorization to apply value engineering principals to reduce the cost of the project to within budget limits and re-advertise the project for public bid.

FINANCIAL CONSIDERATIONS

This project is included in the current Capital Improvement Program. The funding for this project is provided by a California Prop 84 Urban Greening Grant of \$903,721.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Accompanying Resolution

RESOLUTION 2013 – XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO GRANTING THE REQUEST FOR RELIEF OF BID FROM STAR CONSTRUCTION, REJECTING THE TWO REMAINING SUBMITTED BIDS, AND AUTHORIZING CITY STAFF TO PROCEED WITH VALUE ENGINEERING MEASURES AND RE-ADVERTISE FOR PUBLIC BID, THE OHLONE GREENWAY NATURAL AREA AND RAIN GARDEN PROJECT, CITY PROJECT NO. C-3067

WHEREAS, the City Council previously authorized bids for this project as part of the Capital Improvement Program; and

WHEREAS, the project was advertised for bids on June 10, 2013 and on June 17, 2013 and three bids were received on July 3, 2013; and

WHEREAS, Star Construction, the apparent low bidder, requests relief of their bid due to a transcription error; and

WHEREAS, the next lowest bidder was Bay Construction, Inc. whose total bid, in the amount of \$923,066.76, was 44 percent above the Engineer's Estimate, exceeding the projects' fundable budget; and

WHEREAS, staff has determined that modifying the design through the value engineering process will significantly lower the cost of the project, and that such design modification cannot be correlated with the current bids.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito approves the following actions:

- 1) Grant the request for relief of bid from Star Construction;
- 2) Reject the two remaining submitted bids; and
- 3) Authorize City Staff to proceed with value engineering measures and re-advertise the project for public bid.

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

I CERTIFY that at a regular meeting on August 20, 2013 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

Agenda Item No. 5(C)
Attachment 1

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August XX, 2013.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 5(D)

Date: August 20, 2013
To: El Cerrito City Council
From: Yvetteh Ortiz, Interim Public Works Director/City Engineer
Subject: 2013 Street Improvement Program, City Project No. C-3072

ACTION REQUESTED

Adopt a resolution approving the following actions:

- 1) Approve plans for the 2013 Street Improvement Program Project, City Project No. C-3072; and
- 2) Authorize the City Manager to award a contract, contingent on successful negotiations with VSS International, Inc. (the lowest responsible bidder for the project), for a deductive change order after undergoing a value engineering process which is not inconsistent with the revised budget for the 2013 Street Improvement Program, City Project No. C-3072.

BACKGROUND

Project Description

The 2013 Street Improvement Program is a component of the Measure A funded annual street improvement program. This project is intended to repair seventeen street segments with moderate to severely distressed pavement. The majority of the streets included in this project will be resurfaced by applying an asphalt rubber cape seal that is composed of a two layer system of asphalt rubber chip seal with a slurry seal surfacing. This resurfacing treatment was utilized extensively and successfully in 2009 as a critical element of El Cerrito's Accelerated Pavement Resurfacing Program. The other two street segments are planned to be rehabilitated by removing and replacing the entire existing asphalt concrete pavement, typically called an asphalt concrete inlay. Below is a list of the various project street segments and their planned treatment:

Asphalt Rubber Cape Seal Streets

Bay Tree Lane
Carquinez Avenue – Barrett to Lagunitas
Cutting Blvd – Arlington to Junction
Ivy Court
Jordan Avenue – Nason to Alta Punta
Julian Drive

Julian Court
Lawrence Court
Leneve Place
Potrero Avenue – Arlington to Douglas
Regency Court
Scott Street
Tamalpais Court
Yuba Street – North City Limits to Zara
Waldo Avenue – Pomona to Ashbury

Asphalt Concrete Inlay Streets

Edwards Avenue – Barrett to Poinsett
Knott Avenue – San Pablo to Key

In addition, 20 new curb ramps are planned to be constructed along these street segments. Also, 25 existing curb ramps are planned to be retrofitted with new truncated domes in order to comply with current ADA requirements.

The project was advertised for bid in the West County Times on July 16 and 22, 2013. Notices were mailed directly to all contractors on our bidders list and several plan rooms.

ANALYSIS

Three bids were received on August 6, 2013 with the following results:

<u>Name</u>	<u>Location</u>		<u>Base Bid</u>	<u>Alternates</u>	<u>Total Bid</u>
VSS International	West Sacramento	\$	683,869.00	113,918.00	797,787.00
Intermountain Slurry Seal	French Camp	\$	675,797.01	145,082.99	820,880.00
Ghilotti Bros.	San Rafael	\$	847,178.54	146,886.24	994,064.78
Engineer's Estimate		\$	566,581.05	109,068.50	675,649.55

The bid documents stipulated that the low bidder was to be determined by the Total Bid (Base Bid plus Alternates 1 – 4). The low bidder is VSS International (contractor's license #293727, Class A, B, and C-12) with a bid approximately 18 percent above the Engineer's Estimate of \$675,649 which places its bid outside the project budget.

As with the previous project biddings, staff has considered various options:

1. Reject all bids, redesign the project, and go out to bid again. With prices rising, staff does not recommend this option as it would take longer and expose the City to even higher prices.

Agenda Item No.5(D)

2. Award the project and rely on the value engineering process to reduce the total project costs through deductive change orders.

Staff is recommending the value engineering through a deductive change order approach. Staff has worked with the designer on several value engineering options to lower the project costs, including re-programming one or more of the street segments to the next Fiscal Year's Annual Street Maintenance Program. Staff believes there is a strong likelihood that deductive change orders can be negotiated successfully with the low bidder to bring the project within the existing budget.

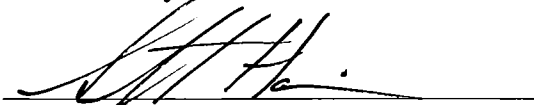
Because we are still in the competitive bidding process, the City cannot negotiate with any bidder. Therefore, we cannot know the actual value of a deductive change. Staff has conservatively estimated that approximately \$175,000 can be deducted from the low bid through elimination of additive bid items, value engineering changes, and deductions that would bring the project within budget.

FINANCIAL CONSIDERATIONS

This project is funded through a \$354,000 State-Local Partnership Program (SLPP) grant with matching and additional funds of \$479,000 provided by Measure A Street Improvement Fund. The total project budget is \$833,000 as shown below.

Design	\$ 77,000
Construction	\$ 595,000
Contingency	\$ 59,500
Inspection, Testing & Admin	\$ 101,500
TOTAL	\$ 833,000

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Accompanying Resolution

RESOLUTION 2013-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING PLANS FOR THE 2013 STREET IMPROVEMENT PROGRAM PROJECT; AND AUTHORIZING THE CITY MANAGER TO AWARD A CONTRACT TO VSS INTERNATIONAL, INC IN AN AMOUNT TO BE DETERMINED AFTER UNDERGOING A VALUE ENGINEERING PROCESS FOR THE 2013 STREET IMPROVEMENT PROGRAM PROJECT, CONTRACT NO. C-3072

WHEREAS, City Council previously authorized bids for this project as part of the Capital Improvement Program; and

WHEREAS, the project was advertised for bids on July 16 and 22, 2013 and three bids were received on August 6, 2013; and

WHEREAS, the lowest bidder was VSS International, Inc. whose total bid, in the amount of \$797,787.00, was 18 percent above the Engineer's Estimate, exceeding the projects fundable budget; and

WHEREAS, staff intends to pursue value engineering options to reduce project costs without jeopardizing any of the critical elements of the project or the intent of the original state grant application; and

WHEREAS, the current funding for this project is provided through State-Local Partnership Program (SLPP) grant funds, and Measure A Street Improvement Funds; and

WHEREAS, the City has the authority to authorize the City Manager to award the contract for this project pursuant to the established common-law doctrine articulated in the case of *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631.

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

- 1) Approves plans for the 2013 Street Improvement Program Project, City Project No. C-3072; and
- 2) Authorizes the City Manager to award a contract, contingent on successful negotiations with VSS International, Inc (the lowest responsible bidder for the project), for a deductive change order after undergoing a value engineering process which is not inconsistent with the revised budget for the 2013 Street Improvement Program Project, City Project No. C-3072.

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

I CERTIFY that at a regular meeting on August 20, 2013 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

Agenda Item No. 5(D)

Attachment 1

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August XX, 2013.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 5(E)

Date: August 20, 2013
To: El Cerrito City Council
From: Yvetteh Ortiz, Interim Public Works Director / City Engineer
Subject: Establish School Zone Speed Limit on Lincoln Avenue 500 Feet West of Ashbury Avenue

ACTION REQUESTED

Adopt a resolution establishing a school zone speed limit of 15 miles per hour (mph) on Lincoln Avenue 500 feet west of Ashbury Avenue.

BACKGROUND

The California Vehicle Code (CVC) Section 22358.4. (b) allows local jurisdictions to establish a 15 mph speed limit when children are present in zones up to 500 feet from school grounds. Specifically, the reduced speed limit is applicable on local streets in a residential district with a maximum of two lanes of traffic and a maximum posted speed limit of 30 mph immediately adjacent to the school zone. Based on the requirements in the CVC and the California Manual on Uniform Traffic Control Devices (MUTCD), when determining the need for the reduced speed, the local jurisdiction must conduct an engineering and traffic survey (“speed survey”) that considers prevailing speeds, collision records, traffic and roadside conditions not readily apparent to the driver, residential density and pedestrian and bicyclist safety.

Lincoln Avenue between Richmond Street and Ashbury Avenue is a two-way local street, with a posted speed limit of 25 mph. The roadway is 30 feet wide, with block lengths of roughly 250 feet. Lincoln Avenue at Richmond Street is controlled with a side-street stop on Lincoln Avenue. The remaining intersections along Lincoln Avenue – Everett Street, Norvell Street, Albemarle Street and Clayton Avenue - are side-street stop controlled on the minor street approach. The intersection of Lincoln Avenue at Ashbury Avenue is controlled with a side-street stop on Lincoln Avenue. Yellow-striped crosswalks are provided on all legs of this intersection, as it provides direct pedestrian access to El Cerrito High School.

In response to resident concerns and a petition from the neighborhood, City Staff and our on-call consultants have been studying the Lincoln Avenue corridor, identifying current issues and presenting potential measures consistent with the Neighborhood Traffic Management Program, adopted by City Council in 2010. One of the measures identified as part of this effort was the establishment of 15 mph school speed zone next to El Cerrito High School. Additional measures include two speed humps and enhanced

traffic striping and pavement markings, which are planned for installation later this Summer and Fall.

ANALYSIS

City Staff engaged the services of Whitlock & Weinberger Transportation, Inc. (W-Trans) to conduct a speed survey for Lincoln Avenue between Richmond Street and Ashbury Avenue in accordance with the requirements set forth in the CVC, MUTCD and established traffic engineering practices. The speed survey demonstrated a high prevailing speed and collision rate on this segment of Lincoln Avenue. Lincoln Avenue is also identified as a bike route in the El Cerrito Circulation Plan for Bicyclists and Pedestrians. Given these conditions, W-Trans is recommending a reduced speed limit of 15 mph on Lincoln Avenue when children are present within 500 feet of El Cerrito High School. The signed and stamped speed survey is attached as Exhibit A to the resolution.

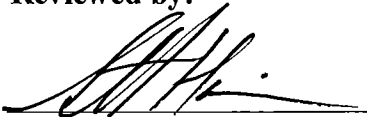
FINANCIAL CONSIDERATIONS

Approval of this resolution will require that several speed limit signs be installed on Lincoln Avenue. The estimated cost is \$1,500. This cost is included in the Public Works, Maintenance Operating budget.

LEGAL CONSIDERATIONS

The City Clerk will certify the resolution and file it with the Contra Costa Superior Court.

Reviewed by:



Scott Hanin, City Manager

Attachment:

1. Accompanying Resolution

RESOLUTION 2013-XX

**RESOLUTION OF THE EL CERRITO CITY COUNCIL ESTABLISHING A SCHOOL ZONE SPEED
LIMIT OF 15 MILES PER HOUR (MPH) ON LINCOLN AVENUE 500 WEST OF ASHBURY
AVENUE**

WHEREAS, the California Vehicle Code (CVC) Section 22358.4. (b) allows local jurisdictions to establish a 15 mile per hour (mph) speed limit when children are present in zones up to 500 feet from school grounds; and

WHEREAS, the Public Works Department engaged the services of Whitlock & Weinberger Transportation, Inc. (W-Trans) to conduct an engineering and traffic survey (“speed survey”) in accordance with the requirements set forth in the California Vehicle Code (CVC), California Manual on Uniform Traffic Control Devices (MUTCD) and established traffic engineering practices; and

WHEREAS, the speed survey demonstrated a high prevailing speed and collision rate on this segment of Lincoln Avenue, which is also identified as a bike route in the El Cerrito Circulation Plan for Bicyclists and Pedestrians; and

WHEREAS, the Public Works and Police Departments have reviewed the speed survey recommendations.

NOW THEREFORE, BE IT RESOLVED that the El Cerrito City Council hereby establishes a school zone speed limit of 15 mph on Lincoln Avenue 500 west of Ashbury Avenue.

BE IT FURTHER RESOLVED, that the Public Works Director / City Engineer is authorized to post the speed limits as appropriate in accordance with this resolution.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file certified copies of this resolution, including the speed survey attached as Exhibit A to this resolution, with the El Cerrito Police Department and Contra Costa Superior Court.

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

I CERTIFY that at a regular meeting on August 20, 2013 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 August ___, 2013.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

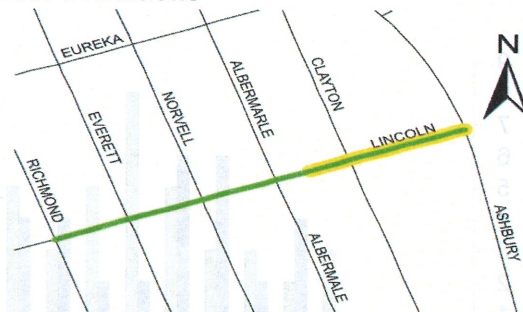
Attachment: Exhibit A

City of El Cerrito
Engineering and Traffic Survey

Street: Lincoln Avenue **From:** Richmond Street **To:** Ashbury Avenue

Existing Speed 25 mph
Width: 25-30 feet
Lanes: 2
Configuration: Undivided
Parking: Some restrictions
Bike Facility: None
Sidewalks: Both sides
Land Use: Residential
Character: Urban
Terrain: Hilly

Street Conditions



Observations and Evaluation

Volume (ADT):	780 vpd	Vehicles Sampled:	100
Segment Length:	0.27 miles	85th Percentile Speed:	30 mph
Collisions:	9 crashes	Mean (50th Percentile) Speed:	24 mph
Evaluation Period:	5 years	Pace:	21 to 30 mph
Collision Rate:	23.42 c/mvm (collisions per million vehicle miles)	Percent in Pace:	75.0%
Statewide Average Rate:	2.80 c/mvm		

(Additional details provided on the next sheet)

Conditions Not Readily Apparent to the Driver:

The calculated collision rate of 23.4 c/mvm exceeds the statewide average of 2.80 c/mvm for comparable streets. The segment is designated as a "proposed class III shared roadway bicycle marking" in the 2007 *Circulation Plan for Bicyclists and Pedestrians*.

Conclusions and Recommendations

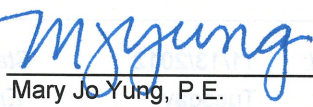
With an 85th percentile speed of 30 mph, the nearest 5 mph increment is 30 mph. However, the collision rate of 23.4 c/mvm far exceeds the statewide average rate for similar facilities. Therefore, it is recommended that the speed limit be posted at 5 mph below the nearest 5 mph increment, or **25 mph**, between Richmond Street and 500 feet west of Ashbury Avenue. In addition, due to the extremely high collision rate, it is further recommended that the school zone, between Ashbury Avenue and 500 feet west of Ashbury Avenue, be posted at **15 mph**, in accordance with the provisions of Section 22358.4 and Sections 627, 22357, 22358 and 40802 of the *California Vehicle Code*.

25 mph Richmond St to 500 ft
west of Ashbury Ave, and
15 mph (school zone) Ashbury
Ave to 500 ft west of Ashbury
Ave

Recommended
Speed Limit

August 12, 2013
Date




Mary Jo Yung, P.E.

Street: Lincoln Avenue

From: Richmond Street

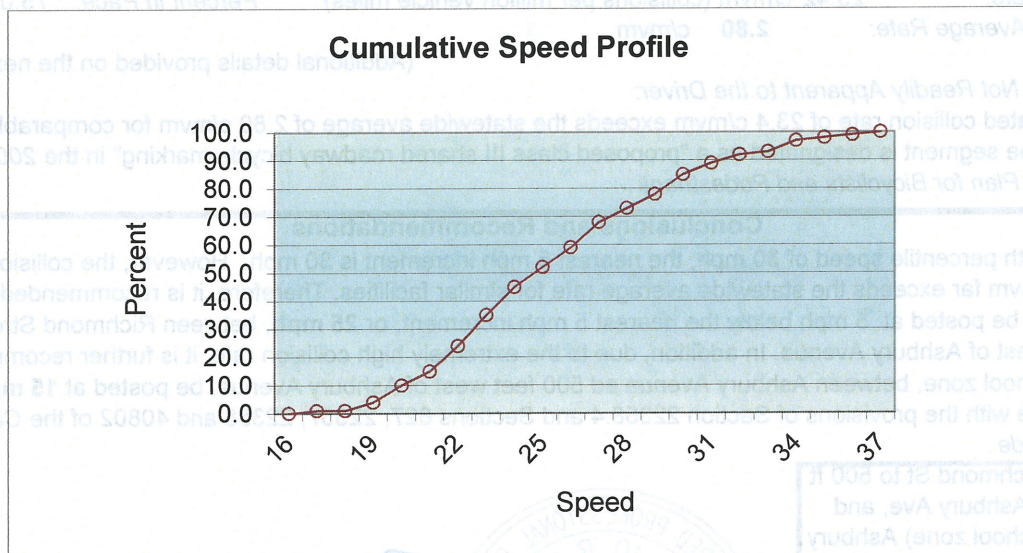
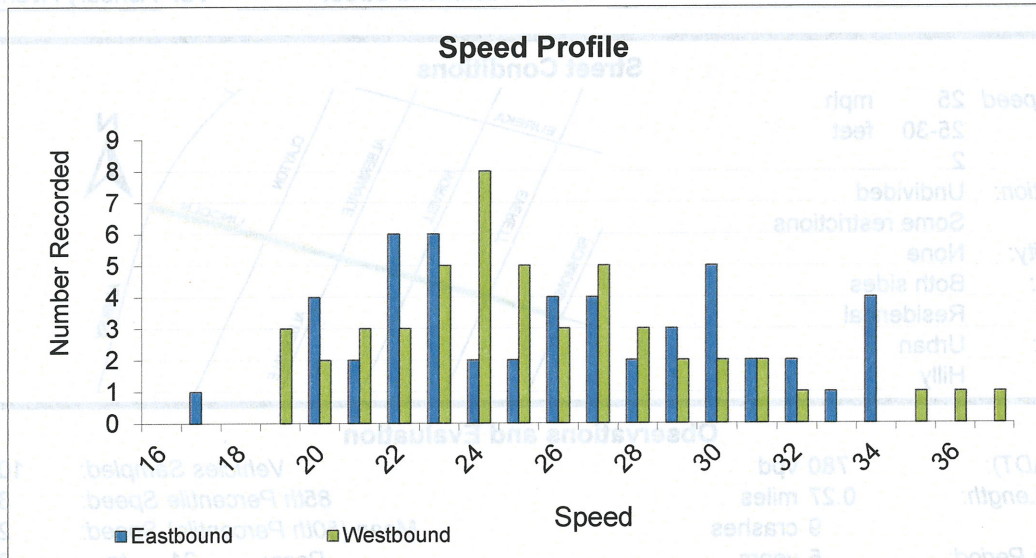
To: Ashbury Avenue



Eastbound



Westbound



Date Data Collected: 11/13/2012

Start Time: 12:20

Weather: Clear

Day of the Week: Tuesday

End Time: 14:30

Recorder: Wiltec



AGENDA BILL

Agenda Item No. 5(F)

Date: August 20, 2013

To: El Cerrito City Council

From: Hilde Myall, Housing Program Manager
Lori Treviño, Finance Manager/Special Projects

Subject: Consultant Services Agreement with Goldfarb & Lipman LLP for Legal Services

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute a consultant services agreement with Goldfarb & Lipman LLP for legal services related to the implementation of AB 1x26 and the City's affordable housing programs.

BACKGROUND

The law firm of Goldfarb & Lipman provided legal services to the former El Cerrito Redevelopment Agency (the "RDA") for redevelopment, economic development and affordable housing activities since its inception, having served as legal counsel for a number of successful projects and programs.

The Agency was dissolved effective February 1, 2012 pursuant to the Fiscal Year 2011-12 State budget bill, AB 1x26 (the "Dissolution Act"). As the RDA was dissolved, Goldfarb & Lipman continued to provide legal services to the City related to redevelopment dissolution and affordable housing programs for the remainder of the FY 2011-12, and then under a new contract with the City for FY 2012-13.

ANALYSIS

Continuity in legal advice and representation is important both for housing projects and programs of the former RDA that have been transferred to the City and for matters related to the dissolution of the former RDA, administration of the El Cerrito Redevelopment Agency Successor Agency, and ongoing implementation of AB 1x26. Staff recommends that the City continue to retain the law firm of Goldfarb & Lipman LLP to provide such legal services for FY 2013-14.

FINANCIAL CONSIDERATIONS

The total proposed not-to-exceed amount of this contract is \$60,000, of which \$40,000 is to be allocated for legal services related to the Successor Agency and \$20,000 for City affordable housing-related services.

The \$40,000 Successor Agency portion of the contract would be funded out of the Finance Department budget within the General Fund appropriations and is included in the approved FY 2013-14 City Budget. The City will receive an allowance of up to \$250,000 from the Redevelopment Property Tax Trust Fund for FY 2013-14 to

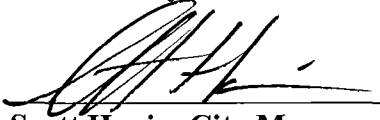
Agenda Item No. 5(F)

administer the Successor Agency, which will reimburse the City for the cost of legal services under this contract. The \$20,000 housing portion of the requested contract will be paid for from the Special Revenue Housing Fund and was included in the approved FY 2013-14 City Budget. All services performed under this contract will be performed at the direction and request of the City.

LEGAL CONSIDERATIONS

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

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. City Council Resolution
2. Proposed Consulting Services Agreement with Goldfarb & Lipman LLP

RESOLUTION NO. 2013-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO (THE "CITY") AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTANT SERVICES AGREEMENT FOR UP TO \$60,000 WITH GOLDFARB & LIPMAN LLP FOR LEGAL SERVICES RELATED TO THE SUCCESSOR AGENCY OF THE FORMER EL CERRITO REDEVELOPMENT AGENCY AND FOR AFFORDABLE HOUSING PROGRAMS

WHEREAS, as part of the 2011-12 State budget bill, AB1x26 (the "Dissolution Act") was enacted significantly modifying the Redevelopment Law to require the dissolution of redevelopment agencies throughout California and the establishment of successor agencies to wind down the former redevelopment agencies' affairs; and

WHEREAS, on August 15, 2011, pursuant to the Dissolution Act, the City elected to serve as the Successor Agency to the El Cerrito Redevelopment Agency (the "Successor Agency"); and

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

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

WHEREAS, the City adopted Resolution No. 2012-43 on June 19, 2012 retaining Goldfarb & Lipman LLP to provide legal services related to the Successor Agency and the City's affordable housing programs for FY 2012-13; and

WHEREAS, the City Council desires to retain the law firm of Goldfarb & Lipman LLP to provide legal services related to the dissolution of the RDA, the administration of the Successor Agency, the wind down of the former redevelopment agency's affairs, and the City's housing functions as Housing Successor; and

WHEREAS, the City's adopted FY 2013-14 budget appropriated funding for legal services related to both the Successor Agency's activities and the affordable housing program.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City Council finds that the above recitals are accurate.
2. The City Council hereby authorizes and directs the City Manager to prepare and execute a contract with Goldfarb & Lipman LLP in an amount not to exceed \$60,000.
3. This Resolution shall become effective immediately upon its adoption.

I CERTIFY that at the regular meeting on August 20, 2013, the City Council of the City of El Cerrito passed this resolution by the following vote:

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

IN WITNESS of this action, I have hereunto set my hand and affixed the official Seal of said City, this ____ day of August, 2013.

Cheryl Morse, City Clerk

Approved:

Gregory B. Lyman, Mayor

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF EL CERRITO AND
GOLDFARB & LIPMAN LLP

THIS AGREEMENT for consulting services is made by and between the City of El Cerrito ("City") and Goldfarb & Lipman LLP ("Consultant") (together referred to as the "Parties") as of August 20, 2013 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on July 1, 2014, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.
- 1.5 **Reserved**

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$60,000, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, and the balance available under the Agreement;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Reserved.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B. Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any

and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.
- 4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
 - b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant

- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered

pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in

employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 15 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall included, but not be limited to, the following:
- 8.6.1 Immediately terminate the Agreement;
 - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.
- 9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10 **MISCELLANEOUS PROVISIONS.**

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et*

seq., the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration. This Agreement shall be administered by Hilde Myall, Housing Program Manager, ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

- 10.10 Notices. Any written notice to Consultant shall be sent to:

Goldfarb & Lipman
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Karen Tiedemann

Any written notice to City shall be sent to:

Scott Hanin, City Manager
City of El Cerrito,
10890 San Pablo Avenue
El Cerrito, CA 94530

- 10.11 Reserved

- 10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Payment Schedule and Reimbursable Expenses

- 10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

CITY OF EL CERRITO

CONSULTANT

Scott Hanin, City Manager

Karen M. Tiedemann, Partner
Goldfarb & Lipman LLP

Attest:

Cheryl Morse, City Clerk

Approved as to Form:

Sky Woodruff, City Attorney

1011032_1.DOC

EXHIBIT A

SCOPE OF SERVICES

1. Provide legal services related to the implementation of AB1x 26, including advice to the City regarding successor agency functions, formation of Oversight Board, compliance with the requirements of AB1x 26 and related matters. Budget for this task shall is not to exceed \$40,000.
2. In addition Consultant shall provide legal advice regarding the City's affordable housing programs, including the City responsibilities as the successor to the former Redevelopment Agency's housing functions. Budget for this task shall is not to exceed \$20,000.

All services will be performed at the direction and request of the City.

EXHIBIT B

ATTORNEYS AND RATE SCHEDULE

M David Kroot	260
John T. Nagle	260
Polly V. Marshall	260
Lynn Hutchins	260
Karen M. Tiedemann	260
Thomas H. Webber	260
John T. Haygood	260
Dianne A. Jackson McLean	260
Michelle D. Brewer	260
Jennifer K. Bell	260
Robert C. Mills	260
James T. Diamond, Jr.	260
Isabel L. Brown	255
Heather Gould	250
Margaret F. Jung	250
Juliet E. Cox	250
Barbara Kautz	245
William F. DiCamillo	245
Erica Williams Orcharton	220
Amy DeVaudreuil	210
Luis A. Rodriguez	185
Rafael Yaquian-Illescas	165
Xochitl Marquez	165
Josh Mukhopadhyay	165
Senior Law Clerks	135
Law Clerks	125
Project Coordinators	125

In addition to our fees for legal services, we also charge for messenger, reproduction, facsimile, and other costs and expenses incurred on your behalf.



AGENDA BILL

Agenda Item No. 5(G)

Date: August 20, 2013
To: El Cerrito City Council
From: Lisa Malek-Zadeh, Finance Director/City Treasurer
Subject: Authorize Short Term Cash Loan from the Municipal Services Corporation

ACTION REQUESTED

Adopt a resolution authorizing the City to enter into a short-term no interest cash loan from the Municipal Services Corporation (MSC).

BACKGROUND

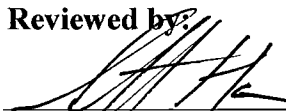
Each year, prior to the distribution of property tax revenues, the City's cash is at its lowest. During this time, receipt of revenues is low, while expenses are higher than normal. In addition to current year expenditures for payroll and other operating expenses, the City must make large debt service payments as well as paying remaining prior year expenditures that are not invoiced until the beginning of the new fiscal year.

ANALYSIS

As in previous years, with City Council approval, the City will issue Tax Anticipation Notes (TANs). The City is currently soliciting bids and plans to bring an item to Council for consideration in September. Until the TANs are issued, the City will enter into a loan agreement with the MSC for \$575,000 in order to address this temporary cash shortfall. This is a no interest, short-term cash loan requiring repayment no later than June 30, 2014. Depending on the City's cash needs, the loan will be repaid with anticipated tax and other general City revenues on or before the June 30th date.

Funding from the MSC is available and will be considered at the MSC meeting following this evening's City Council meeting.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. Loan Agreement

RESOLUTION 2013--XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING
THE CITY MANAGER TO ENTER INTO A LOAN AGREEMENT WITH THE MUNICIPAL
SERVICES CORPORATION**

WHEREAS, the City of El Cerrito, authorizes the City Manager to enter into a loan agreement with the Municipal Service Corporation (MSC) for \$575,000; and

WHEREAS, the City will not be charged any interest or other cost for use of the funds;
and

WHEREAS, the City will be required to repay the loan no later than June 30, 2014; and

WHEREAS, the City will use tax and other general city revenues to repay the loan; and

WHEREAS, the loan agreement will be considered by the MSC Board at its next meeting.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito hereby authorizes the City Manager to enter into an agreement with the MSC for a short-term, no interest cash loan of \$575,000, substantially in the form attached hereto as Exhibit A.

I CERTIFY that at the regular meeting on August 20, 2013 the El Cerrito City Council passed this resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August ___, 2013.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

**EXHIBIT A TO
RESOLUTION 2013-XX**

**LOAN AGREEMENT BETWEEN
THE CITY OF EL CERRITO AND
THE EL CERRITO MUNICIPAL SERVICES CORPORATION**

THIS LOAN AGREEMENT (this "Agreement") is entered into as of August __, 2013 (the "Effective date"), by and between the City of El Cerrito, a California municipal corporation (the "City"), and the El Cerrito Municipal Services Corporation, a nonprofit public benefit corporation (the "Corporation"). The City and the Corporation are hereinafter collectively referred to as the "Parties."

RECITALS

A. The Corporation is a nonprofit public benefit corporation organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes. The specific charitable and public purposes for which the Corporation is organized are, among other things, to benefit and support the City of El Cerrito, in accordance with Section 509(a)(3) of the Internal Revenue Code of 1986, as amended, and to lessen the burdens of government of the City.

B. As a result of the schedule for disbursement by the State of California of various tax and other revenues to the City, the City is presently experiencing a need for short-term cash flow assistance to fund operations. The City has initiated the process of issuing Tax Anticipation Notes to cover the current cash-flow needs, but anticipates needing some additional source of temporary funding until it can complete that process. The City has therefore requested a short-term loan from the Corporation.

C. The Corporation believes that providing short-term cash-flow assistance to the City in the form of a loan is consistent with its corporate purposes and is willing to loan funds to the City pursuant to the terms and conditions described in this Agreement.

D. Concurrently herewith the City shall execute a promissory note (the "Note") in the amount of the Loan. This Agreement and the Note are collectively hereinafter referred to as the "Loan Documents."

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

ARTICLE I LOAN TERMS

1.1. Loan and Note. Corporation agrees to loan to City, and City agrees to borrow from Corporation, subject to the provisions of Section 1.2.1, repay to City, the sum of up to Five hundred seventy five thousand dollars (\$575,000) upon the terms and conditions and for the purposes set forth in this Agreement (the "Loan"). The Loan shall be evidenced by the Note which shall be dated as of the Effective Date and executed by the City substantially in the form attached hereto as Exhibit A. Provided that City has complied with all conditions set forth in Section 2.3, the Loan Proceeds shall be disbursed in accordance with Section 2.2 hereof. The Parties agree that the Corporation shall disburse Loan Proceeds only for and to the extent necessary for the purposes set forth in Section 2.1.

1.2. Interest Rate; Right to Demand Payment Upon Default. The outstanding principal balance of the Note shall bear interest at the rate of zero percent (0%) simple interest per annum. Provided that the City is not in default under the Loan Documents, no periodic payments shall be due on the Loan. The Corporation shall have the right to declare the entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the Loan Documents due and payable in full upon the occurrence of an Event of Default under the Loan Documents and the expiration of any applicable cure period.

1.3. Loan Forgiveness. Notwithstanding the foregoing, provided that no default on the part of the City has arisen under the Loan Documents and remained uncured beyond any applicable cure period, the Corporation may forgive the full original principal balance of the Loan.

1.4. Payment. The City shall fully repay the Loan on or before June 30, 2014, unless the Parties agree to a later date. At the City's discretion, it may repay the Loan in a single lump sum or in installments of any amount that equal the amount of the Loan.

1.5. Prepayment. The Loan or any portion of the outstanding principal balance due under the Loan Documents may be prepaid at any time and from time to time, without penalty or premium. Prepayments shall be applied first to accrued but unpaid interest and then to principal. In no event shall any amount due under the Loan Documents become subject to any rights of offset, deduction, or counterclaim on the part of the City.

ARTICLE II USE AND DISBURSEMENT OF LOAN PROCEEDS

2.1. Use of Proceeds. The City may use the proceeds of the Loan (“Loan Proceeds”) solely and exclusively to pay for legitimate costs of governmental operation.

2.2. Disbursement of Proceeds. Upon satisfaction of the conditions set forth in Section 2.3, provided that the City has provided Corporation with such other documentation as Corporation may reasonably require, Corporation shall disburse Loan Proceeds to City in a lump sum.

2.3. Conditions Precedent to the Disbursement of Proceeds.

(a) Corporation’s obligation to disburse the Loan Proceeds is conditioned upon the City’s delivery to the Corporation of fully-executed and acknowledged copies of the Note and this Agreement and such documentation as Corporation shall reasonably require regarding City’s authority to execute and perform its obligations under the Loan Documents.

(b) No material adverse change as determined by the Corporation in its reasonable judgment shall have occurred in the financial or other condition of the City since the date of this Agreement.

ARTICLE III REPRESENTATIONS, WARRANTIES, AND COVENANTS

3.1. City's Representations, Warranties, and Covenants. The City represents and warrants to the Corporation as follows, and the City covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.1 not to be true, the City shall immediately give written notice of such fact or condition to the Corporation. The City acknowledges that the Corporation shall rely upon the City’s representations made herein notwithstanding any investigation made by or on behalf of the Corporation.

(a) Legal Status; Authority. The City is California municipal corporation, duly organized and operating under the laws of the State of California. The City has the full right, power and authority to deliver and perform all obligations of the City under the Loan Documents. The City’s execution, performance and delivery of the Loan Documents has been duly authorized by all requisite actions, and when executed and delivered will each constitute a valid and binding obligation of the City, enforceable in

accordance with the respective terms thereof. The persons executing this Agreement on behalf of the City have been duly authorized to do so. This Agreement and the other Loan Documents constitute valid and binding obligations of the City, enforceable in accordance with their respective terms.

(b) No Conflict. The execution of the Loan Documents and the City's performance thereunder do not and will not result in a breach of or constitute a default under any agreement, contract, order, indenture or other instrument to which the City is a party or by which the City may be bound.

(c) No Litigation or Other Proceeding. There are no pending or, to the City knowledge, threatened actions or proceedings before any court or administrative body which may adversely affect the financial condition or operation of the City or the City's use of the Proceeds.

(d) No Bankruptcy. The City is not the subject of a bankruptcy or insolvency proceeding.

(e) Compliance with Laws. The City is in compliance in all material respects with all local, state, and federal laws, rules, regulations, orders, and decrees that are applicable to the Loan or to the City in relation thereto ("Applicable Law")

3.2. Corporation's Representations, Warranties, and Covenants. The Corporation represents and warrants to the City as follows, and the Corporation covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.2 not to be true, the Corporation shall immediately give written notice of such fact or condition to the City. The Corporation acknowledges that the City shall rely upon the Corporation's representations made herein notwithstanding any investigation made by or on behalf of the City.

(a) Legal Status; Authority. The Corporation is a nonprofit public benefit corporation, duly organized and operating under the laws of the State of California and the United States. The Corporation has the full right, power and authority to deliver and perform all obligations of the Corporation under the Loan Documents. The Corporation's execution, performance and delivery of the Loan Documents has been duly authorized by all requisite actions, and when executed and delivered will each constitute a valid and binding obligation of the Corporation, enforceable in accordance with the respective terms thereof. The persons executing this Agreement on behalf of the Corporation have been duly authorized to do so. This Agreement and the other Loan

Documents constitute valid and binding obligations of the Corporation, enforceable in accordance with their respective terms.

(b) No Conflict. The execution of the Loan Documents and the Corporation performance thereunder do not and will not result in a breach of or constitute a default under any agreement, contract, order, indenture or other instrument to which the Corporation is a party or by which the Corporation may be bound.

(c) No Litigation or Other Proceeding. There are no pending or, to the Corporation knowledge, threatened actions or proceedings before any court or administrative body which may adversely affect the financial condition or operation of the Corporation or the Corporation's ability to make the Loan.

(d) No Bankruptcy. The Corporation is not the subject of a bankruptcy or insolvency proceeding.

(e) Compliance with Laws. The Corporation is in compliance in all material respects with all local, state, and federal laws, rules, regulations, orders, and decrees that are applicable to the Loan or to the Corporation in relation thereto ("Applicable Law")

ARTICLE IV INDEMNIFICATION

4.1. Indemnification of Corporation by City. The City shall defend (with counsel reasonably acceptable to Corporation), hold harmless and indemnify the Corporation, its officers, employees and agents from and against all claims, liability, costs, expenses, loss or damages of any nature whatsoever, including reasonable attorneys' fees, arising out of or in any way connected with its failure to perform its covenants and obligations under this Agreement and any of its operations or activities related thereto, excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified, or held harmless.

4.2. Indemnification of City by Corporation. The Corporation shall defend (with counsel reasonably acceptable to Corporation), hold harmless and indemnify the City, its officers, employees and agents from and against all claims, liability, costs, expenses, loss or damages of any nature whatsoever, including reasonable attorneys' fees, arising out of or in any way connected with its failure to perform its covenants and obligations under this Agreement and any of its operations or activities related thereto,

excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified, or held harmless.

ARTICLE V EVENTS OF DEFAULT AND REMEDIES

5.1. Events of Default. Each of the following events will constitute an Event of Default (“Event of Default”) under this Agreement:

- (a) Non-disbursal of Loan Proceeds. The Corporation’s failure to disburse Loan Proceeds pursuant to this Agreement.
- (b) Nonpayment. The City’s failure to make payments pursuant to this Agreement.
- (c) Failure to Perform. Either Party’s failure, neglect or refusal to perform any promise, agreement, covenant or obligation contained in this Agreement, after any applicable cure periods.

5.2. Notice of Default. Whenever any Event of Default has occurred, other than a failure to pay any sums due, a Party shall give written notice of default to the other Party. If the default is not cured within thirty (30) calendar days after the Date of Default (defined herein), or any extension approved in writing by the Party providing notice, the Party not in default may enforce its rights and remedies under Section 5.3 below. Any default that has occurred will be deemed to commence on the date that written notice of default is effective pursuant to Section 6.1 of this Agreement (the “Date of Default”). In the event of a default in the payment of any payment when due, the City shall have ten (10) calendar days from the payment due date to cure such default, whether or not the Corporation gives written notice.

5.3. Remedies. Upon the occurrence of any Event of Default, a Party, in addition to any other remedies provided herein or by law, has the right, at its option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) In the event that the City fails to make a loan payment, the Corporation may accelerate and declare the balance of the Loan and interest accrued thereon immediately due and payable.
- (b) Seek specific performance to enforce the terms of the Loan Documents.

(c) Pursue any and all other remedies available under law to enforce the terms of the Loan Documents and the Party's rights thereunder.

5.4. Remedies Cumulative. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided in any other Loan Document. A Party may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

ARTICLE VI MISCELLANEOUS

6.1. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- (a) Personal delivery, in which case notice shall be deemed delivered upon receipt;
- (b) Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- (c) Nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- (d) Facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

City:

City of El Cerrito
Attn: Finance Director/City
Treasurer
10890 San Pablo Avenue
El Cerrito, CA 94530-2323

Corporation:

El Cerrito Municipal Services Corporation
Attn: Chief Financial Officer
10890 San Pablo Avenue
El Cerrito, CA 94530-2323

6.2. Counterparts. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

6.3. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

6.4. Legal Actions; Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

6.5. Captions; Interpretation. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

6.6. Further Assurances. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

6.7. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

6.8. Governing Law; Venue. This Agreement shall in all respects be construed and enforced in accordance with laws of the State of California without regard to principles of conflicts of laws. The Parties agree that any action to enforce or interpret this Agreement shall be litigated exclusively in courts having jurisdiction in Contra Costa County. The Parties irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

6.9. Waiver; Modification And Amendment. No failure or delay on the part of the a Party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by a Party therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on a Party in any case shall entitle the Party to any other or further notice or demand in similar or other circumstances. No amendment to this Agreement shall be effective unless and until such amendment is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

6.10. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, the Corporation's obligation to make the Loan is personal to the City, and shall not be assignable by the City by operation of law or otherwise absent the express written consent of the Corporation, and any such assignment by operation of law or otherwise shall be void.

6.11. No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

6.12. Entire Agreement; Exhibits. This Agreement, together with the other Loan Documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibit A attached hereto is incorporated herein by reference as though fully set forth herein.

6.13. Survival. All representations made by the Parties herein, all indemnity provisions and all other provisions that state that they shall survive the termination hereof shall survive the expiration or earlier termination of this Agreement. The representations of a Party made herein have been or will be relied upon by the other Party, notwithstanding any investigation made by the party or on its behalf.

6.14. Corporation Status. The City recognizes and agrees that the Corporation is not a commercial lending institution, but a public benefit nonprofit corporation acting pursuant to its corporate purpose. Any duties or obligations that a commercial lending institution might have to the City shall not apply to this transaction except as set forth herein and in the Loan Documents.

6.15. Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council.

6.16. Non-Liability of City and City Officials, Employees, and Agents. No member, official, employee or agent of the City shall be personally liable to the Corporation or any successor in interest to any of the foregoing in the event of any default or breach by the City, or for any amount of money which may become due to the Corporation or the Corporation's successors in interest or for any obligation of City under this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the City and the Corporation have executed this Agreement as of the Effective Date.

City of El Cerrito

El Cerrito Municipal Services Corporation

Scott Hanin, City Manager

Scott Hanin, Executive Director

Attest:

Attest:

Cheryl Morse, City Clerk

Cheryl Morse, Secretary

Approved as to Form:

Approved as to Form:

Sky Woodruff, City Attorney

Karen Tiedemann, Counsel

2124092.1

EXHIBIT A
FORM OF PROMISSORY NOTE

PROMISSORY NOTE

\$575,000

El Cerrito, California

August __, 2013

A. FOR VALUE RECEIVED, the CITY OF EL CERRITO, a municipal corporation, operating and as authorized by applicable law of the State of California ("Maker"), promises to pay to the EL CERRITO MUNICIPAL SERVICES CORPORATION ("Holder"), the principal sum of FIVE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$575,000), or so much thereof as may be advanced by Holder pursuant to the loan agreement described below, together with interest on the outstanding principal balance, in accordance with the terms and conditions described herein.

This Promissory Note ("Note") has been executed and delivered pursuant to the terms of a Loan Agreement dated August __, 2013 (the "Agreement") between Maker and Holder which details the terms and conditions under which Holder agrees to lend to Maker, and Maker agrees to borrow, up to FIVE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$575,000), (the "Loan"). The Agreement requires Holder to disburse the amount for the Loan in a lump sum. This Note reflects the disbursement under the Agreement. The rights and obligations of Maker under this Note shall be governed by the Agreement and by the terms set forth in this Note. Capitalized terms used, but not defined herein, shall have the same meaning as set forth in the Agreement.

B. Note Terms.

(1) Loan Term. The Maker shall repay any loan principal and accrued interest in an amount required to pay off the total outstanding loan principal, together with accrued interest thereon, on or before June 30, 2014 (the "Maturity Date").

(2) Interest Rate. The unpaid principal balance of the Loan shall accrue interest at the rate of zero percent (0%) until all indebtedness and other amounts payable under this Agreement are paid in full. Interest will be calculated on the basis of a year of 365 days and charged for the actual number of days that principal is outstanding.

(3) Payments. At the Maker's discretion, it may repay the loan in a single lump sum or in installments of any amount that equal the amount of the loan.

(4) Place and Manner of Payment. Payments shall be made in lawful money of the United States to Holder at 10890 San Pablo Avenue, El Cerrito, CA 94530, or at such other place as Holder may from time to time designate in writing to Maker.

(5) Prepayment. Maker may prepay this Note, including any accrued interest, either in whole or in part, at any time prior to the Maturity Date without penalty or other charge.

C. If default occurs in the payment of this Note when due, and the default is not cured within thirty (30) days, the Holder may accelerate and declare the balance of the loan and interest accrued thereon immediately due and payable. In case of any default by the Maker, Holder shall have available all remedy options stated in Article 5 of the Agreement.

D. Maker agrees to pay the following costs, expenses and attorneys' fees paid or incurred by Holder, or adjudged by a court: (1) reasonable costs of collection, costs, expenses and attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; and (2) costs of suit and such sums as the court may adjudge as attorneys' fees in an action to enforce payment of this Note or any part thereof.

E. This Note shall be governed by and construed in accordance with the laws of the State of California.

F. The terms of this Note shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of Maker and Holder.

G. Time is of the essence with respect to each and every provision hereof. If any provision hereof is found to be invalid or unenforceable by a court of competent jurisdiction, the invalidity thereof shall not affect the enforceability of the remaining provisions of this Note.

Executed in El Cerrito, California on August ___, 2013

CITY OF EL CERRITO

By: Scott Hanin
Its: City Manager



AGENDA BILL

Agenda Item No. 5(H)

Date: August 20, 2013

To: El Cerrito City Council

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

Subject: Authorize the City Manager and Finance Director/City Treasurer to Conduct Investment Activity with the Local Agency Investment Fund (LAIF)

ACTION REQUESTED

Adopt a resolution authorizing the City Manager and Finance Director/City Treasurer to conduct investment transactions with LAIF.

BACKGROUND

At various times throughout the year and with the availability of cash, the City may invest a portion of existing funds in the State of California's Local Agency Investment Fund (LAIF). LAIF is a pooled fund administered by the California Treasurer's Office. In order to participate and conduct financial transactions with LAIF, each local agency must adopt a resolution appointing officers to conduct such activity.

On March 5, 2013, the City Council approved a resolution authorizing the City Manager and Finance Director/City Treasurer to conduct financial transactions on behalf of the City. The resolution approved transactions for all City accounts including investments with LAIF; however, the City was recently notified by the State Treasurer's Office that a separate resolution is required that authorizes the City Manager and Finance Director/City Treasurer to conduct financial transactions with LAIF.

The City last updated its resolution appointing the City Manager and then City Treasurer to make investment transactions with LAIF in 2002. Position titles and the individuals who hold the positions have changed and an updated resolution is required.

Reviewed by:

Scott Hanin
City Manager

Attachment:

- 1) Resolution

RESOLUTION 2013-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
AUTHORIZING THE CITY MANAGER AND FINANCE DIRECTOR/CITY
TREASURER TO CONDUCT INVESTMENT ACTIVITY WITH LOCAL AGENCY
INVESTMENT FUND (LAIF)

WHEREAS, LAIF is established in the State Treasury under Government Code Section 16429.1 et seq. for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

WHEREAS, the City Council of El Cerrito hereby finds that the deposit and withdrawal of money in LAIF in accordance with Government Code Section 16429.1 et seq. for the purpose of investment as provided therein is in the best interests of the City.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of El Cerrito hereby authorizes the deposit and withdrawal of El Cerrito monies in LAIF for the purpose of investment as provided in Government Code Section 16429.1 et seq.

BE IT FUTHER RESOLVED, as follows:

Section 1. The following officers holding the titles specified below or their successors in office are each hereby authorized to order the deposit or withdrawal of monies in LAIF and may execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution and the transactions contemplated hereby:

Scott Hanin
City Manager

Lisa Malek-Zadeh
Finance Director/City Treasurer

Signature

Signature

Section 2. This resolution shall remain in full force and effect until rescinded by the City Council by resolution and a copy of the resolution rescinding this resolution is filed with the State Treasurer's Office.

I CERTIFY that at a regular meeting on August 20, 2013 the City Council passed this resolution by the following vote:

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

Agenda Item No. 5(H)
Attachment 1

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on August XX, 2013.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 6

Date: August 20, 2013

To: El Cerrito City Council

From: Sean Moss, Senior Planner
Margaret Kavanaugh-Lynch, Development Services Manager

Subject: Appeal of the Planning Commission's Approval of a Conditional Use Permit to Allow a Wireless Telecommunications Facility on an Existing Utility Pole near 851 Seaview Drive.

RECOMMENDATION

Conduct a public hearing and upon conclusion adopt a resolution denying an appeal of the Planning Commission's approval of a Conditional Use Permit to allow a wireless telecommunications facility on an existing utility pole near 851 Seaview Drive.

BACKGROUND

On January 10, 2013 New Cingular Wireless PCS, LLC doing business as AT&T Mobility submitted applications for six wireless telecommunications facilities on existing utility poles in the City of El Cerrito. Planning staff reviewed the applications with the City Attorney and determined that pursuant to El Cerrito Municipal Code Chapter 19.28: Wireless Telecommunications Facilities, that both a Conditional Use Permit and Design Review were required to allow the applications. In order to allow the bodies of decision to consider each separate location on its own merits, each location was treated as a separate application. The staff reports for both the Design Review Board and the Planning Commission discussed all of the locations in one report to avoid excessive duplication but each site received its own findings and each had its own resolution.

On February 8, 2013, City staff sent a letter to the applicant advising them that the application was incomplete.

On March 5, 2013, the applicant submitted additional materials, including more detailed propagation maps and fees for the required Design Review, to resolve deficiencies in the application. On April 4, 2013, the application was determined to be complete.

On May 1, 2013, the Design Review Board conducted Preliminary Conceptual Review of the applications. The El Cerrito Zoning Ordinance specifies that applications which require both Planning Commission and Design Review Board consideration must first be presented to the Design Review Board for Preliminary Conceptual Review. At this meeting, the Board does not make a formal decision or recommendation but rather gives comments which are forwarded to the Planning Commission for consideration.

On May 13, 2013, the applicant withdrew one application for one wireless telecommunication facility.

On June 19, 2013, the Planning Commission held a public hearing, took public testimony and after a thorough consideration of the facts in evidence and the comments received, acted to approve each of the five applications. In each case, the Planning Commission made all of the required findings in Section 19.34.040(A) of the El Cerrito Zoning Ordinance (general findings for Conditional Use Permits) as well as the required findings in Section 19.28.060 for wireless telecommunications facilities. Please see attached staff report and resolution.

On July 1, 2013, the Planning Commission's approval of the application near 851 Seaview Drive was appealed to the City Council by Chong Jin Lee, Diana Inchauspe, David Zemanek, Richard and Paulina Lee and Bill Fingado.

Although not part of the consideration of the appeal itself, it should be noted that on August 7, 2013, the Design Review Board held a public hearing, took public testimony and after a thorough consideration of the facts in evidence and the comments received, acted to deny design review approval for the four other applications.

CONTEXT OF PLANNING COMMISSION DECISION

Federal Telecommunications Act

The regulation of wireless telecommunications facilities by local jurisdictions is governed by the Federal Telecommunications Act of 1996 as well as by local ordinance. The Telecommunications Act prevents local jurisdictions from "prohibit[ing] or hav[ing] the effect of prohibiting the provision of personal wireless services." In addition, the Act states that cities "shall not unreasonably discriminate among providers of functionally equivalent services." Under the Act, the City must allow all wireless providers a means of providing coverage to El Cerrito. This does not mean that if the City permits AT&T to install DAS nodes on utility poles that the City would be required to waive the public review process for the similar sites of other wireless providers. Any future proposals for wireless telecommunications facilities would be subject to the public process stipulated in Chapter 19.28 of the El Cerrito Municipal Code. The Telecommunications Act also prohibits cities from regulating wireless telecommunications facilities based on the health effects or concerns. The Act states, "no State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions."

El Cerrito General Plan

All development projects are reviewed in the context of the goals of the El Cerrito General Plan. The Planning Commission found that the proposed project would implement the following policies of the General Plan: LU4.2: Availability of Goods and Services, CD5.1: Design Review Process, CD6: Affordable Commerce, PS3.3: Upgrading Infrastructure. In addition to upgrading the City's communication

infrastructure for residents, the proposed facility will provide infrastructure necessary for many home based businesses and will enhance the opportunity for these businesses to establish near the facility, consistent with the goals of the General Plan.

El Cerrito Zoning Ordinance

Within the regulatory framework of the Telecommunications Act, the City of El Cerrito has two sections of the municipal code that apply to this application. Section 19.34.040(A) states the findings required whenever a Conditional Use Permit is analyzed. In addition, Section 19.28 of the municipal code specifically pertains to the regulation of wireless telecommunications facilities. As stated in the Planning Commission staff report and associated resolution and as noted below, the Commission approved the applications based on the following findings stated in both sections of municipal code.

Section 19.34.040(A) Use Permit Findings

- 1. The location, size, design, and operating characteristics of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.*

The proposed wireless telecommunications facility will be located on existing utility poles and is compatible with the surrounding properties and will not adversely affect the livability or development of surrounding properties.

- 2. The location and design of the proposal will provide a convenient and functional living, working, shopping, or civic environment that will be an attractive amenity for the City.*

The proposed wireless telecommunications facility will provide 4G LTE wireless service to the southern portion of El Cerrito, improving the convenience of the living and working environments.

- 3. The proposal is consistent with the purposes of the district where it is located and conforms in all significant respects with the El Cerrito General Plan and with any other applicable plan adopted by the City Council.*

The project is consistent with the El Cerrito General Plan. There are no other relevant adopted plans.

Section 19.28.060(A) General Finding Required of Wireless Telecommunication Facilities:

- 1. The proposed use conforms with the specific purposes of this Chapter and any special standards applicable to the proposed facility.*

The proposed facility conforms with the standards of Chapter 19.28: Wireless Telecommunications Facilities of the El Cerrito Municipal Code.

- 2. The applicant has made good faith and reasonable efforts to locate the proposed wireless facility on a support structure other than a new ground-mounted antenna, monopole, or lattice tower, or to accomplish co-location.*

The applicant currently operates facilities at El Cerrito Plaza and 6830 Stockton Avenue. There are limited structures in the southern portion of El Cerrito that can

accommodate new facilities. The applicant identified alternative sites and found them to be less desirable from both coverage and aesthetic perspectives.

3. *The proposed site results in fewer or less severe environmental impacts than any feasible alternative site.*

The proposed site (on top of existing utility poles) limit the visual impacts of the facilities. The project is exempt from review under the California Environmental Quality Act.

4. *The proposed facility will not be readily visible, or it is not feasible to incorporate additional measures that would make the facility not readily visible as defined in Section 19.28.040.*

The location of the proposed facility is within the public right of way. It is incorporated onto existing utility poles. It is not feasible to limit their visual impact. Sites that would enable the facilities to be not readily visible are limited in this portion of El Cerrito.

Section 19.28.060 (C): Additional Findings for Facilities in a Residential Zone.

To locate a facility in a residential zoning district where it is readily visible from the habitable area of a dwelling unit within 300 feet, or at any location where it is readily visible from a public right-of-way, public park, or other public recreation or cultural facility, the decision maker shall find that:

1. *It is not feasible to provide the service at another location; or to incorporate additional measures such as a decrease in height, increase in setback, change in design, relocation relative to other structures or natural features, that would further reduce its visibility; and*

The applicant operates wireless telecommunications facilities at El Cerrito Plaza and 6830 Stockton Avenue. The topography of this portion of El Cerrito provides coverage challenges. The proposed facility will extend the existing utility pole to the minimum height required for separation from existing utilities and to provide coverage.

2. *The proposed facility provides an important link in the applicant's service area build-out and is necessary to provide personal wireless services to city residents.*

The proposed facility is necessary to provide coverage to the southern portion of El Cerrito.

Development Proposal

The proposed wireless facility near 851 Seaview Drive is part of a proposed Distributed Antenna System (DAS) network in the East Bay Hills. AT&T is currently processing applications for other portions of the network in the Cities of Oakland and Berkeley as well as Contra Costa County (Kensington). DAS networks typically consist of lower powered nodes connected to a common connection point. However, each of the proposed DAS nodes will be connected to AT&T's existing fiber optic infrastructure at the site of each pole. Distributed antenna systems are often utilized in indoor areas, such as shopping malls and sports arenas, where coverage poses challenges.

Agenda Item No. 6

The applicant currently operates wireless telecommunications facilities at El Cerrito Plaza, the church at 6830 Stockton Avenue, and the Super 8 Motel at 6009 Potrero Avenue. Despite these facilities, the applicant has noted that the topography of the East Bay hills presents coverage challenges. The applicant has decided to pursue a DAS network as a way to provide more consistent coverage in the hills. The proposed nodes will provide both voice and data signals using 3G and 4G LTE technology. The applicant has provided propagation maps that show coverage gaps in the area. Locations for additional wireless telecommunications in the portion of El Cerrito where this facility is proposed are limited. The area is almost exclusively residential, with the exception of public facilities such as Huber Park and El Cerrito High School and the small commercial district at the end of Fairmount Avenue.

The DAS node is proposed to be located on top of the existing utility pole through the use of a 7-foot extension. The two proposed antennas would be approximately 2 feet tall and would be mounted at the top of the pole extension. The top of the antennas would sit approximately 3 feet above the top of the pole. The complete installation would therefore increase the height of the pole by 10 feet. All equipment for the facility would be mounted on the pole. No equipment is proposed to be ground mounted.



Photos of the existing utility pole near 851 Seaview Drive.



Photo Simulation of the proposed facility near 851 Seaview Drive

APPEAL

The appellants submitted a ten page appeal. Please see attachment 2 for full text. A summary is outlined below in bold. Staff has provided a response after each point stated by the appellant.

1. The antennae are not to serve the residents in the vicinity but for relaying signals up the hills.

The City of El Cerrito staff must rely on the applicant to respond to technical discussion points. The applicant has informed staff that although AT&T is seeking to deploy DAS across a large portion of the East Bay Hills, each DAS node would function as an independent site providing wireless coverage to its immediate area. The proposed nodes do allow calls from moving vehicles to transition from one facility to another, just as the macro installations do.

2. Alternative installation methods are available and AT&T is aware of them.
See response to comment 3.

3. AT&T Cingular should pursue relaying signals from the closest optic fiber base station and the most direct route up the hills through less densely populated area using halfmast installation method.

The applicant is responsible for submitting the most suitable installations to fulfill the needs of their particular telecommunications company's need to serve their clients in the city. And, as part of the initial review of any wireless

telecommunication's application, staff discusses each application with the applicant to identify the least intrusive method of constructing any installation. To that end, there are many telecommunication installation sites throughout the city that are invisible to the public. In support of that policy, the Zoning Ordinance establishes a much simpler non-discretionary process for applications that are not visible.

The appellants note that in the neighboring community of Kensington, some of the installations are mounted halfway down the utility pole. In this example, AT&T revised the initial submittal, for sites where it was feasible (2 of 6 sites), to lower the elevation of the antenna on the pole. The antenna projects off the side of the pole below the existing PG&E lines. The California Public Utilities Commission (CPUC) requires a minimum separation of 6 feet between the proposed DAS antennas and the existing PG&E lines. The applicant has informed staff that the height of the antennas at the site in question (as well as the other five installations that are not a part of this appeal) are as low as possible and still meet mandated separation requirements and their goal of providing the needed coverage.

4. The immediate impact of the proposed antennae extended on top of a utility pole will ruin the view from the hills, inevitably destroying property value.

Lower property value will result in a loss of property taxes to the City.

None of the findings required by the municipal code for wireless telecommunications facilities identify property values as a specific item to be considered in making a decision. The potential for aesthetic and safety impacts of wireless telecommunications facilities to decrease property values is recognized in the applicable case law as a legitimate basis for concluding that a proposed project would negatively affect the public health, safety, and welfare. Such a conclusion could support a determination by the City Council that it is unable to make some of the findings required by the municipal code.

The applicable case law also instructs, however, that such a conclusion must be based upon substantial evidence in the record. Substantial evidence is less than a preponderance but more than a "scintilla." Moreover, the evidence cannot consist solely of speculation or the assertions of individuals without the expertise or experience necessary to form valid conclusions. Thus, the City Council must consider how much weight to give to the opinions expressed by the appellants regarding the effect of the proposed facility on nearby property values, as well as any contrary evidence in the record for the hearing, including this staff report and any potential opinions provided by technical experts.

Staff researched this issue and were unable to identify any existing study that provided conclusive evidence that DAS antennas have a negative impact on property values. Further, the appellants have presented a hypothetical regarding the effects of a decrease in property values resulting from the proposed facility, but their letter does not contain evidence that such a decrease would occur. Therefore, the City Council should consider what weight to give the evidence in the record regarding this issue. If it finds that there is evidence in support of both positions, it may at its discretion determine which position it believes is better supported. If the City

Council bases its decision in part on this issue, the City Council must identify the evidence in the record in support of its conclusion and explain the “analytical bridge” that connects the evidence to the conclusion that it can or cannot make the necessary findings.

The City Council is not required to reach any conclusion regarding property values, however. It may base its decision on whether there is substantial evidence in the record regarding other issues that supports the City Council’s ability to make or not make the required findings for the proposed facility.

The issue of the damage of the view from the hills was discussed by the members of the Planning Commission. It was noted in the meeting that many Commissioners as well as staff had visited the utility pole near 851 Seaview Drive and felt that while the installation would not be visually pleasing, it did not appear to substantially block the view of any dwelling. No Commission member or staff person had the opportunity to view the pole from the inside of adjacent residences.

5. The Kensington Planning Commission has denied the applications as of February 2013. As a result, Cingular has now reduced its plan to install antennae in Kensington. Cingular has now proposed to place a macro tower in El Cerrito to reduce the number of antennae in Kensington.

It is true that a new application has been made to the City of El Cerrito to add a macro tower on the top of the Moeser corridor. It is also true that that AT&T has reduced its number of proposed sites in the unincorporated community of Kensington. While these two facts are concerning, they have no impact on the decision of the Planning Commission that is the subject of this appeal.

6. The antennae violates the City of El Cerrito’s wireless ordinance, specifically section 19.28.040.

Chapter 19.28 of the El Cerrito Municipal Code establishes the requirements for wireless telecommunications facilities in the City of El Cerrito. Section 19.28.040 of the Municipal Code states, “all wireless telecommunications facilities subject to this Chapter shall be located, developed, and operated in compliance with the following standards unless the Zoning Administrator or the Planning Commission approves a Use Permit subject to the findings in Section 19.34.040(A).” As previously stated, Planning staff, upon reviewing the application with the City Attorney, determined that the application required both approval of a Conditional Use Permit by the Planning Commission as well as Design Review Board approval. The Planning Commission’s June 19th Conditional Use Permit approval made the findings contained in Section 19.34.040(A) for the application. Since the Planning Commission approved a Use Permit subject to the findings in Section 19.34.040(A), the additional standards in Section 19.28.040 are not applicable.

7. Insufficient time was given to this matter and the due process from the public hearing to the Planning Commission decision was unclear to the residents as compared [to] the Contra Costa procedure. Public study should be conducted.

Contra Costa County and the City of El Cerrito have different paths for the review of discretionary projects. AT&T submitted applications for 9 wireless DAS nodes for Kensington to Contra Costa County in January. As an unincorporated community, land use decisions in Kensington are made by the Contra Costa County Planning Commission. The Commission is composed by one member appointed by each County Supervisor from his/her district and two members appointed by the Board of Supervisors at-large. Kensington also has a county advisory body called the Kensington Municipal Advisory Council (KMAC) which makes advisory recommendations to the Planning Commission. In February, the KMAC considered the applications and recommended that the Planning Commission deny all of the applications. The applicant subsequently revised the applications to withdraw three nodes and determined that for two of the proposed nodes, it was feasible to propose antennas mounted to the side of the utility poles. The KMAC considered the revised applications on July 30, 2013. The Committee recommended that the Planning Commission approve the two revised side-mounted installations and recommended that the Commission deny the remaining four applications. The Planning Commission has not yet considered the applications. When City staff last spoke with County staff, the applications had not been scheduled for a Planning Commission meeting.

As a separate jurisdiction from the county, the City of El Cerrito is governed by its own municipal code. Section 19.32.050 of the El Cerrito Municipal Code stipulates the required legal noticing requirements for public hearings held by the Planning Commission. All the legal noticing requirements for the Planning Commission's public hearing of June 19th were met. The notice was mailed to all property owners within 300 feet of the subject utility pole on June 6, 2013 and appeared in the West County Times on Friday, June 7, 2013. In addition, pursuant to section 19.32.050(D) of the Municipal Code, the Zoning Administrator may require notice of the public hearing in addition to what is normally required. In this case, because the proposed sites are within the public right-of-way and therefore do not have addresses or parcel numbers, staff posted hearing notices on the subject poles so that they were readily identifiable to the public.



A photo showing the public notice of the Planning Commission hearing posted on the pole.

8. Most families are concerned with electromagnetic field. The antennae will stand as a constant reminder of EMF. It will create a tremendous mental stress to the families. We included a signed petition of 28 families in the vicinity.

It is not unusual that members of the public have concerns regarding the possible health effects of wireless communication equipment. However, as stated above, the Telecommunications Act prohibits cities from regulating wireless telecommunications facilities based on health effects or concerns. The Act states, “no State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission's regulations concerning such emissions.”

9. El Cerrito stands to lose as Cingular has revised its plan for Kensington.

See comment in response to comment 5.

Improper use of a Categorical Exemption under CEQA

Although not part of the formal appeal, staff has received comments regarding the possible improper use of a Categorical Exemption to CEQA. Staff felt that adding this discussion to the appeal report might assist the Council members in their deliberations.

The basic charge that staff has heard is that the project has been “piecemealed” by the city and the applicant. Since the city processed five applications for wireless devices at the same time, the charge maintains that all of the devices should be considered as part of an overall project for CEQA purposes. Staff also believes that

this line of questioning is related to a possible concern that the cumulative effects of these applications are being ignored.

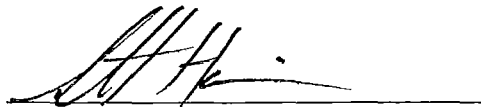
In an unpublished opinion in 2012, the California Court of Appeal considered a similar charge arising from the approval of approximately 40 wireless facilities to be attached to existing utility poles throughout San Francisco. (*Robinson v. City and County of San Francisco*). Because the decision is unpublished, it is not citable as precedent, but the facts are similar to the current matter and therefore the ruling is instructive. In its ruling the court disagreed with the residents and upheld the city's determination that all of the facilities included in the telecommunication company project fell within a categorical exemption to CEQA which applies to the construction, installation, or conversion of a limited number of small facilities, structures or equipment. (14 California Code of Regulations § 15303(d).) Further, when a project is categorically exempt, the court confirmed, no environmental review is necessary and the project may proceed without any CEQA analysis or compliance whatsoever.

Finally, the court acknowledged that the exemption must be denied if a "fair argument" can be made that the cumulative impact of successive installations "of the same type in the same place" will result in a significant adverse environmental impact. However, the court concluded, unless there is a fair argument that future installations will be located within the "sensory range" of other similar equipment, the court said, "the categorical exemption here is not negated by the cumulative impact exception." Staff does not believe that there is evidence in the record to support such an argument.

CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE

Pursuant to the California Environmental Quality Act (CEQA), this Conditional Use Permit, involving a wireless telecommunication facility on an existing utility pole, is considered exempt from environmental review under section 15303: Categorical Exemption Class 3: New Construction or Conversion of Small Structures.

Reviewed by:

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

Scott Hanin, City Manager

Attachments:

1. Proposed Resolution denying the appeal
2. Application PL13-0006 including application form, applicant's project description, propagation maps, photo simulations, and public notification list.
3. Appeal Letter from the appellants dated July 1, 2013
4. Planning Commission Staff Report for application PC13-0006
5. Planning Commission Resolution PC13-09.
6. Plans
7. Alternative Site Analysis for site near 851 Seaview Drive provided by the applicant in response to city staff request

RESOLUTION 2013--XX

A RESOLUTION OF THE EL CERRITO CITY COUNCIL DENYING AN APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF A CONDITIONAL USE PERMIT TO ALLOW A WIRELESS TELECOMMUNICATIONS FACILITY ON AN EXISTING UTILITY POLE NEAR 851 SEAVIEW DRIVE.

WHEREAS, on January 10, 2010, the applicant submitted an application for a Conditional Use Permit to allow a wireless telecommunications facility on an existing utility pole near 851 Seaview Drive; and

WHEREAS, the General Plan land use classification of the site is Low Density Residential; and

WHEREAS, the zoning district of the site is RS-5 (Single Family Residential); and

WHEREAS, the project is located in the public right-of-way near 851 Seaview Drive; and

WHEREAS, the project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303: New Construction or Conversion of Small Structures; and

WHEREAS, on June 19, 2013, the Planning Commission held a duly noticed public hearing, received public testimony and adopted Resolution PC13-09, approving a Conditional Use Permit to allow a wireless telecommunications facility on an existing utility pole near 851 Seaview Drive, pursuant to the findings in Sections 19.34.040 and 19.28.060 of the El Cerrito Municipal Code; and

WHEREAS, on July 1, 2013, an appeal of the Planning Commission's approval of the Conditional Use Permit was filed at City Hall; and

WHEREAS, on August 20, 2013, the City Council held a duly noticed public hearing to consider the appeal; and

WHEREAS, based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony and the proceedings before the Planning Commission, the Council has considered the appeal.

NOW, THEREFORE, BE IT RESOLVED:

The City Council of the City of El Cerrito finds that:

1. The facility is proposed on top of an existing utility pole. The existing pole is harmonious and compatible with the surrounding neighborhood and does not impact adjacent properties. The project will add additional utilities to an existing pole. The project is therefore compatible with the neighborhood. The project will not impact the livability or development of adjacent properties.
2. The proposed wireless telecommunications facility will improve wireless voice and data coverage to the area using 3G and 4G LTE technologies. The facility will therefore provide a functional and convenient living, working and shopping environment for El Cerrito.

Agenda Item No. 6
Attachment 1

3. The project is consistent with all requirements of the RS-5 zoning district. The project will implement the following policies of the El Cerrito General Plan: LU4.2: Availability of Goods and Services, CD5.1: Design Review Process, CD6: Affordable Commerce, PS3.3: Upgrading Infrastructure.
4. The facility conforms with the requirements of Chapter 19.28: Wireless Telecommunications Facilities of the El Cerrito Municipal Code.
5. The applicant currently operates facilities at El Cerrito Plaza and 6830 Stockton Avenue. There are limited structures in the southern portion of El Cerrito that can accommodate new facilities. The applicant identified alternative sites and found them to be less desirable from both coverage and aesthetic perspectives.
6. The proposed site (on top of an existing utility pole) limits the visual impact of the facility. The proposed antennas are smaller than those of traditional macro wireless telecommunications facilities, limiting the visual impact. The project is exempt from review under the California Environmental Quality Act.
7. The location of the proposed facility is within the public right-of-way. It is incorporated onto an existing utility pole. It is not feasible to limit the site's visual impact. Sites that would enable the facilities to be not readily visible are limited in this portion of El Cerrito.
8. The applicant operates wireless telecommunications facilities at El Cerrito Plaza and 6830 Stockton Avenue. The topography of this portion of El Cerrito provides coverage challenges. The proposed facility will extend the existing utility pole to the minimum height required for separation from existing utilities and to provide coverage.
9. The proposed facility is necessary to provide consistent wireless coverage to the southern portion of El Cerrito.

After careful consideration of facts, correspondence, and testimony, and other evidence submitted in this matter, the El Cerrito City Council hereby denies the subject appeal of the Planning Commission's approval of a Conditional Use Permit to allow a wireless telecommunication facility on an existing utility pole near 851 Seaview Drive.

I CERTIFY that at a regular meeting on August 20, 2013, 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 August XX, 2013.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



DEVELOPMENT REVIEW APPLICATION
Environmental and Development Services Dept.
Planning Division
10890 San Pablo Avenue, El Cerrito, CA 94530
(510) 215-4330 – FAX (510) 233-5401
planning@ci.el-cerrito.ca.us

Application #	Agenda Item No. 6 Attachment 2
PL13-0006	
Date Received:	
1/10/13	
Revised:	

Please discuss your proposal with Planning Staff prior to completing this form. Please print or type legibly. Attach additional sheets if necessary. Incomplete applications will not be accepted.

1. Type of Application

- | | |
|--|--|
| ☒ Use Permit | ☐ Design Review |
| ☐ Administrative Use Permit | ☒ Administrative Design Review |
| ☐ Variance | ☐ Planned Sign Program |
| ☐ Lot Line Adjustment | ☐ RAD Review |
| ☐ Certificate of Compliance | ☐ Planned Development |
| ☐ Tentative Map (Minor) | ☐ Zoning Amendment/Rezone |
| ☐ Tentative Map (Major) | ☐ General Plan Amendment |
| ☐ Parcel Map | ☐ Zoning Clearance |
| ☐ Environmental Review | ☐ Temporary Use Permit |

Application Fee(s):

Fee(s): \$ 2819.00 ()
\$ 1121.00 ()
Pub. Notice: \$0.52 x 40 =
\$ 20.80 (1700)
Mail List: \$ (6055)
Env. Fee: \$ 190.00 (6053)
Total: \$ 4150.80



2. Property Location: Zoning District: _____ APN: near 5033120162
Address of Subject Property: PROW near 851 Spaview Dr.

3. Requested Action:

We respectfully request Use Permit and Administrative Design Review approval of the attached DAS Node installation. (Node #3)

4. Applicant: In signing this application, I, as Applicant, certify that I have obtained written authorization from the property owner and have attached separate documentation showing my full legal capacity to file this application. I agree to be bound by the conditions of approval, subject only to the right to object at the public hearings or during the appeal period. I further certify that the information and exhibits submitted are true and correct.

Applicant's Name: New Cingular Wireless PCS, LLC

Contact Person: Attn: Matthew Vergovich

Capacity: Permitting Agent

Company: Vergovich and Associates, LLC

Address: 1826 Webster St.

San Francisco, CA Zip: 94115

Applicant's Phone: (415) 596-3474

Contact Person's Phone: (415) 596-3474

Fax: () _____

Email Address: myergo@gmail.com

Signature: Matthew D. Vergovich

Date: 01/10/2013

5. Property Owner: In signing this application, I, as Property Owner, certify that I have full legal capacity to, and hereby do, authorize the filing of this application. I understand that conditions of approval are binding. I agree to be bound by those conditions, subject only to the right to object at the public hearings or during the appeal period. I further certify that the information and exhibits submitted are true and correct. Note: all property owners must sign if property is jointly owned.

Name: New Cingular Wireless PCS, LLC

Capacity: PROW Pole Owner

Company: DBA "AT&T Mobility"

Address: 4430 Rosewood Dr., Bldg. 3

Pleasanton, CA

Zip: 94558

Phone: () _____

Fax: () _____

Email Address: _____

Signature: See Attached

Date: _____

APPLICANT AGREES TO HOLD THE CITY OF EL CERRITO (CITY) HARMLESS FOR ALL COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES, INCURRED BY THE CITY OR HELD TO BE THE LIABILITY OF THE CITY IN CONNECTION WITH THE CITY'S DEFENSE OF ITS ACTIONS IN ANY PROCEEDING BROUGHT IN ANY STATE OR FEDERAL COURT CHALLENGING THE CITY'S ACTIONS WITH RESPECT TO THE APPLICANT'S PROJECT.



Monday, January 07, 2013

RE: AT&T DAS Node 3 Installation
Pole #: 110235789
GPS Location: 37.91774, -122.293016
Nearest Address: 851 Seaview Drive
Jurisdiction: City of El Cerrito

To Whom it May Concern:

This letter authorizes Matthew Yergovich as a duly appointed representative to obtain permits for New Cingular Wireless PCS, LLC (doing business as AT&T Mobility) at the above-referenced site.

Feel free to contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Vani Muller". The signature is fluid and cursive, with a long, sweeping underline.

New Cingular Wireless PCS, LLC
dba AT&T Mobility



January 10, 2013

City Planner
El Cerrito Planning Department
10890 San Pablo Avenue
El Cerrito, CA 94530

Re: Proposed AT&T Mobility DAS Node Installation
Applicant: **New Cingular Wireless PCS, LLC (d/b/a AT&T Mobility)**
Nearest Site Address: **Public Right of Way near 851 Seaview Drive**
Nearest APN: **5033120162**
Site ID: **OAKN-003A**
Latitude/Longitude: **37.914774 -122.293016**
Joint Utility Pole #: **110235789**

Dear City Planner,

This letter and attached materials are to apply for the appropriate conditional use permit to accomplish the above-referenced and below-described AT&T distributed antenna system ("DAS") node installation. The following is an explanation of the existing site, a project description of the installation, the project purpose and justifications in support of this proposal.

A. Project Description.

The existing site consists of an approximate 35-foot tall wooden utility pole in the public right of way on the south side of the road near 851 Seaview Drive. The area is residential and slopes upward north-eastward.

AT&T proposes to modify the utility pole by adding two panel antennas approximately two-feet long, ten-inches wide and six-inches deep. These antennas will be mounted onto a seven-foot tall extension affixed on top of the pole. The extension piece is a utility-required and pre-approved fixture. At a mounting location about 17-feet high on the pole we propose to mount a battery-backup equipment box approximately two-feet long by two-feet wide and a foot and a half feet deep. At about 12-feet high on the pole we propose to mount an equipment cabinet approximately four-feet long, a foot wide and a foot deep. Below that, at about 10-feet high on the pole, we propose to mount an approximate one-foot long by one-foot wide by four-inch deep optical demarcation unit. Below that at about eight feet we propose a small safety shut-off switch and electricity meter approximately one-foot long, three-inches deep and eight-inches wide. Also, climbing pegs will be re-oriented on the pole. The equipment will be connected to power and telecommunications lines already on the pole, extended through one-inch and three-inch conduit. All equipment will be painted brown to match the utility pole. Our proposal is depicted in the attached design drawings and photographic simulations.

This is an unmanned facility that will operate at all times (24-hours per day, 7 days per week) and will be serviced about once per month by an AT&T technician. The facility does not contain any hazardous materials except a small amount of battery acid. Our proposal will greatly benefit the area by improving wireless telecommunications service as detailed below.

AT&T Mobility
C/O Yergovich and Associates, LLC
ExteNet Systems Real Estate Contractor
1826 Webster Street • San Francisco, CA 94115
(415) 596-3474 • myergo@gmail.com

B. Project Purpose.

The purpose of this project is to provide AT&T third and fourth generation (3G and 4G) wireless voice and data coverage to the surrounding area where there is currently a significant gap in coverage. These wireless services include mobile telephone, wireless broadband, emergency 911, data transfers, electronic mail, internet, web browsing, wireless applications, wireless mapping and video streaming. The proposed node is part of a larger distributed antenna system ("DAS") providing coverage to areas of the Oakland, Berkeley, Kensington and El Cerrito Hills that are otherwise impossible to reach.

A DAS network consists of a series of radio access nodes connected to small telecommunications antennas, typically mounted on existing wooden utility poles within the public rights of way, to distribute cellular telephone signals. DAS networks provide telecommunications transmission infrastructure for use by wireless services providers. These facilities allow service providers such as AT&T to establish or expand their network coverage and capacity. The nodes are linked by fiberoptic cable that is typically strung overhead between poles to carry the signal stemming from a central equipment hub to a node antenna. Although the signal propagated from a node antenna spans over a shorter range than a conventional tower system, DAS appeals to communities where conventional towers are unwelcome but wireless service is poor.

C. Project Justification, Design and Placement

The site is located in a difficult coverage area because of its winding roads, hilly terrain and plentiful trees. The coverage area consists of a hilly residential El Cerrito neighborhood running off of Terrace Drive near Arlington Boulevard and Moeser Lane. The proposed site will cover transient traffic along the roadways and the surrounding residents as depicted in the attached-propagation maps.

This DAS node is the least intrusive means to provide coverage because it uses existing utility infrastructure, the smallest equipment and the lowest emissions possible. Deploying a DAS node onto this pole minimizes any visual impact for residences or views. By co-locating antennas and equipment onto this existing pole, AT&T does not need to propose any new infrastructure in the area. Furthermore, this two-antenna installation onto existing infrastructure is miniature in size compared to the typical 12-antenna macro site and therefore more appropriate for the surrounding residential area. The site should be barely noticeable as a co-located utility amidst the backdrop of trees and terrain.

The DAS node emissions are also much lower than a typical macro-site and are thus appropriate for the area. Section 1.1307(b)(1) of the Federal Communication Commission's (FCC) rules deem these facilities to be "categorically excluded" as they are fully compliant with the FCC's requirements for limiting human exposure to radio frequency energy. Attached is a radio-frequency analysis supporting this conclusion. The facility will also comply with California Public Utility Commission (CPUC) General Orders 95 and 170 that govern utility use in the public right of way.

Alternative sites were considered at other utility poles in the area, at the Unitarian Church to the east, Blake Garden and Huber Park to the southeast, and Cerrito Vista Park to the West, but none of these sites are as desirable from a coverage perspective or from an aesthetics perspective. The proposed location is equally distanced from nodes to be placed in surrounding hard-to-reach areas so that coverage can be evenly distributed, taking into account the local topography. The other utility poles along Seaview and Stockton Avenue are more conspicuous than the proposed location and would not provide wireless coverage as well as from the proposed site because of elevation and obstructions to line of sight. Installations of sites at the Garden, the Church or the Parks are too low in elevation, too far away from the

AT&T Mobility
C/O Yergovich and Associates, LLC
ExteNet Systems Real Estate Contractor
1826 Webster Street • San Francisco, CA 94115
(415) 596-3474 • myergo@gmail.com

coverage objective or would require a new unnecessary pole. For these reasons, our proposal is the best out of all the alternatives.

D. Inventory of AT&T's Existing Sites.

The following is an inventory of addresses where AT&T has existing sites in El Cerrito, where AT&T hopes to install new sites in the future, and a brief description of those sites. Attached please find maps showing these approximate locations.

Existing Sites:

- (1) 6009 Potrero Avenue: Panel antennas inside clock tower at Super 8 Hotel.
- (2) 300 El Cerrito Plaza: Antennas mounted to rooftop of shopping center.
- (3) 6830 Stockton Avenue: Antennas inside church steeple.

Future Macro Site:

- (1) 8751 Terrace Drive: Antennas proposed on top of PG&E lattice tower.

Proposed DAS Nodes:

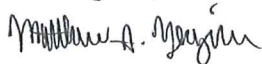
- (1) 859 Gelston Place: Public right of way joint utility pole-mounted antennas.
- (2) 851 Seaview Drive: Public right of way joint utility pole-mounted antennas.
- (3) 906 Balra Drive: Public right of way joint utility pole-mounted antennas.
- (4) 762 Colusa Avenue: Public right of way joint utility pole-mounted antennas.
- (5) 7800 Eureka Avenue: Public right of way joint utility pole-mounted antennas.
- (6) 202 Seaview Drive: Public right of way joint utility pole-mounted antennas.

Included with this zoning submittal are the following materials:

- (1) A completed Use Permit Application;
- (2) The appropriate filing fee;
- (3) Full-sized (24" x 36") and reduced drawing sets;
- (4) Photographic simulations depicting the proposed modification;
- (5) Propagation maps;
- (6) Radius label notification materials;
- (7) Authorization from AT&T; and
- (8) A radio-frequency report explaining the impact of the proposed site.

We respectfully request approval of this project. Feel free to contact me if you have any questions.
Thank you.

Best Regards,



Matthew S. Yergovich
ExteNet Real Estate Contractor
For AT&T Mobility

AT&T Mobility
C/O Yergovich and Associates, LLC
ExteNet Systems Real Estate Contractor
1826 Webster Street • San Francisco, CA 94115
(415) 596-3474 • myergo@gmail.com

**New Cingular Wireless, LLC • Six Proposed Distributed Antenna System Nodes
Oakland Hills • El Cerrito, California**

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained on behalf of New Cingular Wireless, LLC, a wireless telecommunications service provider, to evaluate six distributed antenna system (DAS) nodes proposed to be located in the Oakland Hills area of El Cerrito, California, for compliance with appropriate guidelines limiting human exposure to radio frequency (“RF”) electromagnetic fields.

Executive Summary

New Cingular Wireless proposes to install two directional panel antennas on six existing or proposed utility poles sited in the Oakland Hills area of El Cerrito. The proposed operation will comply with the FCC guidelines limiting public exposure to RF energy.

Prevailing Exposure Standards

The U.S. Congress requires that the Federal Communications Commission (“FCC”) evaluate its actions for possible significant impact on the environment. A summary of the FCC’s exposure limits is shown in Figure 1. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. The most restrictive FCC limit for exposures of unlimited duration to radio frequency energy for several personal wireless services are as follows:

Wireless Service	Frequency Band	Occupational Limit	Public Limit
Microwave (Point-to-Point)	5,000–80,000 MHz	5.00 mW/cm ²	1.00 mW/cm ²
BRS (Broadband Radio)	2,600	5.00	1.00
AWS (Advanced Wireless)	2,100	5.00	1.00
PCS (Personal Communication)	1,950	5.00	1.00
Cellular	870	2.90	0.58
SMR (Specialized Mobile Radio)	855	2.85	0.57
700 MHz	700	2.35	0.47
[most restrictive frequency range]	30–300	1.00	0.20

Power line frequencies (60 Hz) are well below the applicable range of these standards, and there is considered to be no compounding effect from simultaneous exposure to power line and radio frequency fields.

General Facility Requirements

Base stations typically consist of two distinct parts: the electronic transceivers (also called “radios” or “channels”) that are connected to the traditional wired telephone lines, and the passive antennas that send the wireless signals created by the radios out to be received by individual subscriber units.



New Cingular Wireless, LLC • Six Proposed Distributed Antenna System Nodes Oakland Hills • El Cerrito, California

The transceivers are often located at ground level and are connected to the antennas by coaxial cables. A small antenna for reception of GPS signals is also required, mounted with a clear view of the sky. Because of the short wavelength of the frequencies assigned by the FCC for wireless services, the antennas require line-of-sight paths for their signals to propagate well and so are installed at some height above ground. The antennas are designed to concentrate their energy toward the horizon, with very little energy wasted toward the sky or the ground. Along with the low power of such facilities, this means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

Computer Modeling Method

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation," dated August 1997. Figure 2 attached describes the calculation methodologies, reflecting the facts that a directional antenna's radiation pattern is not fully formed at locations very close by (the "near-field" effect) and that at greater distances the power level from an energy source decreases with the square of the distance from it (the "inverse square law"). The conservative nature of this method for evaluating exposure conditions has been verified by numerous field tests.

Site and Facility Description

Based upon information provided by New Cingular Wireless, that carrier proposes to install six new nodes, listed in Table 1 below, in the Oakland Hills area of El Cerrito. Each node would consist of two Kathrein Model 840-10525 directional panel antennas installed on a new or existing utility pole to be sited in a public right-of-way. The antennas would be mounted with no downtilt at an effective height of about 35 feet above ground and would be oriented in different directions, as shown in Table 1. The maximum effective radiated power in any direction would be 219 watts, representing simultaneous operation by New Cingular Wireless at 104 watts for PCS, 61 watts for cellular, and 54 watts for 700 MHz service. There are reported no other wireless telecommunications base stations at the site or nearby.

<u>Node #</u>	<u>Approximate Address</u>	<u>Antenna Orientations</u>	
Node 2	859 Gelston Place	69°T	113°T
Node 3	851 Seaview Drive	49°T	124°T
Node 4	906 Balra Drive	79°T	130°T
Node 5	762 Colusa Avenue	29°T	105°T
Node 6	7800 Eureka Avenue	20°T	106°T
Node 12	202 Seaview Drive	16°T	107°T

Table 1. New Cingular Wireless Nodes Evaluated



**New Cingular Wireless, LLC • Six Proposed Distributed Antenna System Nodes
Oakland Hills • El Cerrito, California**

Study Results

For a person anywhere at ground, the maximum RF exposure level due to the proposed operation is calculated to be 0.0026 mW/cm², which is 0.50% of the applicable public exposure limit. The maximum calculated level at the second-floor elevation of any nearby building^{*} is 1.2% of the public limit. It should be noted that these results include several “worst-case” assumptions and therefore are expected to overstate actual power density levels from the proposed operation.

Recommended Mitigation Measures

Due to their mounting locations on utility poles, the New Cingular Wireless antennas would not be accessible to the general public, and so no mitigation measures are necessary to comply with the FCC public exposure guidelines. To prevent occupational exposures in excess of the FCC guidelines, no access within 3 feet directly in front of the antennas themselves, such as might occur during maintenance work on the poles, should be allowed while the pertinent node is in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met. Posting explanatory warning signs[†] at the antennas and/or on the poles below the antennas, such that the signs would be readily visible from any angle of approach to persons who might need to work within that distance, would be sufficient to meet FCC-adopted guidelines.

Conclusion

Based on the information and analysis above, it is the undersigned’s professional opinion that the proposed operation of these New Cingular Wireless nodes in El Cerrito, California, will comply with the prevailing standards for limiting public exposure to radio frequency energy and, therefore, will not for this reason cause a significant impact on the environment. The highest calculated level in publicly accessible areas is much less than the prevailing standards allow for exposures of unlimited duration. This finding is consistent with measurements of actual exposure conditions taken at other operating base stations. Posting explanatory signs is recommended to establish compliance with occupational exposure limitations.

^{*} Including nearby residences located at least 24 feet from any pole, based on photographs from Google Maps.

[†] Warning signs should comply with OET-65 color, symbol, and content recommendations. Signage may also need to comply with the requirements of California Public Utilities Commission General Order No. 95.



**New Cingular Wireless, LLC • Six Proposed Distributed Antenna System Nodes
Oakland Hills • El Cerrito, California**

Authorship

The undersigned author of this statement is a qualified Professional Engineer, holding California Registration Nos. E-13026 and M-20676, which expire on June 30, 2013. This work has been carried out under his direction, and all statements are true and correct of his own knowledge except, where noted, when data has been supplied by others, which data he believes to be correct.



William F. Hammett

William F. Hammett, P.E.
707/996-5200

December 13, 2012



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

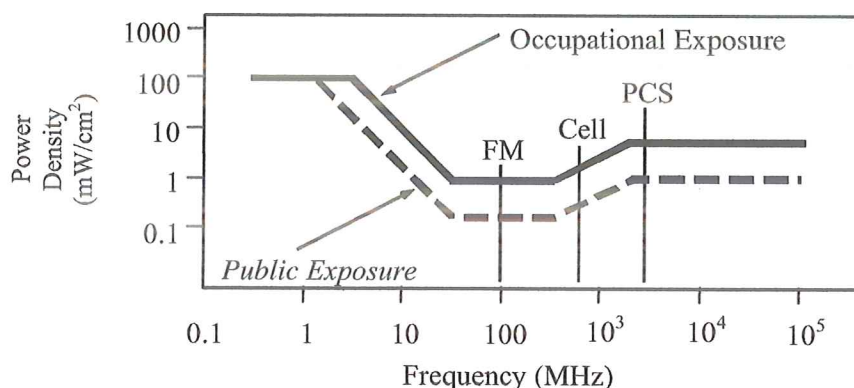
S5XH
Configuration 2B
Page 4 of 4

FCC Radio Frequency Protection Guide

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements ("NCRP"). Separate limits apply for occupational and public exposure conditions, with the latter limits generally five times more restrictive. The more recent standard, developed by the Institute of Electrical and Electronics Engineers and approved as American National Standard ANSI/IEEE C95.1-2006, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," includes similar limits. These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

As shown in the table and chart below, separate limits apply for occupational and public exposure conditions, with the latter limits (in *italics* and/or dashed) up to five times more restrictive:

Frequency	Electromagnetic Fields (f is frequency of emission in MHz)					
Applicable Range (MHz)	Electric Field Strength (V/m)		Magnetic Field Strength (A/m)		Equivalent Far-Field Power Density (mW/cm ²)	
0.3 – 1.34	614	<i>614</i>	1.63	<i>1.63</i>	100	<i>100</i>
1.34 – 3.0	614	<i>823.8/f</i>	1.63	<i>2.19/f</i>	100	<i>180/f²</i>
3.0 – 30	1842/f	<i>823.8/f</i>	4.89/f	<i>2.19/f</i>	900/f ²	<i>180/f²</i>
30 – 300	61.4	<i>27.5</i>	0.163	<i>0.0729</i>	1.0	<i>0.2</i>
300 – 1,500	$3.54\sqrt{f}$	<i>$1.59\sqrt{f}$</i>	$\sqrt{f}/106$	<i>$\sqrt{f}/238$</i>	$f/300$	<i>$f/1500$</i>
1,500 – 100,000	137	<i>61.4</i>	0.364	<i>0.163</i>	5.0	<i>1.0</i>



Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits, and higher levels also are allowed for exposures to small areas, such that the spatially averaged levels do not exceed the limits. However, neither of these allowances is incorporated in the conservative calculation formulas in the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) for projecting field levels. Hammett & Edison has built those formulas into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radio sources. The program allows for the description of buildings and uneven terrain, if required to obtain more accurate projections.



RFR.CALC™ Calculation Methodology

Assessment by Calculation of Compliance with FCC Exposure Guidelines

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The maximum permissible exposure limits adopted by the FCC (see Figure 1) apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits.

Near Field.

Prediction methods have been developed for the near field zone of panel (directional) and whip (omnidirectional) antennas, typical at wireless telecommunications base stations, as well as dish (aperture) antennas, typically used for microwave links. The antenna patterns are not fully formed in the near field at these antennas, and the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) gives suitable formulas for calculating power density within such zones.

For a panel or whip antenna, power density $S = \frac{180}{\theta_{BW}} \times \frac{0.1 \times P_{net}}{\pi \times D \times h}$, in mW/cm²,

and for an aperture antenna, maximum power density $S_{max} = \frac{0.1 \times 16 \times \eta \times P_{net}}{\pi \times h^2}$, in mW/cm²,

where θ_{BW} = half-power beamwidth of the antenna, in degrees, and

P_{net} = net power input to the antenna, in watts,

D = distance from antenna, in meters,

h = aperture height of the antenna, in meters, and

η = aperture efficiency (unitless, typically 0.5-0.8).

The factor of 0.1 in the numerators converts to the desired units of power density.

Far Field.

OET-65 gives this formula for calculating power density in the far field of an individual RF source:

$$\text{power density } S = \frac{2.56 \times 1.64 \times 100 \times \text{RFF}^2 \times \text{ERP}}{4 \times \pi \times D^2}, \text{ in mW/cm}^2,$$

where ERP = total ERP (all polarizations), in kilowatts,

RFF = relative field factor at the direction to the actual point of calculation, and

D = distance from the center of radiation to the point of calculation, in meters.

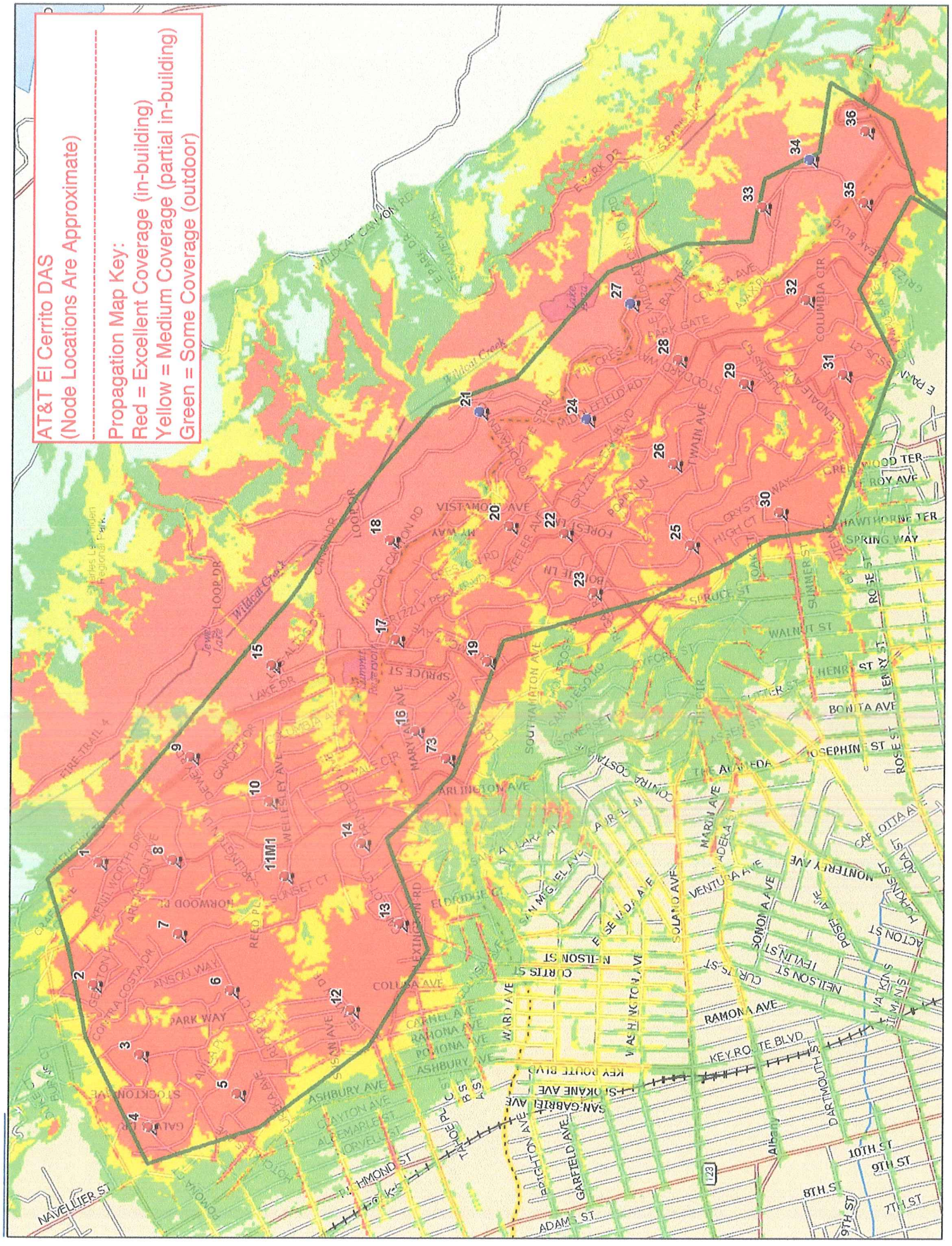
The factor of 2.56 accounts for the increase in power density due to ground reflection, assuming a reflection coefficient of 1.6 ($1.6 \times 1.6 = 2.56$). The factor of 1.64 is the gain of a half-wave dipole relative to an isotropic radiator. The factor of 100 in the numerator converts to the desired units of power density. This formula has been built into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radiation sources. The program also allows for the description of uneven terrain in the vicinity, to obtain more accurate projections.

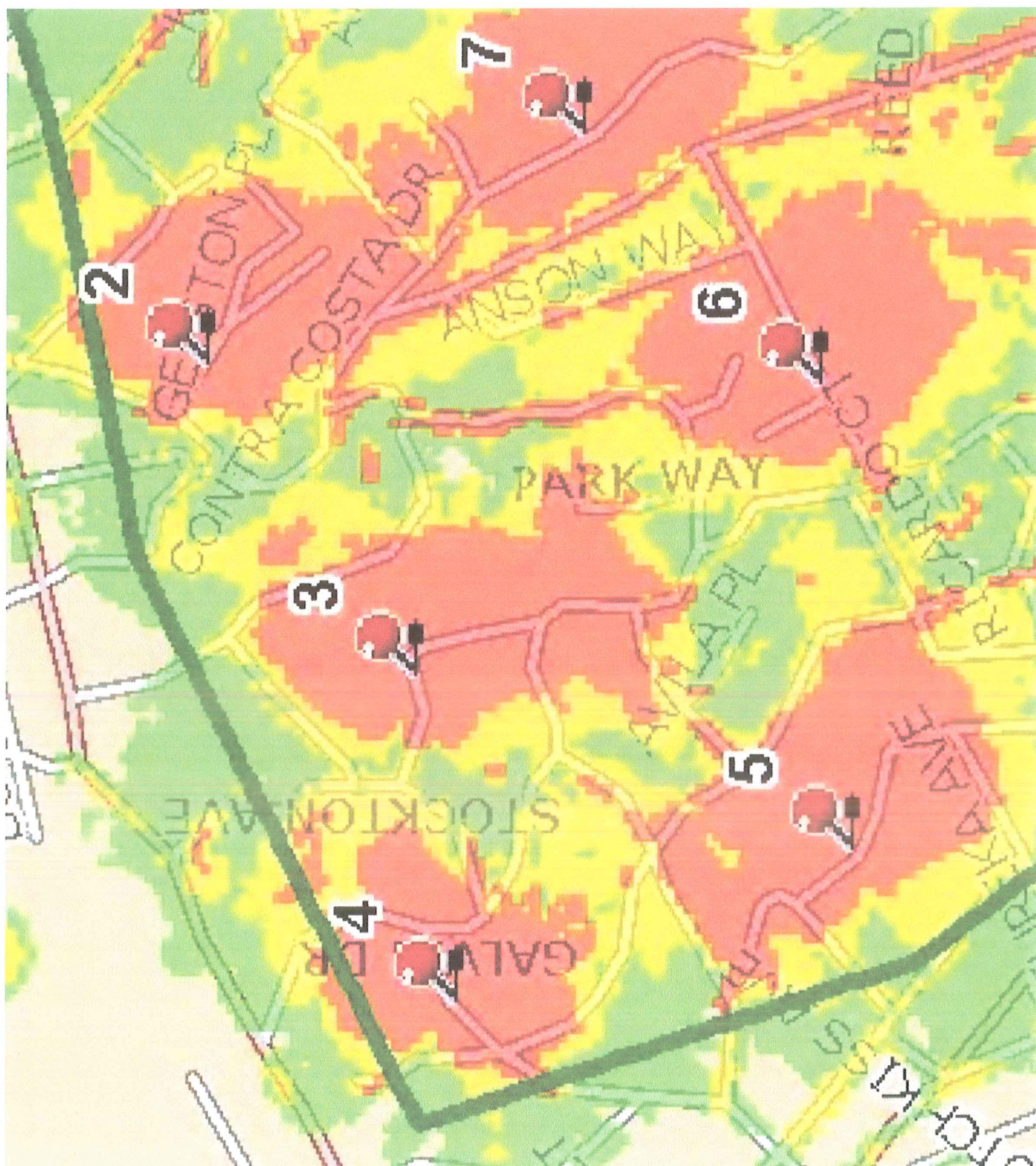


AT&T El Cerrito DAS
(Node Locations Are Approximate)

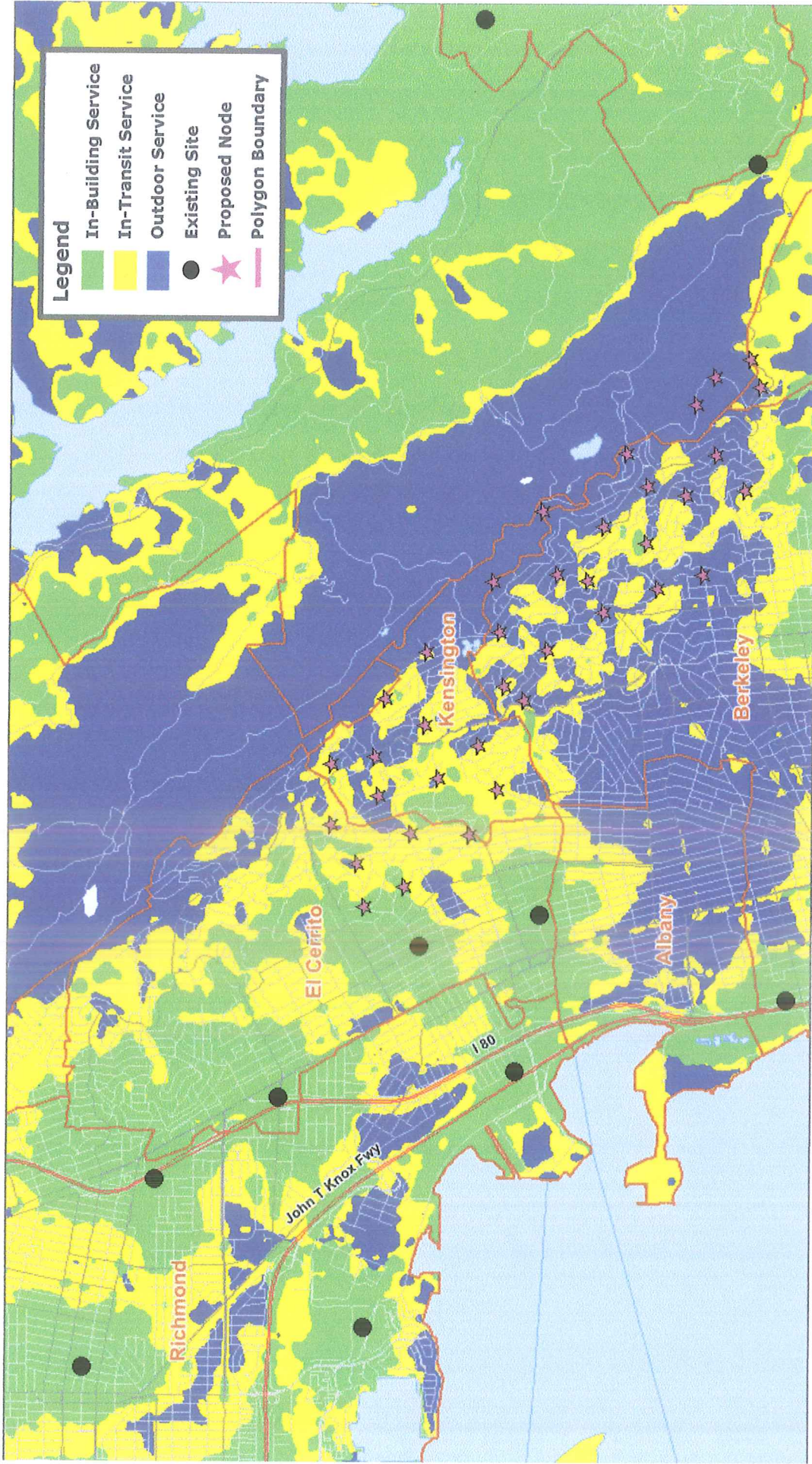
Propagation Map Key:

- Red = Excellent Coverage (in-building)
- Yellow = Medium Coverage (partial in-building)
- Green = Some Coverage (outdoor)

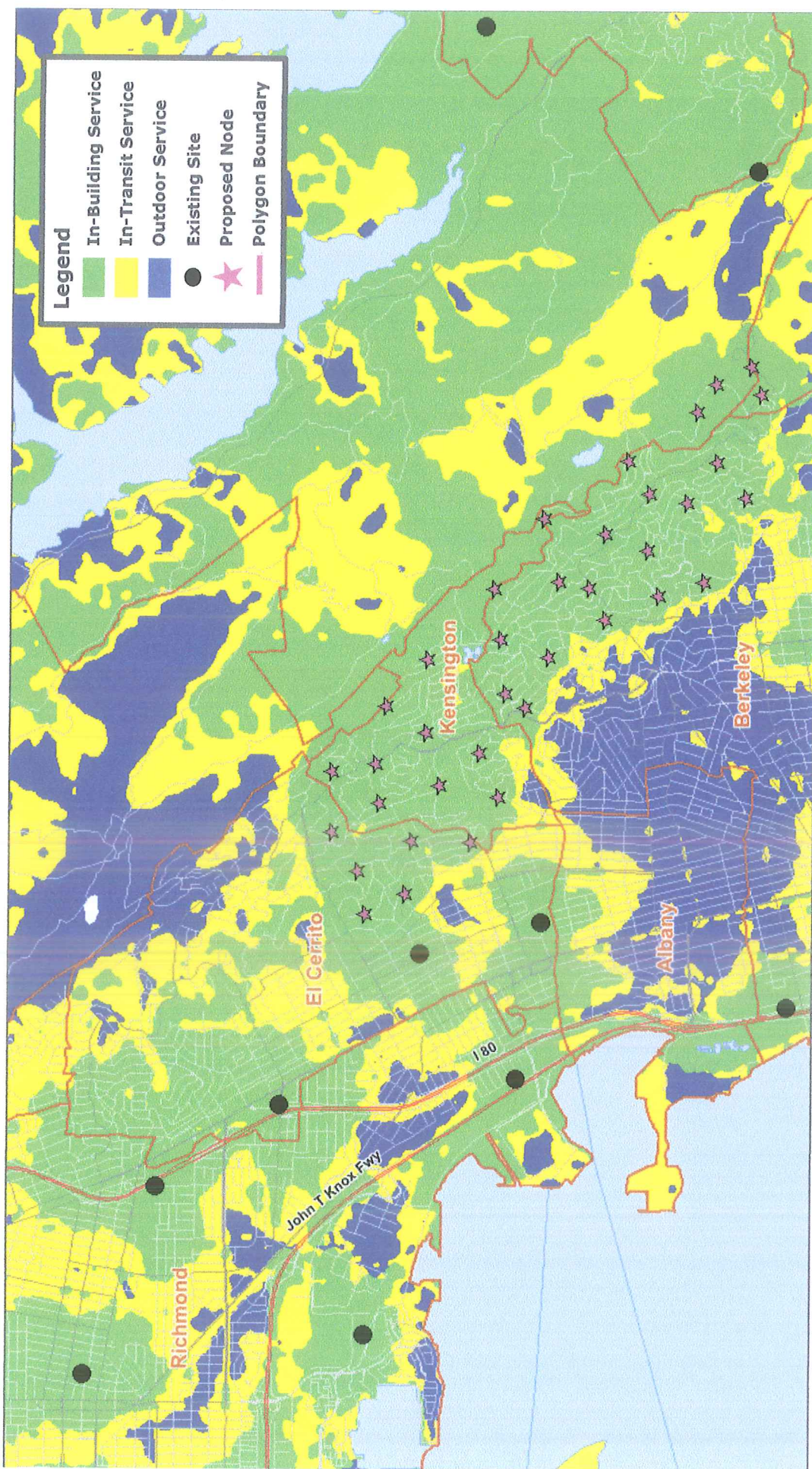




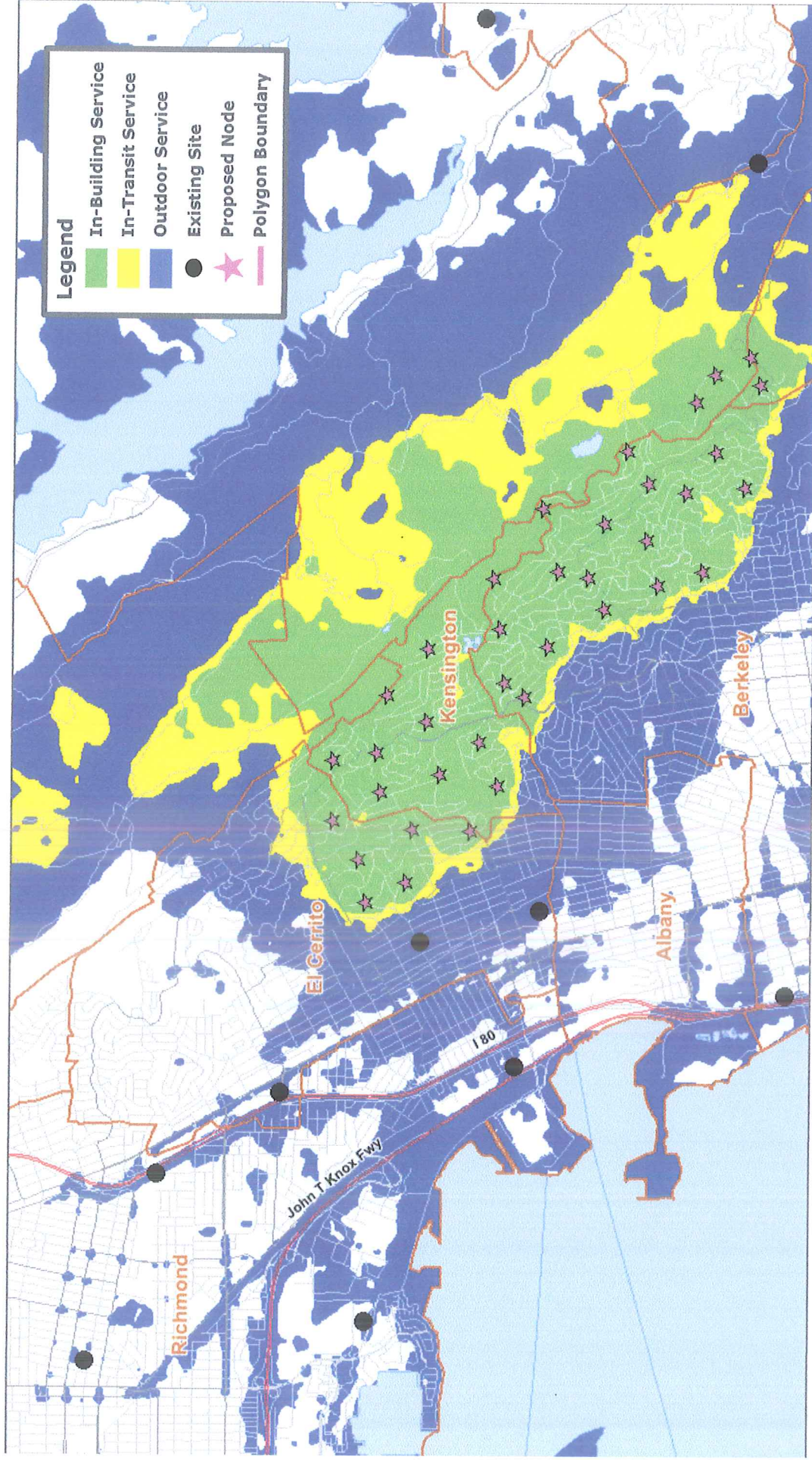
El Cerrito Coverage - Existing



El Cerrito Coverage - Expected



El Cerrito Coverage - Expected by Nodes Only



Existing



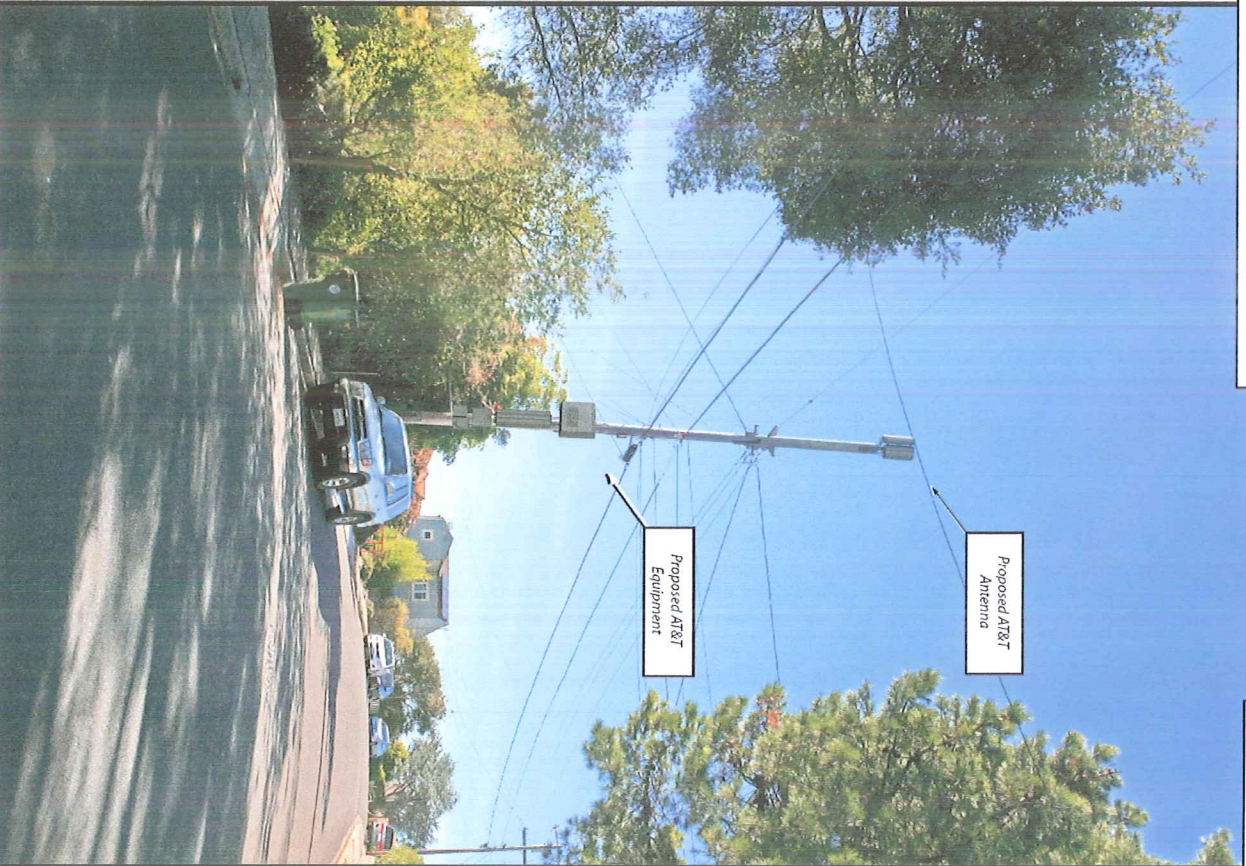
view from Seaview Drive looking west at site



AT&T Wireless

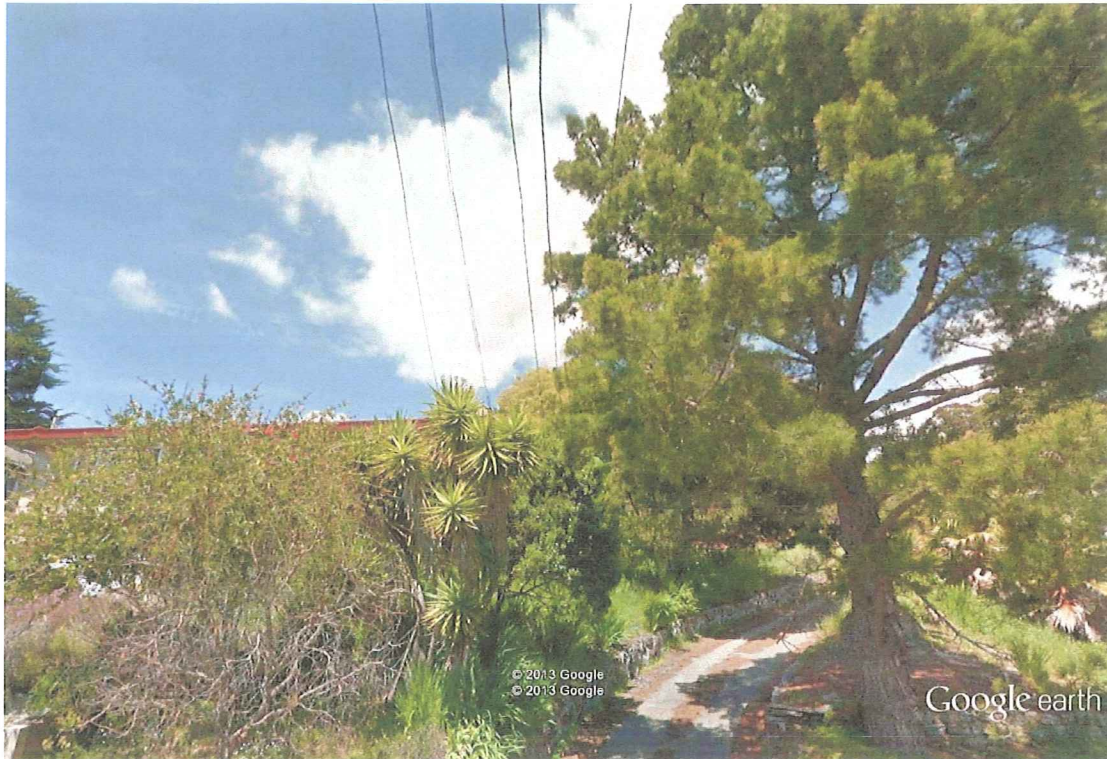
851 Seaview Drive, El Cerrito, CA
Oak Hills AT&T North Network Node 003A

Proposed

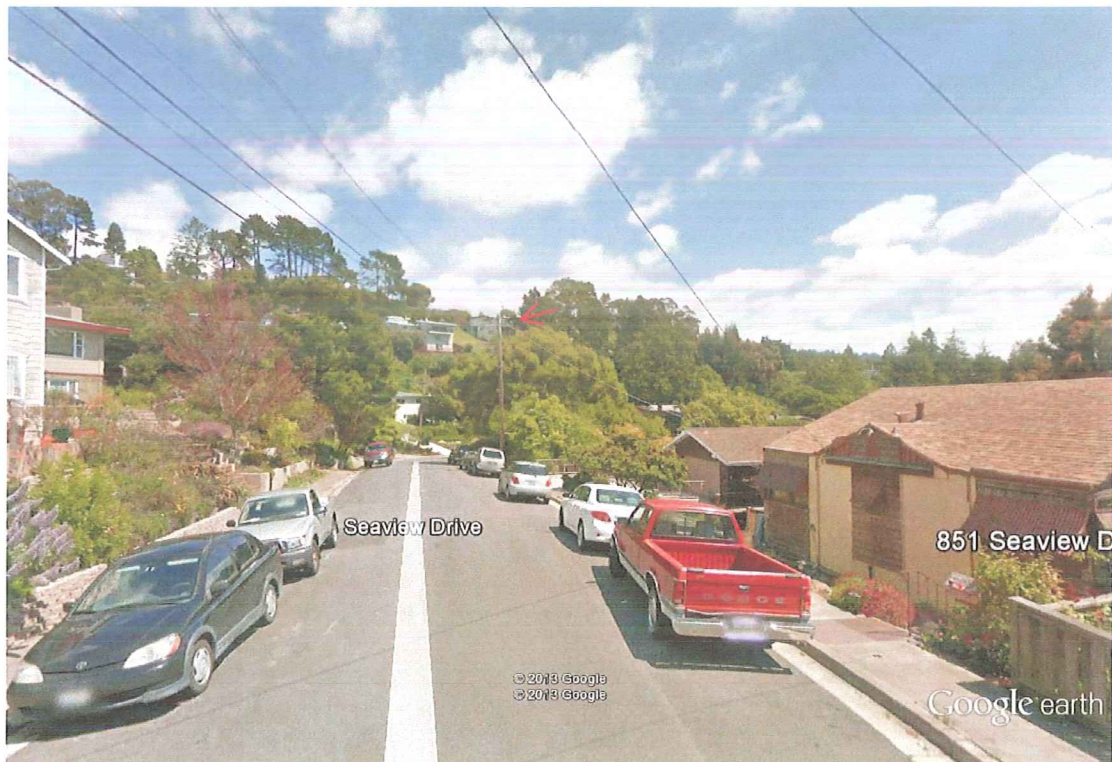


Proposed AT&T
Antenna

Proposed AT&T
Equipment



Looking North from 851 Seaview



East from 883 Seaview



West from 837 Seaview Dr.



Radius Maps Owner and Occupant Lists Mailing Services

December 11, 2012

TO: City of El Cerrito
 10890 San Pablo Ave
 El Cerrito, CA 94530

COPY TO:

RE: Notification Package 851 Seaview Dr OAKN 003AY

To Whom It May Concern:

Enclosed please find

- 300' radius map measured from the exterior of property boundaries
- Mailing list with all owners within the 300' keyed to map
- Mailing labels with all owners within the 300'
- Copy mailing labels

This property information was acquired through the County Assessor's office. Further, the information is based upon the most up-to-date records of the county tax assessor and is deemed reliable, but is not guaranteed.

Parcels:07/26/2012;TaxRoll:09/21/2011;Transactions:11/6/2012

Please contact me at (949) 465-8290 if you have questions.

Thank you.

Kristin Allison



300' Radius Map

**851 Seaview Dr
(OAKN-003A)**



200 ft
LandVision

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300' Radius List
 851 Seaview Dr
 (OAKN-003A)
 Owners List



MAP #	APN	OWNER NAME	OWNER ADDRESS	CITY	STATE	ZIP
1	5033120097	MENKES,PAUL	871 SEAVIEW DR	EL CERRITO	CA	94530
2	5033120113	GRAY,EUGENE & DIANA LYNNE	806 GALVIN DR	EL CERRITO	CA	94530
3	5033120121	JOHANSSON,HANS & MARY K	867 SEAVIEW DR	EL CERRITO	CA	94530
4	5033120139	SILVA,DAVID A & REBEKA G	861 SEAVIEW DR	EL CERRITO	CA	94530
5	5033120147	SAROYAN,ALINE	857 SEAVIEW DR	EL CERRITO	CA	94530
6	5033120154	DUISMAN,JACK A	855 SEAVIEW DR	EL CERRITO	CA	94530
7	5033120162	FINGADO,WILLIAM E & PAMELA TR TRUST	851 SEAVIEW DR	EL CERRITO	CA	94530
8	5033120170	INCHAUSPE,DIANA R TR TRUST	837 SEAVIEW DR	EL CERRITO	CA	94530
9	5033120188	LEE,CHONG JIN TR TRUST	831 SEAVIEW DR	EL CERRITO	CA	94530
10	5033120196	MARTIN,ERIC	825 SEAVIEW DR	EL CERRITO	CA	94530
11	5033120204	WILLIAMS,NORMAN & VIRGINIA TR TRUST	821 SEAVIEW DR	EL CERRITO	CA	94530
12	5033120212	BALSARA & LILLY 2011 TRUST	815 SEAVIEW DR	EL CERRITO	CA	94530
13	5033120220	NIKAIDOH,TAKASHI JEREMIAH	811 SEAVIEW DR	EL CERRITO	CA	94530
14	5033120253	ESFANDIARI,MEHRAN	123 CAPRICORN AVE	OAKLAND	CA	94611
15	5033120261	GREEN,DAVID	7641 TERRACE DR	EL CERRITO	CA	94530
16	5033120279	PAPKOFF,HAROLD & LILLIAN E TR TRUST	7621 TERRACE DR	EL CERRITO	CA	94530
17	5033120287	MCFADDEN,MICHAEL G & CLARA L	7619 TERRACE DR	EL CERRITO	CA	94530
18	5033120295	ONEIL,CAROL L	7603 TERRACE DR	EL CERRITO	CA	94530
19	5052300091	ZUCKERMAN,DAVID B	7750 STOCKTON AVE	EL CERRITO	CA	94530
20	5052300125	NELSON,JACK B TR TRUST	7738 STOCKTON AVE	EL CERRITO	CA	94530
21	5052300133	SAMPSON,HAROLD & FRANCES TR TRUST	7718 STOCKTON AVE	EL CERRITO	CA	94530
22	5052300158	ETCUBANAS,ERLINDA TR TRUST	870 SEAVIEW DR	EL CERRITO	CA	94530
23	5052300166	RAJSPIC,THOMAS G & RICHARD M	1335 CORNELL AVE	BERKELEY	CA	94702
24	5052300190	LEE,RICHARD	850 SEAVIEW DR	EL CERRITO	CA	94530
25	5052300208	LE PAGE MICHAEL	856 CARMEL AVE	ALBANY	CA	94706
26	5052300216	ROORDA,AUSTIN JOHN	840 SEAVIEW DR	EL CERRITO	CA	94530
27	5052300224	PIECH,PAWEL & CAREY	838 SEAVIEW DR	EL CERRITO	CA	94530
28	5052300232	DORAN,PHILIP & ELLEN TR TRUST	834 SEAVIEW DR	EL CERRITO	CA	94530
29	5052300240	KAYE,JULIAN P & MICHELLE A	828 SEAVIEW DR	EL CERRITO	CA	94530
30	5052300547	RICHARDSON,JOSEPH E & NATHALIE	7720 STOCKTON AVE	EL CERRITO	CA	94530
31	5052300588	ZEMANEK,DAVID F & PATRICIA M	852 SEAVIEW DR	EL CERRITO	CA	94530

300' Radius List
 851 Seaview Dr
 (OAKN-003A)
 Owners List



32	5052300596	CHANG,CHEN-PO	7742 STOCKTON AVE	EL CERRITO	CA	94530
33	5052300604	SEIDLER,ELEANOR D	7746 STOCKTON AVE	EL CERRITO	CA	94530
34	5052300638	HAMPTON,HELEN	860 SEAVIEW DR	EL CERRITO	CA	94530
35	5052300646	SILVA,WALTER JR & KY	856 SEAVIEW DR	EL CERRITO	CA	94530
36	5052300141	CHEUNG,EVELYN	880 SEAVIEW DR	EL CERRITO	CA	94530
37	5052300257	WANG,LISA	822 SEAVIEW DR	EL CERRITO	CA	94530
38	5052300265	GEST,MICHAEL E	818 SEAVIEW DR	EL CERRITO	CA	94530
39	5033120105	CHAN,TIN SANG	7668 STOCKTON AVE	EL CERRITO	CA	94530
40	5033120089	MCLAUGHLIN,ANDREW C & PATRICIA M	7670 STOCKTON AVE	EL CERRITO	CA	94530

CITY OF EL CERRITO
PLANNING DIVISION
RECEIVED

JUL 01 2013

PL13-0088

Agenda Item No. 6

Attachment 3



PAID

June 30, 2013

Dear El Cerrito City Council members:

We strongly object to any installation of Distributed Antenna System on the utility pole outside of 851 Sea View Drive and any address in the nearby vicinity.

We sincerely hope the City Council will consider objecting to the installation approved by the Planning Commission. We urge the Council to press AT&T Cingular to pursue better alternatives that are beneficial to El Cerrito as a whole and without levying any burden on residents surrounding the proposed locations. The following are our arguments in brief:

1. The antennae are not to serve the residents in the vicinity but for relaying signals up the hills.
2. Alternative installation methods are available and AT&T is aware of them.
3. AT&T Cingular should pursue relaying signals from the closest optic fiber base station and the most direct route up the hills through less densely populated area using half-mast installation method.
4. The immediate impact of the proposed antennae extended on top of a utility pole will ruin the view from the hills, inevitably destroying property value. Lower property values will result in a loss of property taxes to the city.
5. The Kensington Planning Commission has denied the applications as of February 2013. As a result, Cingular has now reduced its plan to install antennae in Kensington.
6. The antennae violate El Cerrito's wireless ordinance.
7. Insufficient time was given to the matter and the due process from public hearing to Planning Commission Decision was unclear to the residents as compared Contra Costa procedure. Public study should be conducted.
8. Most families are concerned with electromagnetic field. The antennae will stand as a constant reminder of EMF. It will create a tremendous mental stress to the families. We included a signed petition of 28 families in the vicinity.
9. El Cerrito stands to lose as Cingular has revised its plan for Kensington!

We include strong arguments that AT&T is not serving El Cerrito and it is aware of alternatives. The substantial arguments are attached (Please see attached arguments 1 - 8). Thank you very much for your careful considerations and your service to the community.

Yours duly taxpaying residents,

Cheng Tan Lee 831 Sea View Dr. 6/30/13 (Tel: 510-528-9595)
David F. Smith 852 SEAVIEW DR. 6/30/13
William E. Fingado 851 Sea View Dr. 6-30-13
U. R. 850 Seaview Dr. 6/30/13
Quinn R. Ingham 839 Sea View Dr. 6-30-13

1. The antennae are not to serve the residents in the vicinity but for relaying signals up the hills.

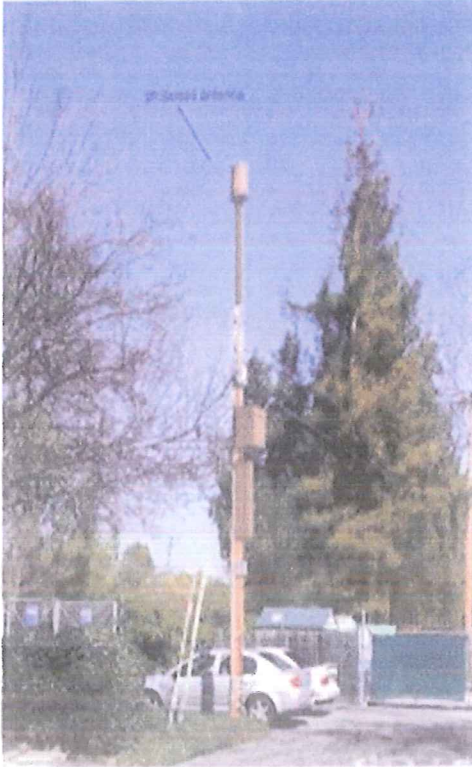
We tested the cellphone signals in all proposed locations for the DAS antennae in El Cerrito. The signals are unanimously strong, registering 4 bars and 5 bars (max) in all locations. As the signals are all strong, we wonder why the antennae would be necessary. This is a strong indication that the antennae are NOT meant for El Cerrito residents. They are for relaying signals up the hills.

One succinct observation after viewing the before-and-after cellphone reception maps during the public hearing on June 19 is that after the installations, signals will only improve marginally in El Cerrito whereas Kensington will see a drastic improvement! This is another clear indication that the DAS antennae in El Cerrito are meant to relay signals up the hills to Kensington. El Cerrito residents stand to gain little.

2. Alternative installation methods are available and AT&T is aware of them.

We noticed in AT&T Cingular's applications to install DAS antennae in Kensington, one application proposes a different type of DAS antenna. The antenna is mounted halfway up the utility pole. It is a half-mast antenna. The fourth picture below is from that application. Link to the applications site in Contra Costa county site: <http://www.contracosta.ca.gov/documentcenter/view/26853>.

This half-mast antenna can be seen in Central Park and also in Oakland hills. The half-mast method also has less power intensity though it might require more installations. The lower power density has the benefit of lesser health concern.



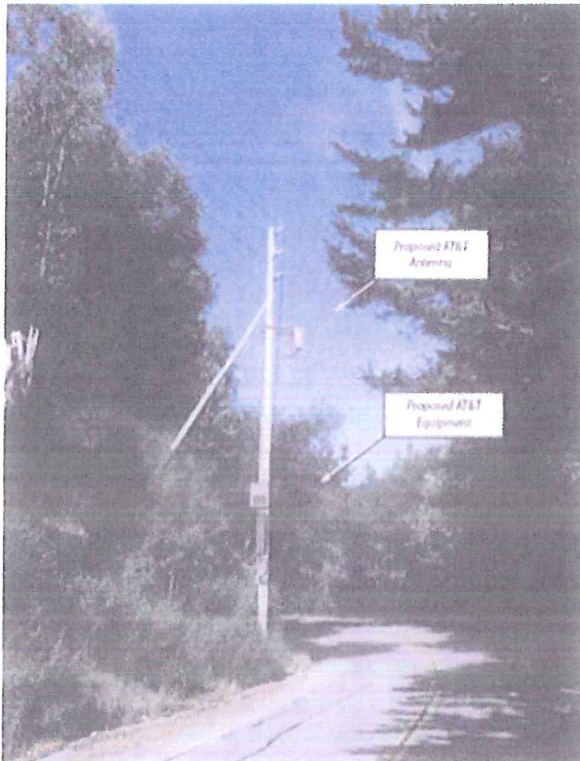
The proposed DAS antenna for El Cerrito – particularly an eyesore in the line of view for residents on the hills



Half-mast DAS antenna at 6655 Snake Road, Oakland



Aesthetically appealing half-mast antenna at Central Park, New York installed by a company **Mobilitie** of Newport Beach, CA.



**AT&T IS AWARE OF AN
ALTERNATIVE!**

Excerpted from AT&T Cingular applications to install in Kensington

Half-mast antenna proposed by AT&T Cingular for one particular location in Kensington.

As seen in the picture above, AT&T did propose a different antenna in one location in Kensington. AT&T is aware of this alternative! We urge the City Council to conduct a public study on alternative aesthetically-appealing antennae.

3. **For the purpose of relaying cell phone signals and data transmission up the hills, AT&T Cingular should pursue a more direct route, for example Moeser Lane, capitalizing on existing street lights, and using the half-mast technology.**

Based on the aforementioned arguments 1 and 2, if AT&T Cingular intends to pursue relaying the signals up the hills, El Cerrito can negotiate the company to install in a less populated areas. One plausible location may be up Moeser Lane using the existing street lights directly in a straight line manner up the hills. The installation can be the more appealing half-mast method, avoiding being an eye-sore.

Besides the half-mast installation method, AT&T's optic fibers have reached the intersection between 7000 block of Eureka and 700 block of Sea View Drive. Can AT&T

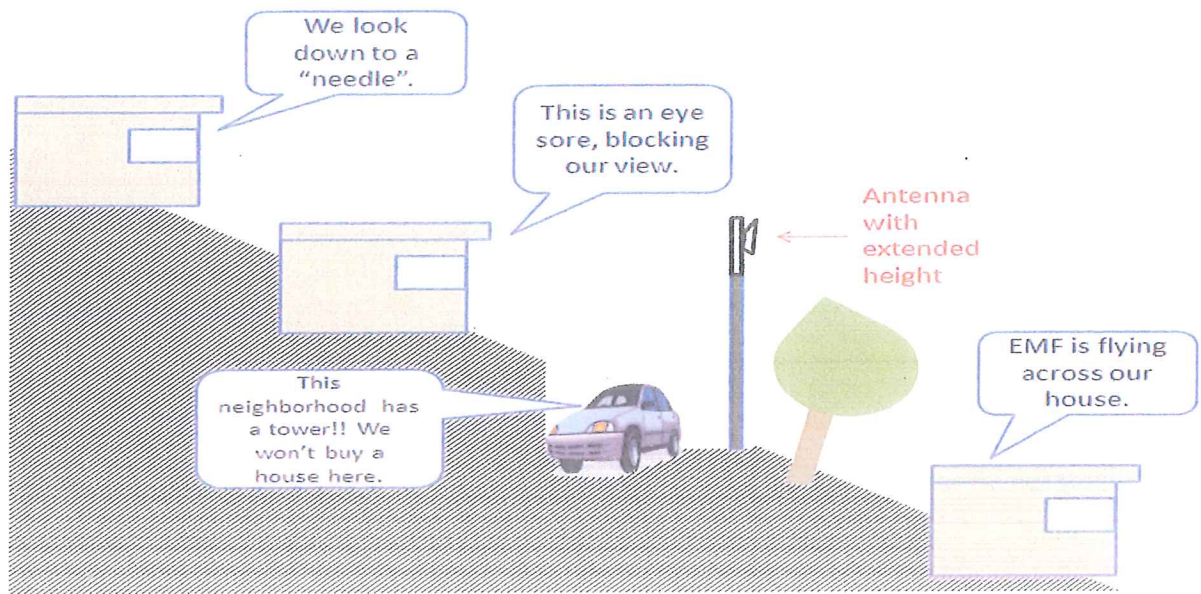
pull optic fibers further up from these locations? The optic fibers are literally only one block from Kensington. AT&T Cingular should be urged to pursue this kind of long-term installation that ultimately provides great bandwidth for many years to come. This once-and-for-all installation should prove to be more economical for AT&T and to El Cerrito's benefit.

4. The immediate impact of the proposed antennae extended on top of a utility pole will ruin the view from the hills, inevitably destroying property value. Lower property values will result in a loss of property taxes to the city.

First and foremost, stating the obvious, any installation with a vertical height does not fit the hill topography. It ruins the view! View as the residents paying a premium for and it is a crucial to the property value! The antennae will inevitably lower the property value.

- Having an antenna with great visibility for anyone stigmatizes the neighborhood.
- The concern for electro-magnetic field is so great that, unless the Federal Communications Commission or any wireless carrier can offer an absolute convincing proof to convince anyone in the entire World, the concern remains.
- With that concern, anyone passing through the neighborhood, any potential house buyers will look at the neighborhood as "unsound for health". The stigma together with the view obstruction yields an immediate impact.
- The immediate impact – loss of property value!
- **An estimate using the most current median house prices (\$587,600) in El Cerrito on Zillow.com as of June 18, 2013, if the installation were to go ahead, \$4,407,000 of property value will be wiped out with a 15% drop in property value.**
- **This equals to \$57,732 losses in tax revenues for El Cerrito. This is greater than 10% of the city's latest revenues from fees and permits!**
- **If we assume the median housing price is to continue growing at 25% annually, the city will continue to suffer a greater and greater tax revenue loss over time.**

Year	First Year	Second Year	Third Year
Property Tax Loss	\$57,732	\$72,165	\$90,206



5. The Kensington Planning Commission has denied the applications as of February 2013. As a result, Cingular has now reduced its plan to install antennae in Kensington.

Since the application does not proceed for Kensington, the installations in El Cerrito will not be necessary. As long as this uncertainty exists, there is no urgency for El Cerrito to make the decision on the installations.

Cingular has now proposed to put a "macro" tower in El Cerrito and to reduce the number of antennae in Kensington in its revised plan.

6. The antennae violate El Cerrito's wireless ordinance, chapter 19.28

The application and the installation violate the following ordinances in Chapter 19.28 highlighted in yellow:

19.28.040 Additional Standards

A. Location and Siting. All facilities shall be designed and sited to minimize their visibility, prevent visual clutter, and reduce conflicts with surrounding land uses. As used in this Chapter, "readily visible" means that a person with normal vision can see the facility and distinguish it as an antenna or other component of a wireless telecommunications facility.

5. No facility shall be located in a residential zoning district where it is readily visible from the habitable area of a dwelling unit within 300 feet of the facility.

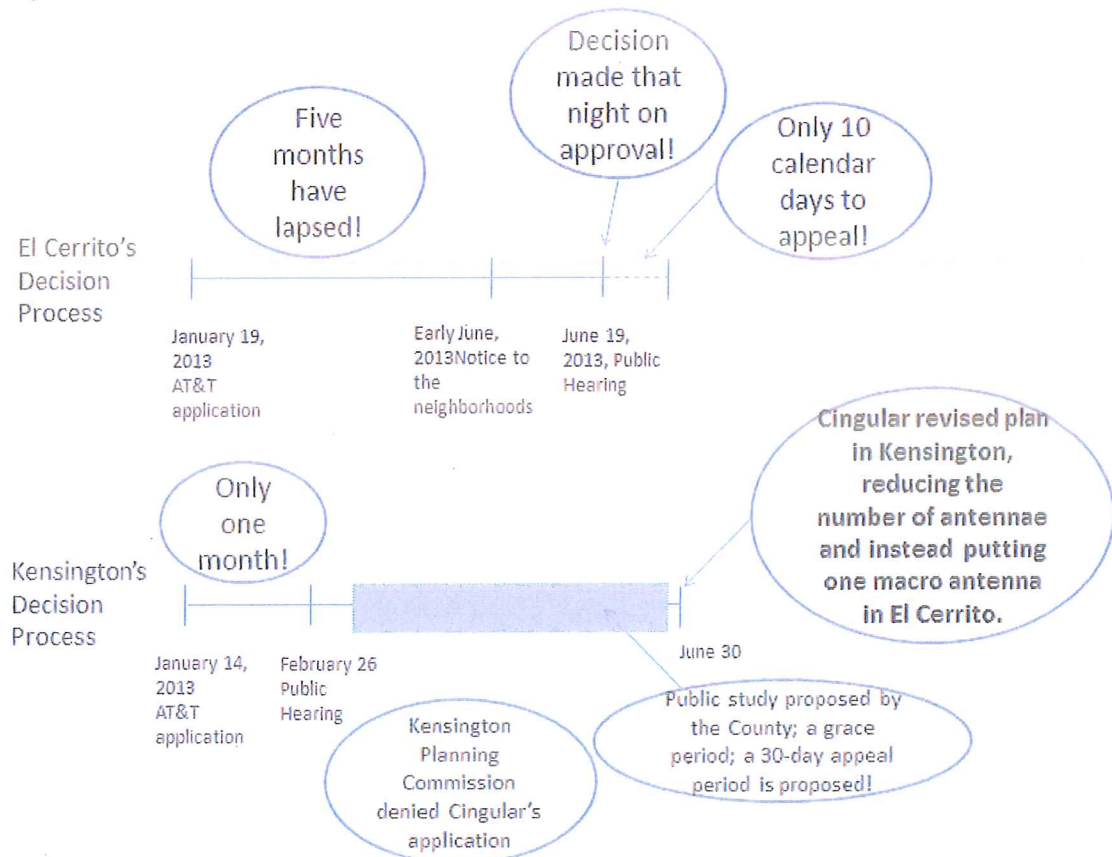
19.28.060 Required Findings

4. The proposed facility will not be readily visible, or it is not feasible to incorporate additional measures that would make the facility not readily visible as defined in [Section 19.28.040](#).

The AT&T Cingular's proposal to paint the antenna brown is absurd. It would only highlight the antenna against the horizon. Painting it brown is only suitable for antennae located in the flat area to "integrate" them with the pole.

7. Insufficient time given and unclear due process from public hearing to Planning Commission decision as compared to Contra Costa procedure. At this point the basis of the Planning Commission's decision is unclear. A public study should be conducted.

Here is a comparison between Kensington's decision process vs. El Cerrito:



- There was a long five-month period with residents kept in the dark, not knowing about the applications in El Cerrito.
- The decision made on the very night of the Public Hearing with basis unclear to the residents.
- Only ten days of appeal period is too short.
- It is time for El Cerrito to change its process to informing the residents early, and involving the residents to receive inputs from the public before making any decision. There should be a period for a public study!
- There should be a longer period for residents to appeal.
- Residents were not notified of the Planning Commission's decision. How do you expect the residents to appeal in a limited time frame?
- The whole process needs to be more transparent and provide an early notification to residents.
- Compared to the Kensington process, the El Cerrito's process appears to be harsh with a long inert period and a quick decision at the end, giving the public very time to consider the matters very dear to them.
- Lack of a period for open public study or to receive input from the residents.
- Independent technical expertise should be brought into the study.

8. Most families are concerned with electromagnetic fields. The antennae standing as a constant reminder will create tremendous mental stress for the families. We included a signed petition of 28 families.

As long as the causal link between electromagnetic fields and health effect are inconclusive, there are grave concerns among parents with children, especially young ones. EMF even at low frequency has been classified by the International Agency on Cancer Research, a branch of the World Health Organization, as a very likely cause of childhood leukemia.

An antenna will create huge mental stress on the parents who will be reminded every day, day-in day-out, on their way to work, and coming back from school. Every time they go through the antennae. The antennae will stand there as a constant reminder of EMF. We cordially invite the City Council to visit our neighborhood to see the impact.



Many families in the neighborhood strongly object to the DAS antenna.

28 families on the 800 block of Sea View Drive and cross streets signed the petition objecting to the DAS antennae. The petition was submitted to Planning Committee on June 19. Attached is a copy of the petition. More objections are expected.

9. El Cerrito stands to lose as Cingular has revised its plan for Kensington!

According to the latest Kensington Outlook, Cingular decided to revise its plan for Kensington:

- Cingular reduces the number of antennae from nine to six in Kensington and instead puts one “macro” tower in El Cerrito. To cover the reduction in antennae, Cingular proposed to put one “macro” antenna in El Cerrito!

- Five of those six remaining antennae in Kensington will be modified to be more aesthetically appealing! This is another indication that AT&T Cingular does have alternatives!
- This revised plan will be discussed by the Kensington community on July 30. If it is accepted, El Cerrito will have to decide if we want a “macro” antenna and aesthetically less appealing antennae! El Cerrito stands to lose if no firm stance is taken vis-à-vis AT&T Cingular!

We strongly urge the City Council to press AT&T for better alternatives in terms of better locations and aesthetically more appealing antennae!



Environmental and Development Services Department - Planning Division

10890 San Pablo Avenue, El Cerrito, CA 94530

(510) 215-4330 - FAX: (510) 233-5401

planning@ci.el-cerrito.ca.us

PLANNING COMMISSION STAFF REPORT

Meeting Date: June 19, 2013

I. SUBJECT

Application: PL13-0006 – PL13-0010

Applicant: New Cingular Wireless PCS, LLC

Location: Public Right of Way near 851 Seaview Drive, 906 Balra Drive, 762 Colusa Avenue, 7800 Eureka Avenue, and 202 Seaview Drive

APN: Public Right-of-Way

Zoning: RS-5 (Single Family Residential)

General Plan: Low Density Residential

Request: Planning Commission consideration of conditional use permits to allow five wireless telecommunications facilities on existing utility poles.

CEQA: Categorically Exempt, Section 15301 – Class 1, Existing Facilities.

II. BACKGROUND

On January 10, 2013 New Cingular Wireless PCS, LLC, doing business as AT&T Mobility submitted six applications for wireless telecommunications facilities at the locations of existing utility poles in the southern portion of El Cerrito. On May 23, 2013, the applicant withdrew one application near 859 Gelston Place. The remaining five applications are proposed as part of a distributed antenna system (DAS) that will cover a large portion of the East Bay hills. The applicant is currently processing applications in Oakland, Berkeley, and Kensington for other portions of the network.

The Design Review Board conducted Conceptual Review of the project at their May 1 meeting. The DRB comments generally centered around the aesthetic of the existing poles and whether the Board could require the applicant to replace the poles with a certain type of pole (e.g. concrete). The City Attorney is currently looking into whether it is within the DRB's authority to require the type of replacement pole.

III. DISCUSSION

DAS networks typically consist of lower powered nodes connected to a common connection point. However, each of the proposed DAS nodes will be connected to AT&T's network at site of each pole. Distributed antenna systems are often utilized in indoor areas where coverage poses challenges. In this case, the topography of the East Bay hills presents coverage challenges. The

applicant has decided to pursue a DAS network as a way to provide more consistent coverage in the hills.

The proposed DAS nodes would be located on top of the existing utility poles. For three of the proposed sites, a 7-foot extension would be added to the top of the pole. For two sites, the existing pole would be replaced with a new pole that would be approximately 7 feet taller. The proposed antennas are approximately 2 feet tall would be mounted at the top of the extension or the new pole. The top of the antennas would sit approximately 3 feet above the top of the pole. All equipment for each facility would be mounted on the pole. No equipment will be ground mounted. Pursuant to section 19.32.050(D) of the Zoning Ordinance, the Zoning Administrator may require notice of the public hearing in addition to what is normally required. In this case, because the proposed sites are within the public right-of-way and therefore do not have addresses or parcel numbers, staff required the applicant to post hearing notices on the subject poles so that they are readily identifiable to the Planning Commission and the public.



Site PL13-0006 near 851 Seaview Drive.



Site PL13-0007 near 906 Galvin Drive.



Site PL13-0008 near 762 Colusa Avenue



Site PL13-0009 near 7800 Eureka Avenue



Site PL13-0010 near 202 Seaview Drive

Similar DAS nodes have been installed in the East Bay by T-Mobile. The site nearest to El Cerrito is at 1215 Santa Fe Avenue in Berkeley at the intersection Key Route Boulevard on the border with Albany. This site is visible from BART trains. Other nearby sites include Cedar Street at Juanita Way, near Cedar Rose Park and Dwight Way at California Street. Photos of two of these sites are included below. These sites are slightly different from the proposed AT&T nodes in that the T-Mobile sites use omnidirectional antennas which are cylindrical in shape. The coverage that AT&T is attempting to provide with the proposed nodes has informed the applicant's decision to propose two directional antennas per node. Coverage in all directions is not required and the applicant wished to limit the loss of signal toward the bay and other areas where coverage is not needed. The existing examples of DAS nodes mentioned above are good examples of the scale of the proposed facilities. The pole extensions that these nodes are

mounted on are approximately the same height as the extensions that AT&T is proposing. The T-Mobile antennas appear to be taller than the proposed AT&T antennas.



DAS node near 1215 Santa Fe Avenue, Berkeley



DAS node near Dwight Way and California Street, Berkeley

The applicant has verbally assured staff that their intent is to paint the proposed antennas and equipment brown to match the color of the utility poles. Staff is proposing a condition of approval to ensure that this will happen. Staff is also proposing a condition of approval to ensure that AT&T will not oppose any future efforts to underground utilities in the areas where these facilities are located. The applicant verbally committed to this at the recent DRB meeting.

IV. FINDINGS

The Planning Commission must make the following findings as outlined in Section 19.34.040 of the El Cerrito Zoning Ordinance:

1. *The location, size, design, and operating characteristics of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.*

The proposed wireless telecommunications facilities are compatible will be located on existing utility poles and are compatible with the surrounding properties and will not adversely affect the livability or development of surrounding properties.

2. *The location and design of the proposal will provide a convenient and functional living, working, shopping, or civic environment that will be an attractive amenity for the City.*

The proposed wireless telecommunications facilities will provide 4G LTE wireless service to the southern portion of El Cerrito, improving the convenience of the living and working environments.

3. *The proposal is consistent with the purposes of the district where it is located and conforms in all significant respects with the El Cerrito General Plan and with any other applicable plan adopted by the City Council.*

The project is consistent with the El Cerrito General Plan. There are no other relevant adopted plans.

The Planning Commission must make the following findings as outlined in Section 19.28.060 of the El Cerrito Zoning Ordinance:

1. *The proposed use conforms with the specific purposes of this Chapter and any special standards applicable to the proposed facility.*

The proposed facilities conform with the standards of Chapter 19.28: Wireless Telecommunications Facilities of the El Cerrito Municipal Code.

2. *The applicant has made good faith and reasonable efforts to locate the proposed wireless facility on a support structure other than a new ground-mounted antenna, monopole, or lattice tower, or to accomplish co-location.*

The applicant currently operates facilities at El Cerrito Plaza and 6830 Stockton Avenue. There are limited structures in the southern portion of El Cerrito that can accommodate new facilities. The applicant identified alternative sites and found them to be less desirable from both coverage and aesthetic perspectives.

3. *The proposed site results in fewer or less severe environmental impacts than any feasible alternative site.*

The proposed sites (on top of existing utility poles) limit the visual impacts of the facilities. The project is exempt from review under the California Environmental Quality Act.

4. *The proposed facility will not be readily visible, or it is not feasible to incorporate additional measures that would make the facility not readily visible as defined in Section 19.28.040.*

The location of the proposed facilities are within the public right of way. They are incorporated onto existing utility poles. It is not feasible to limit their visual impact. Sites that would enable the facilities to be not readily visible are limited in this portion of El Cerrito.

To locate a facility in a residential zoning district where it is readily visible from the habitable area of a dwelling unit within 300 feet, or at any location where it is readily visible from a public right-of-way, public park, or other public recreation or cultural facility, the decision maker shall find that:

1. *It is not feasible to provide the service at another location; or to incorporate additional measures such as a decrease in height, increase in setback, change in design, relocation relative to other structures or natural features, that would further reduce its visibility; and*

The applicant operates wireless telecommunications facilities at El Cerrito Plaza and 6830 Stockton Avenue. The topography of this portion of El Cerrito provides coverage challenges. The proposed facilities will extend the existing utility poles to the minimum height required for separation from existing utilities and to provide coverage.

2. *The proposed facility provides an important link in the applicant's service area build-out and is necessary to provide personal wireless services to city residents.*

The proposed facilities are necessary to provide coverage to the southern portion of El Cerrito.

V. RECOMMENDATION

Staff recommends approval of Planning Applications PL13-0006 – PL13-0010 as conditioned by the draft resolutions in Attachment 1-5 approving conditional use permits to allow five wireless telecommunications facilities on existing utility poles.

Proposed Motion: Move adoption of Planning Commission Resolution PC13-__ approving a conditional use permit to allow a conditional use permit to allow a wireless telecommunications facilities on an existing utility pole.

Appeal Period: Within ten (10) calendar days after the date of the decision, the Planning Commission action may be appealed to the City Council.

Attachments:

- 1) Draft Resolution PC13-09
- 2) Draft Resolution PC13-10
- 3) Draft Resolution PC13-11
- 4) Draft Resolution PC13-12
- 5) Draft Resolution PC13-13
- 6) Plans for Application PL13-0006 (near 851 Seaview Drive), dated January 10, 2013
- 7) Plans for Application PL13-0007 (near 906 Balra Drive), dated January 10, 2013
- 8) Plans for Application PL13-0008 (near 762 Colusa Avenue), dated January 10, 2013
- 9) Plans for Application PL13-0009 (near 7800 Eureka Avenue), dated January 10, 2013
- 10) Plans for Application PL13-0010 (near 202 Seaview Drive), dated January 10, 2013

Planning Commission Resolution PC13-09

APPLICATION NO. PL13-0006

A RESOLUTION OF THE CITY OF EL CERRITO PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT TO ALLOW A WIRELESS TELECOMMUNICATION FACILITY ON AN EXISTING UTILITY POLE NEAR 851 SEAVIEW DRIVE.

WHEREAS, the subject site is located in the public right-of-way near 851 Seaview Drive;

WHEREAS, the zoning district of the site is RS-5 (Single Family Residential);

WHEREAS, the general plan land use designation of the site is Low Density Residential;

WHEREAS, on January 10, 2013, the applicant submitted an application for a conditional use permit; and

WHEREAS, this project is Categorically Exempt from the provisions of CEQA – Section 15301 Class 1 – Existing Facilities;

WHEREAS, on June 19, 2013, the Planning Commission of El Cerrito, after due consideration of all evidence and reports offered for review, does find and determine the following:

1. The existing facility is compatible with and does not adversely affect the adjacent properties.
2. The project will provide 4G LTE wireless service to the southern portion of El Cerrito. The improved service will enhance the convenience of the living, and working environment.
3. The project is consistent with the El Cerrito General Plan. There are no other relevant adopted plans.
4. The proposed facility conforms with the standards of Chapter 19.28: Wireless Telecommunications Facilities of the El Cerrito Municipal Code.
5. The applicant currently operates facilities at El Cerrito Plaza and 6830 Stockton Avenue. There are limited structures in the southern portion of El Cerrito that can accommodate new facilities. The applicant identified alternative sites and found them to be less desirable from both coverage and aesthetic perspectives.
6. The proposed site (on top of an existing utility pole) limits the visual impact of the facility. The project is exempt from review under the California Environmental Quality Act.
7. The location of the proposed facility is within the public right-of-way. It is incorporated onto an existing utility pole. It is not feasible to limit the site's visual impact. Sites that would enable the facilities to be not readily visible are limited in this portion of El Cerrito.
8. The applicant operates wireless telecommunications facilities at El Cerrito Plaza and 6830 Stockton Avenue. The topography of this portion of El Cerrito provides coverage challenges. The proposed facility will extend the existing utility pole to the minimum height required for separation from existing utilities and to provide coverage.
9. The proposed facility is necessary to provide wireless coverage to the southern portion of El Cerrito.

NOW, THEREFORE, BE IT RESOLVED, that after careful consideration of maps, facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, the El Cerrito Planning Commission hereby approves Application No. PL13-0006, subject to the following conditions:

Planning Division:

1. The project shall be developed and maintained substantially in compliance with the plans dated January 10, 2013 except as amended by subsequent conditions of this Resolution. Minor changes may be approved by the Zoning Administrator.
2. Approval of this conditional use permit shall be limited to allow a wireless telecommunications facility on an existing utility pole.
3. If not used, this use permit shall expire two years from the date of this action.
4. All antennas, cables, equipment and any other visible elements of the facility shall be brown in color to match the color of the utility pole.

Public Works:

5. Prior to installation, the applicant shall secure all necessary Encroachment Permits.
6. The owner and/or operator of the facility shall not take any action to oppose any future undergrounding of utilities in the area of the facility.

Building Division:

7. Prior to installation, the applicant shall secure all necessary Building Permits.

Fire Department:

8. Construction shall meet current all meet all current building codes and the El Cerrito Fire Code.

CERTIFICATION

I CERTIFY that this resolution was adopted by the El Cerrito Planning Commission at a regular meeting held on June 19, 2013 upon motion of Commissioner Pine, second by Commissioner Kuhlman:

AYES: Hansen, Kuhlman, Lucas, Pine

NOES: Coty, Hirano

ABSTAIN: None

ABSENT: Motoyama



Sean Moss, AICP

Senior Planner



OAKHILLS AT&T NORTH NETWORK

OAKN-003A

(PROW) 851 SEAVIEW DR, EL CERRITO, CA 94530

PROPRIETARY INFORMATION

THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARRIER SERVICES IS STRICTLY PROHIBITED.



NEW CINGULAR WIRELESS PCS, LLC
4430 ROSEWOOD DR, BLDG 3
PLEASANTON, CA 94588-3050

PROJECT INFORMATION:

OAKHILLS AT&T
NORTH NETWORK
NODE 003A

851 SEAVIEW DR
EL CERRITO, CA 94530

CURRENT ISSUE DATE:

12/15/12

ISSUED FOR:

ZONING

BY: DATE: DESCRIPTION: REV:

BY	DATE	DESCRIPTION	REV
ACI	12/15/12	POLE INFO CORRECTED	1
ACI	12/01/12	ZDs	0

PLANS PREPARED BY:



Aero Communications Inc.
1-800-825-4ACI
5711 Research Drive
Canton, MI 48188

ACI NUMBER: OAKN-003A

CONSTRUCTED BY:



3030 Warrenville Rd, Suite 340
Lisle, IL 60532
www.extenet.com

SEAL OF APPROVAL:

SHEET TITLE:

TITLE SHEET
AND
PROJECT INFORMATION

SHEET NUMBER: REVISION:

T1

1

12/15/12

LEGEND & SYMBOLS

— — — — —	CENTERLINE	⊕	SPOT ELEVATION (DATUM)
— — — — —	PROPERTY/LEASE LINE	⊗	FLAG NOTE
— — — — —	PROPOSED CONDUIT	⊗	ITEM BALLOON (DETAIL SHEETS)
— — — — —	POWER CONDUIT	⊗	DETAIL REFERENCE
— — — — —	TELEPHONE CONDUIT	⊗	SECTION REFERENCE
— — — — —	AERIAL ELECTRICAL LINE		
— — — — —	COAXIAL CABLE/CONDUIT		
— — — — —	OVERHEAD CONDUCTORS		
— — — — —	CHAIN LINK FENCING		

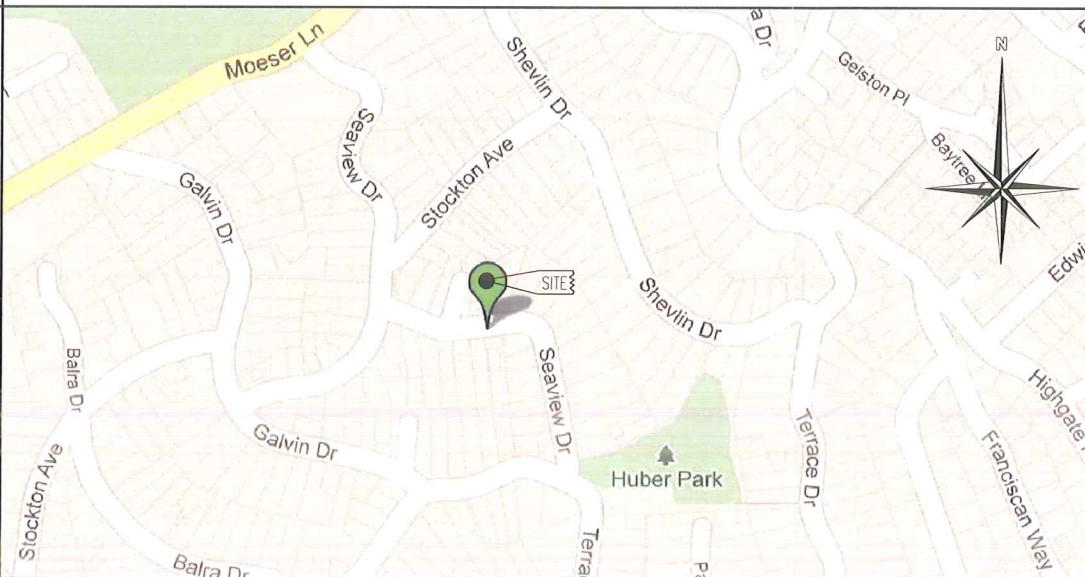
ABBREVIATIONS

AL	ALUMINUM	FLR	FLOOR	PRELIM	PRELIMINARY
ALY	ALLOY	FT	FOOT	PWR	POWER
ANT	ANTENNA	FS	FARSIDE	QTY	QUANTITY
AGL	ABOVE GROUND	FSTNR	FASTENER	R	RADIUS
	LEVEL	GALV	GALVANIZED	PAD	RADIATION
AMSL	ABOVE MEAN	GA	GAUGE	RC	RAD CENTER
	SEA LEVEL	GEN	GENERATOR	RCVR	RECEIVER
APVD	APPROVED	GND	GROUND/GROUNDING	ALY	ALLOY
APPROX	APPROXIMATE	ID	INSIDE DIAMETER	RELOC	RELOCATED
AR, A/R	AS REQUIRED	MATL	MATERIAL	REQD	REQUIRED
BAT	BATTERY	MAX	MAXIMUM	SH	SHEET
BC	BOLT CIRCLE	MFR	MANUFACTURER	SPLY	SUPPLY
BLDC	BUILDING	MTD	MOUNTED	SS	STAINLESS STL
BRKT	BRAKET	MTG	MOUNTING	STD	STANDARD
CAB	CABINET	MTR	METER	STL	STEEL
CL	CENTERLINE	MAX	MAXIMUM	STR	STRUCTURAL
CONC	CONCRETE	MIN	MINIMUM	SQ	SQUARE
CND	CONDUIT	(N)	NEW	SW	SWITCH
DN	DOWN	NS	NEARSIDE	THD	THREAD
(E)	EXISTING	NTS	NOT TO SCALE	THK	THICK
EA	EACH	OC	ON CENTER	TNND	TINNED
EL	ELEVATION	OD	OUTSIDE DIAMETER	TYP	TYPICAL
EMBED	EMBEDMENT	(P)	PROPOSED	UBC	UNIFORM
EMER	EMERGENCY	PLYWD	PLYWOOD		BUILDING CODE
ENCL	ENCLOSURE	PL	PLACES	W/	WITH
EQPT	EQUIPMENT	PNL	PANEL	W/O	WITHOUT
EQ SP	EQUAL SPACE	P/O	PART OF	XMFR	TRANSFORMER
HGT	HEIGHT	POSN	POSITION	XMTR	TRANSMITTER
(F)	FUTURE				

CODE COMPLIANCE

- ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES. NOTHING IN THESE PLANS IS TO BE CONSTRUCTED TO PERMIT WORK NOT CONFORMING TO THESE CODES.
1. CALIFORNIA BUILDING CODE CBC-2010.
 2. CALIFORNIA ADMINISTRATIVE CODE. (INCL. TITLES 24 & 25) 2010.
 3. ANSI/ EIA-222-F LIFE SAFETY CODE NFPA.
 4. BUILDING OFFICIALS' AND CODE ADMINISTRATORS (BOCA)
 5. CALIFORNIA ELECTRICAL CODE CEC-2010.
 6. CALIFORNIA MECHANICAL CODE CMC-2010.
 7. CALIFORNIA PLUMBING CODE CPC 2010.
 8. LOCAL BUILDING CODE(S).
 9. CITY AND/OR COUNTY ORDINANCES.
 10. MUST COMPLY TO LATEST CALIFORNIA FIRE CODE. (AND LATEST MUNICIPAL FIRE CODE).
 11. CALIFORNIA GENERAL ORDER 95 AND 128.

VICINITY MAP



DRIVING DIRECTIONS

- FROM: 2678 BISHOP RANCH DR, SAN RAMON, CA
DISTANCE: 34.1 MILES (39 MIN)
1. HEAD SOUTHWEST ON BISHOP DR TOWARD SUNSET DR 400 FT
 2. TAKE THE 1ST LEFT ONTO SUNSET DR 0.1 MI
 3. TURN RIGHT ONTO BOLLINGER CANYON DR 0.2 MI
 4. MERGE ONTO I-680 N VIA THE RAMP TO SACRAMENTO 10.9 MI
 5. TAKE EXIT 45B TO MERGE ONTO CA-24 W/STATE ROUTE 24 W TOWARD LAFAYETTE/OAKLAND 13.5 MI
 6. TAKE EXIT 2B FOR INTERSTATE 580 W 1.0 MI
 7. MERGE ONTO I-580 W 1.1 MI
 8. MERGE ONTO I-80 E 4.8 MI
 9. TAKE EXIT 14A FOR CENTRAL AVE TOWARD EL CERRITO 0.2 MI
 10. TURN RIGHT ONTO CENTRAL AVE 0.4 MI
 11. TURN LEFT ONTO SAN PABLO AVE 0.7 MI
 12. TURN RIGHT ONTO MOESER LN 0.7 MI
 13. TURN RIGHT ONTO GALVIN DR 0.2 MI
 14. TURN LEFT ONTO STOCKTON AVE 0.1 MI
 15. TAKE THE 1ST RIGHT ONTO SEAVIEW DR 348 FT
 16. DESTINATION WILL BE ON THE RIGHT.

TO: 851 SEAVIEW DR, EL CERRITO, CA 94530

PROJECT DESCRIPTION

THESE DRAWINGS DEPICT A PORTION OF A DISTRIBUTED ANTENNA SYSTEM (DAS) TELECOMMUNICATIONS NETWORK, TO BE CONSTRUCTED BY EXTENET SYSTEMS AND OWNED AND OPERATED BY NEW CINGULAR WIRELESS PCS, LLC, IN THE PUBLIC RIGHT OF WAY PURSUANT TO AUTHORITY GRANTED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION.

THE MAIN COMPONENTS OF THIS INSTALLATION ARE:
THE ADDITION OF TWO (2) 27.75"X10.625"X6.25" PANEL ANTENNAS, ONE (1) BBU CABINET, ONE (1) RADIO UNIT, ASSOCIATED ELECTRICAL COMPONENTS, AND MOUNTING BRACKETS AS REQUIRED, LOCATED ON AN EXISTING PG&E UTILITY POLE.

DRAWING INDEX

T1	TITLE SHEET & PROJECT INFORMATION
T2	GENERAL NOTES AND SCHEDULES
A1	SITE PLAN
A2	UTILITY POLE ELEVATIONS / RISER DETAILS
D1	EQUIPMENT DETAILS

BUILDING / SITE DATA

LATITUDE:	37.914774	TYPE OF CONSTRUCTION:	ATTACHMENTS TO EXISTING WOOD POLE
LONGITUDE:	-122.293016	AREA OF CONST:	-
ELEVATION:	N / A	HANDICAP REQUIREMENTS:	FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. HANDICAPPED ACCESS NOT REQUIRED.
JURISDICTION:	CITY OF EL CERRITO	TITLE 24 REQUIREMENTS:	FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. THIS PROJECT IS EXEMPT.
A.P.N.:	5033120162		
ZONING:	PUBLIC RIGHT OF WAY		
OCCUPANCY:	U, UNMANNED		

PROJECT TEAM

PROPERTY OWNER:	CONSTRUCTION MANAGER:	MUNICIPAL AFFAIRS:
NAME: PUBLIC RIGHT OF WAY ADDRESS: 851 SEAVIEW DR, EL CERRITO, CA 94530	EXTENET SYSTEMS CA, LLC. CONTACT: KEN BOOKER PHONE: (510) 406-0829	EXTENET SYSTEMS CA, LLC. CONTACT: BILL STEPHENS PHONE: (510) 612-2511
APPLICANT:	APPLICANT AGENT:	ARCHITECT:
NEW CINGULAR WIRELESS PCS, LLC 4430 ROSEWOOD DR, BLDG 3 PLEASANTON, CA 94588-3050 CONTACT: VANI MULLER PHONE: (510) 258-1703	MATTHEW YERGOWICH EXTENET SYSTEMS REAL ESTATE CONTRACTOR FOR AT&T MOBILITY 1826 WEBSTER ST SAN FRANCISCO, CA 94115 PHONE: (415) 596-3474 EMAIL: myergo@gmail.com	AERO COMMUNICATIONS, INC. 5711 RESEARCH DRIVE CANTON, MI 48188 CONTACT: GARY GETCHELL PHONE: (510) 292-8918

GENERAL NOTES

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR SURVEY MONUMENTS AND/OR VERTICAL CONTROL BENCHMARKS WHICH ARE DISTURBED OR DESTROYED BY CONSTRUCTION. A LAND SURVEYOR MUST FIELD LOCATE, REFERENCE, AND/OR PRESERVE ALL HISTORICAL OR CONTROLLING MONUMENTS PRIOR TO ANY EARTHWORK. IF DESTROYED, SUCH MONUMENTS SHALL BE REPLACED WITH APPROPRIATE MONUMENTS BY A LAND SURVEYOR. A CORNER RECORD OR RECORD OF SURVEY, AS APPROPRIATE, SHALL BE FILED AS REQUIRED BY THE PROFESSIONAL LAND SURVEYORS ACT.
2. IMPORTANT NOTICE: SECTION 4215 OF THE GOVERNMENT CODE REQUIRES A DIG ALERT IDENTIFICATION NUMBER BE ISSUED BEFORE A "PERMIT TO EXCAVATE" WILL BE VALID. FOR YOUR DIG ALERT I.D. NUMBER, CALL UNDERGROUND SERVICE ALERT, TOLL FREE 1-800-227-2600, TWO DAYS BEFORE YOU DIG.
3. CONTRACTOR SHALL BE RESPONSIBLE FOR THE POT HOLE AND LOCATING OF ALL EXISTING UTILITIES THAT CROSS THE PROPOSED TRENCH LINE AND MUST MAINTAIN A 1' MINIMUM VERTICAL CLEARANCE.
4. IF ANY EXISTING HARDSCAPE OR LANDSCAPE INDICATED ON THE APPROVE PLANS IS DAMAGED OR REMOVED DURING DEMOLITION OR CONSTRUCTION, IT SHALL BE REPAIRED AND/OR REPLACED IN KIND PER THE APPROVED PLANS.
5. CONTRACTOR SHALL REPLACE OR REPAIR ALL TRAFFIC SIGNAL LOOPS, CONDUIT, AND LAKE STRIPING DAMAGED DURING CONSTRUCTION.
6. THIS PROJECT WILL BE INSPECTED BY ENGINEERING AND FIELD ENGINEERING DIVISION.

7. MANHOLES OR COVERS SHALL BE LABELED EXTENET.

8. CONTRACTOR SHALL IMPLEMENT AN EROSION CONTROL PROGRAM DURING THE PROJECT CONSTRUCTION ACTIVITIES. THE PROGRAM SHALL MEET THE APPLICABLE REQUIREMENTS OF THE STATE WATER RESOURCE CONTROL BOARD.

9. THE CONTRACTOR SHALL HAVE EMERGENCY MATERIALS AND EQUIPMENT ON HAND FOR UNFORESEEN SITUATIONS, SUCH AS DAMAGE TO UNDERGROUND WATER, SEWER, AND STORM DRAIN FACILITIES WHEREBY FLOWS MAY GENERATE EROSION AND SEDIMENT POLLUTION.

CALTRANS NOTES

1. ANY REMOVED OR DAMAGED STRIPING AND MARKINGS SHALL BE REPLACED IN KIND AS PER CALTRANS STANDARDS AND AT PERMITEE'S EXPENSE.



Call before you dig
811 / 1-800-227-2600
www.usanorth.org

SPECIAL NOTES

1. INDEMNIFICATION CLAUSE: THE CONTRACTOR AGREES AND SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY OF THE JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING THE SAFETY OF ALL PERSONS AND PROPERTIES. THAT THESE REQUIREMENTS SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS AND CONDITIONS. THE CONTRACTOR FURTHER AGREES TO DEFEND INDEMNITY AND HOLD EXTENET, REPRESENTATIVES, AND ENGINEERS HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED IN CONNECTION WITH THE PERFORMANCE OF THE WORK ON THIS PROJECT.
2. PRIOR TO THE BEGINNING OF ANY CONSTRUCTION AND THROUGHOUT THE COURSE OF CONSTRUCTION WORK, THE CONTRACTOR SHALL FULLY COMPLY WITH "CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH" ACT OF 1973 INCLUDING ALL REVISIONS AND AMENDMENTS THERETO.
3. ALL WORK SHALL CONFORM TO THE LATEST EDITIONS OF G095,128 AND THE STANDARD "SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION" AS ADOPTED BY THE CITY, COUNTY OR STATE AS MODIFIED BY STANDARD PLANS AND ADDENDUMS.
4. THE EXISTENCE AND LOCATION OF UTILITIES AND OTHER AGENCY'S FACILITIES AS SHOWN HERON ARE OBTAINED BY A SEARCH OF AVAILABLE RECORDS. OTHER FACILITIES MAY EXIST. THE CONTRACTOR SHALL VERIFY PRIOR TO THE START OF CONSTRUCTION AND SHALL USE EXTREME CARE AND PROTECTIVE MEASURES TO PREVENT DAMAGE TO THESE FACILITIES. THE CONTRACTOR IS RESPONSIBLE FOR THE PROTECTION OF ALL UTILITY OR AGENCY FACILITIES WITHIN THE LIMITS OF WORK, WHETHER THEY ARE SHOWN ON THIS PLAN OR NOT.
5. THE CONTRACTOR SHALL NOTIFY THE CITY, COUNTY OR STATE ENGINEER INSPECTION DEPARTMENT, AT LEAST TWO DAYS BEFORE START OF ANY WORK REQUIRING THEIR INVOLVEMENT.
6. THE CITY, COUNTY OR STATE SHALL SPECIFY THE EXPIRATION PERIOD OF THE PERMIT FOR THIS CONSTRUCTION PROJECT.
7. THE MINIMUM COVER FOR ALL CONDUITS PLACED UNDERGROUND SHALL BE 30 INCHES TO THE FINISHED GRADE AT ALL TIMES.
8. THE CONTRACTOR SHALL TUNNEL ALL CURB AND GUTTERS AND BORE ALL CONCRETE DRIVEWAYS AND WALKWAYS AT THE DIRECTION OF THE CITY, COUNTY OR STATE ENGINEER.
9. ALL AC AND/OR CONCRETE PAVEMENT SHALL BE REPLACED AT THE DIRECTION OF THE CITY, COUNTY OR STATE ENGINEERS.
10. ALL SHRUBS, PLANTS OR TREES THAT HAVE BEEN DAMAGED OR DISTURBED DURING THE COURSE OF THE WORK, SHALL BE REPLANTED AND/OR REPLACED SO AS TO RESTORE THE WORK SITE TO ITS ORIGINAL CONDITION.
11. THE CONTRACTOR WILL BE RESPONSIBLE FOR THE PROCESSING OF ALL APPLICANT PERMIT FORMS ALONG WITH THE REQUIRED LIABILITY INSURANCE FORMS. CLEARLY DEMONSTRATING THAT EXTENET, THE CITY, COUNTY OR STATE IS ALSO INSURED WITH THE REQUIRED LIABILITY INSURANCE IN THE AMOUNT OF \$1,000,000.00 FOR THIS CONSTRUCTION PROJECT.
12. VAULTS, PEDESTALS, CONDUITS AND OTHER TYPES OF SUBSTRUCTURE ARE EITHER SPECIFIED ON THIS PLAN OR WILL BE SPECIFIED BY THE CONSTRUCTION ENGINEER. ANY AND ALL DEVIATIONS FROM THE SPECIFIED TYPES OF MATERIAL MUST BE APPROVED BY THE SYSTEM ENGINEER, IN WRITING BEFORE INSTALLATION THEREOF.
13. THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL EXISTING UTILITIES IN INCLUDING SEWER LATERALS & WATER SERVICES TO INDIVIDUAL LOTS BOTH VERTICAL AND HORIZONTAL PRIOR TO COMMENCING IMPROVEMENT OPERATIONS.
14. CONTRACTOR SHALL MAKE EXPLORATION EXCAVATIONS AND LOCATE EXISTING FACILITIES SUFFICIENTLY AHEAD OF CONSTRUCTION TO PERMIT REVISIONS TO PLANS IF REVISION IS NECESSARY BECAUSE OF LOCATION OF EXISTING UTILITIES.
15. THE LOCATIONS OF ALL EXISTING UTILITIES SHOWN ON THESE PLANS ARE FROM EXISTING RECORDS AND CORROBORATED, WHERE POSSIBLE, WITH FIELD TIES. THE CONTRACTOR IS RESPONSIBLE FOR CONFIRMING THE LOCATIONS SHOWN, BOTH HORIZONTAL AND VERTICALLY. PRIOR TO CONSTRUCTION, IF EXISTING LOCATIONS VARY SUBSTANTIALLY FROM THE PLANS. THE ENGINEER SHOULD BE NOTIFIED TO MAKE ANY CONSTRUCTION CHANGES REQUIRED.

EROSION AND SEDIMENT CONTROL NOTES

TEMPORARY EROSION/SEDIMENT CONTROL PRIOR TO COMPLETION OF FINAL IMPROVEMENTS, SHALL BE PERFORMED BY THE CONTRACTOR OR QUALIFIED PERSON AS INDICATED BELOW:

1. ALL REQUIREMENTS OF THE CITY, COUNTY AND STATE "STORM WATER STANDARDS" MUST BE INCORPORATED INTO THE DESIGN AND CONSTRUCTION OF THE PROPOSED GRADING/IMPROVMENTS CONSISTENT WITH THE APPROVED STORM WATER POLLUTION PREVENTION PLAN (SWPPP), WATER QUALITY TECHNICAL REPORT (WQTR), AND/OR WATER POLLUTION CONTROL PLAN (WPCP).
2. FOR STORM DRAIN INLETS, PROVIDE A GRAVEL BAG SILT BASIN IMMEDIATELY UPSTREAM OF INLET AS INDICATED ON DETAILS.
3. FOR INLETS LOCATED AT SUMPS ADJACENT TO TOP OF SLOPES, THE CONTRACTOR SHALL ENSURE THAT WATER DRAINING TO THE SUMP IS DIRECTED INTO THE INLET AND THAT A MINIMUM OF 1.00' FREEBOARD EXISTS AND IS MAINTAINED ABOVE THE TOP OF THE INLET. IF FREEBOARD IS NOT PROVIDED BY GRADING SHOWN ON THESE PLANS THE CONTRACTOR SHALL PROVIDE IT VIA TEMPORARY MEASURES, I.E. GRAVEL BAGS OR DIKES.
4. THE CONTRACTOR OR QUALIFIED PERSON SHALL BE RESPONSIBLE FOR CLEANUP OF SILT AND MUD ON ADJACENT STREET(S) AND STORM DRAIN SYSTEM DUE TO CONSTRUCTION ACTIVITY.
5. THE CONTRACTOR OR QUALIFIED PERSON SHALL CHECK AND MAINTAIN ALL LINED AND UNLINED DITCHES AFTER EACH RAINFALL.
6. THE CONTRACTOR SHALL REMOVE SILT AND DEBRIS AFTER EACH MAJOR RAINFALL.
7. EQUIPMENT AND WORKERS FOR EMERGENCY WORK SHALL BE MADE AVAILABLE AT ALL TIMES DURING THE RAINY SEASON. ALL NECESSARY MATERIALS SHALL BE STOCKPILED ON SITE AT CONVENIENT LOCATIONS TO FACILITATE RAPID CONSTRUCTION OF TEMPORARY DEVICES WHEN RAIN IS IMMINENT.
8. THE CONTRACTOR SHALL RESTORE ALL EROSION/SEDIMENT CONTROL DEVICES TO WORKING ORDER TO THE SATISFACTION OF THE CITY ENGINEER OF RESIDENT ENGINEER AFTER EACH RUN-OFF PRODUCING RAINFALL.
9. THE CONTRACTOR SHALL INSTALL ADDITIONAL EROSION/SEDIMENT CONTROL MEASURES AS MAY BE REQUIRED BY THE RESIDENT ENGINEER DUE TO UNCOMPLETED GRADING OPERATIONS OR UNFORESEEN CIRCUMSTANCES, WHICH MAY ARISE.
10. THE CONTRACTOR SHALL BE RESPONSIBLE AND SHALL TAKE NECESSARY PRECAUTIONS TO PREVENT PUBLIC TRESPASS ONTO AREAS WHERE IMPOUNDED WATERS CREATE A HAZARDOUS CONDITION.
11. ALL EROSION/SEDIMENT CONTROL MEASURES PROVIDED PER THE APPROVED GRADING PLAN SHALL BE INCORPORATED HERON. ALL EROSION/SEDIMENT CONTROL FOR INTERIM CONDITIONS SHALL BE DONE TO THE SATISFACTION OF THE RESIDENT ENGINEER.
12. GRADED AREAS AROUND THE PROJECT PERIMETER MUST DRAIN AWAY FROM THE FACE OF THE SLOPE AT THE CONCLUSION OF EACH WORKING DAY.
13. ALL REMOVABLE PROTECTIVE DEVICES SHOWN SHALL BE IN PLACE AT THE END OF EACH WORKING DAY WHEN RAIN IS IMMINENT.
14. THE CONTRACTOR SHALL ONLY GRADE, INCLUDING CLEARING AND GRUBBING FOR THE AREAS FOR WHICH THE CONTRACTOR OR QUALIFIED PERSON CAN PROVIDE EROSION/SEDIMENT CONTROL MEASURES.
15. THE CONTRACTOR SHALL ARRANGE FOR WEEKLY MEETINGS DURING OCTOBER 1ST TO APRIL 30TH FOR PROJECT TEAM (GENERAL CONTRACTOR, QUALIFIED PERSON, EROSION CONTROL SUBCONTRACTOR IF AN, ENGINEER OF WORK, OWNER/DEVELOPER AND THE RESIDENT ENGINEER) TO EVALUATE THE ADEQUACY OF THE EROSION/SEDIMENT CONTROL MEASURE AND OTHER RELATED CONSTRUCTION ACTIVITIES.

GENERAL NOTES

ROW GROUND CONSTRUCTION NOTES:

1. 120/240 POWER REQUIRED FOR 3-WIRE SERVICE.
2. GC TO REMOVE/CLEAN ALL DEBRIS, NAILS, STAPLES, OR NON-USED VERTICALS OFF THE POLE.
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH MUNICIPAL, COUNTY, STATE, FEDERAL, G095 AND G0128 STANDARDS AND REGULATIONS.
4. CALL USA 48 HOURS PRIOR TO EXCAVATING AT (800) 227-2600.
5. ALL LANDSCAPING TO BE RESTORED TO ORIGINAL CONDITION OR BETTER.
6. ALL EQUIPMENT TO BE BONDED.
7. METERING CABINET REQUIRES 3' CLEARANCE AT DOOR OPENING.
8. CAULK CABINET BASE AT PAD.

STANDARD GROUNDING NOTES:

1. GROUND TESTED AT 5 OHMS OR LESS.
2. 5/8"x8" ROD, CAD WELD BELOW GRADE
3. #6 GROUND AND BOND WIRE.
4. WOOD MOLDING, STAPLED EVERY 3' AND AT EACH END
5. GROUNDS 3' FROM POLE.
6. PLACE 3 #10GA WIRES FROM BREAKER TO METER BOX.

STANDARD CONDUIT NOTES:

1. FOR UNDERGROUND USE SCHEDULE 40.
2. FOR RISERS USE SCHEDULE 80.
3. PLACE 2" GALVANIZED STEEL CONDUIT FOR ANY CONDUIT UNDER 3", STUB UP 10' THEN CONVERT TO SCHEDULE 80.
4. CONVERT 4" CARRIER CONDUIT TO 3" AT BASE OF POLE.
5. GC TO STUB UP POLE 10' w/3" POWER CONDUIT, POWER CO. TO CONVERT FROM 3" SCH. 80 TO 2" SCH. 80 FROM TOP OF STUB UP.
6. ALL CONDUIT WILL BE MAN DRILLED AND EQUIPPED WITH 3/8" PULL ROPE.

STANDARD TRENCHING NOTES:

1. MAINTAIN 40" MINIMUM COVER FOR ELECTRICAL CONDUIT.
2. MAINTAIN 30" MINIMUM COVER FOR COMMUNICATIONS CONDUIT.
3. SAND SHADING MINIMUM 1" UNDER CONDUITS, AND 6" COVERING ON TOP REQUIRED.
4. ALL ELECTRICAL SERVICE CONDUITS FROM POWER COMPANY, WHETHER FROM POLES, TRANSFORMERS, OR OTHER LOCATIONS; WILL BE SLURRY BACKFILLED.
5. IN STREET SLURRY TO GRADE AND MILL DOWN 1-1/2" FOR AC CAP.
6. IN DIRT SLURRY 18" FROM GRADE, AND FILL WITH 95% COMPACTION NATIVE SOIL FOR BALANCE.
7. PLACE WARNING TAPE IN TRENCH 12" ABOVE ALL CONDUITS AND #18 WARNING TAPE ABOVE GROUND RING.

ROW UTILITY POLE CONSTRUCTION NOTES:

1. NO BOLT THREADS TO PROTRUDE MORE THAN 1-1/2".
2. FILL ALL HOLES LEFT IN POLE FROM REARRANGEMENT OF CLIMBERS.
3. ALL CLIMB STEPS NEXT TO CONDUIT SHALL HAVE EXTENDED STEPS.
4. CABLE NOT TO IMPEDE 15" CLEAR SPACE OFF POLE FACE (12.00).
5. 90' SHORT SWEEPS UNDER ANTENNA ARM. ALL CABLES MUST ONLY TRANSITION ON THE INSIDE OR BOTTOM OF ARMS (NO CABLE ON TOP OF ARMS).
6. USE CABLE CLAMPS TO SECURE CABLE TO ARMS; PLACE 2" CARRIER CABLE ID TAGS ON BOTH SIDES OF ARMS.
7. USE 90' CONNECTOR AT CABLE CONNECTION TO ANTENNAS.
8. PLACE GPS ON ARM WITH SOUTHERN SKY EXPOSURE AT MINIMUM 6" FROM TRANSMIT ANTENNA, WHICH IS 24" AWAY FROM CENTER OF POLE.
9. USE 1/2" CABLE ON ANTENNAS UNLESS OTHERWISE SPECIFIED.
10. FILL VOID AROUND CABLES AT CONDUIT OPENING WITH FOAM SEALANT TO PREVENT WATER INTRUSION.

WIND LOADING INFORMATION

ANTENNA/WOOD ARM AREA TOTAL	82.52 SQ. FT.
TOP GRADE	44'-11"
BOTTOM GRADE	35'-0"
METER/BREAKER AREA TOTAL	14.62 SQ. FT.
TOP GRADE	8'-11"
BOTTOM GRADE	8'-0"
BATTERY BACK-UP AREA TOTAL	40.5 SQ. FT.
TOP GRADE	18'-9"
BOTTOM GRADE	16'-6"
PRISM DECK AREA TOTAL	50.77 SQ. FT.
TOP GRADE	15'-9"
BOTTOM GRADE	11'-7"
PRISM DECK (FUT.) AREA TOTAL	-
TOP GRADE	-
BOTTOM GRADE	-
COAX RISER SIZE	3"U
COAX RISER TOP GRADE	42'-0"
COAX RISER BTM GRADE	11'-7"
PWR RISER SIZE	1"ø
PWR RISER TOP GRADE	33'-0"
PWR RISER BTM GRADE	8'-0"

ANTENNA & CABLE SCHEDULE

ANTENNA SECTOR	AZIMUTH	ANTENNA MAKE / MODEL	COAXIAL CABLE LENGTH	CABLES PER SECTOR	CABLE SIZE
SECTOR ALPHA	49°	KATHREIN 840-10525	33'/3'	2/4	1/2"
SECTOR BETA	124°	KATHREIN 840-10525	33'/3'	2/4	1/2"
SECTOR GAMMA					
NOTE: CONTRACTOR TO FIELD VERIFY CABLE LENGTHS PRIOR TO ORDERING, FABRICATION, OR INSTALLATION OF CABLES.					

ROW CONSTRUCTION GENERAL NOTES

SCALE
NTS

3

LOADING AND ANTENNA CABLE SCHEDULES

SCALE
NTS

1



NEW CINGULAR WIRELESS PCS, LLC
4430 ROSEWOOD DR, BLDG 3
PLEASANTON, CA 94588-3050

PROJECT INFORMATION:

OAKHILLS AT&T
NORTH NETWORK
NODE 003A
851 SEAVIEW DR
EL CERRITO, CA 94530

CURRENT ISSUE DATE:

12/15/12

ISSUED FOR:

ZONING

BY: DATE: DESCRIPTION: REV:

ACI	12/15/12	POLE INFO CORRECTED	1
ACI	12/01/12	ZDs	0
BY	DATE	DESCRIPTION	REV

PLANS PREPARED BY:



Aero Communications Inc.
1-800-825-4ACI
5711 Research Drive
Canton, MI 48188

ACI NUMBER: OAKN-003A

CONSTRUCTED BY:



3030 Warrenville Rd, Suite 340
Lisle, IL 60532
www.extenet.com

SEAL OF APPROVAL:

SHEET TITLE:

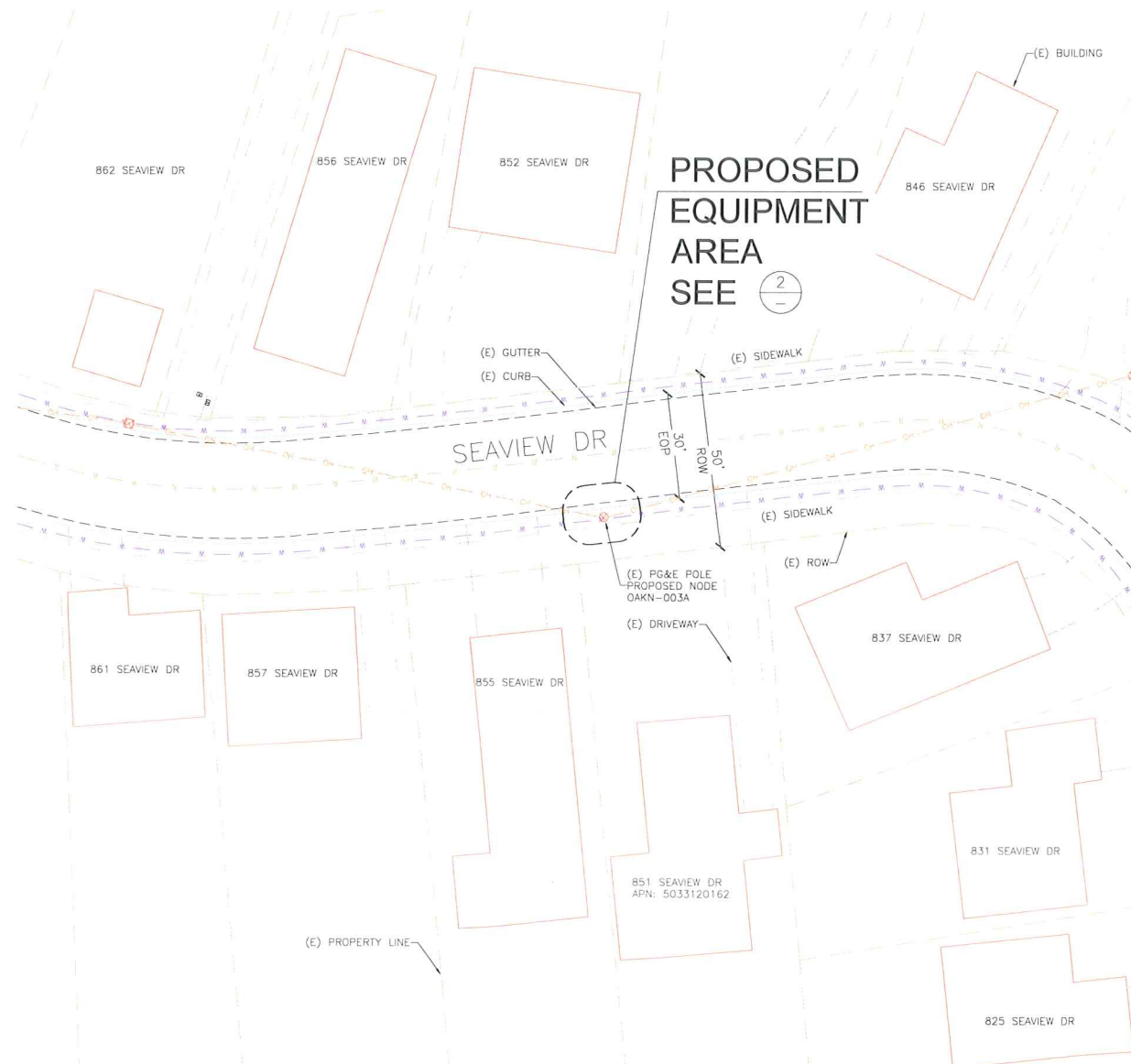
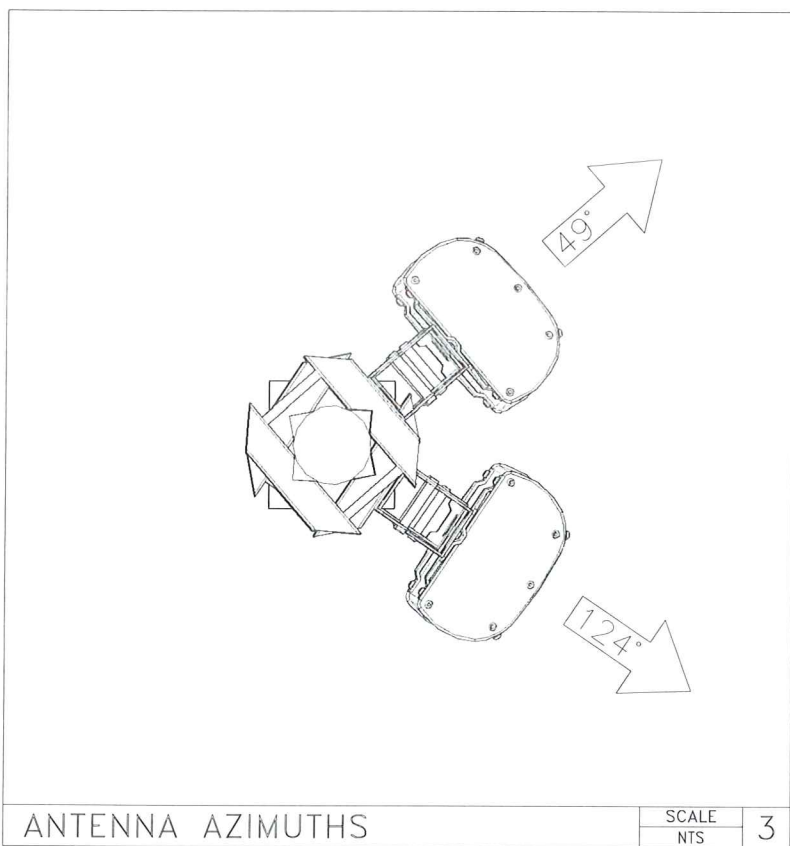
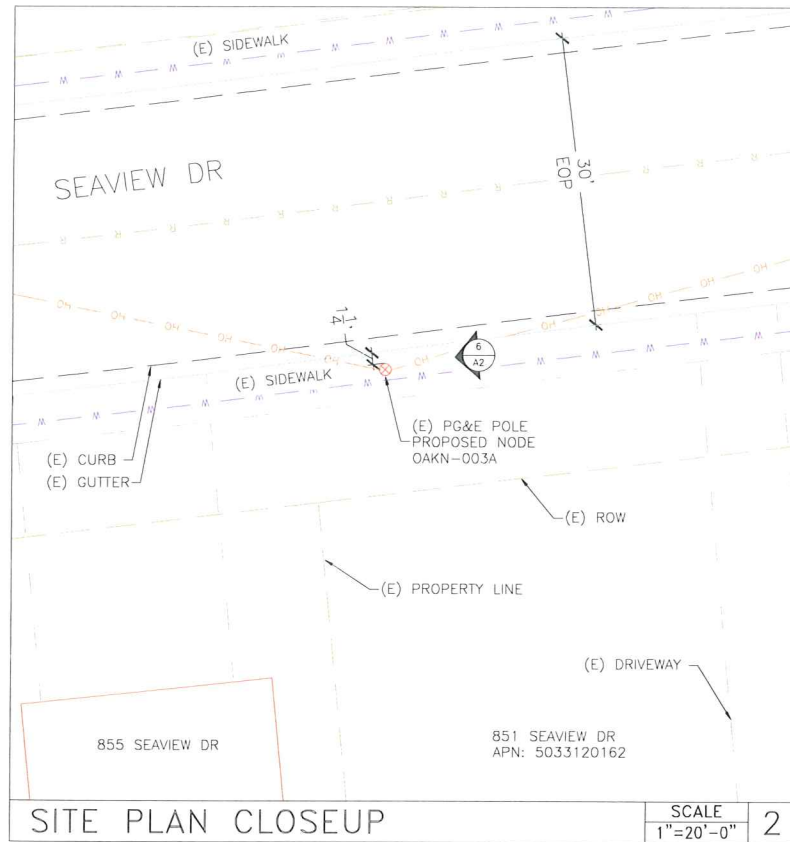
GENERAL NOTES
AND
SCHEDULES

SHEET NUMBER: REVISION:

T2

1

12/15/12



NEW CINGULAR WIRELESS PCS, LLC
4430 ROSEWOOD DR, BLDG 3
PLEASANTON, CA 94588-3050

PROJECT INFORMATION:

**OAKHILLS AT&T
NORTH NETWORK
NODE 003A**

851 SEAVIEW DR
EL CERRITO, CA 94530

CURRENT ISSUE DATE:

12/15/12

ISSUED FOR:

ZONING

BY: DATE: DESCRIPTION: REV:

BY	DATE	DESCRIPTION	REV
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ACI	12/01/12	ZDs	0
BY	DATE	DESCRIPTION	REV

PLANS PREPARED BY:



Aero Communications Inc.
1-800-825-4ACI
5711 Research Drive
Canton, MI 48188

ACI NUMBER: OAKN-003A

CONSTRUCTED BY:



3030 Warrenville Rd, Suite 340
Lisle, IL 60532
www.extenet.com

SEAL OF APPROVAL:

SHEET TITLE:

SITE PLAN

SHEET NUMBER: REVISION:

A1

1

12/15/12



NEW CINGULAR WIRELESS PCS, LLC
4430 ROSEWOOD DR, BLDG 3
PLEASANTON, CA 94588-3050

PROJECT INFORMATION:

OAKHILLS AT&T
NORTH NETWORK
NODE 003A
851 SEAVIEW DR
EL CERRITO, CA 94530

CURRENT ISSUE DATE:

12/15/12

ISSUED FOR:

ZONING

BY: DATE: DESCRIPTION: REV:

BY	DATE	DESCRIPTION	REV
ACI	12/15/12	POLE INFO CORRECTED	1
ACI	12/01/12	ZDs	0

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3030 Warrenville Rd, Suite 340
Lisle, IL 60532
www.extenet.com

SEAL OF APPROVAL:

SHEET TITLE:

ELEVATIONS
&
RISER DETAILS

SHEET NUMBER: REVISION:

A2

1

12/15/12

COMMUNICATIONS MAKE-READY

1. INSTALL PG&E 1" SCH 80 CONDUIT AT 7:30 POSITION FOR POWER SERVICE.
2. INSTALL 3" SCH 80 U-GUARD AT 11:00 POSITION OVER COAX.
3. INSTALL RADIO, BBU, OPTINIB, METER SOCKET, & SAFETY SWITCH 4" OFF OF POLE (USING UNISTRUTS) AT 9:00 POSITION.
4. RELOCATE CLIMBING PEGS AT 9:00 POSITION, 8'-6" AGL TO COMM ZONE, TO 12:00 POSTION.

POWER MAKE-READY

1. INSTALL 7' POLE TOP EXTENSION.
2. INSTALL (2) PANEL ANTENNAS W/ MOUNTING BRACKET ON POLE TOP EXTENSION AT 42'-3" AGL.
3. INSTALL COMBINERS AND (4/8) 1/2" COAX.
4. INSTALL PG&E WEATHER HEAD AND 1" SCH 80 CONDUIT AT 7:30 POSITION FOR POWER SERVICE.
5. INSTALL 3" SCH 80 U-GUARD AT 11:00 POSITION OVER COAX.
6. PROVIDE 120/240 3-WIRE SINGLE PHASE, 100 AMP SERVICE TO 1" PG&E CONDUIT AT 7:30 POSITION TO METER SOCKET FROM SERVICE DROP 33'-0" AGL.

MAKE-READY NOTES

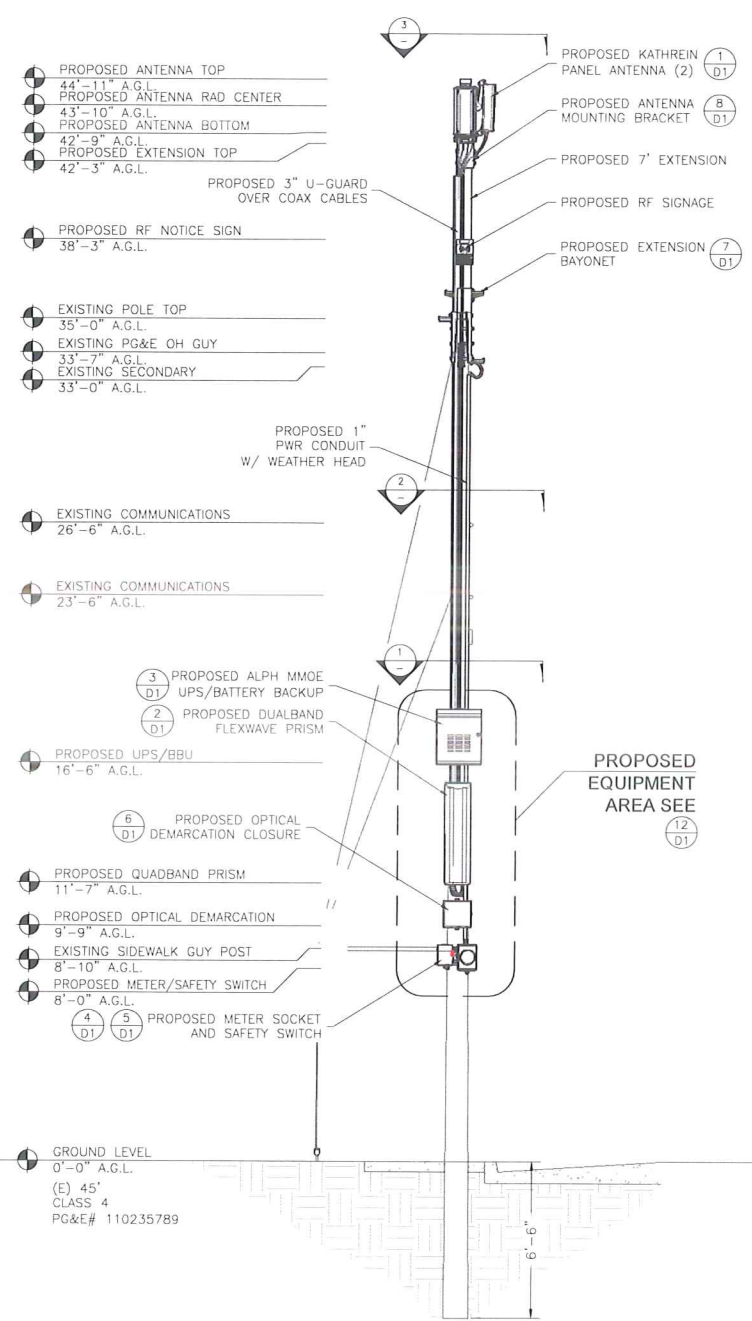
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- EXISTING POLE TOP
35'-0" A.G.L.
- EXISTING PG&E OH GUY
33'-7" A.G.L.
- EXISTING SECONDARY
33'-0" A.G.L.

- EXISTING COMMUNICATIONS
26'-6" A.G.L.
- EXISTING COMMUNICATIONS
23'-6" A.G.L.

- EXISTING SIDEWALK GUY POST
8'-10" A.G.L.

- GROUND LEVEL
0'-0" A.G.L.
- (E) 45'
CLASS 4
PG&E# 110235789

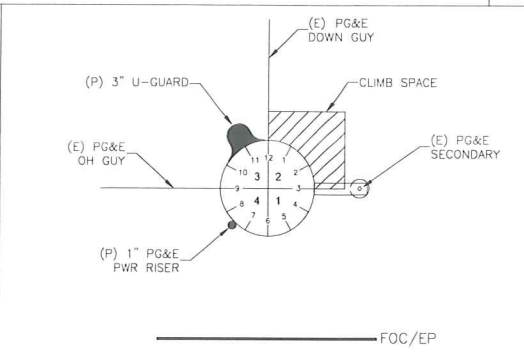


PROPOSED ELEVATION EAST

SCALE
1/8"=1'-0"

6

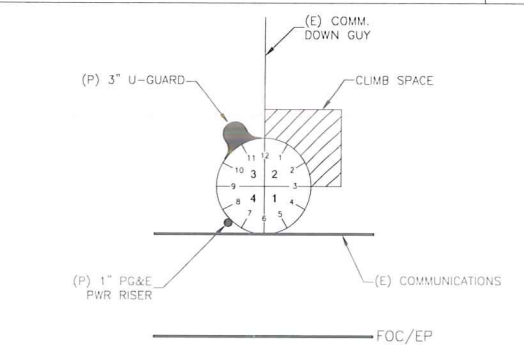
EXISTING ELEVATION EAST



SEAVIEW DR

POWER SPACE PLAN VIEW

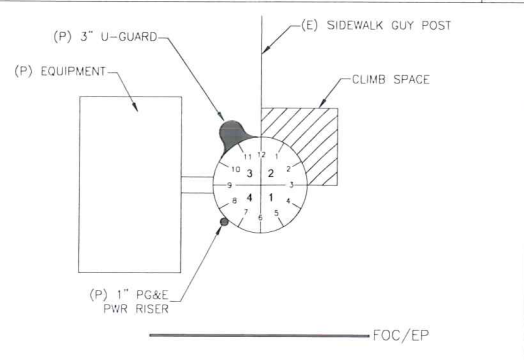
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SEAVIEW DR

COMM. SPACE PLAN VIEW

2



SEAVIEW DR

EQUIP. SPACE PLAN VIEW

1

Alternative Site Analysis

JPA Pole 110235789 at 851 Seaview Drive

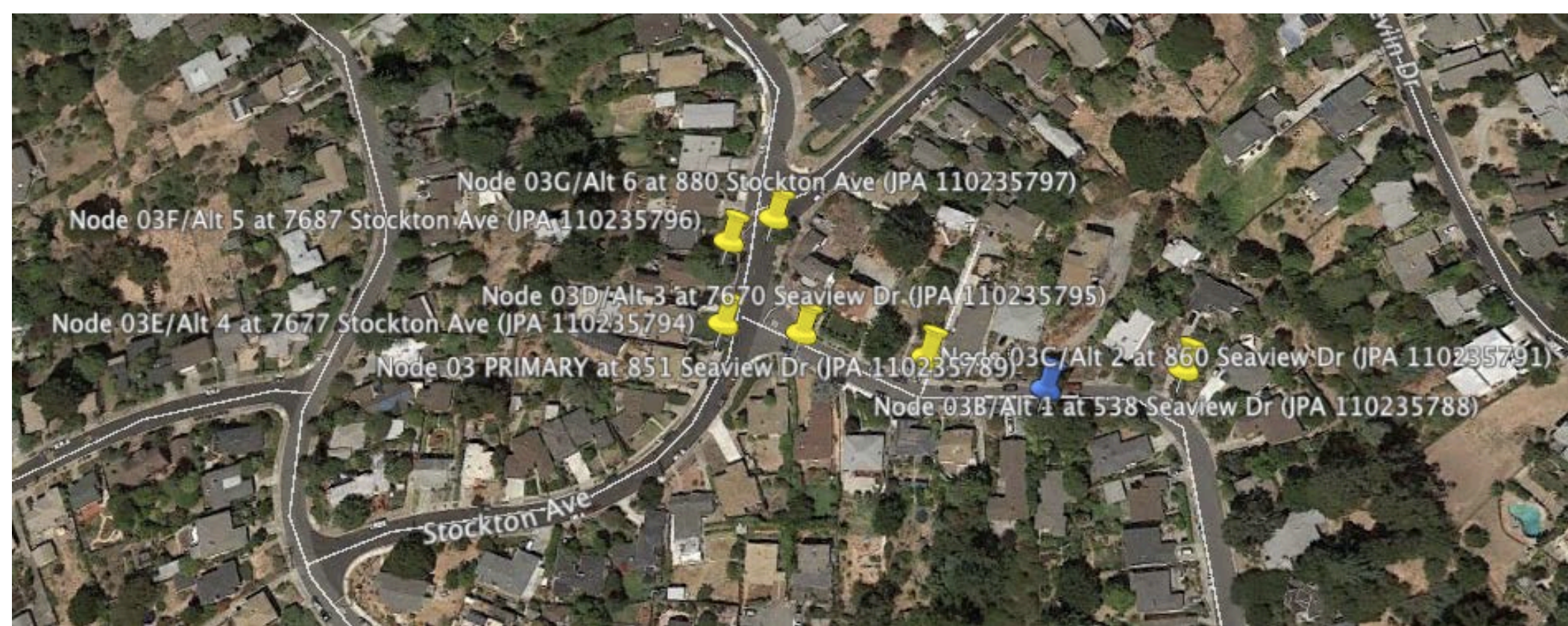
- This is an analysis of alternative sites surrounding the proposed Node 3 site considering the radio-frequency (RF) coverage perspective, an engineering/implementation feasibility perspective, and an aesthetics perspective.

Primary site

- The Primary pole location is identified as JPA 110235789 at 851 Seaview Dr.
- The photo to the right is a snapshot of the proposed site. This site is acceptable only if additional height can be achieved by the proposed pole-top extension.
- Side-mounting is unacceptable from an RF perspective (inadequate propagation height) and an implementation perspective (not enough separation from utility lines).



primary & Alternative locations



- On the map above, the primary site is marked with a blue pin with the alternative sites are marked by yellow pins.

ALTERNATIVE 1: Node 03B



- Alternative 1 is identified as JPA 110235788 at 538 Seaview Dr.
- This site presents a view impact for the homes located behind the site up hill.
- RF engineering rejects this site; the location is not viable to achieve AT&T's coverage objective
- Implementation accepts this site only if an extension or pole-swap can be done to achieve adequate utility line separation.
- This site is not a viable alternative for RF and aesthetic reasons.

ALTERNATIVE 2: Node 03C

- Alternative 2 is identified as JPA 110235795 at 860 Seaview Dr.
- This site is more visible than the proposed location and presents a view impact for homes located up hill behind the site – especially imposed by additional height required by RF and implementation.
- RF Engineering accepts this site as a viable alternative only if additional height is achieved (side-arm mounting is unacceptable).
- Implementation accepts this site only if an extension or pole-swap can be done to achieve adequate utility line separation.
- This site is not a viable alternative because it much more aesthetically intrusive than the proposed site.



ALTERNATIVE 3: Node 03D



- Alternative 3 is identified as JPA 110235795 at 7670 Seaview Drive.
- There is a view impact imposed by this site for homes located behind the pole.
- RF Engineering accepts this site as a viable alternative with a pole top extension mount (side-arm mounting is unacceptable).
- Implementation deems this site viable only if a pole swap or extension is proposed.
- This is not a viable alternative location for aesthetic reasons.

ALTERNATIVE 4: Node 03E

- Alternative 4 is identified as JPA 110235795 at 7677 Stockton.
- This location is highly exposed and would a facility here would make an already cluttered pole look worse.
- RF Engineering rejects this site because it cannot meet the desired coverage objective.
- Implementation rejects this site because it is too busy and would present access problems.
- This site is not a viable alternative for aesthetics, RF and implementation reasons.



ALTERNATIVE 5: Node 03F



- Alternative 5 is identified as JPA 1101235796 at 7687 Stockton.
- A facility mounted on this pole would be more visibly exposed than at the proposed location.
- This would only meet RF Engineering requirements if a pole top extension was proposed (side arm mounting is unacceptable).
- Implementation accepts this site only if a pole swap or extension was utilized to maintain the required utility line separation.
- This is not a viable alternative site because of its poor aesthetic impact.

ALTERNATIVE 6: Node 03G

- Alternative 6 is identified as JPA 110235797 at 880 Stockton.
- The site is highly exposed and would be present aesthetic issues if a facility was installed here.
- RF Engineering rejects this site because a facility here is unable to achieve the desired coverage objective any any available height.
- Implementation rejects this site because it is too busy and there would be access blockage by the exiting utility lines.
- This is not a viable alternative for aesthetic, RF and implementation reasons.



SUMMARY

- Alternative 1/03B: Not viable.
- Alternative 2/03C: Not viable.
- Alternative 3/03D: Not viable.
- Alternative 4/03E: Not viable.
- Alternative 5/03F: Not viable.
- Alternative 6/03G: Not viable.
- **The Primary and all Alternative sites were considered for side arm mounting but do not achieve the required minimum height for the antennas. Thus, side arm mounting has been rejected for all candidates.**



AGENDA BILL

Agenda Item No. 7(A)

Date: August 20, 2013
To: El Cerrito City Council
From: Garth Schultz, Operations + Environmental Services Manager
Subject: Proposed Single-Use Bag Ordinance

ACTION REQUESTED

Introduce by title, waive any further reading, and approve an ordinance amending the El Cerrito Municipal Code (ECMC) by adding Chapter 8.22 – El Cerrito Single-Use Bag Ordinance.

BACKGROUND

Litter pollution on streets and in gutters, storm drains, creeks, and San Francisco Bay is a major environmental quality and compliance concern in El Cerrito and the entire Bay Area. Certain components of litter – including single-use bags – have been identified locally, regionally, and state-wide as being particularly problematic.

Single-use bags, especially those made of plastic, are difficult to keep from becoming litter, are unsightly when littered, and can be challenging to remove from the environment once littered. Over 79 cities and counties in California have adopted single-use bag ordinances in order to reduce bag litter and promote environmental sustainability. Current single-use bag ordinances typically prohibit the distribution of single-use plastic bags in retail establishments at the point of sale and require retail establishments to charge the customer a fee on single-use paper bags. In 2011, the El Cerrito City Council adopted Resolution No. 2011-68, which declared the City Council's support for a regional approach to the development and potential implementation of a single-use bag ordinance.

RecycleMore – the West Contra Costa Integrated Waste Management Authority – took the lead in developing a model ordinance and commissioning an Environmental Impact Report (EIR) that could be utilized by RecycleMore's member agencies, including El Cerrito. This provided for a coordinated, cost-effective effort that leveraged the partnership of member agencies under RecycleMore and will lead to greater environmental benefit under an ordinance regional in scope. RecycleMore finalized the model single-use bag ordinance in late 2012 and completed and certified the EIR in

2013¹. The EIR detailed many areas in which regional implementation of the model ordinance would have a beneficial environmental impact, while not causing any significant environmental impacts on the whole.

The RecycleMore Board of Directors has recommended the model ordinance for individual adoption by member agencies. Member agencies have the option to modify portions of the model ordinance to make its provisions appropriate for their respective communities. The City of Richmond completed adoption of its single-use bag ordinance in July 2013 and the City San Pablo is considering adoption of a similar ordinance soon. The El Cerrito Environmental Quality Committee passed a motion recommending City Council adoption of the proposed Ordinance on July 9, 2013.

DISCUSSION

Proposed Single-Use Bag Ordinance

El Cerrito City staff modified RecycleMore's model ordinance to develop the proposed El Cerrito Single-Use Bag Ordinance (Attachment 1) which would:

1. Prohibit the distribution of single-use plastic bags in retail establishments at the point of sale for all retail establishments except restaurants and non-profit charitable reusers. This includes department stores, clothing stores, liquor stores, book stores, specialty stores, drug stores, convenience stores, etc. Restaurants, take-out food establishments, or any other businesses that receive their revenue primarily from the sale of food cooked or otherwise prepared at the establishment would be exempt from the Ordinance.
2. Require retail establishments to charge to all customers a minimum of five (\$0.05) cents for each paper bag distributed at the point of sale, effective January 1, 2014.
3. Require retail establishments to charge to all customers a minimum of ten (\$0.10) cents for each paper bag distributed at the point of sale, effective January 1, 2016.
4. Require that paper bags distributed to customers by retail establishments contain at least 40 percent post-consumer recycled content.
5. Provide for a penalty levied against noncompliant business owners as infractions of the El Cerrito Municipal Code.
6. Exempt from the provisions of the Ordinance plastic or paper bags without handles that are used by customers or the retail establishment to protect or contain raw meat, fresh produce, food prepared at the establishment, or other

¹ Access the Single-Use Bag Ordinance Final EIR (March 2013) and Addendum to the Final EIR (May 2013) online at <http://ca-elcerrito.civicplus.com/Admin/DocumentCenter/Document/View/2642> (the document is very large and may take a few minutes to open).

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goods that must be protected from moisture, damage, or contamination, and that are typically placed inside a carryout bag at the point of sale.

7. Become effective January 1, 2014 and enforceable on July 1, 2014.

Public Outreach and Comments

The City of El Cerrito initiated outreach on a draft Single-Use Bag Ordinance in May 2013. Public outreach included:

- Direct postcard mailing in three languages (Attachment 2) to all potentially affected business locations and billing addresses, announcing a public comment period from May 15 through July 15.
- Four weeks published advertisement in the El Cerrito Journal, soliciting public comments during the public comment period.
- Public comment meetings and discussion with the Environmental Quality Committee on June 11 and July 9, and presentation and public comment with members of the El Cerrito Chamber of Commerce on June 18.
- 1,000 reusable bags distributed during Earth Day and at the 4th of July Celebration to promote and help prepare community members for the Single-Use Bag Ordinance.
- Posting the draft Ordinance online at www.el-cerrito.org/bagsandfoam as well as sending notifications to over 800 email subscribers, and posting on Twitter.

The public outreach process yielded 43 public comments from individuals and organizations, with 16 comments expressing opposition to the Ordinance and 25 comments expressing support (the remaining 2 did not state a position). The City received letters of support from the following organizations: Friends of Five Creeks, Citizens for East Shore Parks, the Sierra Club, the Golden Gate Audubon Society, and Clean Water Action. No organization submitted letters of opposition to the proposed Ordinance. The main themes expressed by the public comments are discussed below:

Environmental Benefits Questioned

One category of public comments refuted the significance of the environmental benefits of the proposed Ordinance. Many comments in this category cited that plastic bags are often reused or recycled, and would need to be purchased if banned. Others stated that more education and enforcement about littering would better achieve the goals of the Ordinance. RecycleMore's EIR found that the Ordinance would result in beneficial impacts in several areas, including litter, water pollution, air pollution, biological resources, and greenhouse gas emissions. Additionally, not all bags would be banned by the proposed Ordinance, and some bags will still be available for reuse. The El Cerrito Recycling + Environmental Resource Center collects hundreds of pounds of bags every

week, and is committed to making these bags available, on an ongoing basis, for reuse by community members interested in supplies of reusable single-use plastic bags.

Potential Health Risks

Another frequently voiced comment of opposition claimed that banning plastic bags will result in harmful contamination of reusable bags and checkout counters, resulting in a public health concern. Some of these comments referred to recent news reports and studies demonstrating the presence of bacteria on reusable bags. RecycleMore's EIR cited studies that found bacteria present on unwashed reusable bags to be in substantially lower quantities than on home cutting boards (67 times more bacteria than on reusable bags), counter tops (144 times more), and sponges (9,000 times more). Furthermore, the EIR demonstrates that washing reusable bags greatly decreases the presence of bacteria. This data indicates that food preparation and storage areas represent a greater risk of food-borne contamination than an unwashed reusable bag. That said, the proposed Ordinance defines reusable bags as those that are capable of being washed or disinfected, and future City outreach on this topic will encourage people to regularly and properly wash their bags, hands, and food items in advance of food preparation in order to avoid any potential health risks.

Inconvenience and Inefficiency

Several public comments stated that banning plastic bags will inconvenience consumers. Among the reasons given were that paper bags rip and tear, especially when wet, resulting in dropped or broken items. Others stated that people using alternative modes of transportation would be more greatly inconvenienced than people in cars, because reusable and paper bags are hard to carry. Still others claimed that paper and reusable bags are harder to load at the check-out stand, which would result in longer lines or higher labor costs at retail stores. Some worried that more reusable bags would result in more shoplifting. Overall, the comments in this category speculate that implementing the proposed Ordinance will change the fundamentals of shopping and doing business in El Cerrito. It is important to note that the City did not receive any comments from businesses or retailers expressing concern about these possible impacts of the Ordinance. Indeed, in other communities where ordinances have been implemented, it appears to be the case that life with a single-use bag ordinance reverts to normal soon after an initial adjustment period.

Charge for Paper Bags

A number of public comments were not supportive of a charge on paper bags, and some of these were unclear about the reasons for the charge. One common viewpoint stated that a charge for paper bags would increase the effective costs of goods, since bags are currently provided for free. It is important to be clear that any bags currently provided by retailers are provided by the retailers at a cost; charging customers for those bags, and providing fewer bags overall, should enable retailers to pass on savings realized from purchasing fewer bags to customers in the form of reduced prices. The intent of establishing a minimum charge for paper bags is to reduce the number of single-use paper bags by virtue of consumers being presented with the choice of whether or not to purchase a bag. Any charges for bags will be retained by the retailer and may be used to cover the costs of providing bags, complying with the Ordinance, providing free

reusable bags, and educating customers about the Ordinance. Additionally, retail establishments may choose to exempt low-income customers from the minimum charge.

Customers Shopping Elsewhere

Some comments expressed concern that shoppers would avoid shopping in El Cerrito as a result of the proposed Ordinance. This concern does not seem well founded, since most of El Cerrito's neighboring commercial districts currently have, intend to implement, or are seeking implementation of similar single-use bag ordinances. Nor does it appear to be the case that such impacts have been felt elsewhere in the Bay Area. For example, a year after implementing its own ordinance, the City of San Jose found there to be no reports of sustained negative impact on local retailers.

Other Alternatives

A few comments suggested that the City pursue alternatives to a single-use bag ordinance, such as better education about and enforcement of litter laws, and a deposit and return system on single-use bags similar to that on cans and bottles. Though education and enforcement of litter laws is certainly something the City can do more of, the problems associated with single-use bag litter go well beyond everyone putting waste in the right place (consider for example plastic bags blown by wind out of garbage containers, recycling trucks, and waste transfer stations). Similarly, while the idea of a deposit system for bags may have merit, implementation of a deposit program could only be achieved at a regional or State level.

Some supportive comments suggested that the proposed Ordinance should be revised to achieve earlier implementation and a higher charge for paper bags. The proposed implementation date of January 1, 2014 would allow the City to conduct an appropriate outreach campaign to both businesses and shoppers and is the earliest date that staff recommends. The proposed enforcement date of July 1, 2014 is intended as a six month grace period to allow affected businesses sufficient time to adjust to the requirements of the Ordinance. Though the Council may choose the implementation and enforcement timeline at its discretion, the charge on paper bags is the maximum allowed by the Ordinance without redoing the EIR.

Next Steps if Adopted

Prior to January 1, 2014, City staff plans to send a mailer to the approximately 250 potentially affected business owners, to host community meetings, and to provide signs to business owners to inform customers about the Ordinance. Staff will conduct another similar round of outreach prior to July 1, 2014, when enforcement activities are proposed to begin. Enforcement of the Ordinance is expected to be largely complaint based and will be conducted via administrative citation as per ECMC Sections 1.08 and 1.14. Per, the ECMC, the City Manager may designate enforcement officers to issue administrative citations. Penalties for non-compliance start at \$100 for the first violation and can be up to \$500 per violation.

STRATEGIC PLAN CONSIDERATIONS

Adoption of the proposed Single-Use Bag Ordinance would help fulfill Goal F – Foster environmental sustainability citywide – as detailed in the City of El Cerrito Strategic

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Plan, adopted March 2013. Specifically, adoption of the proposed Ordinance would contribute to achieving the following strategies:

- *Implement policies to promote waste diversion (i.e., ban on single-use bags and EPS food containers).* Adoption of the proposed Ordinance would complete one example stated in this strategy.
- *Implement the City's Climate Action Plan.* Adoption of the proposed Ordinance would contribute to meeting Objective W-1.4 of the Climate Action Plan (Bans on problematic materials).

ENVIRONMENTAL CONSIDERATIONS

If adopted, and as discussed in the EIR, the Single-Use Bag Ordinance would reduce single-use bag litter on El Cerrito streets and public spaces, reduce the presence of single-use bags in storm drains and creeks (the City is required to eliminate trash in stormwater per the Municipal Regional Stormwater Permit), and reduce waste management inefficiencies attributed to single-use bags.

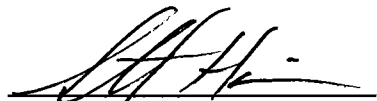
FINANCIAL CONSIDERATIONS

Implementation of the Ordinance would require the use of limited budgeted funds and staffing for outreach, education, and enforcement activities in the Public Works Department , Operations + Environmental Services Division. No additional funding or staffing will be needed to implement and enforce the Ordinance. The City may avoid unknown future costs due to litter control and complying with the Municipal Regional Permit as a result of the Ordinance.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the draft Ordinance and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Draft Single-Use Bag Ordinance
2. Trilingual Postcard Mailer

ORDINANCE NO. 2013–XX

AN ORDINANCE OF THE CITY OF EL CERRITO REGULATING THE USE OF PLASTIC CARRY-OUT BAGS AND RECYCLABLE PAPER CARRY-OUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS WITHIN THE CITY

SECTION 1. Findings.

WHEREAS, single-use carry-out bags have been associated with significant environmental impacts, including greenhouse gas emissions, harm to wildlife, solid waste generation, and constitute a high percentage of litter, which is unsightly and costly to clean up; and

WHEREAS, littering single-use bags can result in blocked storm drains, fouled waterways, and increased marine debris; and

WHEREAS, even properly disposed or recycled plastic single-use bags cause operational problems at solid waste transfer stations, landfills, and recyclables collection and processing facilities; and

WHEREAS, the City of El Cerrito has a substantial interest in protecting its waterways, environment, and taxpayers from the negative impacts from single-use carry-out bags; and

WHEREAS, there are several alternatives to single-use carry-out bags readily available to El Cerrito residents and shoppers; and

WHEREAS, studies document that banning single-use plastic bags and charging for single-use paper bags will dramatically reduce the use of both types of bags; and

WHEREAS, the West Contra Costa Integrated Waste Management Authority (“Authority”) has developed a single-use bag reduction model ordinance for potential consideration and adoption by its member agencies, including El Cerrito; and

WHEREAS, on April 11, 2013 the Authority Board certified an Environmental Impact Report (“EIR”) for its model ordinance and recommended that each Authority member agency consider adopting the model ordinance; and

WHEREAS, the City intends this ordinance to fall within the scope of the Authority’s EIR and has, therefore, modeled this ordinance on the Authority’s draft ordinance; and

WHEREAS, the City has reviewed the Authority’s EIR and finds that there are no significant environmental impacts relating to the City’s adoption of prohibitions on plastic bag use that were not addressed in the Authority’s EIR.

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

SECTION 2. Amendment of Municipal Code. Title 8 of the El Cerrito Municipal Code is hereby amended to add a new Chapter 8.22 and shall read as follows:

8.22.010 - Title.

This Ordinance shall be known as the El Cerrito Single Use Bag Ordinance. The City of El Cerrito hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

8.22.020 - Operative Date.

This Ordinance shall become operative on January 1, 2014 and shall become enforceable on July 1, 2014.

8.22.030 - Purpose.

It is the intent of the City of El Cerrito in enacting Chapter 8.22 to reduce the common use of single-use carry-out bags and to encourage the use of reusable bags by consumers and retailers in El Cerrito.

8.22.040 - Definitions.

The following definitions apply to this Ordinance:

- A. "Carry-out Bag" means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Carry-out Bags do not include bags provided to the Customer to contain produce, bulk food or meat from a produce, loose bulk food or meat department within a store to the point of sale.
- B. "Customer" means any person purchasing goods from a Retail Establishment.
- C. "Nonprofit Charitable Reuser" means a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.
- D. "Operator" means the person in control of, or having the responsibility for, the operation of a Retail Establishment, which may include, but is not limited to, the owner of the Retail Establishment.

- E.** “Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- F.** “Plastic Bag” means any bag made predominantly of plastic derived from either petroleum, ethylene derived from natural gas, or a biologically-based source, such as corn or other plant sources, which is provided to a Customer at the point of sale. Plastic Bags include: compostable and biodegradable bags but does not include Reusable Bags, Produce Bags, or Product Bags.
- G.** “Postconsumer Recycled Material” means a material that has completed its life cycle as a consumer item, would otherwise be destined for solid waste disposal, but is recycled. "Postconsumer Recycled Material" does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.
- H.** “Prepared Food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Provider's premises. For the purposes of this ordinance, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises, also known as "take-out food".
- I.** “Produce Bag” or “Product Bag” means any bag without handles used exclusively to carry produce, meats, or other food or goods to the point of sale inside a Retail Establishment, or to prevent such items from coming into direct contact with other purchased items, or to hold prescription medication dispensed from a pharmacy.
- J.** “Recyclable” means material that can be sorted, cleansed, and reconstituted using El Cerrito’s available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
- K.** “Recycled Paper Bag” means a paper bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment and that meets all of the following requirements: (1) contains no old growth fiber, (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) Postconsumer Recycled Material; (3) displays the words “Reusable and Recyclable” in a highly visible manner on the outside of the bag; (5) displays the percentage of Postconsumer Recycled Material used; and (6) and displays the name and location of the manufacturer.

- L. “Restaurant” means a restaurant, take-out food establishment, or any other business that receives 90% or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.
- M. “Reusable Bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (3) is machine washable or capable of being cleaned and disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts as defined by applicable State and Federal standards and regulations for packaging or Reusable Bags (5) if made of plastic, is a minimum of at least 2.25 millimeters thick.
- N. “Retail Establishment” means any commercial establishment that sells perishable and nonperishable goods including, but not limited to, clothing, food and personal items directly to the Customer, and is located within or doing business within the geographical city limits of the City of El Cerrito. Retail Establishments do not include Restaurants or Nonprofit Charitable Reuser organizations.
- O. “Single-Use Carry-out Bag” means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single-Use Carry-out Bags do not include bags without handles provided to the Customer to transport produce, bulk food or meat from a produce, bulk food or meat department within a store to the point of sale.

8.22.040 – Plastic Carry-out Bags Prohibited.

- A. No Retail Establishment shall provide a plastic Single-Use Carry-out Bag to a Customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Ordinance.
- B. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to Produce Bags or Product Bags.

8.22.060 – Permitted Bags.

All Retail Establishments shall provide or make available to a Customer only Recycled Paper Carry-out Bags or Reusable Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Ordinance. Nothing in this Ordinance prohibits Customers from using bags of any type that they bring to the Retail Establishment themselves or from carrying away goods that are not

placed in a bag, in lieu of using bags provided by the store.

8.22.080 – Regulation of Recycled Paper Carry-out Bags.

- A.** Any Retail Establishment that provides a Recycled Paper Carry-out Bag or Reusable Bag to a Customer must charge the Customer a minimum charge of five cents (\$0.05) for each bag provided, except as otherwise provided in the Ordinance.
- B.** Two years after the Ordinance is enacted a Retail Establishment that provides a Recycled Paper Carry-out Bag or Reusable Bag to a Customer must charge the Customer a minimum charge of ten cents (\$0.10) for each bag provided, except as otherwise provided in the Ordinance.
- C.** All Retail Establishments must indicate on the Customer receipt the number of Recycled Paper Carry-out Bags provided and the total amount charged for the bags.
- D.** All monies collected by a Retail Establishment under this Ordinance will be retained by the Retail Establishment and may be used for any of the following purposes:
 - 1.** Costs associated with complying with the requirements of this Ordinance.
 - 2.** Actual costs of providing Recycled Paper Carry-out Bags.
 - 3.** Costs associated with a Retail Establishment's educational materials or education campaign encouraging the use of reusable bags, if any.
 - 4.** Funding reusable bag give-aways during limited-time store promotions.

8.22.100 - Use of Reusable Bags.

- A.** All Retail Establishments may provide Reusable Bags to Customers. If provided, Retail Establishments may provide Reusable Bags either:
 - 1.** For sale; or
 - 2.** At a minimum charge of ten cents (\$0.10) per bag during limited-time store promotions.
 - 3.** Retail Establishments need not charge for Reusable Bags that are given away as part of Reusable Bag giveaway events intended to

promote the use of Reusable Bags, not to exceed a total of 90 days in any consecutive 12-month period.

- B.** Each Retail Establishment is strongly encouraged to educate its staff to promote Reusable Bags and to post signs encouraging Customers to use reusable bags.

8.22.120 – Exemptions

- A.** Retail Establishments may provide at the point of sale, free of charge, either Reusable Bags or Recycled Paper Carry-out Bags or both, at the Retail Establishment's option, to any Customer participating in any of the following programs: (1) the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code; (2) in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code, the State Department of Social Services Food Stamp program; or (3) other state or federal government-subsidized purchase programs for low-income residents.
- B.** Restaurants and Nonprofit Charitable Resuer organizations are exempt from the provisions of this Chapter as specified in Section 8.22.040 - Definitions.

8.22.140 – Enforcement and Violation – Penalty.

- A.** Any violation of this ordinance is punishable as specified in Chapters 1.08 or 1.14 of the El Cerrito Municipal Code or by any other applicable law.
- B.** The City Manager or his or her designee has primary responsibility for enforcement of this Ordinance. The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Ordinance, including, but not limited to, investigating violations, issuing fines and entering the premises of any Retail Establishment during business hours. Other City of El Cerrito staff may assist with this enforcement responsibility by entering the premises of a Retail Establishment as part of their regular inspection functions and reporting any alleged violations to the City Manager.

SECTION 3. Compliance with the California Environmental Quality Act.

The findings for this Ordinance have been determined to be in compliance with the California Environmental Quality Act (“CEQA”). On April 11, 2013, the West Contra Costa Integrated Waste Management Authority (“Authority”) Board adopted Resolution 13-08 certifying the single-use bag reduction Environmental Impact Report (“EIR”) that analyzed the impacts of this single-use bag ordinance if adopted in cities

throughout the Authority, including the City of El Cerrito, as well as neighboring jurisdictions. The EIR was adopted pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq. and California Code of Regulations, Title 14, Section 15000 et seq. (“CEQA Guidelines”). The EIR is incorporated by reference herein. Pursuant to Section 15096 of the CEQA Guidelines, the City of El Cerrito acts as a responsible agency for adoption of this ordinance within the City of El Cerrito. Upon independent review of the EIR and all the evidence before it, the City Council makes the following findings:

- A.** The Final Environmental Impact Report is complete, correct, adequate, and prepared in accordance with CEQA, 14 California Code of Regulations section 15000 et seq., and the public comment period; and
- B.** On the basis of the Initial Study, Notice of Preparation, Final EIR, and public comment received by both the Authority and the City of El Cerrito, there is no substantial evidence that the project as proposed will have a significant effect on the environment; and
- C.** Adoption of this ordinance and analysis of the EIR reflects the independent judgment of the City Council of the City of El Cerrito; and
- D.** None of the conditions listed in CEQA Guidelines section 15162(a) are applicable to adoption of this Ordinance, and adoption of this Ordinance is an activity that is part of the program examined by the Authority’s Final EIR and is within the scope of the project described in the Authority’s Final EIR.
- E.** A Notice of Determination shall be filed pursuant to CEQA Guidelines section 15096.

SECTION 4. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the Ordinance. The City Council of the City of El Cerrito hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid.

SECTION 5. No Conflict with Federal or State Law.

Nothing in this Ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION 6. Effective Date.

This Ordinance shall take effect on January 1, 2014 and be enforced on July 1, 2014; prior to the expiration of fifteen (15) days from the passage thereof, the Ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

The foregoing Ordinance was introduced at a regular meeting of the City Council on August 20, 2013, and passed by the following vote:

AYES:
NOES:
ABSENT:

Adopted and ordered published at a regular meeting of the City Council held on the Month, Day, 2013, and passed by the following vote:

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

APPROVED:

Gregory B. Lyman, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on _____, 2013.

Cheryl Morse, City Clerk

2078355.1



City of El Cerrito to consider new food ware and bag regulations



The proposed regulations would prohibit single-use plastic bags and polystyrene food containers in El Cerrito.

La Ciudad de El Cerrito considerará nueva reglamentación para bolsas y recipientes de alimentos. La reglamentación propuesta prohibiría el uso de bolsas plásticas de un solo uso y recipientes de poliestireno para alimentos en El Cerrito.

El Cerrito市考慮採用新的食品用具及購物袋法規。擬議法規將禁止在El Cerrito市使用一次性塑料袋和聚苯乙烯食品容器。

Public comments are welcome now through July 15. See back side for details.

Los comentarios del público se recibirán desde ahora hasta el 15 de julio. Ver más detalles al dorso.

歡迎各位市民在7月15日前提交意見。詳情請見背面。



10890 San Pablo Avenue
El Cerrito, CA 94530

City of El Cerrito to consider new food ware and bag regulations

La Ciudad de El Cerrito considerará nueva reglamentación para bolsas y recipientes de alimentos.

El Cerrito市考慮採用新的食品用具及購物袋法規。

Attend a public meeting and learn more:

Asista a una reunión abierta al público y averigüe más:

請出席市民會議了解詳情：

June 11 at 7 p.m. and July 9 at 7 p.m.

El Cerrito City Hall Council Chambers

10890 San Pablo Avenue, El Cerrito

Read draft regulations at www.el-cerrito.org

Send comments & questions to:

Envíe comentarios
y preguntas a:

請將意見和
問題提交至：

City of El Cerrito Environmental Services

10890 San Pablo Avenue, El Cerrito, CA 94530

Garth Schultz, Environmental Analyst

Request copies of draft regulations via email or phone

510-559-7684, gschultz@ci.el-cerrito.ca.us

Comments due by July 15

Envíe comentarios hasta el 15 de julio

請於7月15日前提交意見

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AGENDA BILL

Agenda Item No. 7(B)

Date: August 20, 2013
To: El Cerrito City Council
From: Garth Schultz, Operations + Environmental Services Manager
Subject: Proposed Food Ware Ordinance

ACTION REQUESTED

Introduce by title, waive any further reading, and approve an ordinance amending the El Cerrito Municipal Code (ECMC) by adding Chapter 8.24 – El Cerrito Food Ware Ordinance.

BACKGROUND

Litter pollution on streets and in gutters, storm drains, creeks, and San Francisco Bay is a major environmental quality and compliance concern in El Cerrito and the entire Bay Area. Certain components of litter – including expanded polystyrene (EPS) food ware – have been identified locally, regionally, and state-wide as being particularly problematic.

EPS food ware is difficult to keep from becoming litter, is unsightly when littered, and can be challenging to remove from the environment once littered. In order to reduce EPS litter and promote environmental sustainability, over 72 cities and counties in California have adopted ordinances banning the use of EPS food ware by food service businesses. Current EPS food ware ordinances typically prohibit the distribution of EPS food ware by food service businesses. El Cerrito's neighboring commercial districts in Albany and Richmond already enforce similar food ware ordinances, and the City of San Pablo is currently considering an ordinance for future adoption. Because of the nature of El Cerrito's border with Richmond along San Pablo Avenue, customers already have limited access to EPS food ware along the Avenue.

The El Cerrito Environmental Quality Committee (EQC) has expressed interest in banning EPS food ware for use by food service businesses since 2009. In partnership with staff, the EQC applied for grant funds to educate food service businesses about alternative food ware products, provide incentive funds to those that started using compostable food ware, and inform the food service community about the potential for an El Cerrito food ware ordinance. In 2011, EQC members drafted a model food ware ordinance and recommended that staff seek Council adoption of an ordinance that would include food service businesses and El Cerrito government operations. On July 9, 2013, the EQC passed a motion recommending that the City Council adopt the proposed Food Ware Ordinance.

DISCUSSION

Proposed Food Ware Ordinance

El Cerrito City staff modified a draft ordinance written by members of the EQC. The proposed Food Ware Ordinance would:

1. Prohibit food providers and City facilities, Departments, franchisees, contractors, vendors and caterers (doing business with the City) from providing prepared food to customers in disposable food ware made from EPS.
2. Require any of the above using disposable food ware to use compostable, recyclable, or reusable food ware, with strong encouragement for reusable food ware; this includes all individuals, entities and organizations using City facilities.
3. Provide for a penalty levied against noncompliant business owners as infractions of the El Cerrito Municipal Code.
4. Provide for a number of exemptions from the provisions of the Ordinance, including an exemption for food providers who can demonstrate undue economic hardship or when suitable compostable, recyclable or reusable food ware alternatives do not exist.
5. Become effective January 1, 2014 and enforceable on July 1, 2014.

Public Outreach and Comments

The City of El Cerrito initiated outreach on a draft Food Ware Ordinance in May 2013. Public outreach included:

- Letters to all potentially affected businesses in September 2011 and June 2012 announcing the City's interest in a ban on EPS food ware, inviting them to public meetings, and announcing incentive funds for compostable food ware products.
- EQC members canvassing all potentially affected food service businesses in El Cerrito, inviting them to the public meetings and announcing the incentive funds.
- Public meetings in September 2011 and August 2012 for food service businesses, discussing City plans for a food ware ordinance, detailing alternative food ware products, and how to access \$110 in incentive funds to switch to compostable products (a total of 5 incentive fund applications were received and funded).
- Direct postcard mailing in three languages (same as referenced in Staff Report on Single-Use Bag Ordinance) to all potentially affected business locations and billing addresses announcing a public comment period from May 15, 2013 through July 15, 2013.

Agenda Item No. 7(B)

- Four week published advertisement in the El Cerrito Journal soliciting public comment during the public comment period.
- Public comment meetings and discussion with the Environmental Quality Committee on June 11 and July 9, and presentation and public comment with members of the El Cerrito Chamber of Commerce on June 18.
- Posting the draft Ordinance online at www.el-cerrito.org/bagsandfoam as well as sending notifications to over 800 email subscribers, and posting on Twitter.

The public outreach process yielded 25 public comments from individuals and organizations, with 4 comments expressing opposition to the Ordinance and 21 comments expressing support. The City received letters of opposition from the California Restaurant Association and the American Chemistry Council. Letters of support were received from Friends of Five Creeks, Citizens for East Shore Parks, the Golden Gate Audubon Society, the Sierra Club, and Clean Water Action. The main themes expressed by the public comments are discussed below:

Alternatives Too Costly and Don't Perform

All of the comments in opposition to the proposed Ordinance stated EPS food ware is at least half as expensive as alternative food ware products. Additionally, they state that EPS products perform better as food ware than the alternatives. Per these comments, requiring food service businesses to use EPS alternatives would result in undue hardship for those businesses currently using EPS. Staff has confirmed that the claims about the relative costs of EPS vs. alternative products is correct, and recognizes that there may be cases where suitable alternatives don't exist. As such, business that can demonstrate undue hardship due to the elimination of EPS foam, should apply to the City Manager for exemption from the requirements of the Ordinance.

No Decrease in Litter

The letters of opposition from industry representatives site studies claiming that, while EPS litter does decrease following a ban on EPS food ware, the total amount of litter does not decrease because paper and other food ware litter increases. Assuming this is the case, from a litter control perspective it is better to reduce the prevalence of problematic litter like EPS – which doesn't biodegrade, but does break down into smaller pieces and which floats – than to allow its presence at current levels.

Health Impacts of Styrene Overstated

The letter of opposition received from the American Chemistry Council noted that the statements about the questionable human health impacts of styrene, which were included in the draft Ordinance that was circulated for public comment, were incorrect. Staff and members of the EQC had originally included these statements as a means of exhibiting precaution with respect to the any potential health impacts attributable to the styrene in EPS. However, since avoiding potential health impacts is not the primary intent of the proposed Ordinance, staff has removed all such references from the Ordinance.

Next Steps if Adopted

Prior to January 1, 2014, City staff plans to send a mailer to the approximately 250 potentially affected business owners, to host community meetings, and to provide signs to business owners to inform customers about the Ordinance. Staff will conduct another similar round of outreach prior to July 1, 2014, when enforcement activities are proposed to begin. Enforcement of the Ordinance is expected to be largely complaint based and will be conducted via administrative citation as per ECMC Sections 1.08 and 1.14. Per, the ECMC, the City Manager may designate enforcement officers to issue administrative citations. Penalties for non-compliance start at \$100 for the first violation and can be up to \$500 per violation.

STRATEGIC PLAN CONSIDERATIONS

Adoption of the proposed Food Ware Ordinance would help fulfill Goal F – Foster environmental sustainability citywide – as detailed in the City of El Cerrito Strategic Plan, adopted March 2013. Specifically, adoption of the proposed Ordinance would contribute to achieving the following strategies:

- *Implement policies to promote waste diversion (i.e., ban on single-use bags and EPS food containers).* Adoption of the proposed Ordinance would complete one example stated in this strategy.
- *Implement the City's Climate Action Plan.* Adoption of the proposed Ordinance would contribute to meeting Objective W-1.4 of the Climate Action Plan (Bans on problematic materials).

ENVIRONMENTAL CONSIDERATIONS

If adopted, the Food Ware Ordinance would reduce EPS litter on El Cerrito streets and public spaces, reduce the presence of EPS litter in storm drains and creeks (the City is required to eliminate trash in stormwater per the Municipal Regional Stormwater Permit), and reduce waste management inefficiencies attributed to EPS food ware.

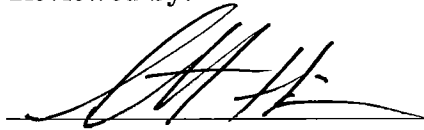
FINANCIAL CONSIDERATIONS

Implementation of the Ordinance would require the use of limited budgeted funds and staffing for outreach, education, and enforcement activities in the Public Works Department, Operations + Environmental Services Division. No additional funding or staffing will be needed to implement and enforce the Ordinance. The City may avoid unknown future costs due to litter control and complying with the Municipal Regional Permit as a result of the Ordinance.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the draft Ordinance and found that legal considerations have been addressed.

Reviewed by:

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

Scott Hanin, City Manager

Attachments:

1. Draft Food Ware Ordinance

ORDINANCE NO. 2013–YY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO PROHIBITING THE USE OF EXPANDED POLYSTYRENE DISPOSABLE FOOD WARE AND ENCOURAGING THE USE OF COMPOSTABLE, RECYCLABLE AND REUSABLE FOOD WARE

SECTION 1. Findings.

WHEREAS, expanded polystyrene (EPS) disposable food ware has been associated with considerable environmental impacts, including being a problematic component of litter, which is unsightly and costly to clean up; and

WHEREAS, littering EPS food ware can result in blocked storm drains, fouled waterways, and increased marine debris; and

WHEREAS, EPS food ware is commonly used by food providers in the City of El Cerrito, and has limited recycling potential; and

WHEREAS, the City of El Cerrito has a substantial interest in protecting its waterways, environment, and taxpayers from the negative impacts of EPS food ware; and

WHEREAS, restricting the use of EPS food ware products and replacing non-compostable, non-reusable, or non-recyclable food service ware with compostable, reusable, or recyclable food service ware products will further protect waterways and promote environmental sustainability; and

WHEREAS, compostable food ware products such as cups, plates, bowls and hinged containers are available in local stores, are increasingly available in the food service market; and

WHEREAS, many businesses in Bay Area cities engage in organics recycling and have demonstrated that the use of compostable food ware can reduce disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of El Cerrito and is exempt from the requirements of the California Environmental Quality Act (“CEQA”), as amended, pursuant to Section 15061(b)(3) or Section 15308 of the CEQA Guidelines.

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

SECTION 2. Amendment of Municipal Code. Title 8 of the El Cerrito Municipal Code is hereby amended to add a new Chapter 8.24 and shall read as follows:

8.24.010 - Title.

This Ordinance shall be known as the El Cerrito Food Ware Ordinance. The City of El Cerrito hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

8.24.020 - Operative Date.

This Ordinance shall become operative on January 1, 2014 and shall become enforceable on July 1, 2014.

8.24.030 - Purpose.

It is the intent of the City of El Cerrito in enacting Chapter 8.24 to eliminate the use of expanded polystyrene food ware and to encourage the use of reusable, recyclable or compostable food containers by food providers and customers in El Cerrito.

8.24.040 - Definitions.

The following definitions apply to this Ordinance:

- A. "ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International standards D6400 or D6868 for compostable materials, as those standards may be amended.
- B. "Compostable" means the product is capable of composting and is labeled in accordance with California law, or is consistent with the timeline and specifications of ASTM D6400 and D6868, without regard to material type.
- C. "City Facilities" means any building, structure or vehicle owned or operated by the City of El Cerrito, its agents, agencies, departments or franchisees.
- D. "Customer" means any member of the public obtaining Prepared Food from a Food Provider.
- E. "Disposable Food Ware" means all containers, bowls, plates, trays, cartons, cups, forks, spoons, and knives and other items that are designed for one-time use for Prepared Foods, including service ware for take-out foods and/or leftovers from partially consumed meals prepared by Food Providers. This term does not include lids or straws.
- F. "Food Provider" means any vendor, business, organization, entity, group or individual, including any Restaurant or Retail Food Establishment, located or operating within the City of El Cerrito or providing food or beverage to the public, and any provider of Prepared Food at organized or special events occurring within the boundaries of the City of El Cerrito.

- G.** “Expanded Polystyrene” or “EPS” means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of Expanded Polystyrene insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.
- H.** “Prepared Food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Provider's premises. For the purposes of this ordinance, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises, also known as "take-out food".
- I.** “Restaurant” means a restaurant, take-out food establishment, or any other business that receives 90% or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.
- J.** “Retail Food Establishment” means any store, shop, sales outlet, or other establishment, other than a Restaurant, including but not limited to a grocery store, delicatessen, mobile food preparation and sale unit, drive-in, coffee shop, cafeteria, short-order cafe, luncheonette, grill, sandwich shop, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out Prepared Food place, industrial feeding establishment, catering kitchen, commissary, special event, food market, produce stand, food stand, or similar place in which food or drink is prepared for sale, or for service, on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served or provided to Customers.
- K.** “Recyclable” means material that can be sorted, cleansed, and reconstituted using El Cerrito’s available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. “Recycling” does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
- L.** “Reusable” means all materials in the product or package will be used more than once in its same form by the customer, food vendor or other reuse programs. Reusable food ware includes: food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor by the customer that is provided take-out containers. Reusable also includes durable

containers, packages or trays used on-premises or returnable containers brought back to the food vendor.

- M. “Reusable Food Ware” means all containers, bowls, plates, trays, cartons, cups, and other items that are designed for prolonged use, including but not limited to ceramic, glass, porcelain, and metal food ware.

8.24.040 – EPS Food Ware Prohibited.

- A. Except as provided in this Chapter, Food Providers are prohibited from providing Prepared Food to Customers in Disposable Food Ware made from Expanded Polystyrene.
- B. Except as provided in this Chapter, all City Facilities are prohibited from using Expanded Polystyrene Disposable Food Ware and all City Departments and Agencies will not purchase or acquire Expanded Polystyrene Disposable Food Ware for use at City Facilities or events.
- C. Except as provided in this Chapter, all City franchisees, contractors, vendors and caterers doing business with the City shall be prohibited from using Expanded Polystyrene Disposable Food Ware in City Facilities, at City events or on City projects within the City of El Cerrito.

8.24.060 – Permitted Disposable Food Ware.

- A. All Food Providers using any Disposable Food Ware will use Compostable, Recyclable or Reusable Food Ware. All Food Providers are strongly encouraged to use Reusable Food Ware in place of using Disposable Food Ware for all food served on-premises. A Food Provider may price its products or services to customers in a manner to cover any cost differential.
- B. All City Facilities using any Disposable Food Ware will use Compostable, Recyclable or Reusable Food Ware. All City Facilities are strongly encouraged to use Reusable Food Ware in place of using Disposable Food Ware for all food served on-premises.
- C. All City franchisees, contractors, vendors and caterers, when doing business with the City, will use Compostable, Recyclable or Reusable Food Ware. All City Facilities are strongly encouraged to use Reusable Food Ware in place of using Disposable Food Ware for all food served on-premises.
- D. All individuals, entities or organizations using City Facilities for public or private events shall comply with the requirements in this Chapter.

8.24.080 – Exemptions.

- A.** Prepared Foods that are prepared or packaged outside the City of El Cerrito as well as Prepared Foods prepared and packaged in the City of El Cerrito for use outside of the City of El Cerrito are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of El Cerrito are encouraged to follow the provisions of this Chapter.
- B.** Food Providers may be exempted from the provisions of this Chapter for specific items or types of Disposable Food Ware if the City Manager or his/her designee finds that a suitable Compostable, Reusable or Recyclable alternative does not exist for a specific application and/or that imposing the requirements of this Chapter on that item or type of Disposable Food Ware would cause undue hardship.
- C.** Any Food Provider or City Facility may seek an exemption from the requirements of this Chapter by filing a request in writing with the City Manager. The City Manager may waive any specific requirement of this Chapter for a period of not more than one year if the Food Provider or City Facility seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship.
- D.** A Food Provider or City Facility granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship if the Food Provider or City Facility wishes to have the exemption extended. The City Manager's decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.
- E.** Expanded Polystyrene coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.
- F.** In a situation deemed by the City Manager or his/her designee to be an emergency, or in the event that a local emergency or disaster has been declared in effect, for the immediate preservation of the public peace, health or safety, City Facilities, Food Providers, City franchisees, contractors, vendors and caterers doing business with the City shall be exempt from the provisions of this Chapter.

8.24.140 – Enforcement and Violation – Penalty.

- A.** Any violation of this ordinance is punishable as specified in Chapters 1.08 or 1.14 of the El Cerrito Municipal Code or by any other applicable law.
- B.** The City Manager or his or her designee has primary responsibility for enforcement of this Ordinance. The City Manager is authorized to promulgate

regulations and to take any and all other actions reasonable and necessary to enforce this Ordinance, including, but not limited to, investigating violations, issuing fines and entering the premises of any Food Provider during business hours. Other City of El Cerrito staff may assist with this enforcement responsibility by entering the premises of a Food Provider as part of their regular inspection functions and reporting any alleged violations to the City Manager.

SECTION 3. Compliance with the California Environmental Quality Act.

Pursuant to Title 14 of the California Administrative Code, the City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons: (1) under Section 15061 (b)(3), it is not a project which has the potential for causing a significant effect on the environment; (2) under Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration, enhancement, or protection of the environment.

SECTION 4. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the Ordinance. The City Council of the City of El Cerrito hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid.

SECTION 5. No Conflict with Federal or State Law.

Nothing in this Ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION 6. Effective Date.

This Ordinance shall take effect on January 1, 2014 and be enforced on July 1, 2014; prior to the expiration of fifteen (15) days from the passage thereof, the Ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

The foregoing Ordinance was introduced at a regular meeting of the City Council on August 20, 2013, and passed by the following vote:

AYES:

NOES:

ABSENT:

Adopted and ordered published at a regular meeting of the City Council held on the Month, Day, 2013, and passed by the following vote:

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

APPROVED:

Gregory B. Lyman, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on _____, 2013.

Cheryl Morse, City Clerk



AGENDA BILL

Agenda Item No. 7(C)

Date: August 20, 2013
To: El Cerrito City Council
From: Cheryl Morse, City Clerk
Subject: 2013 League of California Cities Delegate Confirmation and Resolutions

ACTION REQUESTED

Confirm Mayor Pro Tem Abelson's appointment as voting delegate at the 2013 League of California Cities Annual Conference, select an alternate as desired, and provide direction to Mayor Pro Tem Abelson regarding the following 2013 League of California Cities Conference resolutions:

1. Water Bond Funds [sponsored by Los Angeles County]
League Recommendation: Approve
2. Public Safety Realignment [Public Safety Committee]
League Recommendation: Approve

BACKGROUND

The League of California Cities 2013 Annual Conference is scheduled on September 18-20, 2013, in Sacramento. As part of the Conference, the League will hold its annual business meeting, during which League membership considers and takes action on resolutions that establish League policy.

In order to vote at the annual business meeting, the League requires City Council action to designate a voting delegate. The Council may also choose to designate up to two voting delegate alternates. Staff believes the Council fulfilled this requirement by selecting Mayor Pro Tem Abelson as the East Bay League of California Cities Delegate with the additional responsibility of attending the Annual League Conference, when it confirmed annual Council Liaison assignments at its December 18, 2012 City Council meeting.

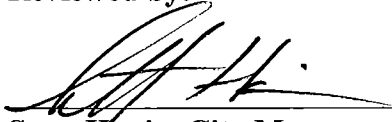
Currently, Mayor Pro Tem Abelson is the only member who has registered to attend the Annual League Conference. Any alternates selected by the Council would also need to be registered for the conference.

The two proposed conference resolutions are outlined in the attached packet. One was referred to the Environmental Quality Committee and one to the Public Safety Committee. These policy committees will be meeting on Wednesday, September 18, to consider the resolutions. Their recommendations are forwarded to the General Resolutions Committee, who will then make a recommendation to the General Assembly for consideration and vote on Friday, September 20, 2013. The League encourages each City Council to consider the resolutions and to determine a city position so that the voting delegate can represent the City's position on each resolution.

Agenda Item No. 7(C)

based on discussion and feedback at the League's annual meeting. The League's recommendation is to support both resolutions although if the Council feels differently it is not required to do so. The California Police Chiefs Association supports the Resolution related to realignment.

Reviewed by:

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

Scott Hanin, City Manager

Attachments:

1. Annual League Conference Resolution packet and League Designation of Voting Delegates and Alternates

Cheryl Morse

From: city_clerks-bounces@lists.cacities.org on behalf of Natasha Karl [nkarl@cacities.org]
Sent: Tuesday, July 23, 2013 6:52 PM
To: 'city_managers@lists.cacities.org'; city_clerks@lists.cacities.org
Cc: Samantha Caygill; Meg Desmond
Subject: [City_clerks] 2013 Annual Conference Resolutions Packet/Notice of League Annual Meeting
Attachments: ATT00001.txt

July 23, 2013

TO: Mayors, City Managers and City Clerks
League Board of Directors

RE: Annual Conference Resolutions Packet
Notice of League Annual Meeting

Click [here](#) for the 2013 Annual Conference Resolutions Packet. A hard copy will be mailed the week of August 5.

Annual Conference in Sacramento. This year's League Annual Conference will be held September 18 - 20 in Sacramento. The conference announcement has previously been sent to all cities and we hope that you and your colleagues will be able to join us. More information about the conference is available on the League's Web site at www.cacities.org/ac. We look forward to welcoming city officials to the conference.

Annual Luncheon/Business Meeting - Friday, September 20, 12:00 p.m. The League's Annual Business Meeting will be held at the Hyatt Regency Hotel.

Resolutions Packet. At the Annual Conference, the League will consider the two resolutions introduced by the deadline, Saturday, July 20, 2013, midnight. These resolutions are included in this packet. New this year, resolutions submitted to the General Assembly must be concurred in by five cities or by city officials from at least five or more cities. These letters of concurrence are included with this packet. We request that you distribute this packet to your city council.

We encourage each city council to consider the resolutions and to determine a city position so that your voting delegate can represent your city's position on each resolution. A copy of the resolutions packet is posted on the League's website for your convenience: www.cacities.org/resolutions.

The resolutions packet contains additional information related to consideration of the resolutions at the Annual Conference. This includes the date, time and location of the meetings at which resolutions will be considered.

Voting Delegates. Each city council is encouraged to designate a voting delegate and two alternates to represent their city at the Annual Business Meeting. A letter asking city councils to designate their voting delegate and two alternates has already been sent to each city. Copies of the letter, voting delegate form, and additional information are also available at: www.cacities.org/resolutions.

For questions about the Resolutions process please contact Meg Desmond at mdesmond@cacities.org or Natasha Karl at nkarl@cacities.org.

No virus found in this message.

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Version: 2013.0.2904 / Virus Database: 3204/6516 - Release Date: 07/24/13



***Annual Conference
Resolutions Packet***

115th Annual Conference



***Sacramento
September 18 - 20, 2013***

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration by the Annual Conference and referred to the League policy committees.

POLICY COMMITTEES: Two policy committees will meet at the Annual Conference to consider and take action on resolutions referred to them. The committees are Environmental Quality and Public Safety. These committees will meet on Wednesday, September 18, 2013, at the Sheraton Grand Hotel in Sacramento. The sponsors of the resolutions have been notified of the time and location of the meetings.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 19, at the Sacramento Convention Center, to consider the reports of the two policy committees regarding the two resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president. Please check in at the registration desk for room location.

ANNUAL LUNCHEON/BUSINESS MEETING/GENERAL ASSEMBLY: This meeting will be held at 12:00 p.m. on Friday, September 20, at the Hyatt Regency Hotel.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (47 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Session of the General Assembly. This year, that deadline is 12:00 p.m., Thursday, September 19. If the petitioned resolution is substantially similar in substance to a resolution already under consideration, the petitioned resolution may be disqualified by the General Resolutions Committee.

Resolutions can be viewed on the League's Web site: www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: mdesmond@cacities.org or (916) 658-8224

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities is through the League's eight standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
 - (c) Consider important issues not adequately addressed by the policy committees and board of directors.
 - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

LOCATION OF MEETINGS

Policy Committee Meetings

Wednesday, September 18, 2013
Sheraton Grand Hotel
1230 J Street, Sacramento

Public Safety: 9:00 a.m. – 10:30 a.m.
Environmental Quality: 10:30 a.m. – 12:00 p.m.

General Resolutions Committee

Thursday, September 19, 2013, 1:00 p.m.
Sacramento Convention Center
1400 J Street, Sacramento

Annual Business Meeting and General Assembly Luncheon

Friday, September 20, 2013, 12:00 p.m.
Hyatt Regency Hotel
1209 L Street, Sacramento

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action		
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		1	2	3
		1 - Policy Committee Recommendation to General Resolutions Committee		
		2 - General Resolutions Committee		
		3 - General Assembly		

ENVIRONMENTAL QUALITY POLICY COMMITTEE

		1	2	3
1	Water Bond Funds			

PUBLIC SAFETY POLICY COMMITTEE

		1	2	3
2	Public Safety Realignment			

Information pertaining to the Annual Conference Resolutions will also be posted on each committee's page on the League website: www.cacities.org. The entire Resolutions Packet will be posted at: www.cacities.org/resolutions.

KEY TO ACTIONS TAKEN ON RESOLUTIONS *(Continued)*

KEY TO REVIEWING BODIES

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

KEY TO ACTIONS TAKEN

- A - Approve
- D - Disapprove
- N - No Action
- R - Refer to appropriate policy committee for study
- a - Amend
- Aa - Approve as amended
- Aaa - Approve with additional amendment(s)
- Ra - Amend and refer as amended to appropriate policy committee for study
- Raa - Additional amendments and refer
- Da - Amend (for clarity or brevity) and Disapprove
- Na - Amend (for clarity or brevity) and take No Action
- W - Withdrawn by Sponsor

Action Footnotes

- * Subject matter covered in another resolution
- ** Existing League policy
- *** Local authority presently exists

Procedural Note: Resolutions that are approved by the General Resolutions Committee, as well as all qualified petitioned resolutions, are reported to the floor of the General Assembly. In addition, League policy provides the following procedure for resolutions approved by League policy committees but *not* approved by the General Resolutions Committee:

Resolutions initially recommended for approval and adoption by all the League policy committees to which the resolution is assigned, but subsequently recommended for disapproval, referral or no action by the General Resolutions Committee, shall then be placed on a consent agenda for consideration by the General Assembly. The consent agenda shall include a brief description of the basis for the recommendations by both the policy committee(s) and General Resolutions Committee, as well as the recommended action by each. Any voting delegate may make a motion to pull a resolution from the consent agenda in order to request the opportunity to fully debate the resolution. If, upon a majority vote of the General Assembly, the request for debate is approved, the General Assembly shall have the opportunity to debate and subsequently vote on the resolution.

2013 ANNUAL CONFERENCE RESOLUTIONS

RESOLUTION REFERRED TO ENVIRONMENTAL QUALITY POLICY COMMITTEE

- 1. RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO WORK WITH THE LEAGUE OF CALIFORNIA CITIES IN PROVIDING ADEQUATE FUNDING AND TO PRIORITIZE WATER BONDS TO ASSIST LOCAL GOVERNMENT IN WATER CONSERVATION, GROUND WATER RECHARGE AND REUSE OF STORMWATER AND URBAN RUNOFF PROGRAMS.**

Source: Los Angeles County Division

Concurrence of five or more cities/city officials: Cities of Alhambra; Cerritos; Claremont; Glendora; Lakewood; La Mirada; La Verne; Norwalk; Signal Hill; Mary Ann Lutz, Mayor, city of Monrovia.

Referred to: Environmental Quality Policy Committee

Recommendations to General Resolutions Committee: Approve

WHEREAS, local governments play a critical role in providing water conservation, ground water recharge and reuse of stormwater infrastructure, including capture and reuse of stormwater for their citizens, businesses and institutions; and

WHEREAS, local governments support the goals of the Clean Water Act to ensure safe, clean water supply for all and the U.S. Environmental Protection Agency has encouraged local governments to implement programs to capture, infiltrate and treat stormwater and urban runoff with the use of low impact development ordinances, green street policies and programs to increase the local ground water supply through stormwater capture and infiltration programs; and

WHEREAS, local governments also support the State's water quality objectives, specifically Section 13241 of the Porter-Cologne Water Quality Control Act, on the need to maximize the use of reclaimed and water reuse and the Regional Water Quality Control Boards and the State Water Resources Board encourage rainwater capture efforts; and

WHEREAS, the State's actions working through the water boards, supported by substantial Federal, State and local investments, have led to a dramatic decrease in water pollution from wastewater treatment plants and other so-called "point sources" since 1972. However, the current threats to the State's water quality are far more difficult to solve, even as the demand for clean water increases from a growing population and an economically important agricultural industry; and

WHEREAS, the State's Little Hoover Commission found in 2009 that more than 30,000 stormwater discharges are subject to permits regulating large and small cities, counties, construction sites and industry. The Commission found that a diverse group of water users – the military, small and large businesses, home builders and local governments and more – face enormous costs as they try to control and limit stormwater pollution. The Commission concluded that the costs of stormwater clean up are enormous and that the costs of stormwater pollution are greater, as beach closures impact the State's economy and environmental damage threatens to impair wildlife; and

WHEREAS, at the same time that new programs and projects to improve water quality are currently being required by the U.S. EPA and the State under the National Pollution Discharge Elimination System (NPDES) permits and the Total Daily Maximum Load (TMDL) programs, many local governments find that they lack the basic infrastructure to capture, infiltrate and reuse stormwater and cities are facing difficult economic challenges while Federal and State financial assistance has been reduced due to the impacts of the recession and slow economic recovery; and

WHEREAS, cities have seen their costs with the new NPDES permit requirements double and triple in size in the past year, with additional costs anticipated in future years. Additionally, many local businesses have grown increasingly concerned about the costs of retrofitting their properties to meet stormwater and runoff requirements required under the NPDES permits and TMDL programs; and

WHEREAS, the League of California Cities adopted water polices in March of 2012, recognizing that the development and operation of water supply, flood control and storm water management, among other water functions, is frequently beyond the capacity of local areas to finance and the League found that since most facilities have widespread benefits, it has become the tradition for Federal, State and local governments to share their costs (XIV, Financial Considerations); and the League supports legislation providing funding for stormwater and other water programs; and

WHEREAS, the Governor and the Legislature are currently contemplating projects for a water bond and a portion of the bond could be directed to assist local government in funding and implementing the goals of the Clean Water Act and the State's water objectives of conserving and reusing stormwater in order to improve the supply and reliability of water supply; and now therefore let it be

RESOLVED by the General Assembly of the League of California Cities, assembled in Sacramento on September 20, 2013, that the League calls for the Governor and the Legislature to work with the League and other stakeholders to provide adequate funding for water conservation, ground water recharge and capture and reuse of stormwater and runoff in the water bond issue and to prioritize future water bonds to assist local governments in funding these programs. The League will work with its member cities to educate federal and state officials to the challenges facing local governments in providing for programs to capture, infiltrate and reuse stormwater and urban runoff.

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Background Information on Resolution No. 1

Source: Los Angeles County Division

Background:

In order to meet the goals of both the Federal Clean Water Act and the State's Porter-Cologne Water Quality Control Act, which seek to ensure safe clean water supplies, cities provide critical water conservation, ground water recharge and reuse of stormwater infrastructure, including capture and reuse of stormwater for their citizens, businesses and institutions.

Working with the State's Regional Water Quality Control Boards and the State Water Resources Board through the National Pollution Discharge Elimination System (NPDES) permitting process and Total Maximum Daily Load (TMDL) Programs, California's cities implement programs to capture, infiltrate and treat stormwater and urban runoff with the use of low impact development ordinances, green streets policies and other programs to increase the local ground water supply.

These actions have led to a dramatic decrease in water pollution from wastewater treatment plants and other so-called "point sources" since the adoption of the Clean Water Act in 1972. However, current threats to the State's "non-point sources" of pollution, such as stormwater and urban runoff are far more difficult to solve, even as the demand for clean water increases from a growing population and an economically important agricultural industry.

Current Problem Facing California's Cities

The Little Hoover Commission found in 2009 that more than 30,000 stormwater discharges are subject to permits regulating large and small cities, counties, construction sites and industry. The Commission found that a diverse group of water users – the military, small and large businesses, home builders and local governments and more – face enormous costs as they try and control and limit stormwater pollution. The Commission concluded that the costs of stormwater clean up are enormous and that the costs of stormwater pollution are greater as beach closures impact the state's economy and environmental damage threatens to impair wildlife.

Additionally, new programs and projects to improve water quality are currently being required by the U.S. EPA and the State under the NPDES permits and the TMDL programs. Many local governments find that they lack the basic infrastructure to capture, infiltrate and reuse stormwater and the cities are facing difficult economic challenges while Federal and State financial assistance has been reduced due to the impacts of the recession and slow economic recovery.

Cities have seen their costs with the new NPDES permit requirements triple in size in the past year, with additional costs anticipated in future years. Additionally, many local businesses have grown increasingly concerned about the costs of retrofitting their properties to meet stormwater and runoff requirements required under the NPDES permits and TMDL programs.

In Los Angeles County alone, reports commissioned by the Los Angeles County Flood Control District estimate the costs of achieving region-wide compliance for implementing TMDL programs in the NPDES permits required by the Los Angeles Regional Water Quality Control Board (LARWQCB) will be in the tens of billions of dollars over the next twenty years. Additionally, failure to comply with the LARWQCB's terms could result in significant Clean Water Act fines, state fines and federal penalties anywhere from \$3,000- \$37,500 per day. Violations can also result in third-party litigation. Such costs are not confined to Los Angeles County and are being realized statewide.

Clearly, compliance with the NPDES permit and TMDL programs will be expensive for local governments over a long period of time and cities lack a stable, long-term, dedicated local funding source to address this need. Many cities are faced with the choice of either cutting existing services or finding new sources of revenue to fund the NPDES and TMDL programs.

Los Angeles County Division Resolution

The Division supports strong League education and advocacy at both the State and Federal levels to help cities face the challenges in providing programs to capture, infiltrate and reuse stormwater and urban runoff. While Los Angeles County cities and other regions seek to secure local funding sources to meet the Clean Water Act and the State's water objectives, it will simply not be enough to meet the enormous costs of compliance. The Los Angeles County Division strongly believes that State and Federal cooperation are necessary to fund programs to secure and reuse stormwater in order to improve water supply and reliability throughout the state.

The Division calls for the League to engage in discussions on 2014 State Water Bond to assist cities in funding and implementing the goals of the Clean Water Act and the State's Water objectives. This resolution does not support the 2014 bond issue, since the League and individual cities will need to make this decision at a later time upon review of the final language. However, the Governor and Legislature have reopened discussions for the 2014 water bond and funding of urban runoff and stormwater programs has taken a back seat in past bond issues, such as Proposition 84. In May, Assembly Speaker John Perez appointed a Water Bond Working Group which recently outlined a new set of Priorities and Accountability Measures for developing a water bond that would gain the support of 2/3 of the Legislature and voters. One of the priorities identified by the committee included, "Regional Self Reliance/Integrated Regional Water

Management,” posing the question if stormwater capture should be included in any future bonds. The Division believes the opportunity to advocate for funding in the bond is now.

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League of California Cities Staff Analysis on Resolution No. 1

Staff: Jason Rhine; (916) 658-8264

Committee: Environmental Quality

Summary:

This resolution seeks to call upon the Governor and the Legislature to work with the League of California Cities in providing adequate funding and to prioritize water bonds to assist local governments in water conservation, ground water recharge and reuse of stormwater and urban runoff programs.

Background:

In 2009, the State Legislature passed and Governor Arnold Schwarzenegger signed a package of legislation that included four policy bills and an \$11.1 billion water bond (The Clean, and Reliable Drinking Water Supply Act). The water bond included the following major spending proposals:

- \$455 million for drought relief projects, disadvantaged communities, small community wastewater treatment improvements and safe drinking water revolving fund
- \$1.4 billion for "integrated regional water management projects"
- \$2.25 billion for projects that "support delta sustainability options"
- \$3 billion for water storage projects
- \$1.7 billion for ecosystem and watershed protection and restoration projects in 21 watersheds
- \$1 billion for groundwater protection and cleanup
- \$1.25 billion for "water recycling and advanced treatment technology projects"

The \$11.1 billion bond also included nearly \$2 billion in earmarks. Projects slated for funding included:

- \$40 million to educate the public about California's water
- \$100 million for a Lake Tahoe Environmental Improvement Program for watershed restoration, bike trails and public access and recreation projects
- \$75 million for the Sierra Nevada Conservancy, for public access, education and interpretive projects
- \$20 million for the Baldwin Hills Conservancy to be used to buy more land
- \$20 million for the Bolsa Chica Wetlands for interpretive projects for visitors

The water bond was originally scheduled to appear on the 2010 ballot as Proposition 18. However, due to significant criticism over the size of the bond, the amount of earmarked projects, and a lack of public support, the Legislature has voted twice to postpone the ballot vote. The water bond is now slated for the November 4, 2014 ballot.

It is unclear whether or not the water bond will actually appear on the November 2014 ballot. In recent months, pressure has been mounting to postpone the water bond yet again or significantly rewrite the water bond to drastically reduce the overall size of the bond and remove all earmarks. The Legislature has until the summer of 2014 to act.

Fiscal Impact:

Unknown. This resolution does not seek a specified appropriation from a water bond.

Existing League Policy:

In 2008, the League formed a new Water Task Force to consider updates and revision to the Water Guidelines the League drafted and adopted 20 years earlier. These new Guidelines were formally approved by the League board of directors in Feb. 2010. Below are the most pertinent policy and guiding principles related to the proposed resolution. To view the entire water policy guidelines, go to www.cacities.org/waterpolicyguidelines.

General Principles

- The League supports the development of additional groundwater and surface water storage, including proposed surface storage projects now under study if they are determined to be feasible, including but not limited to: environmentally, economically, and geographically relating to point of origin. Appropriate funding sources could include, but are not limited to user fees, bonds and federal funding.
- The League supports state water policy that allows undertaking aggressive water conservation and water use efficiency while preserving, and not diminishing, public and constitutional water rights.

Water Conservation

- The League supports the development of a statewide goal to reduce water use by 20% by 2020 through the implementation of fair and equitable measures consistent with these principles.
- Accomplishing water conservation and water use efficiency goals will require statewide action by all water users, including residential, commercial, industrial and agricultural water users, local and regional planning agencies, state and federal agencies, chambers of commerce, and business, commercial and industrial professional and trade associations.

Water Recycling

- Wherever feasible, water recycling should be practiced in urban, industrial and agricultural sectors. This includes increasing the use of recycled water over 2002 levels by at least one million acre-feet/year (afy) by 2020 and by at least two million afy by 2030.
- Increased recycling, reuse and other refinements in water management practices should be included in all water supply programs.

Water Storage

- The development of additional surface facilities and use of groundwater basins to store surface water that is surplus to that needed to maintain State Water Resource Control Board (SWRCB) Bay-Delta estuary water quality standards should be supported.

Groundwater

- The principle that local entities within groundwater basins (i.e., cities, counties, special districts, and the regional water quality control boards) working cooperatively should be responsible for and involved in developing and implementing basin wide groundwater, basin management plans should be supported. The plans should include, but not be limited to: a) protecting groundwater quality; b) identifying means to correct groundwater overdraft; c) implementing better irrigation techniques; d) increasing water reclamation and reuse; and e) refining water conservation and other management practices.
- Financial assistance from state and federal governments should be made available to requesting local agencies to develop and implement their groundwater management plans.

Financial Considerations

- It is recognized that the development and operation of water supply, water conveyance, flood control and stormwater management, water storage, and wastewater treatment facilities is frequently beyond the capability of local areas to finance;

- The League supports legislation to provide funding for stormwater, water and wastewater programs, including a constitutional amendment which would place stormwater fees in the category of water and wastewater fees, for the purposes of Proposition 218 compliance.

Support:

New this year, any resolutions submitted to the General Assembly must be concurred in by five cities or by city officials from at least five or more cities. Those submitting resolutions were asked to provide written documentation of concurrence. The following letters of concurrence were received: cities of Alhambra; Cerritos; Claremont; Glendora; Lakewood; La Mirada; La Verne; Norwalk; Signal Hill; and Mary Ann Lutz, Mayor, city of Monrovia. A letter of support was also received from the California Contract Cities Association.

RESOLUTION REFERRED TO PUBLIC SAFETY POLICY COMMITTEE

2. RESOLUTION CALLING UPON THE GOVERNOR AND LEGISLATURE TO ENTER INTO DISCUSSIONS WITH THE LEAGUE AND CALIFORNIA POLICE CHIEFS' ASSOCIATION REPRESENTATIVES TO IDENTIFY AND ENACT STRATEGIES THAT WILL ENSURE THE SUCCESS OF PUBLIC SAFETY REALIGNMENT FROM A LOCAL MUNICIPAL LAW ENFORCEMENT PERSPECTIVE.

Source: Public Safety Policy Committee

Concurrence of five or more cities/city officials: Cities of Arroyo Grande, Covina; Fontana; Glendora; Monrovia; Ontario; Pismo Beach; and Santa Barbara

Referred to: Public Safety Policy Committee

Recommendation to General Resolutions Committee: Approve

WHEREAS, in October 2011 the Governor proposed the realignment of public safety responsibilities from state prisons to local government as a way to address recent court orders in response to litigation related to state prison overcrowding, and to reduce state expenditures; and

WHEREAS, the Governor stated that realignment needed to be fully funded with a constitutionally protected source of funds if it were to succeed; and

WHEREAS, the Legislature enacted the realignment measures, AB 109 and AB 117, and the Governor signed them into law without full constitutionally protected funding and liability protection for stakeholders; and

WHEREAS, California currently has insufficient jail space, probation officers, housing and job placement programs, medical and mental health facilities, lacks a uniform definition of recidivism; and utilizes inappropriate convictions used to determine inmate eligibility for participation in the realignment program; and

WHEREAS, since the implementation of realignment there have been numerous issues identified that have not been properly addressed that significantly impact municipal police departments' efforts to successfully implement realignment; and

WHEREAS, ultimately many of these probationers who have severe mental illness are released into communities where they continue to commit crimes that impact the safety of community members and drain the resources of probation departments and police departments throughout the state; and

WHEREAS, an estimated 30 counties were operating under court-ordered or self-imposed population caps before realignment, and the current lack of bed space in county jails has since led to many convicted probationers being released early after serving a fraction of their time; with inadequate to no subsequent supervision, leaving them free to engage in further criminal offenses in our local cities; and

WHEREAS, there is increasing knowledge among the offender population which offenses will and will not result in a sentence to state prison, and many offenders, if held in custody pending trial, that would be sentenced to county jail are ultimately sentenced to time served due to overcrowding in county facilities; and

WHEREAS, there are inadequate databases allowing local police departments to share critical offender information among themselves, with county probation departments, and with other county and state law enforcement entities; and

WHEREAS, local police departments have not received adequate funding to properly address this new population of offenders who are victimizing California communities; and now therefore let it be

RESOLVED by the General Assembly of the League of California Cities, assembled in Sacramento on September 20, 2013, to request the Governor and State Legislature to immediately enter into discussions with League representatives and the California Police Chiefs' Association to address the following issues:

1. The need to fully fund municipal police departments with constitutionally protected funding to appropriately address realignment issues facing front-line law enforcement;
2. Amend appropriate sections of AB 109 to change the criteria justifying the release of non-violent, non-serious, non-sex offender inmates (N3) inmates to include their total criminal and mental history instead of only their last criminal conviction;
3. Establish a uniform definition of recidivism with the input of all criminal justice stakeholders throughout the state;
4. Enact legislation that will accommodate the option for city police officers to make ten (10) day flash incarcerations in city jails for probationers who violate the conditions of their probation;
5. Establish oversight procedures to encourage transparency and accountability over the use of realignment funding;
6. Implement the recommendations identified in the California Little Hoover Commission Report #216 dated May 30, 2013;
7. Provide for greater representation of city officials on the local Community Corrections Partnerships. Currently AB 117 provides for only one city official (a police chief) on the seven-member body, six of which are aligned with the county in which the partnership has been established. As a result, the counties dominate the committees and the subsequent distribution of realignment funds.
8. Provide, either administratively or by legislation, an effective statewide data sharing mechanism allowing state and local law enforcement agencies to rapidly and efficiently share offender information to assist in tracking and monitoring the activities of AB 109 and other offenders.

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Background Information on Resolution No. 2

Source: Public Safety Policy Committee

Background:

In October 2011 the Governor proposed the realignment of public safety tasks from State Prisons to local government as a way to address certain judicial orders dealing with State prison overcrowding and to reduce State expenditures. This program shifts the prisoner burden from State prisons to local counties and cities.

When the Governor signed into law realignment he stated that realignment needed to be fully funded with constitutionally protected source of funds to succeed. Nonetheless, the law was implemented without full constitutional protected funding for counties and cities; insufficient liability protections to local agencies; jail space; probation officers; housing and job placement programs; medical and mental health facilities; and with an inappropriate definition of N3 (non-serious, non-sexual, non-violent) criminal convictions used to screen inmates for participation in the program.

Two-thirds of California's 58 counties are already under some form of mandated early release. Currently, 20 counties have to comply with maximum population capacity limits enforced by court order, while another 12 counties have self-imposed population caps to avoid lawsuits.

At this time no one knows what the full impact of realignment will ultimately be on crime. We hope that crime will continue to drop, but with the current experience of the 40,000 offenders realigned since October 2011, and an estimated additional 12,000 offenders being shifted from State prison to local jails and community supervision by the end of fiscal year 2013-14, it will be very difficult to realize lower crime rates in the future.

Beginning in October 2011, California State prisons began moving N3 offenders into county jails, the county probation and court systems, and ultimately funneled them into community supervision or alternative sentencing program in cities where they will live, work, and commit crime.

Note: There is currently no uniform definition of recidivism throughout the state and no database that can deliver statistical information on the overall impact realignment has had on all cities in California. Because of this problem we have used data from Los Angeles County.

The March 4, 2013 report to the Los Angeles County Criminal Justice Coordination Committee (CCJCC) shows a strong effort and progress in addressing the realignment mandate. However, there is insufficient funding.

The report also states the jail population continues to be heavily influenced by participants housed locally. On September 30, 2012, the inmate count in the Los Angeles County Jail was 15,463; on January 31, 2013, the count was 18,864. The realignment population accounted for 32% of the Jail population; 5,743 offenders sentenced per Penal Code Section 1170 (h) and 408 parole violations.

By the end of January 2013, 13,535 offenders were released on Post Release Community Supervision (PRCS) to Los Angeles County including prisoners with the highest maintenance costs because of medical and drug problems and mental health issues costing counties and local cities millions of dollars in unfunded mandates since the beginning of the program. Prisoners with prior histories of violent crimes are also being released without proper supervision. That is why sections of **AB 109 must be amended to change the criteria used to justify the release of N3 inmates to include an offender's total criminal and mental history instead of only their last criminal conviction.** Using the latter as the key criteria does not provide

an accurate risk assessment of the threat these offenders pose to society if they are realigned to county facilities, or placed on Post Release Community Supervision.

Chief Jerry Powers from the Los Angeles County Probation Department recently stated the release criteria for N3 offenders “has nothing to do with reality.” He said initially the State estimated the population of released PRCS offenders would be 50% High Risk, 25% Medium Risk and 25% Low Risk. The reality is 3% are Very High Risk, 55% are High Risk, 40% are Medium Risk and only 2% are Low Risk offenders. He said the High Risk and serious mentally ill offenders being released “are a very scary population.” One of the special needs offenders takes the resources of 20-30 other offenders.

Assistant Sheriff Terri McDonald who is the county Jail Administrator recently stated the Jail has only 30 beds for mentally ill offenders being released – when in fact she actually needs 300 beds to accommodate the volume of serious mentally ill offenders being released that require beds.

Los Angeles County data shows 7,200 released offenders have had some sort of revocation. This number is expected to increase because of a significant increase in the first four months of year two of realignment that totals 83% of the entire first year of the program; 4,300 warrants were issued for offenders; 6,200 offenders have been rearrested; and 1,400 prosecuted. Data reveals one in 10 offenders will test positive for drugs during the first 72 hours after being released knowing they are required to report to a probation officer during that time. Only one in three offenders will successfully complete probation.

There are more than 500 felony crimes that qualify State prison inmates for release under realignment. They will be spending their time in cities with little, if any, supervision.

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League of California Cities Staff Analysis on Resolution No. 2

Staff: Tim Cromartie (916) 658-8252

Committee: Public Safety Policy Committee

Summary:

This Resolution seeks to outline the deficiencies in the State’s current public safety realignment policy, as implemented in 2011 by AB 109, and to identify policy changes that will assist State, county and municipal law enforcement entities to cope with the expanded universe of offenders that are now being directed to county facilities, resulting in increased related impacts on both local communities and municipal law enforcement.

Background:

This resolution was brought to the Public Safety Policy Committee by individual members of that committee who are increasingly concerned about municipal public safety impacts resulting from county jail overcrowding, a problem that has intensified with realignment, resulting in certain categories of offenders doing no jail time or being sentenced to time served. This has created a climate in which some offenses receive little or no jail time, accompanied by a growing body of anecdotal evidence that property crimes have correspondingly increased, with some, such as auto theft, being committed in serial fashion. Increased criminal activity has strained the resources of many local police departments already struggling to more closely coordinate information sharing with county probation offices to effectively monitor offenders on post-community release supervision.

In addition, there is growing concern about the criteria established for determining which offenders are eligible for post-release community supervision (the non-violent, non-serious, non-sex offenders). There is so much concern that a May 2013 report of California’s Little Hoover Commission recommended adjusting

the criteria to examine an offender's total criminal history rather than merely his or her last known offense, as a means of more accurately assessing the risk he or she might pose to the community.

Implementation of the realignment policy is handled in part by the Community Corrections Partnerships established by AB 109, which currently have only one city representative, compared to at least four county-level representatives.

Fiscal Impact:

Unknown impact on the State General Fund. This resolution seeks to establish increased and constitutionally protected funding for city police departments (and county sheriff's departments, to the degree they are contracted to provide police services for cities), but does not specify a dollar amount for the revenue stream. At a minimum, it would entail an annual revenue stream of at least the amount provided for cities for front-line law enforcement in the State's 2013-14 Budget, \$27.5 million, indefinitely – although that revenue stream has never been formally identified by the Brown Administration as having any direct connection to realignment.

Existing League Policy:

Related to this resolution, existing policy provides:

- The League supports policies establishing restrictions on the early release of state inmates for the purpose of alleviating overcrowding, and limiting parole hearing opportunities for state inmates serving a life sentence, or paroled inmates with a violation.
- The League supports increasing municipal representation on and participation in the Community Corrections Partnerships, which are charged with developing local corrections plans.
- In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, included the promotion of local control for strong cities. The resolution's objectives of locking in ongoing funding for front-line municipal law enforcement, and increasing city participation in the Community Corrections Partnerships, are consistent with promoting local control.

Support:

New this year, any resolutions submitted to the General Assembly must be concurred in by five cities or by city officials from at least five or more cities. Those submitting resolutions were asked to provide written documentation of concurrence. The following cities/city officials have concurred: cities of Arroyo Grande; Covina; Fontana; Glendora; Monrovia; Ontario; Pismo Beach; and Santa Barbara.

LETTERS OF CONCURRENCE
Resolution #1
Water Bond Funds

City of Alhambra

Office of the Mayor and City Council

July 1, 2013



Gateway
to the
San Gabriel Valley

111
South First Street
Alhambra
California
91801

626
570-5010

FAX
281-2248

Bill Bogaard
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Los Angeles County Division Annual Conference Resolution

Dear President Bogaard:

The City of Alhambra supports the Los Angeles County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for cities working to meet the State's water quality objectives and storm water management plans by providing direction for the League to educate state leaders and advocate for funding during discussions on the 2014 Water Bond. The City of Alhambra is anticipating spending \$24,101.96 this year to start the development of the Enhanced Watershed Plan and monitoring plan. Prior to 2016, the City anticipates spending \$1,169,000 for full capture device on our storm drain catch basins. In the future, it is estimated the city may need \$34 million dollars to finance the required infrastructure to meet the new permit guidelines. We also anticipate needing to hire additional staff to monitor and maintain the program. None of these costs have a dedicated funding source.

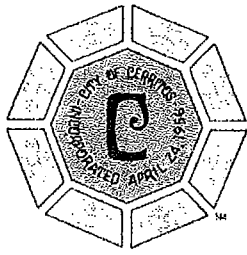
As members of the League, our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Mary Chavez, Director of Public Works, at (626) 570-5067 if you have any questions.

Very truly yours,

Steven Placido, DDS
Mayor

cc: Jennifer Quan, League of California Cities





CITY OF CERRITOS

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OFFICE OF THE MAYOR
BRUCE W. BARROWS

July 8, 2013

Bill Bogaard
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Los Angeles County Division Annual Conference Resolution

President Bogaard: *Bill*

The City of Cerritos supports the Los Angeles County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for cities working to meet the State's water quality objectives and storm water management plans by providing direction for the League to educate state leaders and advocate for funding during discussions on the 2014 Water Bond. The City of Cerritos expended \$866,000 in the Fiscal Year 2011-2012 for compliance with required stormwater programs. Future expenditures are expected to be over \$1.5 million annually, as the City will be required to begin construction of costly stormwater capital improvements.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Art Gallucci, City Manager at (562)916-1301 or agallucci@cerritos.us, if you have any questions.

Sincerely,

Bruce W. Barrows
MAYOR

cc: Ling-Ling Chang, President, Los Angeles County Division c/o
Robb Korinke, Executive Director, Los Angeles County Division, robb@lacies.org



CITY OF CLAREMONT

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Sam Pedroza
Larry Schroeder

July 1, 2013

Bill Bogaard
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

President Bogaard:

**RE: Los Angeles County Division Proposed Resolution for LCC Approval
At The 2013 Annual Conference**

The City of Claremont supports the Los Angeles County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for cities working to meet the State's water quality objectives and storm water management plans by providing direction for the League to educate state leaders and advocate for funding during discussions on the 2014 Water Bond.

As members of the League, our City values the policy development process provided to the General Assembly and appreciates your time on this issue. If you have any questions, please feel free to contact Tony Ramos, City Manager, at (909) 399-5441.

Sincerely,

Opanyi Nasiali
Mayor

c: Jennifer Quan, League of California Cities



CITY OF GLENDORA CITY HALL

(626) 914-8200

116 East Foothill Blvd., Glendora, California 91741
www.ci.glendora.ca.us

July 15, 2013

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Los Angeles County Division Annual Conference Resolution

President Bogaard:

The City of Glendora supports the Los Angeles County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for cities working to meet the State's water quality objectives and storm water management plans by providing direction for the League to educate state leaders and advocate for funding during discussions on the 2014 Water Bond.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact me, if you have any questions.

Sincerely,

Joe Santoro, Mayor

cc: Ling-Ling Chang, President, Los Angeles County Division c/o Robb Korinke,
Executive Director, Los Angeles County Division, robb@lacities.org
Jennifer Quan, Regional Public Affairs Manager, League of California Cities –
jquan@cacities.org

PRIDE OF THE FOOTHILLS

Todd Rogers
Vice Mayor

Jeff Wood
Council Member

Diane DuBois
Council Member

Ron Piazza
Council Member

CITY OF LAKEWOOD

CALIFORNIA

Steve Croft
Mayor

July 2, 2013

Mr. Bill Bogaard
President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

RE: Los Angeles County Division Annual Conference Resolution - Support

Dear President Bogaard:

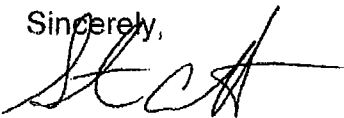
The City of Lakewood supports the Los Angeles County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for cities working to meet the State's water quality objectives and storm water management plans by providing direction for the League to educate state leaders and advocate for funding during discussions on the 2014 Water Bond.

For Lakewood, the initial cost alone to prepare the Watershed Management Plan (WMP), Coordinated Integrated Management Plan (CIMP), and Reasonable Assurance Modeling for the three watersheds that Lakewood is a part of is estimated to be \$153,167. This cost does not include administration costs, monitoring costs, construction costs, or inspection costs, which are estimated to be in the millions of dollars.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Paolo Beltran, Senior Management Analyst, at (562) 866-9771, extension 2140, or email at pbeltran@lakewoodcity.org, if you have any questions.

Sincerely,



Steve Croft
Mayor

cc: Ling-Ling Chang, President, Los Angeles County Division c/o
Robb Korinke, Executive Director, Los Angeles County Division,
robb@lacity.org

Lakewood



CITY OF LA MIRADA

DEDICATED TO SERVICE

13700 La Mirada Boulevard
La Mirada, California 90638
P.O. Box 828
La Mirada, California 90637-0828
Phone: (562) 943-0131 Fax: (562) 943-1464
www.cityoflamirada.org

July 15, 2013

LETTER OF SUPPORT

Bill Bogaard
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

SUBJECT: LOS ANGELES COUNTY DIVISION ANNUAL CONFERENCE RESOLUTION

Dear President Bogaard:

On behalf of the City of La Mirada, I am writing to express support for the League of California Cities, Los Angeles County Division's effort to submit a resolution for consideration by the League's General Assembly at the September 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for local governments working to meet Federal and State objectives to protect water resources and storm water management plans. The resolution also provides direction for the League to educate State leaders and advocates for the inclusion of storm water funding in the State's proposed 2014 Water Bond.

Like many cities, the City of La Mirada does not have the basic infrastructure to capture, filter, and reuse storm water, and Federal and State funding to assist in providing this infrastructure has been reduced in recent years as a result of the economic recession. Compliance with the MS-4 permit and other storm water regulations could cost the City millions, and reduce funding for other vital City services such as infrastructure and public safety. The City could also face steep fines, penalties, and third party lawsuits if it is unable to meet the National Pollutant Discharge Elimination Systems (NPDES) permit requirements. Receiving State funding could help alleviate the financial burden placed on local governments to meet storm water requirements.

As a member of the League, our City values the policy development process provided to the General Assembly. Please contact Jeff Boynton, Deputy City Manager, at (562) 943-0131 if you have any questions.

Sincerely,

CITY OF LA MIRADA

Steve De Ruse
Mayor

TER:jb:vdr

cc: Ling-Ling Chang, President, Los Angeles County Division
Robb Korinke, Executive Director, Los Angeles County Division



CITY OF LA VERNE CITY HALL

3660 "D" Street, La Verne, California 91750-3599
www.ci.la-verne.ca.us

July 2, 2013

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Los Angeles County Division Annual Conference Resolution

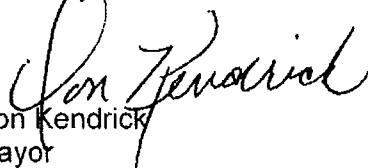
President Bogaard:

The City of La Verne supports the Los Angeles County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for cities working to meet the State's water quality objectives and storm water management plans by providing direction for the League to educate state leaders and advocate for funding during discussions on the 2014 Water Bond. While the City is still in the process of identifying the costs associated with meeting the new requirements of the MS-4 PERMIT, it is expected these measures will far exceed existing local resources.

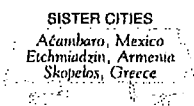
As members of the League, our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, Bob Russi at 909-596-8726, if you have any questions.

Sincerely,


Don Kendrick
Mayor

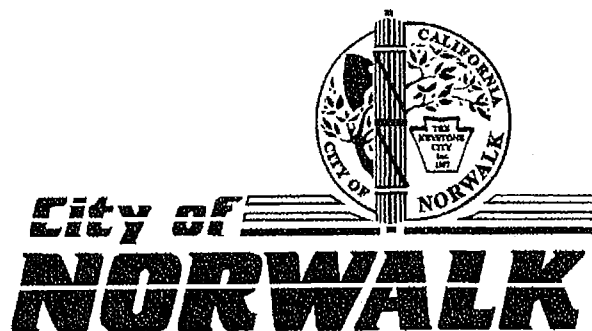
cc: Jennifer Quan, League of California Cities
JR Ranells, Senior Management Analyst

U:\My Documents\CITY COUNCIL\DON KENDRICK\Support 2013 League Conf Reso.doc



General Administration 909/596-8726 • Water Customer Service 909/596-8744 • Parks & Community Services 909/596-8700
Public Works 909/596-8741 • Finance 909/596-8716 • Community Development 909/596-8706 • Building 909/596-8713
Police Department 909/596-1913 • Fire Department 909/596-5991 • General Fax 909/596-8737

LUIGI VERNOLA
Mayor
MARCEL RODARTE
Vice Mayor
CHERI KELLEY
Councilmember
MICHAEL MENDEZ
Councilmember
LEONARD SHRYOCK
Councilmember
MICHAEL J. EGAN
City Manager



12700 NORWALK BLVD., P.O. BOX 1030, NORWALK, CA 90651-1030 * PHONE: 562/929-5700 * FACSIMILE: 562/929-5773 * WWW.NORWALKCA.GOV

July 2, 2013

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Los Angeles County Division Annual Conference Resolution

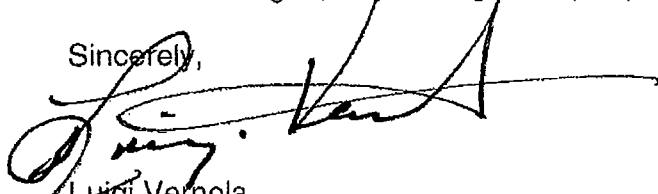
Dear President Bogaard:

The city of Norwalk supports the Los Angeles County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for cities working to meet the State's water quality objectives and storm water management plans by providing direction for the League to educate state leaders and advocate for funding during discussions on the 2014 Water Bond. The cost of compliance with the new storm water permit is in the millions of dollars. The Watershed Management Plan alone will cost close to \$1M. Implementation of projects in the near future based on that Watershed Management Plan could potentially cost the City of Norwalk \$5 - \$10 million annually.

As members of the League our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Mike Egan, City Manager, at (562) 929-5772 if you have any questions.

Sincerely,



Luigi Vernola
Mayor

cc: Ling-Ling Chang, President, Los Angeles County Division c/o
Robb Korinke, Executive Director, Los Angeles County Division, robb@lacies.org



CITY OF SIGNAL HILL

2175 Cherry Avenue • Signal Hill, California 90755-3799

June 27, 2013

Bill Bogaard
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Los Angeles County Division Annual Conference Resolution

President Bogaard:

The city of Signal Hill supports the Los Angeles County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for cities working to meet the State's water quality objectives and storm water management plans by providing direction for the League to educate state leaders and advocate for funding during discussions on the 2014 Water Bond. The city of Signal Hill currently budgets for \$755,000 annually for compliance with required stormwater programs, which represents over 4% of the entire General Fund. Future expenditures are expected to be over \$1.5 million annually, as the City will be required to begin construction of costly stormwater capital improvements.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Ken Farfsing, City Manager at (562) 989-7302 or kfarfsing@cityofsignal.org, if you have any questions.

Sincerely,

Michael J. Noll
Mayor

CC: Ling-Ling Chang, President, Los Angeles County Division c/o
Robb Korinke, Executive Director, Los Angeles County Division, robb@lacities.org



Office of the Mayor and the City Council

July 2, 2013

Bill Bogaard
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

SUBJECT: Los Angeles County Division Annual Conference Resolution

Dear President Bogaard:

As Mayor of the City of Monrovia, I support the Los Angeles County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for cities working to meet the State's water quality objectives and storm water management plans by providing direction for the League to educate state leaders and advocate for funding during discussions on the 2014 Water Bond. The City is anticipating millions of dollars in stormwater permit compliance costs over the next five years – funds the City currently does not have available. Funding assistance is vital in order for the City to meet stormwater permit requirements.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Heather Maloney, Senior Management Analyst, at (626) 932-5577 or hmaloney@ci.monrovia.ca.us, if you have any questions.

Sincerely,

Mary Ann Lutz,
Mayor

cc: City Council
Ling-Ling Chang, President, Los Angeles County Division c/o
Robb Korinke, Executive Director, Los Angeles County Division, robb@laciities.org
Laurie K. Lile, City Manager
Ron Bow, Director of Public Works



EXECUTIVE BOARD

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Calabasas

ASSOCIATE MEMBERS COMMITTEE
FRANK V. ZERUNYAN
Rolling Hills Estates

EXECUTIVE DIRECTOR
SAM OLIVITO

June 20, 2013

Bill Bogaard
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Los Angeles County Division Annual Conference Resolution

President Bogaard:

The California Contract Cities Association supports the Los Angeles County Division's effort to submit a resolution for consideration by the General Assembly at the League's 2013 Annual Conference in Sacramento.

The Division's resolution seeks to address a critical funding need for cities working to meet the State's water quality objectives and storm water management plans by providing direction for the League to educate state leaders and advocate for funding during discussions on the 2014 Water Bond. All of the 58 cities we represent can ill afford this increasingly expensive ongoing cost.

As members of the League our association values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our office at (562) 622-5533 if you have any questions.

Sincerely,

Steve Tye
CCCA President

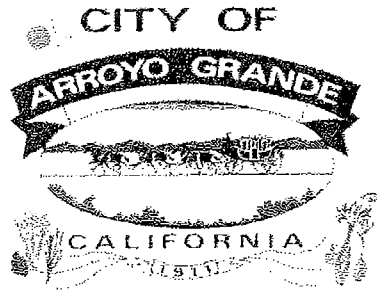
CC: Ling-Ling Chang, President, Los Angeles County Division c/o
Robb Korinke, Executive Director, Los Angeles County Division, robb@lacitycities.org

LETTERS OF CONCURRENCE

Resolution #2

Public Safety Realignment

OFFICE OF THE
MAYOR



300 East Branch Street
Arroyo Grande, CA 93420
Phone: (805) 473-5400
FAX: (805) 473-0386
agcity@arroyogrande.org
www.arroyogrande.org

July 17, 2013

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Public Safety Realignment Resolution

Dear President Bogaard:

On behalf of the City of Arroyo Grande, I am writing to express support for the League of California Cities' Public Safety Resolution, which will be submitted for consideration by the League's General Assembly at the September 2013 Annual Conference in Sacramento.

The League's Resolution seeks to highlight a number of deficiencies with the current public safety realignment policy, and what funding and policy changes need to occur in response. The resolution specifically calls out the need for ongoing local law enforcement funding related to realignment, as well as modification of the criteria for which offenders are eligible for post-release community supervision, i.e. a non-violent, non-serious, non-sex offender criteria that focuses on total criminal history rather than merely the last recorded offense.

As a member of the League, our City values the policy development process provided to the General Assembly. Please contact our City Manager, Steve Adams, at (805)473-5404, if you have any questions.

Sincerely,

Tony Ferrara

Mayor, City of Arroyo Grande



CITY OF COVINA

125 East College Street • Covina, California 91723-2199

www.covinaca.gov

July 17, 2013

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

RE: Public Safety Realignment Resolution

Dear President Bogaard:

On behalf of the City of Covina, I am writing to express support for the League of California Cities' Public Safety Resolution, which will be submitted for consideration by the League's General Assembly at the September 2013 Annual Conference in Sacramento.

The League's Resolution seeks to highlight a number of deficiencies with the current public safety realignment policy, and what funding and policy changes need to occur in response. The resolution specifically calls out the need for ongoing local law enforcement funding related to realignment, as well as modification of the criteria for which offenders are eligible for post-release community supervision, i.e. a non-violent, non-serious, non-sex offender criteria that focuses on total criminal history rather than merely the last recorded offense.

As a member of the League, our City values the policy development process provided to the General Assembly. Please contact Daryl Parrish, City Manager, at (626) 384-5410, if you have any questions.

Sincerely,

Walter Allen III
Mayor, City of Covina

*The City of Covina provides responsive municipal services and manages
public resources to enhance the quality of life for our community.*



Mayor Acquanetta Warren



July 17, 2013

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

RE: Public Safety Realignment Resolution

Dear President Bogaard:

On behalf of the City of Fontana, I am writing to express support for the League of California Cities' Public Safety Resolution, which will be submitted for consideration by the League's General Assembly at the September 2013 Annual Conference in Sacramento.

The League's Resolution seeks to highlight a number of deficiencies with the current public safety realignment policy, and what funding and policy changes need to occur in response. The resolution specifically calls out the need for ongoing local law enforcement funding related to realignment, as well as modification of the criteria for which offenders are eligible for post-release community supervision, i.e. a non-violent, non-serious, non-sex offender criteria that focuses on total criminal history rather than merely the last recorded offense.

As a member of the League, our City values the policy development process provided to the General Assembly. Please contact Ken Hunt City Manager, at (909)350-7654, if you have any questions.

Sincerely,

Mayor, City of Fontana

AW/ac



CITY OF GLENDORA CITY HALL

(626) 914-8201

OFFICE OF THE MAYOR

116 East Foothill Blvd., Glendora, California 91741

FAX (626) 914-8221

www.ci.glendora.ca.us

July 19, 2013

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

RE: Public Safety Realignment Resolution

Dear President Bogaard:

On behalf of the City of Glendora, I am writing to express support for the League of California Cities' Public Safety Resolution, which will be submitted for consideration by the League's General Assembly at the September 2013 Annual Conference in Sacramento.

The League's Resolution seeks to highlight a number of deficiencies with the current public safety realignment policy, and what funding and policy changes need to occur in response. The resolution specifically calls out the need for ongoing local law enforcement funding related to realignment, as well as modification of the criteria for which offenders are eligible for post-release community supervision, i.e. a non-violent, non-serious, non-sex offender criteria that focuses on total criminal history rather than merely the last recorded offense.

As a member of the League, our City values the policy development process provided to the General Assembly. Please contact Chris Jeffers, City Manager, at cjeffers@ci.glendora.ca.us or (626) 914-8201, if you have any questions.

Sincerely,

City of Glendora

Joe Santoro
Mayor

PRIDE OF THE FOOTHILLS



Office of the Mayor and the City Council

July 19, 2013

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

RE: PUBLIC SAFETY REALIGNMENT RESOLUTION

Dear President Bogaard:

As Mayor of the City of Monrovia, I am writing to express support for the League of California Cities' Public Safety Resolution, which will be submitted for consideration by the League's General Assembly at the September 2013 Annual Conference in Sacramento.

The League's Resolution seeks to highlight a number of deficiencies with the current public safety realignment policy, and what funding and policy changes need to occur in response. The resolution specifically calls out the need for ongoing local law enforcement funding related to realignment, as well as modification of the criteria for which offenders are eligible for post-release community supervision, i.e. a non-violent, non-serious, non-sex offender criteria that focuses on total criminal history rather than merely the last recorded offense.

As a member of the League, our City values the policy development process provided to the General Assembly. Please contact Laurie Lile, City Manager, at (626) 932-5501, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Ann Lutz".

Mary Ann Lutz
Mayor

cc: City Council
James Hunt, Police Chief

CITY OF



ONTARIO

303 EAST "B" STREET, CIVIC CENTER

ONTARIO

CALIFORNIA 91764-4105

(909) 395-2000
FAX (909) 395-2070

PAUL S. LEON
MAYOR

JIM W. BOWMAN
MAYOR PRO TEM

ALAN D. WAPNER
DEBRA DORST-PORADA
PAUL VINCENT AVILA
COUNCIL MEMBERS

July 18, 2013

CHRIS HUGHES
CITY MANAGER

MARY E. WIRTES, MMC
CITY CLERK

JAMES R. MILHISER
TREASURER

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

RE: Public Safety Realignment Resolution

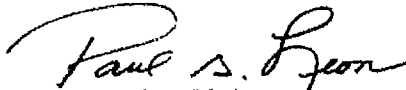
Dear President Bogaard:

On behalf of the City of Ontario, I am writing to express support for the League of California Cities' Public Safety Resolution, which will be submitted for consideration by the League's General Assembly at the September 2013 Annual Conference in Sacramento.

The League's Resolution seeks to highlight a number of deficiencies with the current public safety realignment policy, and what funding and policy changes need to occur in response. The resolution specifically calls out the need for ongoing local law enforcement funding related to realignment, as well as modification of the criteria for which offenders are eligible for post-release community supervision; i.e., a non-violent, non-serious, non-sex offender criteria that focuses on total criminal history rather than merely the last recorded offense.

As a member of the League, our City values the policy development process provided to the General Assembly. Please contact Chris Hughes, City Manager, at (909) 395-2010, if you have any questions.

Sincerely,


PAUL S. LEON
Mayor



From the Office of the Mayor

Shelly Higginbotham

760 Mattie Road

Pismo Beach, CA 93449

(805) 235-6604

shigginbotham@pismobeach.org

July 18, 2013

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

RE: Public Safety Realignment Resolution

Dear President Bogaard:

On behalf of the City of Pismo Beach, I am writing to express support for the League of California Cities' Public Safety Resolution, which will be submitted for consideration by the League's General Assembly at the September 2013 Annual Conference in Sacramento.

The League's Resolution seeks to highlight a number of deficiencies with the current public safety realignment policy, and what funding and policy changes need to occur in response. The resolution specifically calls out the need for ongoing local law enforcement funding related to realignment, as well as modification of the criteria for which offenders are eligible for post-release community supervision, i.e. a non-violent, non-serious, non-sex offender criteria that focuses on total criminal history rather than merely the last recorded offense.

As a member of the League, our City values the policy development process provided to the General Assembly. Please contact James R. Lewis, City Manager, at (805) 773-7007, if you have any questions.

Sincerely,

Shelly Higginbotham

Shelly Higginbotham

Mayor



City of Santa Barbara

Office of Mayor

HSchneider@SantaBarbaraCA.gov

www.SantaBarbaraCA.gov

July 19, 2013

Helene Schneider
Mayor

Bill Bogaard, President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

City Hall
735 Anacapa Street
Santa Barbara, CA
93101-1990

RE: Public Safety Realignment Resolution

Dear President Bogaard:

Mailing Address:
P.O. Box 1990
Santa Barbara, CA
93102-1990

Tel: 805.564.5323
Fax: 805.564.5475

On behalf of the City of Santa Barbara, I am writing to express support for the League of California Cities' Public Safety Resolution, which will be submitted for consideration by the League's General Assembly at the September 2013 Annual Conference in Sacramento.

The League's Resolution seeks to highlight a number of deficiencies with the current public safety realignment policy, and what funding and policy changes need to occur in response. The resolution specifically calls out the need for ongoing local law enforcement funding related to realignment, as well as modification of the criteria for which offenders are eligible for post-release community supervision, i.e. a non-violent, non-serious, non-sex offender criteria that focuses on total criminal history rather than merely the last recorded offense.

It is important to our City, that such state-mandated programs remain fully-funded and that the regulations do not impede our law enforcement officers' ability to use their professional discretion in protecting our community.

As a member of the League, our City values the League's leadership and policy direction on this issue.

Sincerely,

Helene Schneider,
Mayor

cc: Dave Mullinax, League of California Cities



Please consider the environment before printing this letter.



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

Council Action Advised by September 13, 2013

PLEASE NOTE: You are receiving this letter and form earlier than usual because hotel space near the Sacramento Convention Center for the Annual Conference will be especially tight this year. As a result, we want to encourage you to make your hotel reservations early.

July 23, 2013

TO: Mayors, City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – September 18 - 20, Sacramento**

The League's 2013 Annual Conference is scheduled for September 18 - 20 in Sacramento. An important part of the Annual Conference is the Annual Business Meeting (*at the General Assembly*), scheduled for noon on Friday, September 20, at the Hyatt Regency Hotel. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, September 13, 2013. This will allow us time to establish voting delegate/alternates' records prior to the conference.

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one person must be present at the

- Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.
- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Sacramento Convention Center, will be open at the following times: Wednesday, September 18, 9:00 a.m. – 6:30 p.m.; Thursday, September 19, 7:00 a.m. – 4:00 p.m.; and September 20, 7:30–10:00 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but not during a roll call vote, should one be undertaken.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League office by Friday, September 13. If you have questions, please call Mary McCullough at (916) 658-8247.

Attachments:

- 2013 Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

Annual Conference Voting Procedures 2013 Annual Conference

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



CITY: _____

**2013 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to the League office by Friday, September 13, 2013. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ E-mail: _____

Mayor or City Clerk _____ Phone: _____
(circle one) (signature)

Date: _____

Please complete and return by Friday, September 13, 2013

League of California Cities
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Council Action Advised by September 13, 2013

PLEASE NOTE: You are receiving this letter and form earlier than usual because hotel space near the Sacramento Convention Center for the Annual Conference will be especially tight this year. As a result, we want to encourage you to make your hotel reservations early.

July 23, 2013

TO: Mayors, City Managers and City Clerks

RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – September 18 - 20, Sacramento

The League's 2013 Annual Conference is scheduled for September 18 - 20 in Sacramento. An important part of the Annual Conference is the Annual Business Meeting (*at the General Assembly*), scheduled for noon on Friday, September 20, at the Hyatt Regency Hotel. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, September 13, 2013. This will allow us time to establish voting delegate/alternates' records prior to the conference.

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one person must be present at the

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