



AGENDA

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Tuesday, November 19, 2013 – 6:00 p.m.

Hillside Conference Room

CITY COUNCIL MEETING

Tuesday, November 19, 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

6:00 p.m. ROLL CALL

CONVENE SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

ANNOUNCEMENT OF CLOSED SESSION

A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION – *Pursuant to Government Code Section 54957*

Title: City Manager

B. CONFERENCE WITH LABOR NEGOTIATORS – *Pursuant to Government Code Section 54957.6*

Agency Designated Representatives: City Council Subcommittee on City Manager Performance

Designated Employee: City Manager

ORAL COMMUNICATIONS FROM THE PUBLIC – *Comments limited to three minutes per person and to the item on this special meeting agenda only.*

RECESS INTO CLOSED SESSION

ADJOURN SPECIAL CITY COUNCIL – CLOSED SESSION

ROLL CALL

7:00 p.m. CONVENE CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF

MOMENT OF SILENCE – Councilmember Rebecca Benassini.

2. COUNCIL / STAFF COMMUNICATIONS (*Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.*)

3. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. PRESENTATIONS

A. KIDS for the BAY – *Presentation by Mandi Billinge, Executive Director/Founder, regarding the organization's Watershed Action Program and their work in El Cerrito schools which is co-sponsored by the City's Clean Water Program.*

B. Prosecution and Prevention of Crime in Contra Costa County – *Presentation by Mark Peterson, Contra Costa County District Attorney.*

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

A. Minutes for Approval

Approve the November 5, 2013 Special City Council Closed Session and Regular City Council meeting minutes.

B. Stormwater Utility Area Agreement with Contra Costa Flood Control and Water Conservation District to Administer an Agreement with West County Wastewater District for El Cerrito's Inspection and Illicit Discharge Control Activities

Adopt a resolution approving the following actions: 1) Authorize the Contra Costa Flood Control and Water Conservation District to execute the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement by and among the District, Central Contra Costa Sanitary District, Delta Diablo Sanitation District and West County Wastewater District; and 2) Authorize the City Manager to execute the Third Amendment to the Stormwater Utility Area Agreement (SUAA) and Clean Water Program Inspection Program Indemnification Agreement. Exempt from CEQA.

C. Contract with West Coast Arborists for City Tree Pruning and Removal

Adopt a resolution authorizing the City Manager to amend the current City Tree Pruning and Removal Contract with West Coast Arborists (WCA) to increase the contract amount from \$25,000 to \$100,000 and time of completion from December 31, 2013 through June 30, 2014. Exempt from CEQA.

6. PUBLIC HEARINGS

A. Proposed Integrated Waste Management Fees and East Bay Sanitary Garbage & Green Waste Collection and Procession Rates – Effective January 1, 2014

1) Conduct a public hearing and upon conclusion adopt a resolution setting Integrated Waste Management (IWM) Fees, effective January 1, 2014; and

- 2) Conduct a public hearing and upon conclusion adopt a resolution setting maximum allowable East Bay Sanitary (EBS) garbage and green waste collection, disposal and processing rates, and stipulating a 15% EBS Franchise Fee, effective January 1, 2014.

B. Building Code and Fire Code Ordinance Update

Conduct a public hearing and upon conclusion adopt Ordinance No. 2013–05, an ordinance of the City of El Cerrito amending Title 16 of the El Cerrito Municipal Code to adopt, with modifications to address unique local conditions, the 2013 Edition of the California Green Building Code, the 2013 Edition of the California Building Code (Based on the 2012 International Building Code), Volumes 1 and 2, including several appendices thereto, the 2013 California Fire Code (based on the 2012 International Fire Code), including all appendices thereto, the 2013 Edition of the California Administrative Code, the 2013 Edition of the California Residential Code (based on the 2012 International Residential Code) with some appendices, the 2013 California Plumbing Code (based on the 2012 Uniform Plumbing Code), the 2013 California Mechanical Code (based on the 2012 Uniform Mechanical Code), and the 2013 California Electrical Code (based on the 2011 National Electrical Code). Exempt from CEQA. *First Reading October 15, 2013. Approved by unanimous vote.*

C. Amend El Cerrito Municipal Code Chapter 11.64 - Bicycles

Conduct a public hearing upon conclusion, introduce by title, waive any further reading and approve an ordinance amending specified sections within El Cerrito Municipal Code Chapter 11.64 – Bicycles. Exempt from CEQA

7. POLICY MATTERS

A. City Manager Employment Agreement Amendment

Adopt a resolution approving the First Amendment to the City Manager Employment Agreement between the City of El Cerrito and Scott Hanin.

B. Board, Commission and Committee Ordinance, Policy and Rules Revisions

Based on direction received from the City Council on October 15, 2013, the City Council Subcommittee on Commission Rules Revisions seeks additional discussion, direction and action this evening on regulations regarding quorums and the minimum number of members required to take action on the City's Boards, Commissions and Committees and proposes adoption of the following legislation:

- 1) Introduce by title, waive any further reading, and approve an ordinance amending Section 2.04.220 of the El Cerrito Municipal Code – Boards, Commissions and Committees and repealing Section 2.04.290 Economic Development Board;
- 2) Adopt a resolution establishing an Economic Development Committee;
- 3) Adopt a resolution revising the policy regarding Council and staff relations with City Commissions, Boards, Committees and Task Forces by modifying the role and reporting frequency of the Council Liaison; and
- 4) Adopt a resolution establishing a policy regarding appropriate positions to receive ethics training pursuant to Government Code Section 53235. The City Council designates each member of the Arts and Culture Commission, Design Review Board, Financial Advisory Board, Parks and Recreation Commission and the Planning Commission to complete AB 1234 Ethics Training.

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.

E. 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 REGULAR CITY COUNCIL MEETING

The next City Council meeting is Tuesday, December 3, 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 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/ind-ex.aspx?NID=114>. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

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EL CERRITO CITY COUNCIL

MINUTES

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Tuesday, November 5, 2013 – 6:00 p.m.

Hillside Conference Room

CITY COUNCIL MEETING

Tuesday, November 5, 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

6:00 p.m.

ROLL CALL

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

CONVENE SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Mayor Lyman convened the Special City Council Closed Session at 6:00 p.m.

ANNOUNCEMENT OF CLOSED SESSION

A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION – *Pursuant to Government Code Section 54957*

Title: City Manager

B. CONFERENCE WITH LABOR NEGOTIATORS – *Pursuant to Government Code Section 54957.6*

Agency Designated Representatives: City Council Subcommittee on City Manager Performance

Designated Employee: City Manager

ORAL COMMUNICATIONS FROM THE PUBLIC – No comments.

RECESSED INTO CLOSED SESSION at 6:02 p.m.

ADJOURNED SPECIAL CITY COUNCIL – CLOSED SESSION at 7:12 p.m.

ROLL CALL

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

7:00 p.m. CONVENE CITY COUNCIL MEETING

Mayor Lyman convened the Special City Council Closed Session at 7:15 p.m.

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

2. COUNCIL / STAFF COMMUNICATIONS

Mayor Lyman reported that the City Council had met in Closed Session on October 1 to discuss a performance evaluation of the City Manager. The City Council formed a Council Subcommittee consisting of Mayor Lyman and Mayor Pro Tem Abelson to develop an evaluation process and to negotiate on behalf of the Council regarding the City Manager's contract. The City Council met in closed session this evening to deliberate the City Manager's performance evaluation and provide direction to the subcommittee about negotiations with the City Manager about his contract. The Council will resume its discussions at another meeting.

On October 26, Mayor Lyman attended a Furever Animal Rescue pet costume party and fundraiser at Petco in El Cerrito Plaza. Furever Animal Rescue has animals available for adoption at Petco. Mayor Lyman noted that there were three cats ready for adoption.

Mayor Pro Tem Abelson reported that she attended a presentation sponsored by the Committee on Aging on heart attacks, strokes and maintenance of a healthy heart on October 16. The program was well attended. On October 19 Mayor Pro Tem Abelson attended a well attended community open house on the Complete Streets Plan, the San Pablo Avenue Specific Plan, Active Transportation Plan and Urban Greening Plan. Sundar Shadi's Gifts, a documentary about Sundar Shadi's Christmas flower displays, debuted at the Cerrito Theater on October 20. Although Mr. Shadi died in 2002, the El Cerrito Community Foundation and volunteers maintain and set up the display every year. On November 1, Mayor Pro Tem Abelson attended a groundbreaking for the Family Justice Center in Richmond. The Center will provide a lot of services in the same building so they can all work together. Contra Costa County Zero Tolerance for Domestic Violence, Richmond Police Department, Contra Costa District Attorney's Office, Bay Area Legal Aid, STAND, and Community Violence Solutions will provide services at the new Center. The groundbreaking was attended by Lieutenant Governor Gavin Newsom.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Alex Aliferis, Contra Costa Taxpayers Association, talked about why Proposition 13 is important. Property is California's largest revenue source. Mr. Aliferis stated that Proposition 13 protects seniors, families, minorities, women and small business owners. It also protects pensioned employees and pension funds. A split roll will impact the California economy and will result in a loss of jobs.

Tom Kirsch, El Cerrito, spoke in support of Jerry Bradshaw, Retired Public Works Director, by acknowledging Mr. Bradshaw for time and attention spent toward solving a neighborhood flooding issue.

Tom Panas, El Cerrito, reported that the Chung Mei Home, located at the former Windrush School Site, was eligible for listing on the National Register of Historic Places on September 30. The effort that went into the application and the listing are a tribute to the city's unique heritage. Mr. Panas also stated that if Windrush School had not been such a good steward of the site, he would not be present at the meeting to make his announcement. All heritage sites need to be treated with the same love and respect. Mr. Panas expressed his hope that the same recognition will be achieved for other sites in the City.

Corey Mason, El Cerrito, informed the City Council about an award he received from the Arts and Culture Commission of Contra Costa County (AC5) for his work as an educator at El Cerrito High School where he is the founder/director of WorldOneRadio, WCCUSD Public Radio 88.1 KECG 97.7. The radio station both educates and engages the community while promoting global awareness through music, culture, nature and technology. Mr. Mason was also recognized for promoting cultural diversity through the World One Festival. Mr. Mason thanked everyone for their support.

4. PRESENTATIONS

International City Managers Association (ICMA) Voice of the People Awards – Presentation by Suzanne Iarla, Public Information Outreach Specialist.

Action: Received presentation.

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

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

A. Minutes for Approval

Approve the October 15, 2013 Regular City Council meeting minutes.

Action: Approved minutes.

B. Ohlone Greenway Crosswalk Improvements Project, City Project No. C-3046-1, Federal Project No. HSIPL-5239 (015)

Adopt a resolution which takes the following actions: 1) Approves plans for the Ohlone Greenway Crosswalk Improvement Project. City Project No. C-3046-1, Federal Project No. HSIPL-5239 (015); 2) Accepts all submitted bids; and 3) Authorizes the City Manager to execute a contract in the amount of \$437,080.00 with Tennyson Electric, Inc. and approves change orders in an additional amount not to exceed \$22,620 for the construction of the Ohlone Greenway Crosswalk Improvements Project.

Action: Adopted Resolution No. 2013–59 as revised to include a recital regarding CEQA exemption.

C. Low and Moderate Income Housing Asset Fund Budget Adjustment

Adopt a resolution approving the following actions: 1) Acknowledging the receipt of \$531,152 in Redevelopment Property Tax Trust Fund (RPTTF) proceeds from the El Cerrito Successor Agency to the City Low and Moderate Income Housing Asset Fund (Fund 232) to be held as restricted funds to fund approved housing loan obligations pursuant to the Redevelopment Property Tax Trust Fund (RPTTF) proceeds from the El Cerrito Successor Agency to the City Low and Moderate Income Housing Asset Fund (Fund 232) to be held as restricted funds to fund approved housing loan obligations pursuant to the Recognized Obligation Payment Schedule (ROPS) 13-14A; and 2) Authorizing the appropriation of \$531,152 from the City Low and Moderate Income Housing Asset Fund from funds received through the Successor Agency pursuant to ROPS 13-14A, to fund a loan commitment to Ohlone Gardens L.P. in the amount of \$471,152 in accordance with the terms of the existing housing loan agreements.

Action: Adopted Resolution No. 2013–60.

D. 2013-2014 Winter Break and Holiday Closure

With the exception of Monday, December 30, City Hall and the Community Center will be closed for the winter holiday period beginning Tuesday, December 24, 2013 through Friday, January 3, 2014 to facilitate the consolidation of employee vacation schedules and to save energy. Regular operating hours will resume on Monday, January 6, 2014. More information and schedules will be posted on the City's website www.ci.el-cerrito.org.

Action: Approved recommendation.

6. PUBLIC HEARINGS – None

7. POLICY MATTERS

San Pablo Avenue Specific Plan and Complete Streets Update and Study Session

Receive a presentation regarding the development of the San Pablo Avenue Specific Plan and provide comment and direction regarding proposed Development Standards, Complete Streets infrastructure improvements and Multimodal Level of Service approach.

Presenters: Melanie Mintz, Community Development Director; Makul Mahotra, Principal and Director of Urban Design, MIG; Yvetteh Ortiz, Public Works Director; and Matthew Ridgeway, Principal, Fehr & Peers.

Speakers: Howdy Goudey, El Cerrito, spoke in support of bicycle improvements, particularly the buffered bike lanes. Mr. Goudey encouraged the City to show leadership in the East Bay by being the first city to consider the proposed bicycle infrastructure and prioritize it as an economic development goal. As part of the place-making and the City's identity and multi-modal interface, the buffer bike lanes and other improvements will help build economic vitality in the city and bring the community together.

Tom Panas, El Cerrito, spoke in support of the current San Pablo Avenue planning documents and thanked staff, MIG and Fehr & Peers for putting the documents together.

Steve Price, El Cerrito, stated that he is a board member of the Form Based Code Institute, and that 250 cities across the country have form based codes, particularly in the Bay Area. Mr. Price expressed some concern with El Cerrito developing a hybrid form based code. Mr. Price said the City should not be so concerned with alienating developers by determining building design and use after establishing form based code standards and to make sure we have a form based code that will deliver what the public wants.

Garland Ellis, Richmond, stated that San Pablo Avenue is not a street to ride a bike on and expressed concerns over the emphasis on bicycle infrastructure. Mr. Ellis also stated that the height of proposed buildings will block views and create shadows.

Nicholas Arzio, El Cerrito, asked questions regarding the proposed sharrows on San Pablo Avenue and how well the overall plan and regulations will affect existing businesses and buildings.

Dave Harris, Richmond Annex, expressed concerns with how proposals will affect his area. The proposed heights of buildings will block views and are out of character with the neighborhood. Mr. Harris also expressed concerns with how the plan and new buildings might affect the availability and location of BART parking and how this in turn, would affect residents of Richmond.

Action: Received presentation. Discussion held. Councilmember Friedman stated that it is a great plan, expressed concerns with costs associated with plan implementation and noted the difficulty of placing constraints on buildings when local landowners are already asking exorbitant prices for the sale or rent of existing properties. Councilmember Benassini stated that she supports the MMLOS as a performance metric and tentatively agrees with the modes but is curious about the tradeoffs that were analyzed. Mayor Pro Tem Abelson stated that the plan is visionary however cautioned staff to be aware of the non-accessible features that were discussed during the presentation. Mayor Lyman suggested that a view analysis be required for El Cerrito and Richmond Annex residents and that shading analyses be completed as well. The significance criteria should include both pedestrian and bike delay. Areas with levels of service (LOS) of two should have bicyclists routed off of San Pablo Avenue for everyone's safety. Mayor Lyman concluded by stating that the proposed MMLOS is very good.

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

A. Mayor Lyman reported that the Commission Rules Subcommittee will put forth items for the Council's consideration at the next City Council meeting. The West Contra Costa County Mayors Conference met on October 24 and received a presentation on the Integrated

Waste Management Authority's post collection services agreement and have placed an item on the agenda regarding Proposition 13 reform. The discussion may take place over the next two months.

B. Mayor Pro Tem Abelson reported that she will attend the grand opening of the Caldicott Tunnel's fourth bore on November 15. The new fourth bore will help those residents of El Cerrito that commute to Walnut Creek. The project came in under budget. The Contra Costa Transportation Authority (CCTA), of which Mayor Pro Tem Abelson is the Chair, is very excited about the project. The West Contra Costa Transportation Advisory Commission (WCCTAC) okayed final documents to join PERS as its own agency. This will help with recruitment.

C. Councilmember Benassini reported that the Planning Commission discussed Ohlone Gardens and offered positive comments on the EIR. Additionally, Hi-Tech Auto was pleased to receive a multi-year permit to conduct sales up to 10:00 p.m.

D. Councilmember Bridges – No report.

SUPPLEMENTAL COMMUNICATIONS

Item No. 5(B) Ohlone Greenway Crosswalk Improvements Project, City Project No. C-3046-1, Federal Project No. HSIPL-5239 (015)

1. Revised resolution – *Submitted by Sky Woodruff, City Attorney.*

Item No. 7 San Pablo Avenue Specific Plan and Complete Streets Update and Study Session

2. Revised powerpoint - *Submitted by Melanie Mintz, Community Development Director.*

Other:

3. Californians to Stop Higher Property Taxes: History of Prop 13, The Consequences of a Split Roll, and How Prop 13 Works – *Submitted by Alex Aliferis, Contra Costa Taxpayers Association.*
4. Acknowledgement of Jerry Bradshaw, Retired Public Works Director – *Submitted by Tom Kirsch, El Cerrito.*
5. Determination by the National Register of Historic Places that the Chung Mei Home Historic District is eligible for placement on the National Register – *Submitted by Tom Panas, El Cerrito.*

Moved, seconded (Abelson/Benassini) and carried unanimously to extend the meeting to 11:00 p.m.

9. ADJOURNED REGULAR CITY COUNCIL MEETING at 11:02 p.m.



AGENDA BILL

Agenda Item No. 5(B)

Date: November 19, 2013

To: El Cerrito City Council

From: Stephen Prée, Environmental Programs Manager/City Arborist
Garth Schultz, Operations + Environmental Services Manager
Yvetteh Ortiz, Interim Public Works Director/City Engineer

Subject: Approval of Third Amendment to Stormwater Utility Area Agreement with Contra Costa Flood Control and Water Conservation District to administer an Agreement with West County Wastewater District for El Cerrito's Inspection and Illicit Discharge Control Activities

ACTION REQUESTED

Adopt a resolution approving the following actions:

1. Authorize the Contra Costa Flood Control and Water Conservation District (District) to execute the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement (Attachment 2) by and among the District, Central Contra Costa Sanitary District, Delta Diablo Sanitation District, and West County Wastewater District; and
2. Authorize the City Manager to execute the Third Amendment to the Stormwater Utility Area Agreement (SUAA) (Attachment 3) and the Clean Water Program Inspection Program Indemnification Agreement (Attachment 4).

BACKGROUND AND DISCUSSION

The City of El Cerrito operates a municipal stormwater sanitary sewer system that collects and diverts stormwater from City streets to local creeks and waterways. Per the federal Clean Water Act, the City is required to have a National Pollutant Discharge Elimination System (NPDES) permit which regulates stormwater discharge activities. The NPDES permit specifies that the City undertake activities to eliminate non-stormwater discharges into municipal storm drains and creeks. One of the many provisions included in the permit stipulates the City's responsibility for conducting regular inspections of industrial and commercial facilities for the purpose of eliminating illicit discharges resulting from illegal processes or activities.

The City's NPDES permit is held jointly with Contra Costa County, the Contra Costa County Flood Control and Water Conservation District (District), and nineteen cities and towns in the County. Together, the District, County, and towns/cities have formed the

Contra Costa Clean Water Program (CCCWP). One of the functions of the CCCWP, via the Storm Water Utility Area Agreement is to provide for the imposition, collection, and administration of Stormwater Utility Assessments for the funding of NPDES Permit activities.

Since 2003, the City has participated in a CCCWP Inspection Activities Agreement under which the costs of inspection services for El Cerrito are paid from El Cerrito's Stormwater Utility Assessments (per the SUAA)¹. Via the Inspection Activities Agreement, and under direction of the City, inspections of local commercial facilities are performed to achieve compliance with federal, state, and local regulations. The inspections include educational efforts, report preparation, and issuance of Notices of Violation, Warning Notices, and Compliance Orders on behalf of the City. In El Cerrito, inspections are focused on commercial businesses, primarily on automotive repair and restaurant operations where the greatest occurrences of potential stormwater pollution violations would likely be found. Since 2003, East Bay Municipal Utilities District (EBMUD) performed the inspections for El Cerrito. In January 2013, EBMUD notified the District that it would no longer provide inspection services to the CCCWP effective June 30, 2013.

The West County Wastewater District (WCWD) agreed to perform future inspections for the CCCWP and the City, for the same cost that EBMUD had previously charged for inspection services. Because WCWD will replace EBMUD as the inspection services provider for the City (as well as other CCCWP member agencies), it is necessary to amend the CCCWP Inspection Services Agreement (Attachment 2) to establish WCWD as the new service provider². Similarly, it is also necessary to amend the SUAA (Attachment 3) in order to affirm that the District may use El Cerrito's Stormwater Utility Assessments to pay WCWD for inspection services provided to the City.

FINANCIAL CONSIDERATIONS

Costs associated with the Agreement are paid for through El Cerrito's Stormwater Utility Area Assessment, which is established and adopted annually by the City Council. The budget (Attachment 3, Exhibit B) for conducting inspections will be established annually by the City, the District and WCWD. The FY 2013-14 cost for inspection services is \$516 per inspection for 40 inspections, at a total of \$20,651 and was anticipated in the fiscal 2013-14 budget.

¹ The authority to administer the joint inspection program was provided by the First Amendment to the 2003 SUAA between the District and the City of El Cerrito, which was adopted on December 1, 2003.

² The Third Amendment to the CCCWP Inspection Services Agreement authorizes WCWD to perform the commercial inspections, lists the Fiscal Year (FY) 2013-14 inspection costs, and calls for annual review of the program activities and budget for the subsequent year (by May 1 of each year) without further amendment to the agreement.

LEGAL CONSIDERATIONS

The Amendment has been reviewed and approved by the City Attorney.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. Amended and Restated CCCWP Inspection Activities Agreement
3. Third Amendment to the SUAA
4. Clean Water Program Inspection Program Indemnification Agreement

RESOLUTION 2013- XX

RESOLUTION APPROVING THIRD AMENDMENT TO STORMWATER UTILITY AREA AGREEMENT BETWEEN THE CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND THE CITY OF EL CERRITO

WHEREAS, the County of Contra Costa, the Contra Costa County Flood Control and Water Conservation District (“DISTRICT”), and nineteen (19) cities and towns in Contra Costa County have joined to form the Contra Costa Clean Water Program (the “PROGRAM”); and

WHEREAS, the members of the PROGRAM hold joint National Pollutant Discharge Elimination System (“NPDES”) Stormwater Permits (Nos. CAS612008 and CAS083313) issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards, respectively; and

WHEREAS, the NPDES Permits require the inspection of industrial and commercial facilities and the control of illicit discharge activities; and

WHEREAS, the DISTRICT and the City of El Cerrito entered into an agreement entitled “STORMWATER UTILITY AREA AGREEMENT BETWEEN THE CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND THE CITY OF EL CERRITO,” dated April 6, 2004 (as amended, the “SUAA”), which provides for the imposition, collection, and administration of Stormwater Utility Assessments for the funding of NPDES Permit activities; and

WHEREAS, the City of El Cerrito agrees that the public good is best served by implementing a joint inspection program to encompass inspection activities and illicit discharge control activities, rather than establishing new, separate inspection programs for each municipality; and

WHEREAS, on April 13, 2010, the City of El Cerrito approved a Second Amendment to the SUAA authorizing the DISTRICT to enter into the Agreement Among the Contra Costa County Flood Control and Water Conservation District, the Central Contra Costa Sanitary District, the Delta Diablo Sanitation District, and the East Bay Municipal Utility District Regarding the Contra Costa Clean Water Program’s Inspection Activities, dated October 26, 2009 (the “INSPECTION AGREEMENT”) on its behalf, for those agencies to perform joint inspection activities and illicit discharge control activities on behalf of the City of El Cerrito and fourteen other municipalities in Contra Costa County; and

WHEREAS, it is in the interest of the City of El Cerrito to continue participating in the joint inspection program; and

WHEREAS, the INSPECTION AGREEMENT has recently been amended and restated to extend the agreement term, modify the procedure for formal enforcement actions, and to revise the scope of the indemnification provisions; and

WHEREAS, it is necessary to amend the SUAA to provide the DISTRICT with authority to execute the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement, dated June 30, 2013, by and among the DISTRICT, Central Contra Costa Sanitary District, Delta Diablo Sanitation District, and West County Wastewater District; and

WHEREAS, the City Council finds that approval of the Agreement is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3). Additionally, approval of the agreement is categorically exempt from CEQA under CEQA Guidelines section 15308 (Protection of the Environment)..

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

1. Approve and authorize the District to execute the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement, dated June 30, 2013, by and among the DISTRICT, Central Contra Costa Sanitary District, Delta Diablo Sanitation District, and West County Wastewater District, herein incorporated by reference and attached as Exhibit A to this resolution.
2. Approve and authorize the City Manager to execute the Third Amendment to the SUAA and the Clean Water Program Inspection Program Indemnification Agreement , herein incorporated by reference and attached as Exhibits B and C to this resolution, in substantially the form attached.
3. This Resolution shall become effective immediately upon its passage and adoption.
4. Three certified copies of this Resolution and three signed originals of the Third Amendment to the SUAA shall be promptly forwarded to the Contra Costa Clean Water Program.

Adopted by the City Council of the City of El Cerrito at its regular meeting on November 19, 2013 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 November XX, 2013.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor
2197590.1

**AMENDED AND RESTATED CONTRA COSTA CLEAN WATER PROGRAM
INSPECTION ACTIVITIES AGREEMENT**

This Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement (this "Agreement"), dated June 30, 2013 (the "Effective Date"), is by and among Contra Costa County Flood Control and Water Conservation District (the "District"), Central Contra Costa Sanitary District ("CCCSD"); Delta Diablo Sanitation District ("DDSD") and, West County Wastewater District ("WCWD", and together with CCCSD and DDSD, the "Agencies," and each separately, an "Agency").

RECITALS

WHEREAS, the County of Contra Costa ("County"), the District, and the 19 incorporated cities and towns in the County have joined to form the Contra Costa Clean Water Program (the "Program"), pursuant to the Contra Costa Clean Water Program Agreement (2010-2025), dated July 1, 2010 (the "Program Agreement"), among the County, the District, Antioch, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon and Walnut Creek (the "Program Members"); and

WHEREAS, the District and CCCSD, DDSD and East Bay Municipal Utility District previously entered into that certain Agreement Among the Contra Costa County Flood Control and Water Conservation District (on behalf of The Contra Costa Clean Water Program), the Central Contra Costa Sanitary District, the Delta Diablo Sanitation District, and the East Bay Municipal Utility District Regarding the Contra Costa Clean Water Program's Inspection Activities, dated October 26, 2009 (the "Inspection Agreement"); and

WHEREAS, the District and the Agencies desire to revise certain provisions of the Inspection Agreement, including replacing EBMUD with WCWD, by amending and restating the Inspection Agreement; and

WHEREAS, the California Regional Water Quality Control Board has issued Central Valley Region National Pollutant Discharge Elimination System ("NPDES") Stormwater Permit No. CAS083313, and San Francisco Bay Region NPDES Permit No. CAS612008 (together, the "NPDES Permits"), governing waste discharge requirements and stormwater runoff for Program Members; and

WHEREAS, the NPDES Permits contain components related to inspection activities at industrial and commercial facilities (Provision C.4.) and illicit discharge control activities (Provision C.5.); and

WHEREAS, the Agencies wish to provide services to the Participating Municipalities (as defined in Section 2 below) for the inspection activities and illicit discharge control activities, as part of the implementation of the NPDES Permits; and

WHEREAS, the NPDES Permits identify long-term goals of: eliminating non-stormwater discharges into municipal storm drains and creeks; conducting stormwater inspections of industrial and commercial facilities; controlling illicit discharges by conducting field surveys of the storm drainage conveyance system and identifying and eliminating the sources of non-stormwater discharges; and eliminating illicit connections and discharges resulting from inappropriate or illegal processes, activities or housekeeping practices; and

WHEREAS, the Agencies and the District desire to modify the Agencies' existing inspection programs to encompass a stormwater illicit discharge elimination program, rather than establishing new, separate inspection programs to effect the goals of this Agreement; and

WHEREAS, the Participating Municipalities have by contract authorized the District to enter into this Agreement on their behalf.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, the parties to this Agreement agree as follows:

1. Term; Termination.

(a) Term. The term of this Agreement is from the Effective Date of this Agreement until it is terminated pursuant to Section 2 (Participating Municipalities) below.

(b) Termination.

(i) Agency Termination. Any Agency may terminate its obligations under this Agreement at its sole discretion by giving written notice to the District, each of the other Agencies, and each Participating Municipality to which it provides Inspection Activities services under this Agreement at least 180 days prior to the effective date of the termination.

(ii) District Termination. The District may terminate this Agreement, at its sole discretion, upon giving all Agencies and Participating Municipalities at least 180 days written notice. The District may terminate a Participating Municipality from receiving services pursuant to this Agreement if a Participating Municipality breaches its obligations under its Stormwater Utility Area Agreement with the District.

(iii) Participating Municipality Termination. Any Participating Municipality may stop receiving Inspection Activities pursuant to this Agreement, at its sole discretion, upon giving the District and each of the Agencies at least 90 days written notice. In the event a Participating

Municipality stops receiving Inspection Activities under this Agreement, the District shall, as of the effective date of the termination, replace Exhibit A (Inspection Agencies And Participating Municipalities) attached hereto and incorporated herein by reference, with a new Exhibit A, dated the date of its effectiveness, and provide a copy of the new Exhibit A to each of the Agencies.

(iv) Mutual Termination. This Agreement may be terminated by mutual written agreement of the District, all of the Agencies, and all of the Participating Municipalities.

2. Participating Municipalities.

(a) Stormwater Utility Area Agreements. The cities and towns listed on Exhibit A attached hereto (the "Participating Municipalities") have each executed a separate Stormwater Utility Area Agreement with the District that, among other things, authorizes the District to enter into this Agreement on behalf of the particular Participating Municipality, and provides for the invoicing and payment of Inspection Activities costs by the Participating Municipality. The Participating Municipalities are not parties to this Agreement but are intended third-party beneficiaries of this Agreement.

(b) Addition of Participating Municipalities. If a Program Member that is not a Participating Municipality desires to become a Participating Municipality and receive Inspection Activities services pursuant to this Agreement, the District and the Agencies shall execute an amendment to this Agreement in the form of Exhibit B attached hereto and incorporated herein, and the Program Member desiring to become a Participating Municipality shall execute a Stormwater Utility Area Agreement with the District that authorizes the District to enter into this Agreement on behalf of the Participating Municipality, contains an indemnity required by Section 8(c) (Participating Municipality Indemnities) below, and provides for the invoicing and payment of Inspection Activities costs by the Participating Municipality, in form and substance satisfactory to the District.

3. Responsibilities of the Agencies. Each Agency will perform the following services (collectively, the "Inspection Activities") for the respective Participating Municipality set forth on Exhibit A (Inspection Agencies And Participating Municipalities):

(a) Implement stormwater inspection activities and illicit discharge control inspection activities, subject to the direction of the District, and to bill the costs of the Inspection Activities to the District;

(b) Perform scheduled and other inspections and investigations of industrial and commercial facilities and the exterior of residential properties to determine compliance with federal, state and local laws and regulations related

to stormwater discharge. Inspections may have an educational component, as directed by the District. The locations and frequency of an inspection, investigation, or educational efforts shall be at the direction of the District and shall take place between 7:30 a.m. and 4:00 p.m. Pacific Standard Time, Monday through Friday, excluding holidays ("Normal Working Hours");

(c) Perform inspections, investigations and educational efforts described in Section 3(b) above outside of Normal Working Hours if mutually agreed to by the District, the particular Participating Municipality, and the performing Agency;

(d) Prepare inspection and investigation reports;

(e) Issue notices of violation, warning notices and compliance orders to commercial and industrial site operators on behalf of the Participating Municipalities where violations and potential violations occur, all to the extent authority to issue such notices and orders has been lawfully delegated by the Participating Municipalities to the Agencies, in connection with inspections and investigations. The Agencies shall develop a standardized approach to recommending and documenting formal enforcement actions for recurring violations at an inspected location. The Agencies, at the direction of the Participating Municipalities, shall also refer violations and potential violations to appropriate enforcing entities, such as the District Attorney. The Agencies shall notify the appropriate Participating Municipality of the issuance of any warning notice or notice of violation issued by the Agencies, by email, by the close of the business day following issuance;

(f) Assist in formal enforcement actions undertaken by a Participating Municipality, as permitted under the Participating Municipality's enforcement authority and to the extent specifically requested by the Participating Municipality. Activities undertaken by Agencies under this provision include but are not limited to documentation of violations, preparation of documents for use in complaints and at hearings, and assistance in hearing preparation and presentation, including provision of testimony as requested;

(g) Keep records regarding Inspection Activities and investigations accomplished. The Agencies shall retain these records through the term of this Agreement as evidence of Participating Municipality compliance with its NPDES Permit. These records shall become property of the respective Participating Municipality upon termination of this Agreement;

(h) Train, supervise and manage staff of the Agencies necessary to implement the Inspection Activities in a consistent manner;

(i) Provide advice and comments to the District regarding the District's preparation of educational material for distribution to industrial and commercial

facilities and the public. The Agencies shall also provide advice and comments to the District regarding the Contra Costa County Green Business Program, as requested by the District;

(j) Provide comments to the District regarding ordinances necessary to implement the Inspection Activities;

(k) Purchase, operate and maintain all equipment necessary to implement the Inspection Activities, at the cost of the Agencies;

(l) Provide quarterly Inspection Activities reports to the District submitted with the quarterly invoices specified in Section 3(n) below. The final report of the fiscal year (fourth quarter) shall include a status report to each Participating Municipality of all warning notices, notices of violation, and enforcement activities initiated by the Agencies by business name. The final report shall also include a hard or electronic copy of the Agencies' databases of commercial/industrial facilities from their inspections lists grouped by Participating Municipality jurisdiction;

(m) Utilize reasonable efforts to assure that Inspection Activities are implemented by the Agencies in a uniform manner;

(n) Provide quarterly invoices to the District for work performed under this Agreement. Due dates for each quarterly invoice during the fiscal year are as follows: (i) First Quarter - October 15; (ii) Second Quarter - January 15; (iii) Third Quarter - April 15; and (v) Fourth Quarter - July 15 of each fiscal year; and

(o) Provide the District and Participating Municipalities updated inspector rosters that include cellular phone numbers with their assigned service area as needed.

4. Responsibilities of the District. The District will perform the following obligations:

(a) Recommend that the Participating Municipalities draft and adopt such ordinances and laws as are necessary to effectuate the Inspection Activities, including delegation of necessary authority to the Agencies;

(b) Authorize and prioritize inspections and investigations, with direction from the Participating Municipalities and Agencies;

(c) Provide timely input on the scope of the following fiscal year Inspection Activities during budget discussions and timely approval of the Agencies' fiscal year Inspection Activities stormwater program budgets;

(d) Recommend that the appropriate Participating Municipality initiate actions against stormwater permit violators except to the extent enforcement has been initiated on behalf of Participating Municipalities by the Agencies, pursuant to lawfully delegated authority;

(e) Provide educational materials for distribution to industrial and commercial facilities and the public;

(f) Provide comments to the Agencies regarding the formats of inspection and investigation reports;

(g) Adopt and administer a stormwater permitting program, as appropriate;

(h) Make timely payments to the Agencies pursuant to invoices for Inspection Activities costs;

(i) Perform other responsibilities as agreed to in writing between the District and the Agencies;

(j) Notify Participating Municipalities of issues affecting them in a timely manner; and

(k) Provide quarterly Inspection Activities and budget summary reports to Participating Municipalities.

5. Communication between District and the Agencies. Each Agency will designate in writing to the District an Inspection Activities program coordinator and an alternate coordinator, subject to the District's approval of the designated coordinator and alternate coordinator. The purpose of designating an Inspection Activities program coordinator is to facilitate communication between the District and the Agencies. The Agencies shall direct matters such as complaints, claims, legal challenges, and other disputes regarding the Inspection Activities to its Inspection Activities program coordinator who will transmit the matter to the District for handling.

6. Financial. The Agencies shall be reimbursed by the District for all appropriate costs of the Inspection Activities, including the actual inspections and related administrative costs. The costs eligible for reimbursement include, but are not necessarily limited to, labor, benefits, overhead, supplies, equipment, vehicle, laboratory, consultant, legal and insurance costs. The Agencies shall promptly notify the District if the Agencies believe that legal costs will be incurred in connection with the inspection or enforcement activities so that the District may arrange for the affected Participating Municipalities to provide legal services on behalf of Agencies, if the Participating Municipalities so choose.

(a) Each of the Agencies will prepare invoices for costs related to the Inspection Activities and submit the invoices to the District no more frequently than monthly and no less frequently than quarterly. The District will pay invoices within 45 days of receipt.

(b) The Agency's labor costs shall be itemized at base cost per individual for time spent plus an overhead multiplier for benefits, administrative overhead, supplies, equipment and insurance. The Agencies' overhead multipliers for the following fiscal year shall be submitted to the District annually by January 31, and approved as part of an annual cost proposed to the Participating Municipalities.

(c) To the extent practicable, all invoices submitted shall be itemized to allocate costs to the Participating Municipality for which Inspection activities services were performed.

(d) To further cost efficiency, Agency staff time spent at meetings relative to the Inspection Activities will be minimized to the extent practicable. Laboratory services will be similarly minimized.

(e) Prior to the beginning of each fiscal year, the District shall approve an Inspection Activities budget, including individual Inspection Activities budgets for each of the Participating Municipalities. The District shall have the Participating Municipalities review and approve the Inspection Activities budget through the Program. Discussions for the annual budget shall begin in January prior to the upcoming fiscal year. The Agencies shall not exceed their approved written Inspection Activities budgets, absent written consent of the Participating Municipality through the District.

7. Insurance: During the term of this Agreement, each Agency shall carry Workers' Compensation and Employers' Liability Insurance as required by law, and General Liability and Automobile Liability insurance in the amount of at least \$1,000,000 per occurrence. If an Agency is self insured, written notification of the self insurance program shall be made to the other parties to this Agreement within 30 days after the execution of this Agreement. Any change to self insured status by any Agency shall be reported to the District in writing within 30 days of such change.

8. Indemnification.

(a) District Indemnity. The District shall indemnify, defend and hold harmless the Agencies and each of them and their officers, directors, agents, and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities, and expenses, such as but not limited to constitutional or property rights claims, arising out of or related to the District's willful misconduct or the negligent acts, errors or omissions of the District in the performance of this Agreement.

(b) Agency Indemnity. Each Agency shall indemnify, defend and hold harmless the District and each Participating Municipality, and their respective officers, directors, agents and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities and expenses arising out of or related to such Agency's willful misconduct or the negligent acts, errors or omissions of such Agency in the performance of this Agreement, except that each Participating Municipality shall be solely liable for any fines resulting from NPDES Permit non-compliance.

(c) Participating Municipality Indemnities. The District shall obtain individual indemnification agreements from each Participating Municipality in the Inspection Activities program, which shall specify that such Participating Municipality shall indemnify the District and Agencies. The indemnification shall read "[Name of City/Town] (Participating Municipality) shall for its jurisdictional area, indemnify, defend and hold harmless Central Contra Costa Sanitary District; Delta Diablo Sanitation District, West County Wastewater District (the "Agencies"), the Contra Costa County Flood Control and Water Conservation District, and each of them, and their respective officers, directors, agents, and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities and expenses (collectively, "Claims") arising out of or related to the Participating Municipality's willful misconduct or the negligent acts, errors or omissions of the Participating Municipality, and the Participating Municipality shall also indemnify, defend and hold harmless Agencies, and their respective officers, directors, agents, and employees from and against all Claims that are not based on Agencies' active negligence, willful misconduct, or vehicle accident, such as but not limited to constitutional or property rights claims arising from an Agency's performance under the Inspection Agreement."

9. Notices. Notices required or permitted under this Agreement shall be in writing and made as follows:

If to District, to:

Mr. Thomas E. Dalziel, Program Manager
Contra Costa Clean Water Program
255 Glacier Drive
Martinez, CA 94553
(925) 313-2373

If to the Agencies collectively, to:

Mr. Timothy Potter
Central Contra Costa Sanitary District
5019 Imhoff Place

Martinez, CA 94553-4392
(925) 229-7380

If to CCCSD, to:

Mr. Timothy Potter
Central Contra Costa Sanitary District
5019 Imhoff Place
Martinez, CA 94553-4392
(925) 229-7380

If to WCWD, to:

Mr. Steve Linsley
West County Wastewater District
2910 Hilltop Drive
Richmond, CA 948065238
510- 237-6603

If to DDSD, to:

Mike Bakaldin
Delta Diablo Sanitation District
2500 Pittsburg-Antioch Highway
Antioch, CA 94509-1373
(925) 756-1942

10. Arbitration: In the event of a dispute arising under this Agreement, the parties may jointly agree to submit the dispute to non-binding arbitration. In the event the parties cannot agree to an arbitrator within 30 days after a party requests arbitration by written notice to the other parties, the arbitrator may be selected by petition of any party to the Superior Court of the County of Contra Costa.

11. Amendments. This Agreement may only be amended by written mutual agreement of the each of the parties hereto. Participating Municipalities shall be notified in writing of any written modification to this Agreement. Any amendment to this Agreement to add a Participating Municipality shall be undertaken according to Section 2(b) (Addition of Participating Municipalities) above.

12. Governing Law. This Agreement is made and will be performed in the State of California, and is governed by California laws shall apply.

13. Severability. If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were, to any extent, adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and

conditions of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

14. Assignment. No Agency shall assign any of its right, title or interest under this Agreement without the prior written consent of the District. Any purported assignment of any Agency's rights under this Agreement is void and without effect.

15. Entire Agreement. This Agreement contains the entire agreement between the parties and all prior understandings or agreements, oral or written, regarding this matter are superseded.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: Sharon L. Anderson, County Counsel By: _____ Eric Gelston, Deputy County Counsel	WEST COUNTY WASTEWATER DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____
CENTRAL CONTRA COSTA SANITARY DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____	DELTA DIABLO SANITATION DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____

EXHIBIT A

INSPECTION AGENCIES AND PARTICIPATING MUNICIPALITIES

<u>Inspection Agency:</u>	Central Contra Costa Sanitary District	West County Wastewater District	Delta Diablo Sanitation District
<u>City or Town:</u>	Clayton	El Cerrito	Antioch
	Concord	Hercules	
	Danville	Richmond	Pittsburg
	Lafayette		
	Martinez		
	Moraga		
	Orinda		
	Pleasant Hill		
	San Ramon		
	Walnut Creek		

EXHIBIT B

FORM OF AMENDMENT TO AMENDED AND RESTATED CONTRA COSTA CLEAN WATER PROGRAM INSPECTION ACTIVITIES AGREEMENT ADDING A PARTICIPATING MUNICIPALITY

This Participating Municipality Amendment, dated _____, 20[], (this "Amendment"), amends that certain Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement (the "Agreement"), dated June 30, 2013, and is by and among Contra Costa County Flood Control and Water Conservation District (the "District"), Central Contra Costa Sanitary District ("CCCCSD"); Delta Diablo Sanitation District ("DDSD") and, West County Wastewater District ("WCWD", and together with CCCCSD and DDSD, the "Agencies," and each separately, an "Agency"). Capitalized terms used in this Amendment and not otherwise defined have the meaning given in the

RECITALS

1. The [City/Town] of [] ("Participating Municipality") is a Program Member and a party to the Program Agreement, and desires to participate in the Contra Costa Clean Water Program Inspection Program and receive Inspection Activities conducted in its jurisdiction pursuant to the Agreement by becoming a Participating Municipality under the Agreement.

2. Participating Municipality has executed a Stormwater Utility Area Agreement with the District that authorizes the District to execute this Amendment on its behalf, and that provides for the invoicing and payment of Inspection Activities costs by Participating Municipality pursuant to the Agreement and the indemnification required by the Agreement.

AMENDMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, the parties to this Amendment agree that the Agreement is amended as follows:

1. The [City/Town] of [] is hereby made a Participating Municipality under the Agreement.

2. Exhibit A (Inspection Agencies And Participating Municipalities) attached to the Agreement is hereby deleted in its entirety and replaced with the Exhibit A attached hereto.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties have executed this Amendment as follows:

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: Sharon L. Anderson, County Counsel By: _____ Eric Gelston, Deputy County Counsel	WEST COUNTY WASTEWATER DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____
CENTRAL CONTRA COSTA SANITARY DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____	DELTA DIABLO SANITATION DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____

EXHIBIT A¹

INSPECTION AGENCIES AND PARTICIPATING MUNICIPALITIES

<u>Inspection Agency:</u>	Central Contra Costa Sanitary District	West County Wastewater District	Delta Diablo Sanitation District
<u>City or Town:</u>	Clayton	El Cerrito	Antioch
	Concord	Hercules	Pittsburg
	Danville	Richmond	
	Lafayette		
	Martinez		
	Moraga		
	Orinda		
	Pleasant Hill		
	San Ramon		
	Walnut Creek		

¹ Revise as necessary to add new Participating Municipality
Exhibit B

**THIRD AMENDMENT TO STORMWATER UTILITY AREA AGREEMENT
(CITY OF EL CERRITO)**

1. PARTIES

This Third Amendment to Stormwater Utility Area Agreement (this "Third Amendment"), is entered into as of June 30, 2013, between the City of El Cerrito, a municipal corporation of the State of California (hereinafter "City"), and the Contra Costa County Flood Control and Water Conservation District, a flood control district existing under the laws of the State of California (hereinafter "District"). The parties to this Third Amendment mutually agree and promise as follows.

2. PURPOSE

This Third Amendment amends the Stormwater Utility Area Agreement between the Contra Costa County Flood Control And Water Conservation District and the City of El Cerrito (as amended, the "SUAA"), entered into on April 6, 2004.

3. AMENDMENT

The SUAA is hereby amended as follows:

- a. Section 7 (City Use of Revenue). The third paragraph of Section 7 of the SUAA is deleted in its entirety and replaced it with the following:

"City authorizes District, on its behalf, to execute the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement, dated June 30, 2013 (the "Amended and Restated Inspection Agreement") among District, Central Contra Costa Sanitary District, Delta Diablo Sanitation District, and West County Wastewater District attached hereto as Exhibit A, to implement an industrial and commercial inspection activities and illicit discharge control inspection activities program (hereinafter the "Inspection Program"), and any amendments or restatement of the Amended and Restated Inspection Agreement that may be required from time to time to implement the Inspection Program."
- b. Exhibit B (Estimate of Inspections and Share of Inspection Costs). The SUAA is hereby amended by deleting the existing Exhibit B attached to the SUAA and replacing it with the Exhibit B (Fiscal Year 2013/14 Stormwater Inspection Program by City) attached to this Third Amendment.
- c. Section 13 (Inspection Program Share of Costs). A new Section 13 (Inspection Program Share of Costs) is hereby added to the SUAA as follows:

- “13. INSPECTION PROGRAM SHARE OF COSTS: “City’s estimated share of the cost for the Inspection Program will be based on the projected number of inspections shown in Exhibit B attached to this Agreement. No later than May 1 of each year, City and District will update Exhibit B to this Agreement by agreeing to the Inspection Program activities and budget for the subsequent year without further amendment of this Agreement.”

4. REMAINING PROVISIONS

Other than the amendments made by this Third Amendment, the SUAA, as previously amended, remains in full force and effect.

[Signatures appear on following pages.]

CONTRA COSTA COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

CITY OF EL CERRITO

By: _____
Chair, Board of Supervisors

By: _____
Name: _____
City Manager

ATTEST:
David Twa, Clerk of the Board of
Supervisors and County Administrator

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
City Clerk

Recommended for Approval:

Recommended for Approval:

Julia R. Bueren, Chief Engineer, Contra
Costa County Flood Control and Water
Conservation District

By: _____
Name: _____
City Engineer/ Public Works Director

Form Approved:
Sharon L. Anderson, County Counsel

Form Approved:

By: _____
Name: _____
Title: Deputy County Counsel

By: _____
Name: _____
City Attorney

Exhibit A
Amended and Restated Inspection Agreement

See attached.

Exhibit B
Fiscal Year 2013/14 Stormwater Inspection Program by City

City	Annual Target	FY 13-14 Budget
Antioch	48	\$22,528
Clayton	8	\$3,755
Concord	214	\$100,438
Danville	57	\$26,752
El Cerrito	40	\$20,651
Hercules	16	\$8,260
Lafayette	32	\$15,019
Martinez	67	\$31,446
Moraga	16	\$7,509
Orinda	15	\$7,040
Pittsburg	55	\$25,814
Pleasant Hill	54	\$25,344
Richmond	50	\$23,467
San Ramon	77	\$36,139
Walnut Creek	120	\$56,320
Totals	869	\$410,482

**CLEAN WATER PROGRAM
INSPECTION PROGRAM INDEMNIFICATION AGREEMENT**

This Clean Water Program Inspection Program Indemnification Agreement, dated June 30, 2013 (this "Agreement"), is by the City of El Cerrito, California ("El Cerrito"). Capitalized terms used in this Agreement and not defined herein have the meaning set forth in the Amended and Restated Inspection Agreement (as defined below).

WHEREAS, Contra Costa County Flood Control and Water Conservation District ("District"), on behalf of the Participating Municipalities (as defined in the Amended and Restated Inspection Agreement), entered into the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement, dated June 30, 2013 (the "Amended and Restated Inspection Agreement"), by and among District, Central Contra Costa Sanitary District ("CCCSD"), Delta Diablo Sanitation District ("DDSD"), and West County Wastewater District ("WCWD"), and together with CCCSD and DDSD, the "Agencies," and each separately, an "Agency"), under which the Agencies are performing inspection services to detect and eliminate illicit discharges into the Participating Municipalities' municipal storm drains and creeks; and

WHEREAS, pursuant to the Stormwater Utility Area Agreement between District and the City of El Cerrito (as amended, the "SUAA"), entered into on April 6, 2004, El Cerrito has authorized District to enter into and perform the terms of the Amended and Restated Inspection Agreement on behalf of El Cerrito; and

WHEREAS, under the Amended and Restated Inspection Agreement, each Agency has agreed to indemnify, defend and hold harmless District and each Participating Municipality, and their respective officers, directors, agents and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities and expenses arising out of or related to such Agency's willful misconduct or negligent acts, errors or omissions of such Agency in the performance of the Amended and Restated Inspection Agreement, except that each Participating Municipality shall be solely liable for any fines resulting from NPDES Permit non-compliance; and

WHEREAS, under the Amended and Restated Inspection Agreement, District is required to obtain an individual indemnification agreement from each Participating Municipality under which each Participating Municipality agrees to indemnify District and the Agencies; and

WHEREAS, El Cerrito desires to comply with the requirements of the Amended and Restated Inspection Agreement by setting forth its indemnification obligations in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, El Cerrito agrees as follows:

El Cerrito shall for its jurisdictional area, indemnify, defend and hold harmless District, the Agencies, and each of them, and their respective officers, directors, agents, and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities, and expenses (collectively, "Claims") arising out of or related to El Cerrito's willful misconduct or the negligent acts, errors or omissions of El Cerrito, and El Cerrito shall also indemnify, defend and hold harmless the Agencies, and their respective officers, directors, agents, and employees from and against all Claims that are not based on such Agency's active negligence, willful misconduct, or vehicle accident, such as but not limited to constitutional or property rights claims arising from an Agency's performance under the Amended and Restated Inspection Agreement.

The City of El Cerrito has executed this Agreement as of the date first set forth above.

City of El Cerrito

By: _____

Name: _____

Title: _____



AGENDA BILL

Agenda Item No. 5(C)

Date: November 19, 2013

To: El Cerrito City Council

From: Stephen Prée, Environmental Programs Manager/City Arborist
Garth Schultz, Operations + Environmental Services Manager
Yvetteh Ortiz, Interim Public Works Director/City Engineer

Subject: City Tree Pruning and Removal Contract with West Coast Arborists

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to amend the current City Tree Pruning and Removal Contract with West Coast Arborists (WCA) to increase the contract amount from \$25,000 to \$100,000 and time of completion from December 31, 2013 through June 30, 2014.

BACKGROUND AND ANALYSIS

The City maintains approximately 10,300 trees on streets, in parks, and on City properties. In the spring of 2013, each tree was inspected and assessed for maintenance needs by Davey Resources Group as a component of the Cal Fire/US Forest Service grant funded tree inventory. The assessment classified 684 of the trees as requiring priority pruning or removal work and 9,269 trees in need of routine pruning.

Historically, El Cerrito City tree pruning service contracts have addressed tree pruning on a time and materials basis. There are inefficiencies in this type of contract due to the complexity of the tracking service and the high cost of mobilization when pruning trees in multiple locations. The previous contracts have not addressed the maintenance needs for all trees in the City in the most cost effective and thorough manner. Consequently, many trees throughout the City have not been pruned in several years, and tree calls remain one of the most frequent Public Works maintenance service requests.

In October 2013, City staff negotiated a tree service contract that will maintain a greater number of City trees given available funding. The contract is derived from a competitive bid process conducted by the City of Union City in July 2013: the lowest qualified bid for tree pruning was submitted by, and the contract awarded to, West Coast Arborists. This same price structure has been extended to the City of El Cerrito (Attachment 2). This process, known as piggybacking, is commonly used by municipalities to receive competitive pricing in an expeditious manner. This piggyback contract and procurement approach was reviewed and approved by the City Attorney, and is commonly used by local agencies for procurement of goods and services.

Agenda Item No. 5(C)

In order to respond to urgent pruning and removal needs, the City entered into an interim \$25,000 piggyback contract with West Coast Arborists (Attachment 3) based on Union City's agreement with WCA. Staff is requesting City Council approval to increase this contract amount to \$100,000 for tree pruning work to be performed through June 30, 2014. At this contract amount, WCA will be able to prune or remove all high priority trees throughout the City and begin grid pruning the street trees in Pruning Zone One (Attachment 4). Grid pruning is the most cost effective near and long term pruning management strategy for City tree maintenance because every tree in a given Zone is pruned each pruning cycle. When each tree, small or large, is inspected and structurally pruned on a regular cycle, both short and long term maintenance costs are reduced due to efficiencies in mobilization, scheduling, and service tracking; both preventative and reactive maintenance are performed in one operation and the need for future priority pruning is minimized.

Staff estimates that the requested contract amount will be sufficient to prune the highest priority trees Citywide and approximately 70% of all trees in Pruning Zone One. Based on the historical pruning patterns throughout the City, Staff intends to request tree service contract funds in the Fiscal Year 14-15 (FY15) Operating Budget that will be sufficient to complete work in Pruning Zone One and all of Pruning Zone Two. Staff anticipates proposing a cost-effective longer term contract for tree pruning services starting FY15, in accordance with the City's procurement policies.

West Coast Arborists is a California based company that has been in business since 1972. They maintain tree service contracts in the Bay Area cities of Alameda, Atherton, Berkeley, Concord, Dublin, Palo Alto, Pleasanton, Menlo Park, Milpitas, Sunnyvale, Union City and others. They have successfully provided El Cerrito with tree pruning and removal services since 2011 when they acquired the previous City tree service provider and assumed their existing time and materials contract.

STRATEGIC PLAN CONSIDERATIONS

Approval of the proposed Amendment to the Tree Pruning Contract with WCA would help fulfill the following City of El Cerrito Strategic Plan goals:

- Goal A: Deliver exemplary government services with the strategy of increased productivity and efficiency by utilizing data driven analysis to ensure appropriate resources allocation. Grid pruning is an excellent example of this.
- Goal E: Ensure the public's health and safety by minimizing tree hazards.

ENVIRONMENTAL CONSIDERATIONS

Healthy City trees contribute aesthetically, add to property values and contribute to the environment by sequestering carbon, retaining stormwater and improving air quality. Fossil fuels are used during tree service work, but because each tree in a given block is pruned in the same mobilization, vehicle miles are significantly reduced. The City utilizes the chipped trees as landscape mulch which is also available to the public; wood chip mulch builds healthier soils and suppresses weeds. WCA provides supervisors with

Agenda Item No. 5(C)

hybrid cars and the company repurposes some of the lumber from tree removal (see benches at City Hall 2nd floor elevator and at the recycling center lobby).

FINANCIAL CONSIDERATIONS

WCA's bid was the most cost competitive compared to the other bids received and reviewed by the City of Union City, as discussed above.

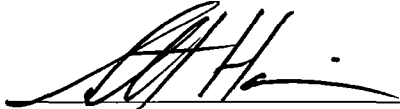
The \$100,000 in expenses anticipated under this contract is included in the approved Fiscal Year 2013-14 Operating Budget, and will be paid from the Citywide Landscape and Lighting District fund.

According to the 2013 Resource Analysis of El Cerrito City Trees by Davey Resource Group, City residents receive \$4.28 in benefits for every \$1 spent on City trees.

LEGAL CONSIDERATIONS

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

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. City of Union City 2013-14 Tree Pruning & Removal Project - Bid Comparison Sheet
3. Current Tree Pruning and Removal Contract with WCA
4. El Cerrito's Tree Trimming Rotational Map

RESOLUTION 2013--XX

RESOLUTION OF THE EL CERRITO CITY COUNCIL AUTHORIZING THE CITY MANAGER TO AMEND THE TREE PRUNING AND REMOVAL CONTRACT WITH WEST COAST ARBORISTS INC. TO A TOTAL CONTRACT AMOUNT OF \$100,000 THROUGH JUNE 30, 2014

WHEREAS, the City maintains approximately 10,300 trees on streets, in parks, and on City properties; and

WHEREAS, all of these trees require regular pruning and maintenance in order to prevent and mitigate hazards and promote the healthy lives of the trees; and

WHEREAS, the City currently has a Tree Pruning and Removal Contract (Agreement) with West Coast Arborists to prune and maintain El Cerrito trees in an amount not to exceed \$25,000; and

WHEREAS, staff recommended the selection West Coast Arborists Inc. based on past performance and on pricing from a competitive bid process conducted by the City of Union City; and

WHEREAS, in order to address priority tree pruning and removal needs and maintain the City's tree pruning rotation schedule, staff is recommending that the City Council approve an amendment to the Agreement, increasing the contract amount to \$100,000 through June 30, 2014; and

WHEREAS, this level of contract expenditure for tree pruning was included in the adopted Fiscal Year 2013-14 Operating Budget; and

WHEREAS, the City Council finds that approval of the amended agreement is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3). Additionally, approval of the Agreement is categorically exempt from CEQA under CEQA Guidelines section 15301(h) (maintenance of existing landscaping).

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito authorizes the City Manager to execute an amendment to the tree pruning and removal contract with West Coast Arborists Inc. increasing the total contract amount to \$100,000 for performing tree services in the City through June 30, 2014.

Agenda Item No. 5(C)

Attachment 1

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

I CERTIFY that at a regular meeting on November 19, 2013 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

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

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

**CITY OF UNION CITY
2013-14 Tree Pruning & Removal Project
CITY PROJECT NO. 12-15**

Item No.	Description	Estimated Quantity	West Coast Arborists, Inc.	Arbortech Tree Care, Inc.	AAA Tree Service, Inc.
1	Block/Grid Pruning-A Tree Structurally Pruned	1700	\$64.00 ea.	\$155.00 ea.	\$500.00 ea.
2	Single Tree Pruning-A Medium Size Structurally Pruned 14.1"- 25" DBH	100	\$80.00 ea.	\$140.00 ea.	\$ 450.00 ea.
3	Single Tree Pruning- A Large Size Structurally Pruned 25"- 36" DBH	100	\$175.00 ea.	\$275.00 ea.	\$550.00 ea.
4	Tree Removals - Medium Size Tree Removal 14.1" – 25" DBH	10	\$150.00 ea.	\$450.00 ea.	\$800.00 ea.
5	Tree Removals – Large Size Tree Removed 25" – 36" DBH	10	\$750.00 ea.	\$675.00 ea.	\$1,100.00 ea.
6	Tree Removals – Very Large Size Tree Removed Greater than 36"DBH	30	\$750.00 ea.	\$1,800.00 ea.	\$1,500.00 ea.
7	Stump Removals - Medium size Stump Removed	10	\$50.00 ea.	\$150.00 ea.	\$150.00 ea.
8	Stump Removal - Large Size Stump Removed	10	\$190.00	\$250.00 ea.	\$200.00 ea.
9	Stump Removal – Very Large Size Stump Removed	30	\$225.00	\$ \$350.00 ea.	\$250.00 ea.
	TOTAL BID		\$174,950.00	\$384,750.00	\$1,025,000.00

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

TREE PRUNING & REMOVAL AGREEMENT



The City of El Cerrito, ("City") enters into this agreement, dated for reference purposes only, with West Coast Arborists, Inc. ("Contractor").

AGREEMENT TERMS

The City and the Contractor agree as follows:

1. THE WORK. The Contractor shall furnish all equipment, tools, apparatus, facilities, material labor, and skill necessary to perform and complete in a good and workmanlike manner Pruning and Removal of hazardous or priority trees City trees as directed by City Arborist.
2. LOCATION OF WORK.
The Work will be performed in El Cerrito as Directed by the City Arborist.
3. TIME FOR COMPLETION. The Contractor must complete the Work in accordance with the Contract Documents and as agreed upon with the City's Arborist, by December 31, 2013.
4. REMEDIES FOR FAILURE TO TIMELY COMPLETE THE WORK. If the Contractor fails to fully perform the Work in accordance with the Contract Documents by the Time for Completion, as such time may be amended by change order or other modification to this agreement in accordance with its terms, and/or if the Contractor fails, by the Time for Completion, to fully perform all of the Contractor's obligations under this agreement that have accrued by the Time for Completion, the Contractor will become liable to the City for all resulting loss and damage in accordance with the Contract Documents and applicable law. The City's remedies for the Contractor's failure to perform include, but are not limited to, assessment of liquidated damages of \$300 per day in accordance with California Government Code Section 53069.85 and the Contract Documents, and/or obtaining or providing for substitute performance in accordance with the Contract Documents.
5. CONTRACT PRICE AND PAYMENT. As full compensation in consideration of completion of the Work in accordance with the Contract Documents and in

City of El Cerrito
2013-14 Tree Pruning & Removal Agreement

consideration of the fulfillment of all of the Contractor's obligations under the Contract Documents, the City will pay the Contractor in lawful money of the United States the total price of \$Twenty Five Thousand and 00/100 Dollars (\$25,000) (the "Contract Price"). Payment to the Contractor under this agreement will be for Work actually performed in accordance with the Contract Documents and will be made in accordance with the requirements of the Contract Documents and applicable law.

Payment to the Contractor under this agreement will furthermore be for Work actually performed at the unit costs specified below:

Grid Pruning

All trees in grid section Structural Pruning	\$64 each
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Single Tree Pruning

14.1" – 25" DBH (Diameter at Breast Height) Medium Tree Structural Pruning	\$80 each
25" – 36" DBH Large Tree Structural Pruning	\$175 each

Tree Removals

14.1" – 25" DBH Medium Tree Removal	\$150 each
25" and larger DBH Large Tree Removal	\$750 each

Stump Removals

14.1" – 25" DBH Medium Stump Removal	\$50 each
25" – 36" DBH Large Stump Removal	\$190 each
36" and larger DBH Very Large Stump Removal	\$225 each

Additional Services – Work Time and Materials

Emergency Call out – Two Persons per hour	\$160/hour
Crew Rental – One Person per hour	\$60/hour

The City will have no obligation to pay the Contractor any amount in excess of the Contract Price unless this agreement is first modified in accordance with its terms. The City's obligation to pay the Contractor under this agreement is subject to and may be offset by charges that may apply to the Contractor under this agreement. Such charges include but are not limited to, charges for liquidated damages and/or substitute performance in accordance with the Contract Documents.

6. PREVAILING WAGES. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, the City has

City of El Cerrito

2013-14 Tree Pruning & Removal Agreement

obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.

7. INSURANCE. Contractor shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, public liability, property damage, owned and non-owned and hired automobile and liability, insurance coverage relating to services of Contractor, its agents, representatives, employees or subcontractors to be performed hereunder covering City's risks in form subject to the approval of the City Attorney. The cost of such insurance shall be included in Contractor's bid.

The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	Statutory minimum, as required of under the Labor Code of the State of California
Public Liability	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage.
Automobile Liability	\$1,000,000 per accident, \$2,000,000 aggregate for bodily injury and property damage (coverage required to the extent applicable to Contractor's vehicle usage in performing services hereunder).

8. THE CONTRACT DOCUMENTS. This agreement consists of the following documents ("Contract Documents"), all of which are incorporated into and made a part of this agreement as if set forth in full. These documents may be originals, or copies where applicable.

City of El Cerrito
2013-14 Tree Pruning & Removal Agreement

- 8.1 This agreement and change orders and other amendments to this agreement signed by authorized representatives of the City and the Contractor.
- 8.2 The Contractor's completed Contractor License Information.
- 8.3 The Contractor's completed List of Proposed Subcontractors.
- 8.4 The Contractor's Workers Compensation Insurance Certification.
- 8.5 The Contractor's completed Certificates of Insurance and Endorsement.
- 8.6 The Contractor's completed City of El Cerrito Business License.
- 8.7 The Contractor's letter offering the City the same competitively bid pricing offered to the City of Union City in that City's Agreement for City Project No. 12-15.
- 8.8 Standards. All trees shall be pruned according to the most current editions of the following benchmark standards for tree pruning:
 - a) American National Standards Institute (ANSI) A3000 Pruning Standards.
 - b) ANSI Z133.1 Safety Standards
 - c) ISA Best Management Practices: Tree Pruning
- 8.9 Pruning objectives
 - a) Improve structural strength and reduce failure potential
 - b) Improve safety and security for residents and visitors
 - c) Provide clearance for vehicles, pedestrians and structures
 - d) Repair structural damage
- 9. ASSIGNMENT PROHIBITED. The Contractor may not assign part or all of this agreement, or any moneys due or to become under this agreement, or any other right or interest of the Contractor under this agreement, or delegate any obligation or duty of the Contractor under this agreement without the prior written approval of an official authorized to bind the City and an authorized representative of Contractor's surety or sureties. Any such purported assignment or delegation without such written approval on behalf of the City and the Contractor's sureties will be void and a material breach of this agreement subject to all available remedies under this agreement and at law and equity.
- 10. CERTIFICATION RE CONTRACTOR'S LICENSE. By signing this Agreement the Contractor certifies that the Contractor holds a valid Type A license issued by the California State Contractors Licensing Board, and that the Contractor understands that failure to maintain its license in good standing throughout the performance of the Work may result in discipline and/or other penalties pursuant to the California Business and Professions Code, and may constitute a material breach of this agreement subject to all available remedies under this agreement and at law and equity.
- 11. NOTICE OF THIRD PARTY CLAIMS. Pursuant to Public Contracts Code section 9201, the City shall provide the Contractor with notice of claims relating

City of El Cerrito
2013-14 Tree Pruning & Removal Agreement

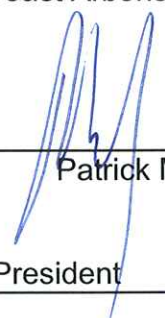
to this Contract filed by third parties no later than ten (10) business days from the date of receipt of the claim. The Contractor shall be responsible for reimbursing the City for its reasonable costs in providing the notification.

12. SEVERABILITY. If any term or provision or portion of a term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.

Executed on October 22, 2013, by

CONTRACTOR

West Coast Arborists, Inc.

By:  _____
Patrick Mahoney

Title: President

APPROVED AS TO FORM:



City Attorney

CITY OF EL CERRITO,
a Municipal Corporation



By: Scott Hanin

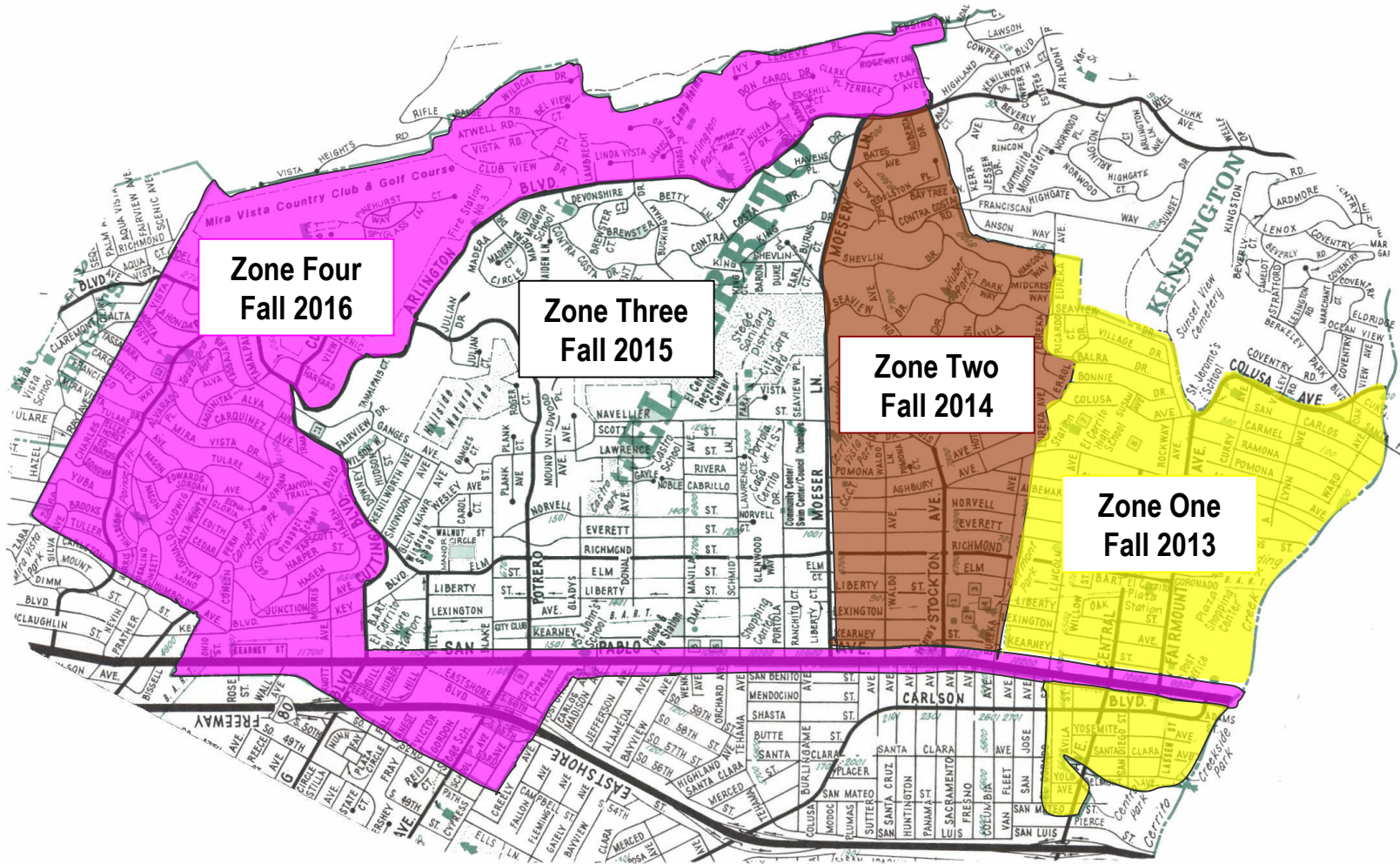
Title: City Manager

ATTEST:
By: 

Cheryl Morse, City Clerk

Date: 10/22/2013

Tree Trimming Rotational Map



Four Year Pruning Cycle to Occur Each Fall of Each Listed Year



AGENDA BILL

Agenda Item No. 6(A)

Date: November 19, 2013

To: El Cerrito City Council

From: Garth Schultz, Operations + Environmental Services Manager
Yvetteh Ortiz, Interim Public Works Director/City Engineer

Subject: Proposed Integrated Waste Management Fees and East Bay Sanitary
Garbage & Green Waste Collection and Processing Rates -- Effective
January 1, 2014

ACTIONS REQUESTED

1. Conduct a public hearing and upon conclusion adopt a Resolution setting Integrated Waste Management (IWM) Fees, effective January 1, 2014.
2. Conduct a public hearing and upon conclusion adopt a Resolution setting maximum allowable East Bay Sanitary (EBS) garbage and green waste collection, disposal and processing rates, and stipulating a 15% EBS Franchise Fee, effective January 1, 2014.

BACKGROUND & ANALYSIS

Integrated Waste Management Fee

In 1990 the City of El Cerrito established IWM Fees to cover integrated waste management services. Services funded by IWM Fees include the City-run operations of the El Cerrito Recycling + Environmental Resource Center, curbside collection of recyclable materials, and other waste collection, reduction, recycling and environmental programs currently operated by the Department of Public Works, Operations + Environmental Services Division (OESD). IWM Fee revenues are collected by EBS as a component of the monthly charges for solid waste collection, processing and disposal services, via EBS's regular billing cycle. After collection, these revenues are transferred to the City of El Cerrito's IWM Fund.

Over the past seven years, the City Council has considered and adopted annual increases to the IWM Fees. As part of the Fiscal Year 2013-14 (FY14) Operating Budget the City Council approved a 10-year Financial Plan (Plan) for the IWM Fund that included increasing IWM Fee revenue from \$1,679,318 in 2013 to \$1,805,266 in calendar year 2014. Though the IWM Fund will incur greater than budgeted expenses in the amount of \$75,400 for fleet maintenance services as authorized by the Council on October 15, 2013 (Resolution 2013-57), staff is currently projecting that these expenses will be offset by a combination of additional revenues and some decreased expenses. Proceeding to increase IWM Fee revenues as proposed in the FY14 Operating budget

would result in a 7.5% increase in IWM Fee revenue, effective January 1, 2014. The proposed 2014 IWM Fees rates are included in Attachment 1.

East Bay Sanitary Garbage and Green Waste Collection Rates

In contrast to IWM Fees (which the City sets and EBS collects), EBS sets and charges the rates for garbage and green waste collection based upon maximum rates authorized by the City, pursuant to City of El Cerrito Municipal Code Chapter 8.12. EBS rates have been adjusted annually for many years. Most recently, EBS rates were increased effective January 1, 2011 and 2013; there was no adjustment in 2012.

In late 2012, the City and EBS completed a Rate and Operations Review that culminated in Council's adoption of a Fifth Amendment to the Franchise Agreement (Resolution 2012-86, November 20, 2012). The Amendment provided for lower rates, greater services, and an extension of the Franchise Agreement through December 31, 2025. The Review process resulted in the development of an annual adjustment to EBS's annual revenues via a Refuse Rate Index (RRI). The RRI stipulates EBS expenses that can be funded via the rates, the sum of which total to a 2014 Revenue Requirement (for collection operations) of \$3,979,331. This figure is 3.71% over the 2013 Revenue Requirement, including an indexed adjustment of 2.55% plus a 1.16% adjustment due to under-collection of rate revenues in 2013, due to persistent *migration* towards smaller garbage container sizes¹.

Proposal to Increase the EBS Franchise Fee from 12% to 15%

In addition to the scheduled RRI calculated rate adjustment, staff is proposing that East Bay Sanitary's Franchise Fee be increased from 12% to 15% of applicable rate revenues. Adjusting the Franchise Fee to this level would result in approximately \$127,000 in additional General Fund revenues in FY14 (from a projected \$607,000 in 2013 to \$734,000 in 2014). Approving the 15% Franchise Fee would increase EBS's 2014 Revenue Requirement by \$127,000, to a total of \$4,106,331.

This increase to the Franchise Fee is being proposed because there is a projected deficit in the NPDES (National Pollution Discharge Elimination System) Fund, which pays for the City's compliance activities per the Municipal Regional Stormwater Permit (MRP). MRP related activities, which are the regional implementation of the federal Clean Water Act, include trash and litter collection activities such as street sweeping and other trash mitigation efforts, totaling \$125,000 to \$150,000 in expenses annually. The actual FY14 starting balances were lower than budgeted for various Special Funds used for operations by Public Works and the FY14 revenues are also projected to be lower than budgeted. For the NPDES Fund in particular, this has resulted in a projected deficit of approximately \$139,000 in FY14; as such, additional revenue sources need to be identified in order to continue to provide these services.

¹ Per the RRI, any under (or over) collection of rate revenues will increase (or offset) the next year's rate revenue requirement via the Balancing Account established by the Fifth Amendment. In 2013, EBS is projecting under-collection of rate revenues in the range of at least \$35,000, and staff is proposing that the projected under-collection be added to the Balancing Account and recovered via the 2014 rate year.

Agenda Item No. 6(A)

NPDES Fund revenues are not sufficient to meet MRP provisions primarily because of the significant expenses associated with requirements to reduce the amount of litter and trash in the City's municipal storm drain system. A 2012 mail ballot effort initiated by the Contra Costa Clean Water Program (of which the City is a member) to raise Storm Water Utility Assessment revenues that would have covered deficits like this for all Contra Costa districts did not pass on a County-wide level. Though the funding measure failed across the County, it would have passed with a 2/3 *majority* had the measure been specific to El Cerrito. Staff is currently exploring the feasibility of a future Clean Water measure in El Cerrito that would create sufficient funding for compliance with current and future MRP provisions. If such a measure were successful, the EBS Franchise Fee could be reduced back to prior levels or remain to offset other General Fund activities. Until that time, staff proposes that the additional \$127,000 in EBS Franchise Fee revenue be budgeted to cover street sweeping collection and disposal expenses in the NPDES Fund, effective January 1, 2014² (staff is exploring other ways of addressing the remaining \$12,000 deficit in the NPDES Fund in FY14).

The proposed 2014 EBS Collection Rates have been calculated to meet the \$4,106,331 Revenue Requirement (adjusted to account for the 3% increase to the Franchise Fee) at current subscription levels for each garbage container size. These rates are detailed in Attachment 1.

East Bay Sanitary Post-Collection Rates: Processing and Disposal

Prior to 2014, processing and disposal rates – which fund solid waste transfer, transport, processing, disposal, household hazardous waste, and other post-collection services – were set by the West County Integrated Waste Management Authority (RecycleMore). RecycleMore has historically set these rates for El Cerrito because the City is party to the Integrated Resource Recovery Facility Agreement (IRRF Agreement), which is administered by RecycleMore. To cover the costs of processing and disposal services in the IRRF Agreement, the RecycleMore Board of Directors annually set IRRF Rates that EBS would charge on solid waste collection bills.

As previously reported to the Council, the IRRF Agreement is set to expire on December 31, 2013. On September 17, 2013, the City Council approved the Post-Collection Agreement between the City and Republic Services for processing and disposal services (Resolution 2013-54). The nature of the new Agreement removes the need for the RecycleMore Board of Directors to set an IRRF Rate for El Cerrito. As such, staff is proposing that the El Cerrito City Council set Post-Collection Rates to cover the costs of processing and disposal of El Cerrito's applicable waste streams. These rates will be charged by EBS to cover for the costs of all post-collection services,

² Staff explored two other options for funding and performing these street sweeping collection and disposal expenses. The other options would have established these efforts as functions of EBS's or the City's solid waste collection operations. Though the parallels between these solid waste operations and the MRP's trash mitigation efforts are apparent, staff ultimately ruled out these options due to concerns about liability and risk.

and will otherwise be functionally identical to the previous IRRF Rates. The proposed 2014 Post-Collection Rates are detailed in Attachment 1.

Total Revenue Requirement: 2013 vs. 2014

In reports to the Council in September and October 2013, staff stated that 2014 solid waste rates were projected to be between 0% and 1% higher than the 2013 solid waste rates. This statement was accurate in that the total rate revenue to be collected from El Cerrito solid waste subscribers (at the proposed 2014 rates, before taking into account the proposed increase to the Franchise Fee) is projected to be \$16,000 *less* than was collected in 2013. When taking into account the proposed increase in the Franchise Fee, total 2014 solid waste revenues will be \$111,000 over 2013 revenues, a 1.6% increase overall.

As such, though ratepayers on-the-whole will pay 1.6% more in solid waste rates in 2014, individual subscription rates are proposed to increase to varying degrees due to the effects of migration. As reported to the Council a number of times in recent years, migration – which refers to the ongoing trend for solid waste subscribers to utilize smaller and smaller garbage containers, and thus pay lower rates – has an adverse impact on EBS's (and the City's) ability to collect the revenues necessary to meet the costs of running solid waste collection operations. It is important to note that migration trends have continued in 2013, including substantial container size decreases in the commercial sector due to successful efforts to increase commercial participation in recycling and composting programs.

STRATEGIC PLAN CONSIDERATIONS

Adoption of the IWM Fees, EBS Collection Rates, and Post-Collection Rates would help fulfill the following goals and strategies as detailed in the City of El Cerrito Strategic Plan (adopted March 2013):

- Goal B | *Achieve long-term financial sustainability - Continue to pursue opportunities for new funding.* The proposed increase to the Franchise Fee generates additional General Fund revenues to fund necessary City programs.
- Goal F | *Implement the City's Climate Action Plan, including reducing the amount of waste generated in El Cerrito.* The proposed rates and fees will support continued reductions in the amount of El Cerrito waste sent to landfills.

ENVIRONMENTAL CONSIDERATIONS

The services being funded by the proposed 2014 IWM Fees, EBS Collection Rates and Post-Collection Rates will enable El Cerrito to continue to reduce its environmental impact via further decreases in the number of tons of solid waste sent to the landfill. Specifically, the proposed rates and fees will enable the OESD and EBS to continue expanding and improving the range of commercial diversion services offered via curbside collection and at the Recycling + Environmental Resource Center – including paint and other household hazardous waste (HHW) materials in FY14.

FINANCIAL CONSIDERATIONS

The proposed IWM Fees and EBS Collection and Post-Collection Rates are included in Attachment 1 (2014 Garbage, Green Waste, and Recycling Rates) and, respectively, in Attachments 2 and 3 (Resolutions). Adoption of the proposed combined IWM Fees and EBS Rates, will result in total monthly cost increases of \$0.30 for 20 gallon customers (36% of cart subscriptions), \$0.40 for 35 gallon customers (59% of cart subscriptions), and \$0.80 for 64 gallon customers (5% of cart subscriptions). Bulk commercial collection costs will increase \$25.45 for one cubic yard and \$50.09 for two cubic yards per month for once weekly pickup of garbage (including recycling fees). Collection of commercial green waste (and collection of residential green waste over the 64 gallons per week included in the base residential rates) will increase by \$2.50 per month for once weekly pickup (94 subscriptions total).

The primary reason for the proportionately larger increase to commercial rates – as compared to residential rates – is that commercial subscriptions migrated further towards reduced container sizes than was anticipated this year. This is largely attributable to concerted outreach efforts initiated by EBS and OESD that resulted in significant increases in recycling and composting participation in the business sector; these efforts contribute to commercial sector and City compliance with the requirements of AB341 (Commercial Recycling). Though commercial subscribers will pay a proportionately larger increase in total solid waste costs in 2014 (as a result of the proposed fees and rates) they also continue to have the greatest potential for diversion and migration towards smaller container sizes. Adopting the rates as proposed both supports the recovery of rate revenue from the appropriate waste sectors³, but also provides incentives to reduce waste generation while also mitigating the effects of continued migration (due to higher rates).

As noted elsewhere in this staff report, the proposed 2014 EBS Collection Rates include an increase in the EBS Franchise Fee from 12% to 15% of applicable revenues. Approval of this increase in the Franchise Fee will generate approximately \$127,000 in additional General Fund Revenues annually, and is intended to cover the costs of street sweeping collection and disposal.

LEGAL CONSIDERATIONS

The City Attorney has reviewed proposed actions and found that legal considerations have been addressed. Notices of public hearing were publicly posted per Ordinance 84-5 and Resolution 84-29 on November 9, 2013 and were published in the November 9, 2013 and November 14, 2013 editions of the West County Times.

³ The proposed 2014 EBS rates ensure that the commercial sector pays its fair share of post-collection costs, based on overall tonnage and the post-collection disposal fees. Additionally, on a gallon per gallon basis, commercial subscribers pay slightly less than residential subscribers.

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. 2014 Garbage, Green Waste, and Recycling Rates
2. Resolution 2013-XX (IWM Recycling fees)
3. Resolution 2013-YY (EBS Collection and Post-Collection rates)

The City of El Cerrito



2014 Solid Waste Collection, Processing and Disposal Rates

Residential Rates | Single Family Homes and Multi-family Dwellings up to 4 units

Residential Solid Waste Services include weekly collection of recycling (grey), green waste (green), garbage (blue); limited free on-call collection of larger quantities from your home; free access to the regional Household Hazardous Waste (HHW) Facility, and free access to most services at the El Cerrito Recycling + Environmental Resource Center. Additional recycling carts are available at no extra cost.

Weekly Collection of Recycling, Green Waste, and Garbage						
<i>Monthly Cost based on garbage container size</i>						
Container Size	EBS Rate	Disposal	IWM Fee	2014 Total Monthly Cost	2013 Total Monthly Cost	\$ Change in Monthly Cost
20 Gallon "Mini-can"	\$ 17.88	\$ 3.56	\$ 8.85	\$ 30.29	\$ 29.99	\$ 0.30
35 Gallon Cart	24.12	6.27	10.00	40.39	39.99	\$ 0.40
64 Gallon Cart	48.55	12.62	19.62	80.79	79.99	\$ 0.80
Weekly Collection of Additional Green Waste Containers (one 64 gallon container serviced weekly included in above rates)						
<i>Monthly Cost based on size of additional green waste container(s)</i>						
Container Size	EBS Rate	Disposal	IWM Fee	2014 Total Monthly Cost	2013 Total Monthly Cost	\$ Change in Monthly Cost
35 Gallon Cart	\$ 26.53	Included	\$ -	\$ 26.53	\$ 25.22	\$ 1.31
64 Gallon Cart	51.30	Included	-	51.30	48.80	2.50

Integrated Waste Management (IWM) Fee: The IWM Fee covers curbside recycling collection for El Cerrito residents and businesses and supports the daily operations of the El Cerrito Recycling Center. The Fee is set and assessed on each trash container collected by East Bay Sanitary Company, based on trash container size.

The City of El Cerrito

2014 Solid Waste Collection, Processing and Disposal Rates



Commercial Rates | Businesses and Multi-family Dwellings over 4 units

Commercial Solid Waste Services include collection of recycling (grey), green waste (green), garbage (blue) and most services at the El Cerrito Recycling + Environmental Resource Center. Additional recycling carts are available at no extra cost.

Once Weekly Collection of Garbage						
<i>Monthly Cost based on garbage container size</i>						
Container Size	EBS Rate	Disposal Rate	IWM Fee	2014 Total Monthly Cost	2013 Total Monthly Cost	\$ Change in Monthly Cost
20 Gallon "Mini-can"	\$ 17.88	\$ 3.56	\$ 8.85	\$ 30.29	\$ 29.99	\$ 0.30
35 Gallon Cart	24.12	6.27	10.00	40.39	39.99	0.40
64 Gallon Cart	48.55	12.62	19.62	80.79	79.99	0.80
One Cubic Yard	164.02	32.28	70.42	266.72	241.27	25.45
Two Cubic Yards	312.36	64.56	140.84	517.76	467.67	50.09
Multiple Weekly Collections of Garbage						
<i>Monthly Cost based on garbage container size and number of pickups per week</i>						
Container Size	Pickups per week					
	1	2	3	4	5	6
20 Gallon "Mini-can"	\$ 30.29	\$ 60.58	\$ 90.87	\$ 121.16	\$ 151.45	\$ 181.74
35 Gallon Cart	40.39	80.78	121.17	161.56	201.95	242.34
64 Gallon Cart	80.79	161.58	242.37	323.16	403.95	484.74
One Cubic Yard	266.72	502.41	738.10	973.79	1,209.48	1,445.17
Two Cubic Yards	517.76	989.14	1,460.52	1,931.90	2,403.28	2,874.66
Green Waste Collection						
<i>Monthly Cost based on green waste container size and number of pickups per week</i>						
Container Size	Pickups per week					
	1	2	3	4	5	
35 Gallon Cart	26.53	53.06	79.59	106.12	132.65	
64 Gallon Cart	51.30	102.60	153.90	205.20	256.50	
On-Call Bulk Collection (Debris Boxes and Compactors)						
<i>Rates listed are per pickup, and are not inclusive of all charges for these services. Please call East Bay Sanitary for complete rates and fees at 510-237-4321.</i>						
Container Type	EBS Rate	Disposal Rate	IWM Fee	Total		
Compacted Rates (per yard)	66.04	14.90	16.25	97.19		
Roll-off (Debris Box)	Market Rate (per load)	\$167.75 (per ton)	\$75.00 (per load)	Varies - Call East Bay Sanitary at 510-327-4321 for price quote.		

Integrated Waste Management (IWM) Fee: The IWM Fee covers curbside recycling collection for El Cerrito residents and businesses and supports the daily operations of the El Cerrito Recycling Center. The Fee is set and assessed on each trash container collected by East Bay Sanitary Company, based on trash container size.

RESOLUTION 2013–XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO FIXING AND SETTING THE INTEGRATED WASTE MANAGEMENT FEES EFFECTIVE JANUARY 1, 2014

WHEREAS, the City of El Cerrito has established Integrated Waste Management Fees (IWM Fees) for Integrated Waste Management Services provided by the Department of Public Works Operations + Environmental Services Division (OESD), including operation of the El Cerrito Recycling + Environmental Center, curbside collection of recyclable materials, and other waste collection, reduction, recycling and environmental programs; and

WHEREAS, the City Council of the City of El Cerrito sets and charges the IWM Fees, and the Fees are collected by East Bay Sanitary Company as part of the garbage bills and transferred in whole to the City of El Cerrito's Integrated Waste Management fund; and

WHEREAS, the City has reviewed and considered financial information as a part of the regular budget process to determine whether increases to IWM Fee revenues are warranted and justified, and has also reviewed the Integrated Waste Management fund 10-year Financial Plan; and

WHEREAS, the City Council intends to adopt IWM Fees to be effective January 1, 2014, thus keeping the OESD's Integrated Waste Management functions as an on-going concern; and

WHEREAS, the City Council finds that setting IWM Fees is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3). Additionally, setting IWM fees provides a government funding mechanism (CEQA Guidelines section 15378(b)(4) and is categorically exempt from CEQA under CEQA Guidelines section 15308 (Protection of the Environment).

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of El Cerrito that the monthly rates for the IWM Fee shall be as follows, effective January 1, 2014:

Garbage Container Size	IWM Fee
20 Gallon Cart	\$8.85
35 Gallon Cart	10.00
64 Gallon Cart	19.62
One Cubic Yard	70.42
Two Cubic Yards	140.84
35 Gallon Green Waste	0.00
64 Gallon Green Waste	0.00
Compacted (per yard)	16.25

Agenda Item No. 6(A)
Attachment 2

Roll-off (per load)	75.00
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BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 19, 2013, the 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 November XX, 2013.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

RESOLUTION 2013 – XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ESTABLISHING MAXIMUM ALLOWABLE RATES FOR THE COLLECTION OF GARBAGE AND GREEN WASTE EFFECTIVE JANUARY 1, 2014 AND SETTING THE CITY’S FRANCHISE FEE AT A RATE OF 15%

WHEREAS, the City of El Cerrito and East Bay Sanitary Company (the “Company”) have entered into that certain Franchise Agreement dated September 2, 1997 (as amended, the “Franchise Agreement”); and

WHEREAS, the Company has submitted a request for rate increases to be effective January 1, 2014, and that such increases were calculated pursuant to the methodology established in the Fifth Amendment to the Franchise Agreement, dated December 14, 2012; and

WHEREAS, the rate adjustments submitted to the City have been reviewed for accuracy, consistency with the adjustment methodology, and reasonableness by the City’s Operations and Environmental Services Manager and R3 Consulting Group, Inc.; and

WHEREAS, the City and the Company agree that the City’s Franchise Fee shall be 15% of the gross revenue derived by the Company from the collection and disposal of garbage and green waste collected within the City, in order to generate revenues to cover the costs of street sweeping collection and disposal in the City.

WHEREAS, the City Council finds that setting IWM Fees is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3). Additionally, setting IWM fees provides a government funding mechanism (CEQA Guidelines section 15378(b)(4) and is categorically exempt from CEQA under CEQA Guidelines section 15308 (Protection of the Environment).

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that the maximum rates that East Bay Sanitary Company may charge, effective January 1, 2014, are as follows:

Garbage Container Size	EBS Collection Rate (\$)	Post-Collection Rate (\$)
20 Gallon Cart	17.88	3.56
35 Gallon Cart	24.12	6.27
64 Gallon Cart	48.55	12.62
One Cubic Yard	164.02	32.28
Two Cubic Yards	312.36	64.56
35 Gallon Green Waste	26.53	0

Agenda Item No. 6(A)**Attachment 3**

64 Gallon Green Waste	51.30	0
Compacted Rates (per yard)	66.04	14.90
Roll-off (per ton)	NA – Market Rate	167.75

BE IT FURTHER RESOLVED, that the City's Franchise Fee shall be 15% of the gross revenue derived by the Company from the collection and disposal of garbage and green waste collected within the City, in order to generate revenues to cover the costs of street sweeping collection and disposal in the City.

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

I CERTIFY that at a regular meeting on November 19, 2013, the City Council passed this resolution by the following vote:

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

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

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

ORDINANCE NO. 2013-05

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING TITLE 16 OF THE EL CERRITO MUNICIPAL CODE TO ADOPT, WITH MODIFICATIONS TO ADDRESS UNIQUE LOCAL CONDITIONS, THE 2013 EDITION OF THE CALIFORNIA GREEN BUILDING CODE, THE 2013 EDITION OF THE CALIFORNIA BUILDING CODE (BASED ON THE 2012 INTERNATIONAL BUILDING CODE), VOLUMES 1 AND 2, INCLUDING SEVERAL APPENDICES THERETO, THE 2013 CALIFORNIA FIRE CODE (BASED ON THE 2012 INTERNATIONAL FIRE CODE), INCLUDING ALL APPENDICES THERETO, THE 2013 EDITION OF THE CALIFORNIA ADMINISTRATIVE CODE, THE 2013 EDITION OF THE CALIFORNIA RESIDENTIAL CODE (BASED ON THE 2012 INTERNATIONAL RESIDENTIAL CODE) WITH SOME APPENDICES, THE 2013 CALIFORNIA PLUMBING CODE (BASED ON THE 2012 UNIFORM PLUMBING CODE), THE 2013 CALIFORNIA MECHANICAL CODE (BASED ON THE 2012 UNIFORM MECHANICAL CODE), AND THE 2013 CALIFORNIA ELECTRICAL CODE (BASED ON THE 2011 NATIONAL ELECTRICAL CODE).

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

DIVISION I. That certain documents, copies of which are on file and are open for inspection by the public in the office of the Building Official of the City of El Cerrito, being marked and designated as the California Building Standards Code, 2013 Edition, comprising Title 24, Parts 1, 2 (Vol. 1 and 2), 2.5, 3, 4, 5, 6, 9, 11, and 12 California Code of Regulations, together with all appendices thereto and the California Housing Law Regulations, are hereby adopted, with certain modifications to reflect unique local conditions, as contained in the Municipal Code of the City of El Cerrito for regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings or structures in the City of El Cerrito. Each and all of the regulations, provisions, conditions, and terms of such California Building Standards Code, California Housing Law Regulations, , all of which are on file in the office of the Building Official are hereby referred to, adopted and made a part hereof as if fully set out in this ordinance. The application and use of the Appendices in the California Building Standards Codes and California Fire Code are adopted individually and are subject to approval of the Building Official and Fire Chief respectively.

The City Council of the City of El Cerrito further ordains as follows:

DIVISION II. TITLE 16, CHAPTER 16.02., ORDINANCE NO. XXXX-XX, (CALIFORNIA BUILDING CODE) OF THE EL CERRITO MUNICIPAL CODE IS HEREBY REPEALED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING CHAPTER 16.02, TITLED “CALIFORNIA BUILDING CODE”:

Chapter 16.02

CALIFORNIA BUILDING CODE

Sections:

16.02.010	California Building Code - Adoption
16.02.020	Chapter 1 Subsection 105.2 (4) Amended - Exempted Work
16.02.030	Chapter 1 Section 107.6 Added - Garage, Carport and Driveway Grades
16.02.040	Chapter 1 Subsection 107.3 Amended - Examination of Documents
16.02.050	Chapter 1 Section 114.1.1 Added - Littering of Streets
16.02.060	Chapter 1 Section 117 Added - General Regulation of Construction
16.02.070	Chapter 5 Section 501.2 Amended - Premises Identification Numbering
16.02.080	Chapter 9 Subsection 903.2 Amended - Automatic Fire Extinguishing Systems
16.02.090	Chapter 9 Subsection 904.3.5 Amended - Sprinkler System Supervision Alarm
16.02.100	Chapter 9 Subsection 905.3.1 Amended - Standpipe Requirements
16.02.110	Chapter 17 Subsection 1705.3 Amended - Special Inspection
16.02.120	Chapter 19 Subsection 1905.1.8 Added - Structural Forces
16.02.130	Chapter 23 Subsections 2308.9.3 and Table 2308.12.4 Amended - Wood
16.02.140	Chapter 23 Subsection 2304.11.2.6 Amended - Shingle or Shake Siding Materials
16.02.150	Chapter 25 Section 2505 Deleted - Gypsum Shear
16.02.160	Chapter 34 Subsection 3402.1 Amended - Substantial Structural Damage
16.02.170	Chapter 34 Chapter 3405 Adoption - Repair and Reconstruction Ordinance
16.02.180	Chapter 34 Section 3405 Added - Repairs including all subsections associated
16.02.190	Appendix 1, Section 110.7 Added - Storm Water Control
16.02.200	Appendix G Section G102.3 Added - Construction in Flood Hazard Areas

16.02.010 California Building Code - Adoption.

The Building Code for the City, sometimes referred to as “the CBC,” is the 2013 California Building Code, incorporating Volumes 1 and 2, (based on the International Building Code, 2012 Edition), including Appendix chapters D, F, G, H, and J, as approved by the California Building Standards Commission, and as published in Title 24, Part 2, Volumes 1 and 2, and Part 2.5 of the California Code of Regulations.

16.02.020 Chapter 1 Subsection 105.2 (4) and (6) Amended - Exempted Work

Subsection 105.2(4) of the CBC is amended to read:

4. Retaining walls which do not retain more than thirty (30) inches of earth when the earth retained is level and where there is no surcharge load, and retaining walls which do not retain more than two (2) feet of earth when the earth retained is sloping not greater than 2h:1v and there is no surcharge load. The above does not apply to retaining walls impounding Class I, II, or IIIA Liquids. See CBC Section 2304.11.7 for treatment of wood used for retaining walls.

16.02.030 Chapter 1 Section 107.6 Added -Garage, Carport & Driveway Grades

Section 107.6 is added to the CBC, to read as follows:

Section 107.6 Garage, Carport and Driveway Grade Requirements.

- (a) Garage and carport floors shall be concrete.
- (b) Any person to whom a building permit has been issued shall, where established, obtain official line and grade information as required in Section 13.20.150 of the City Code prior to the construction of foundations or footings for carports and garages.
- (c) When official line and grade has not been established, it shall be the responsibility of that person to provide such information as required by City Engineer to establish lines and grades.
- (d) Any person to whom a building permit has been issued shall construct the finish floor of carports and garages to an elevation which shall conform to the official driveway data as set forth on plan LL-1031 on file with the City Engineer.

16.02.040 Chapter 1 Subsection 107.3 Amended - Examination of Documents

Subsection 107.3 is added to the CBC, to read as follows:

Review by Fire Chief. Whenever application is made for a building permit, as required by the CBC, the Building Official shall withhold issuance of the building permit until notification from the Fire Chief that all plans required by the California Fire Code (chapter 16.26 of this title) have been reviewed and approved, and that the requirements specified in Section 16.26 have been met.

16.02.050 Chapter 1 Section 114.1.1 Added - Littering of Streets

Section 114.1.1 is added to the CBC, to read as follows:

Section 114.1.1 - Littering of Streets

It shall be unlawful for any person to excavate, dig or move dirt, rock, or other substances so as to allow fragments thereof from being thrown or dropped against or upon lots or buildings, or upon any public right-of-way. Any person dropping such material or tracking dirt, mud or rocks from private property upon any public right-of-way shall immediately cause the same to be removed. Transportation of dirt and rock requires a permit obtained pursuant to chapter 13.24 of the El Cerrito Municipal Code.

16.02.060 Chapter 1 Section 117 Added - General Regulation of Construction

Section 117 is added to the CBC, to read as follows:

Section 117 - General Regulation of Construction

- (a) Work may be prohibited during inclement weather upon the order of the City Building Official.
- (b) The hours of work shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 5:00 p.m. on Saturday. Work shall be prohibited on Sundays and Holidays.

Work hours in the public right-of-way shall be regulated by Public Works Department.

- (c) Work must be controlled to prevent causing a public nuisance such as dust, noise, vibrations, uncontrolled storm water runoff, and traffic congestion.

16.02..070 Chapter5 Section 501.2 Amended - Premises Identification Numbering

Section 501.2 of the CBC is amended to read as follows:

Section 501.2 - Premises Identification Numbering.

- a) The city shall keep on file a description of the method to be used in the assignment of street address identification numbers. This method shall be approved by Council resolution, and shall be available for inspection by any member of the public.
- b) Every main structure or building constructed, altered, repaired or moved into the city shall be assigned a street identification number by the Building Official.
- c) Numbers identifying the street address shall be placed on the street side of the building or structure in such manner as to be plainly visible from the street or public way. Identification numbers shall be a minimum of four (4) inches in height with minimum ½" stroke width for residential, and six (6) inches in height with minimum 1" stroke width for commercial buildings, and of a color to contrast with the surrounding color. Numbers shall be installed prior to final inspection and occupancy of the building or structure.
- d) The premises street address shall be internally or externally illuminated to the satisfaction of the Building Official.
- e) The owner shall be responsible for the maintenance of identification numbers.
- f) Any change of the assigned street identification number must be approved by the Building Official.

- g) Every owner or occupant of any building or structure not numbered in accordance with the provisions of this section shall, within ten (10) days after notice given by the City change the number of such building or structure to the number specified in the notice.

16.02.080 Subsections 903.2 Amended - Automatic Fire-Extinguishing Systems

Subsection 903.2 of the CBC is amended to add:

- a) In every building where the total floor area exceeds 5,000 square feet.
- b) In every building having three (3) or more stories.

16.02.090 Subsection 904.3.5 Amended - Sprinkler System Supervision Alarm

Section 904.3.5 of the CBC is amended by adding the words, “or when required by the Fire Chief.”

16.02.100 Subsection 905.3 Amended - Standpipe Requirements

Subsection 905.3 is amended by adding the following:

Standpipes shall be required in all buildings three (3) stories in height in addition to other requirements in this section, or when required by the Fire Chief.

16.02.110 Subsection 1705.3 Amended - Special Inspection

CBC Subsection 1704.4, Concrete Construction is amended to read as follows:

1704.4 Concrete Construction. The *special inspections* and verifications for concrete construction shall be as required by this section and TABLE 1704.4.

Exceptions: *Special inspections* shall not be required for:

1. Isolated spread concrete footings of buildings three stories or less above *grade plane* that are fully supported on earth or rock, where the structural design of the footing is based on a specified compressive strength, f’c, no greater than 2,500 pound per square inch (psi) (17.2 Mpa).

16.02.120 Subsection 1905.1.8 Added - Structural Forces

Section 1905.1.8. ACI 318 section 22.10.1 allows the use of plain concrete in residential structures assigned to seismic design category D, E or F.

Section 1905.1.8 ACI 318, section 22.10 Delete ACI 318, section 22.10, and replace with the following:

22.10 - Plain concrete in structures assigned to seismic design category C, D, E or F.

22.10.1- Structures assigned to Seismic Design Category C, D, E or F shall not have elements of structural plain concrete, except as follows:

- (a) Isolated footings of plain concrete supporting pedestals or columns are permitted, provided the projection of the footing beyond the face of the supported member does not exceed the footing thickness.

Exception: In detached one and two-family dwelling three stories or less in height, the projection of the footing beyond the face of the supported member is permitted to exceed the footing thickness.

- (b) Plain concrete footing supporting walls are permitted, provided the footings have at least two continuous longitudinal reinforcing bars. Bars shall not be smaller than No. 4 and shall have a total area of not less than 0.002 times the gross cross-sectional area of the footing. A minimum of one bar shall be provided at the top and bottom of the footing. Continuity of reinforcement shall be provided at corners and intersections.

Exception: In detached one and two-family dwellings three stores or less in height and constructed with stud bearing walls, plain concrete footings with at least two continuous longitudinal reinforcing bars not smaller than No. 4 are permitted to have a total area of less than 0.002 times the gross cross –sectional area of the footing.

16.02.130 Chapter 23 Amended - Wood

The following Sections 2308.9.3 and Table 2308.12.4 are amended and/or deleted to read as follows:

Section 2308.9.3 is deleted in its entirety, to be replaced with the following:

2308.9.3 Bracing

A. Braced wall lines shall consist of braced wall panels, which meet the requirements for location, type and amount of bracing as shown in Figure 2308.9.3, specified in Table 2308.9.3(1) and are in line or offset from each other by not more than 4 feet (1219 mm). Braced wall panels shall start not more than 12.5 feet (3810 mm) from each end of a braced wall line. Braced wall panels shall be clearly indicated on the plans. Construction of braced wall panels shall be by one of the following methods:

1. Wood boards of 5/8-inch (16 mm) net minimum thickness applied diagonally on studs spaced not over 24 inches (610 mm) on center.
2. Wood structural panel sheathing with a thickness not less than 3/8-inch (7.9 mm) for 16-inch (406 mm) stud spacing and not less than 3/8-inch (9.5 mm) for 24-inch (610 mm) stud spacing in accordance with Tables 2308.9.3(2) and 2308.9.3(3).

3. Fiberboard sheathing 4-foot by 8-foot (1219 mm by 2438 mm) panels not less than ½-inch (13 mm) thick applied vertically on studs spaced not over 16-inches (406 mm) on center when installed in accordance with Section 2306.6.6 and Table 2306.6
4. Particleboard wall sheathing panels where installed in accordance with 2308.9.3(4).
5. Hardboard panel siding when installed in accordance with Section 2303.1.6 and Table 2309.9.3(5).

For cripple wall bracing see Section 2308.9.4.

For methods 1, 2, 3, 4, and 5, each braced wall panel must be at least 48-inches (1219 mm) in length, covering three stud spaces where studs are 16-inches (406 mm) apart and covering two stud spaces where studs are spaced 24-inches (610 mm) apart.

B. All vertical joints of panel sheathing shall occur over studs. Horizontal joints shall occur over blocking equal in size to the studding except where waived by the installation requirements for the specific sheathing materials.

C. Braced wall panel sole plates shall be nailed to the floor framing and top plates shall be connected to the framing above in accordance with Table 2304.9.1. Sills shall be bolted to the foundation or slab in accordance with Section 1805.6. Where joists are perpendicular to braced wall lines above, blocking shall be provided under and in line with the braced wall panels.

Table 2308.12.4

In footnotes “b” and “c” of Table 2308.12.4, delete all references to “gypsum board”, “lath and plaster”, “Portland cement plaster”, and “gypsum sheathing boards”.

16.02.140 Subsection 2304.11.2.6 Amended - Shingle or Shake Siding Materials

Subsection 2304.11.2.6 of the CBC is amended to add the following sentence at the end thereof:

Siding Materials: Wood shingles or shakes shall be Class B or better which comply with ASTM E108 or UL 790, except that in very high fire hazard severity zones, no wood shake or shingle siding shall be permitted regardless of class designation. See section 8.30.030 of the El Cerrito Municipal Code for roofing standards in very high fire hazard severity zones.

16.02.150 Section 2505 Deleted - Gypsum Shear

Section 2505 of the CBC on the use of gypsum shear is deleted in its entirety.

16.02.160 Subsection 3402.1 Amended - Substantial Structural Damage

Subsection 3402.1 of the CBC is amended to add a definition to read as follows:

Substantial Structural Damage. A condition where:

1. In any story, the vertical elements of the lateral-force-resisting system, have suffered damage such that the lateral load-carrying capacity of the structure in any direction has been reduced by more than 20 percent from its pre-damaged condition, or
2. The capacity of any vertical gravity load-carrying component, or any group of such components, that supports more than 30 percent of the total area of the structure's floor(s) and roof(s) has been reduced more than 20 percent from its pre-damaged condition, and the remaining capacity of such affected elements with respect to all dead and live loads is less than 75 percent of that required by the building code for new buildings of similar structure, purpose, and location.

16.02.170 Chapter 3405 Adoption - Repair and Reconstruction Ordinance

Chapter 3405 establishes regulations as amendments to the building code for the expeditious repair of damaged structures.

16.02.180 Section 3405 Added - Repairs including all subsections associated

The following repair requirements are hereby added as a new Subsection 3405.2.1.1 to Section 3405 "Repairs" of the CBC to read as follows:

3405 Repairs. Repairs of structural elements shall comply with this section.

3405.2.1.1 Seismic evaluation and design. Seismic evaluation and design of an existing building and its components shall be based on the following criteria.

3405.2.1.2 Evaluation and design procedures. The seismic evaluation and design shall be based on the procedures specified in the building code, ASCE 31 *Seismic Evaluation of Existing Buildings* (for evaluation only) or ASCE 41 *Seismic Rehabilitation of Existing Buildings*. The procedures contained in Appendix A of the *International Existing Building Code* shall be permitted to be used as specified in Section 3405.2.1.4.

3405.2.1.3 CBC level seismic forces. When seismic forces are required to meet the building code level, they shall be one of the following:

1. 100 percent of the values in the building code. The R factor used for analysis in accordance with Chapter 16 of the building code shall be the R factor specified for structural systems classified as "Ordinary" unless it can be demonstrated that

the structural system satisfies the proportioning and detailing requirements for systems classified as “Intermediate” or “Special”.

2. Forces corresponding to BSE-1 and BSE-2 Earthquake Hazard Levels defined in ASCE 41. Where ASCE 41 is used, the corresponding performance levels shall be those shown in Table 3405.2.1.3.

TABLE 3405.2.1.3
ASCE 41 and ASCE 31 PERFORMANCE LEVELS

OCCUPANCY a CATEGORY (BASED ON IBC TABLE 1604.5)	PERFORMANCE LEVEL FOR USE WITH ASCE 31 AND WITH ASCE 41 BSE-1 EARTHQUAKE HAZARD LEVEL	PERFORMANCE LEVEL FOR USE WITH ASCE 41 BSE-2 EARTHQUAKE HAZARD LEVEL
P e r f o r I	Life Safety (LS)	Collapse Prevention (CP)
II	Life Safety (LS)	Collapse Prevention (CP)
III	Note (a)	Note (a)
IV	Immediate Occupancy (IO)	Life Safety (LS)

a. Performance levels for Occupancy Category III shall be taken as halfway between the performance levels specified for occupancy Category II and Occupancy Category IV.

3405.2.1.4 Reduced CBC level seismic forces. When seismic forces are permitted to meet reduced building code levels, they shall be one of the following:

1. 75 percent of the forces prescribed in the building code. The R factor used for analysis in accordance with Chapter 16 of the building code shall be the R factor as specified in Section 3405.2.1.3.

2. In accordance with the applicable chapters in Appendix A of the *International Existing Building Code* as specified in Items 2.1 through 2.5 below. Structures or portions of structures that comply with the requirements of the applicable chapter in Appendix A shall be deemed to comply with the requirements for reduced building code force levels.

2.1. The seismic evaluation and design of unreinforced masonry bearing wall buildings in Occupancy Category I or II are permitted to be based on the procedures specified in Appendix Chapter A1.

2.2. Seismic evaluation and design of the wall anchorage system in reinforced concrete and reinforced masonry wall buildings with flexible diaphragms in Occupancy Category I or II are permitted to be based on the procedures specified in Appendix Chapter A2.

2.3. Seismic evaluation and design of cripple walls and sill plate anchorage in residential buildings of light-frame wood construction in Occupancy Category I or II are permitted to be based on the procedures specified in Appendix Chapter A3.

2.4. Seismic evaluation and design of soft, weak, or open-front wall conditions in multiunit residential buildings of wood construction in Occupancy Category I or II are permitted to be based on the procedures specified in Appendix Chapter A4.

2.5. Seismic evaluation and design of concrete buildings and concrete with masonry infill buildings in all Occupancy Categories are permitted to be based on the procedures specified in Appendix Chapter A5.

3. In accordance with ASCE 31 based on the applicable performance level as shown in Table 3405.2.1.3.

4. Those associated with the BSE-1 Earthquake Hazard Level defined in ASCE 41 and the performance level as shown in Table 3405.2.1.3. Where ASCE 41 is used, the design spectral response acceleration parameters S_{xs} and S_{x1} shall not be taken less than 75 percent of the respective design spectral response acceleration parameters S_{DS} and S_{D1} defined by the *International Building Code* and its reference standards.

3405.2.1.5 Wind Design. Wind design of existing buildings shall be based on the procedures specified in the building code.

3405.2.1.6 Repairs to damaged buildings. Repairs to damaged buildings shall comply with this section.

3405.2.1.7 Unsafe conditions. Regardless of the extent of structural damage, unsafe conditions shall be eliminated.

16.02.190 Appendix Chapter 1, Section 110.7 Added - Storm Water Pollution Control Measures

Chapter 1 Section 110.7 is added to the CBC to read as follows:

Storm water pollution control measures shall be implemented during all construction phases of development to prevent pollution from entering waterways. Specific practices of the California Stormwater Quality Association (CASQA) Construction Best Management Practices Handbook shall be incorporated herein.

16.02.200 Appendix G Section G102.3 Added - Construction in Flood Hazard Areas

Section G102.3 is added to the CBC, to read as follows:

Section G102.3 - construction in Special Flood Hazard Area

Construction within special Flood Hazard Areas must comply with chapter 13.40 of the Municipal Code.

DIVISION III. TITLE 16, CHAPTER 16.03., ORDINANCE NO. XXXX-13, (CALIFORNIA RESIDENTIAL CODE) OF THE EL CERRITO MUNICIPAL CODE IS HEREBY REPEALED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING CHAPTER 16.03, TITLED “CALIFORNIA RESIDENTIAL CODE”:

Chapter 16.03

CALIFORNIA RESIDENTIAL CODE

Sections:

- 16.03.010 California Residential Code - Adoption
- 16.03.020 Chapter 1 Subsection R105.2 (3) Amended - Exempted Work
- 16.03.030 Chapter 1 Section R106.3 Added - Garage, Carport and Driveway Grades
- 16.03.040 Chapter 1 Subsection R106.3 Renumbered and Amended - Examination of Documents
- 16.03.050 Chapter 1 Section 103.6 Added - Littering of Streets
- 16.03.060 Chapter 1 Section 115 Added - General Regulation of Construction
- 16.03.070 Chapter 3 Section R319.1 Amended - Premises Identification Numbering
- 16.03.080 Chapter 3 Section R322.1 of the CRC Amended-Flood-Resistant Construction
- 16.03.090 Chapter 4 Section R404.1.4.2 of the CRC Amended – Seismic Reinforcing
- 16.03.100 Chapter 6 Section R602.10.2 and Table R602.10.3(3) of the CRC Amended – Seismic Reinforcing
- 16.03.110 Chapter 7 Subsection R703.5 Amended - Shingle or Shake Siding Materials

16.03.010 California Residential Code - Adoption.

The Residential Code for the City, sometimes referred to as “the CRC,” is the 2013 California Residential Code, (based on the International Building Code, 2012 Edition), including Appendix chapters G and H, as approved by the California Building Standards Commission, and as published in Title 24, Part 2.5 of the California Code of Regulations.

16.03.020 Chapter 1 Subsection 105.2 (3) Amended - Exempted Work

Subsection 105.2(3) of the CRC is amended to read:

3. Retaining walls which do not retain more than thirty (30) inches of earth when the earth retained is level and where there is no surcharge load, and retaining walls which do not retain more than two (2) feet of earth when the earth retained is sloping not greater than 2h:1v and there

is no surcharge load. The above does not apply to retaining walls impounding Class I, II, or IIIA Liquids. See CBC Section 2304.11.7 for treatment of wood used for retaining walls.

16.03.030 Chapter 1 Section 106.3 Added -Garage, Carport & Driveway Grades

Section 107.6 is added to the CBC, to read as follows:

Section 107.6 Garage, Carport and Driveway Grade Requirements.

- (a) Garage and carport floors shall be concrete.
- (b) Any person to whom a building permit has been issued shall, where established, obtain official line and grade information as required in Section 13.20.150 of the City Code prior to the construction of foundations or footings for carports and garages.
- (c) When official line and grade has not been established, it shall be the responsibility of that person to provide such information as required by City Engineer to establish lines and grades.
- (d) Any person to whom a building permit has been issued shall construct the finish floor of carports and garages to an elevation which shall conform to the official driveway data as set forth on plan LL-1031 on file with the City Engineer.

16.03.040 Chapter 1 Subsection R106.3 Renumbered and Amended - Examination of Documents

Subsection R106.3 is renumbered as R106.4 amended by adding a second paragraph to the CRC, to read as follows:

Review by Fire Chief. Whenever application is made for a building permit, as required by the CRC, the Building Official shall withhold issuance of the building permit until notification from the Fire Chief that all plans required by the California Fire Code (chapter 16.26 of this title) have been reviewed and approved, and that the requirements specified in Section 16.26 have been met.

16.03.050 Chapter 1 Section R113.6 Added - Littering of Streets

Section R113.6 is added to the CRC, to read as follows:

Section R113.6 - Littering of Streets

It shall be unlawful for any person to excavate, dig or move dirt, rock, or other substances so as to allow fragments thereof from being thrown or dropped against or upon lots or buildings, or upon any public right-of-way. Any person dropping such material or tracking dirt, mud or rocks from private property upon any public right-of-way shall immediately cause the same to be

removed. Transportation of dirt and rock requires a permit obtained pursuant to chapter 13.24 of the El Cerrito Municipal Code.

16.03.060 Chapter 1 Section R115 Added - General Regulation of Construction

Section R115 is added to the CBC, to read as follows:

Section R115 - General Regulation of Construction

- (a) Work may be prohibited during inclement weather upon the order of the City Building Official.
- (b) The hours of work shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 5:00 p.m. on Saturday. Work shall be prohibited on Sundays and Holidays.

Work hours in the public right-of-way shall be regulated by Public Works Department.

- (c) Work must be controlled to prevent causing a public nuisance such as dust, noise, vibrations, uncontrolled storm water runoff, and traffic congestion.

16.03.070 Section R319.1 Amended - Premises Identification Numbering

Section R319.1 of the CRC is amended to read as follows:

Section R319.1 - Premises Identification Numbering.

- h) The city shall keep on file a description of the method to be used in the assignment of street address identification numbers. This method shall be approved by Council resolution, and shall be available for inspection by any member of the public.
- i) Every main structure or building constructed, altered, repaired or moved into the city shall be assigned a street identification number by the Building Official.
- j) Numbers identifying the street address shall be placed on the street side of the building or structure in such manner as to be plainly visible from the street or public way. Identification numbers shall be a minimum of four (4) inches in height with minimum ½" stroke width for residential, and six (6) inches in height with minimum 1" stroke width for commercial buildings, and of a color to contrast with the surrounding color. Numbers shall be installed prior to final inspection and occupancy of the building or structure.
- k) The premises street address shall be internally or externally illuminated to the satisfaction of the Building Official.
- l) The owner shall be responsible for the maintenance of identification numbers.

- m) Any change of the assigned street identification number must be approved by the Building Official.
- n) Every owner or occupant of any building or structure not numbered in accordance with the provisions of this section shall, within ten (10) days after notice given by the City change the number of such building or structure to the number specified in the notice.

16.03.080 Section R322.1 of the CRC Amended-Flood-Resistant Construction

Section R322.1 of the CRC is amended by adding the following sentence:

Construction within special Flood Hazard Areas must comply with Chapter 13.40 of the Municipal Code.

16.03.090 Section R404.1.4.2 of the CRC Amended – Seismic Reinforcing

Section R404.1.4.2 of the CRC is amended to read as follows:

R404.1.4.2 Seismic reinforcing. Concrete footings located in Seismic Design Categories D0, D1 and D2, as established in Table R301.2(1), shall have minimum reinforcement of at least two continuous longitudinal reinforcing bars not smaller than No. 4 bars. Bottom reinforcement shall be located a minimum of 3 inches (76 mm) clear from the bottom of the footing.

In Seismic Design Categories D0, D1 and D2 where a construction joint is created between a concrete footing and a stem wall, a minimum of one No. 4 bar shall be installed at not more than 4 feet (1219 mm) on center. The vertical bar shall extend to 3 inches (76 mm) clear of the bottom of the footing, have a standard hook and extend a minimum of 14 inches (357 mm) into the stem wall.

In Seismic Design Categories D0, D1 and D2 where a grouted masonry stem wall is supported on a concrete footing and stem wall, a minimum of one No. 4 bar shall be installed at not more than 4 feet (1219 mm) on center. The vertical bar shall extend to 3 inches (76 mm) clear of the bottom of the footing and have a standard hook.

In Seismic Design Categories D0, D1 and D2 masonry stem walls without solid grout and vertical reinforcing are not permitted.

Exception: In detached one- and two-family *dwelling*s which are three stories or less in height and constructed with stud bearing walls, isolated plain concrete footings supporting columns or pedestals are permitted.

16.03.100 Section R602.10.2 and Table R602.10.3(3) of the CRC Amended – Seismic Reinforcing

Section R602.10.4.4 and Table R602.10.3(3) of the CRC are amended by adding a new footnote “e” to the end of CRC Table R602.10.3(3), to read:

e. In Seismic Design Categories D₀, D₁, and D₂, Method GB is not permitted and the use of Method PCP is limited to one-story single family dwellings and accessory structures.

16.03.110 Subsection R703.5 Amended - Shingle or Shake Siding Materials

Subsection R703.5 of the CRC is amended to add the following sentence:

Wood shingles or shakes shall be Class B or better which comply with ASTM E108 or UL 790, except that in very high fire hazard severity zones, no wood shake or shingle siding shall be permitted regardless of class designation. See section 8.30.030 of the El Cerrito Municipal Code for roofing standards in very high fire hazard severity zones.

DIVISION IV. TITLE 16, CHAPTER 16.04, ORDINANCE NO. XXX-XX, (CALIFORNIA PLUMBING CODE) OF THE EL CERRITO MUNICIPAL CODE IS HEREBY REPEALED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING CHAPTER 16.04, TITLED “CALIFORNIA PLUMBING CODE”:

Chapter 16.04

CALIFORNIA PLUMBING CODE

Sections:

16.04.010 California Plumbing Code - Adoption

The Plumbing Code for the City, sometimes referred to as “the CPC,” is the California Plumbing Code, 2013 Edition, (based on the Uniform Plumbing Code, 2012 Edition), as approved by the California Building Standards Commission, and as published in Title 24, Part 5, of the California Code of Regulations.

DIVISION V. TITLE 16, CHAPTER 16.06, ORDINANCE NO. XXX-XX, (CALIFORNIA MECHANICAL CODE) OF THE EL CERRITO MUNICIPAL CODE IS HEREBY REPEALED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING CHAPTER 16.06 TITLED “CALIFORNIA MECHANICAL CODE”:

Chapter 16.06

CALIFORNIA MECHANICAL CODE

Sections:

16.06.010 California Mechanical Code - Adoption.

The Mechanical Code for the City, sometimes referred to as “the CMC,” is the California Mechanical Code, 2013 Edition, (based on the Uniform Mechanical Code, 2012 Edition), as approved by the California Building Standards Commission, and as published in Title 24, Part 4, of the California Code of Regulations

DIVISION VI. TITLE 16, CHAPTER 16.08 (CALIFORNIA ELECTRICAL CODE) OF THE EL CERRITO MUNICIPAL CODE IS HEREBY REPEALED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING CHAPTER 16.08, TITLED “CALIFORNIA ELECTRICAL CODE”:

Chapter 16.08

CALIFORNIA ELECTRICAL CODE

Sections:

16.08.010 California Electrical Code - Adoption.

16.08.040 Article 230.70 (A) (1) Amended - Readily Accessible Location

16.08.010 California Electrical Code - Adoption

The Electrical Code for the City sometimes referred to as “the CEC,” is the California Electrical Code, 2013 Edition, (based on the National Electrical Code, 2011 Edition), as approved by the California Building Standards Commission, and as published in Title 24, Part 3, of the California Code of Regulations, except as amended and supplemented in the manner set forth in this chapter.

16.08.040 Article 230.70 (A) (1) Amended - Readily Accessible Location

Article 230.70 (A) (1) of the National Electric Code is amended to read as follows:

The service disconnecting means shall be installed at a readily accessible location outside of a building or structure near the point of entrance of the service conductors for single family dwellings. For other occupancies where direct access from the exterior does not occur, a remote

control (shunt trip) activating the disconnect shall be located on the exterior of the building in a location and manner acceptable to the Fire and Building Officials.

DIVISION VII. TITLE 16, CHAPTER 16.24., ORDINANCE NO. XXXX-XX, (CALIFORNIA GREEN BUILDING CODE) OF THE EL CERRITO MUNICIPAL CODE IS HEREBY REPEALED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING CHAPTER 16.24, TITLED “CALIFORNIA GREEN BUILDING CODE”:

Chapter 16.24

CALIFORNIA GREEN BUILDING CODE

Section:

16.24.010 California Green Building Code - Adoption.

The Green Building Code for the City is the California Green Building Standards Code, 2013 Edition, as approved by the California Building Standards Commission, and as published in Title 24, Part 11, of the California Code of Regulations.

DIVISION VIII. TITLE 16, CHAPTER 16.26 (CALIFORNIA FIRE CODE) OF THE EL CERRITO MUNICIPAL CODE IS HEREBY REPEALED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING CHAPTER 16.26, TITLED “CALIFORNIA FIRE CODE”:

Chapter 16.26

CALIFORNIA FIRE CODE

Section:

16.26.010 California Fire Code - Adoption.
16.26.020 Chapter 1 Section 1.1.1.2 Added - Title
16.26.030 Chapter 1 Section 1.1.8 Amended - Amendments to the Fire Code
16.26.040 Chapter 1 Section 1.11.1 Amended - Office of the State Fire Marshall
16.26.050 Chapter 1 Section 102.1 Amended - Applicability
16.26.060 Chapter 1 Section 102.9 Amended - Matters Not Provided For
16.26.070 Chapter 1 Section 104.1 Amended - General Authority and Responsibility
16.26.080 Chapter 1 Section 104.1.1A and 104.1.1B Added - General Authority Peace Officer Status
16.26.090 Chapter 1 Section 104.9 Amended - Alternative materials and methods
16.26.100 Chapter 1 Section 105.1.1 Amended - Required permits
16.26.110 Chapter 1 Section 105.6 Amended - Required operational permits
16.26.120 Chapter 1 Section 108 Amended - Board of Appeals

- 16.26.130 Chapter 2 Section 202 Amended – General Definitions
- 16.26.140 Chapter 2 Section 202 Amended - Definitions - F
- 16.26.150 Chapter 2 Section 202 Amended - Definitions - R
- 16.26.160 Chapter 3 Section 318 Added - General precautions against fire
- 16.26.170 Chapter 4 Section 401.5 Amended - Making false report
- 16.26.180 Chapter 5 Sections 503, 504, 505 and 507 Amended -Fire Service Features
- 16.26.190 Chapter 6 Section 603.6 Amended - Building Services and Systems
- 16.26.200 Chapter 9 Section 903.2 Amended – Automatic Fire Extinguishing Systems
- 16.26.210 Chapter 9 Section 903.2 Amended - Automatic Fire Sprinkler Systems
- 16.26.220 Chapter 9 Section 905.3.1 Amended - Standpipe Systems
- 16.26.230 Chapter 9 Section 907.2 Amended - Fire Alarm and Detection Systems
- 16.26.240 Chapter 9 Section 907.8.2 Amended - Record of completion
- 16.26.250 Chapter 10 Section 1008.1.10 Amended - Panic and fire exit hardware
- 16.26.260 Chapter 10 Section 1027.6 Amended - Exit and pathways
- 16.26.270 Chapter 27 Section 2701.1.2 Added - Hazardous Materials
- 16.26.280 Chapter 27 Section 2703.1.1 Amended - General Provisions
- 16.26.290 Chapter 30 Section 3001.1A Added - Compressed Gasses
- 16.26.300 Chapter 33 Section 3301.1.1A Added - Explosives and Fireworks
- 16.26.310 Chapter 34 Section 3404.2.13 Added - Flammable and Combustible Liquids –
Below Ground Tanks
- 16.26.320 Chapter 34 Section 3406 Amended - Flammable and Combustible Liquids -
Above Ground Tanks
- 16.26.330 Chapter 35 Section 3503A Added - Flammable Gases and Flammable Cryogenic
Fluids
- 16.26.340 Chapter 38 Section 3803.2.1.7 Amended - Liquefied Petroleum Gases - Inside
Buildings
- 16.26.350 Chapter 38 Section 3804.2A Added - Liquefied Petroleum Gases - Outside
Buildings

16.26.010 California Fire Code - Adoption.

It is hereby adopted by the city council of the city of El Cerrito for the purpose of prescribing regulations governing conditions hazardous to life and property from fire and explosion, that certain codes and standards known as the 2013 California Building Standards Code, Title 24, California Code of Regulations (CCR), Part 9 (California Fire Code), and by reference the 2012 International Fire Code published by the International Code Council, Inc. (ICC), (including Appendix Chapters A, B, C, D, E, F, G, I, and J) save and except such portions as are deleted, modified or amended by this chapter, of which not less than one copy each have been and are now filed in the office of the Fire Chief and the Building Official of the City of El Cerrito and the same is hereby adopted and incorporated as fully as if set out at length herein, and from the date on which this chapter shall take effect, the provisions thereof shall be controlling within the limits of the City of El Cerrito.

16.26.020 Chapter 1 Section 1.1.1.2 Added - Title

Section 1.1.1.2 Title is added as follows:

Section 1.1.1.2 These regulations shall be known as the Fire Code of the City of El Cerrito,

hereinafter referred to as "this code." The California Fire Code and the International Fire Code adopted by reference in Section 1, amendments thereto, additions, and deletions as set forth in this Section shall become effective as set forth in Section 1.1.8 Division and Appendix numbers used are those of the California Fire Code.

16.26.030 Chapter 1 Section 1.1.8 Amended - Amendments to the Fire Code

Section 1.1.8 is amended by adding the following:

The limits referred to in Section 1.1.8.1 of the California Fire Code and International Fire Code adopted by reference in Section 1, amendments thereto, additions, and deletions and appendices as set forth in this section shall become effective as set forth in Section 1.1.9 Article, Section, Division, and Appendix numbers used are those of the California Fire Code.

16.26.040 Chapter 1 Section 1.11.1 Amended - Office of the State Fire Marshall

Section 1.11.1 is amended by adding 1.11.1 A, B and C

A. The California Fire Code as adopted and amended herein shall be enforced by the city fire prevention division which is hereby established and which shall be operated under the supervision of the fire marshal.

B. The fire marshal in charge of the fire prevention division shall be appointed by the fire chief of the city of El Cerrito on the basis of examination to determine his or her qualifications for the position.

C. The chief of the fire department shall recommend to the city council the employment of technical staff members, who, when such authorization is made, shall be selected on the basis of examination to determine their qualifications for the position.

16.26.050 Chapter 1 Section 102.1 Amended - Applicability

Section 102.1 is amended by adding Section 102.1.1

Section 102.1.1 Buildings in existence at the time of the adoption of this code may have their existing use or occupancy continued, if such use or occupancy was legal at the time of the adoption of this code, provided such continued use is not dangerous to life.

Section 102.2 is amended by adding section 102.2.1

Section 102.2.1 Plans for compliance. Upon written notice to the responsible property owner, plans for compliance shall be submitted and approved, and within 18 months or earlier depending on the life-safety significance of the hazard work shall be completed or the building shall be vacated until made to conform.

16.26.060 Chapter 1 Section 102.9 Amended - Matters Not Provided For

Section 102.9 is amended by adding subsection 102.9.1A

102.9.1A Unless otherwise limited by law, the applicable provisions of this code shall apply to vehicles, ships, boats, and mobile vehicles and other facilities when fixed in a specific location within the boundaries of this jurisdiction.

16.26.070 Chapter 1 Section 104.1 Amended - General Authority and Responsibility

Section 104.1 is amended by adding the following:

The Fire Chief or the Fire Code Official is authorized to render interpretations of this code and to make and enforce rules and supplemental regulations in order to carry out the application of its provisions. The Chief may be guided by the 2013 Supplement to the Uniform Fire Code. Such interpretations, rules and regulations, and supplements shall be in conformance with the intent and purpose of this code and shall be available to the public during normal business hours.

16.26.080 Chapter 1 Section 104.1.1A and 104.1.1B Added - General Authority Peace Officer Status

Section 104.1.1A and 104.1.1B are added in their entirety to read as follows:

Section 104.1.1A The Fire Chief and his designated representatives shall have the powers of peace officers while engaged in the performance of their duties with respect to the prevention, investigation, and suppression of fires and the protection and preservation of life and property against the hazards of fire and conflagration.

Section 104.1.1B The Chief, or his duly authorized agents, may issue citations for violations of this ordinance in accordance with Chapter 5C (commencing with Section 853.5), Title 4, Part 2, of the Penal Code.

16.26.090 Chapter 1 Section 104.9 Amended - Alternative materials and methods

Section 104.9 is amended by adding 104.9.3

Section 104.9.3 - The city council, the fire chief and the fire marshal shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies for which permits are required in addition to those now enumerated in the California Fire Code. The fire marshal shall post such list in a conspicuous place at the offices of the fire prevention division and distribute copies thereof to interested persons.

16.26.100 Chapter 1 Section 105.1.1 Amended - Required permits

Section 105.1.1 is amended by adding Section 105.1.1A:

Section 105.1.1A Fee for Plan Review, Inspection and Permits. Fees required by the City shall be established in the City's master fee schedule, to defray: the costs for plan review of plans required by this code; requested or required inspection services; administrative costs; issuance of permits and all other direct costs incurred by the city.

Section 105.4.1.1 is amended by adding Section 105.4.1.2 (1 to 6):

Section 105.4.1.2 Review of Plans. Whenever required by this Code, plans shall be submitted to the Fire Chief for review and approval prior to construction. Whenever application is made for a building permit, as required by the Building Code, the Building Official shall withhold issuance of the building permit until notification from the Fire Department that plans required by this code have been reviewed and approved and that the requirements set forth in section 105 have been met. In addition to plan submittals required by other sections of this Code, plans shall be submitted whenever any of the following land developments and/or improvements are proposed:

1. Subdivision of land.
2. Construction, alteration or renovation of a building.
3. Demolition of a building.
4. Provision of a water supply for fire protection.
5. Provision of access for fire apparatus.
6. An occupancy for the storage, use, or handling of any hazardous substance, hazardous material process, or hazardous device.

16.26.110 Chapter 1 Section 105.6 Amended - Required operational permits

Section 105.6 is amended by adding 105.6.48 thru 105.6.51.

48. Christmas tree sales. To use a property for the purpose of selling cut Christmas trees. See applicable provisions of Chapter 3 General Precautions against fire.
49. Pumpkin patches/lots. To use a property for the purpose of selling pumpkins and seasonal items. See applicable provisions of Chapter 3 General Precautions against fire.
50. Liquefied petroleum gases. To store, use, or handle liquefied petroleum gas inside buildings. See Chapter 38.
51. Rockets. To launch model rockets. See California Code of Regulations Title 19, Division 1, Article 17.

16.26.120 Chapter 1 Section 108 Amended - Board of Appeals

Section 108 is amended by adding 108.1.1

Section 108.1.1 Whenever the fire chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code has been misconstrued or wrongly interpreted, the applicant may appeal within thirty days the chief's decision to the city council.

16.26.130 Chapter 2 Section 202 Amended – General Definitions

Section 202 - General Definitions is amended as follows: by changing the definition of Jurisdiction and adding the definition for Fire Marshal by adding Sections 202. A and 202. B.

- A. Wherever the word "jurisdiction" is used in the California Fire Code, it shall be held to

mean the City of El Cerrito.

B. Where the party responsible for the enforcement of the California Fire Code is given the title of "Fire Marshal," add the following definition: Fire Marshal is the chief of the bureau of fire prevention.

16.26.140 Chapter 2 Section 202 Amended - Definitions - F

Section 202 -F - is amended by adding:

Facility - any structure or location used for storing, processing or handling material or equipment.

Fair - a temporary enterprise principally devoted to the exhibit or sale of products of commerce, agriculture or industry, or to entertainment and amusement and may include the operation of amusement rides or devices, or concession booths.

Firebreak - a continuous strip of land upon and from which all rubbish, weeds, grass or other growth that could be expected to burn when dry has been abated or otherwise removed in order to prevent the surface extension of fire from one area to another.

Fire trail - a graded firebreak of sufficient width, surface, and design to provide access for fire personnel and equipment to suppress and to assist in preventing a surface extension of fires.

Fuel break - a specified width, strip, or block of land on which the vegetation has been permanently modified to a low volume fuel type so that fires burning on it can be more readily controlled.

16.26.150 Chapter 2 Section 202 Amended - Definitions - R

Section 202 - R is amended by adding:

Response Time - the calculated time difference between receiving a report of an alarm and the application of extinguishing agent.

Running Time - the calculated time difference between leaving the first due fire station and arriving on the emergency scene.

Rural Area - that area generally designated for agricultural or open space uses with parcels over 10 acres in size.

Rural Residential Area - that area generally designated for single family residential use with parcels between 3 and 10 acres in size.

16.26.160 Chapter 3 Section 319 Added - General precautions against fire

Chapter 3 Section 319 is added in its entirety:

Section 319 Exterior hazard control.

Section 319.1 Weeds and Rubbish to be Destroyed or Removed.

It shall be unlawful for any person owning, occupying, renting, managing or controlling any real property in this jurisdiction to cause, or permit to remain on the property, or on portions of streets adjoining such property, any weeds, rubbish, litter or other flammable material which creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous. It shall be the duty of every such person to remove or destroy such weeds, rubbish, litter or other flammable material. Destruction by burning within the jurisdictions unlawful unless the written permission of the Fire Chief of the City is first obtained and all other applicable permits are obtained from appropriate governing jurisdictions.

Section 319.2 Definitions, as used in this article

1. "Weed," as used in this part, means all weeds growing upon streets or private property in this jurisdiction and includes any of the following:
2. Weeds that bear seeds of a downy nature or are subject to flight.
3. Sagebrush, chaparral and any other brush or weeds which obtain such large growth as to become, when dry, a fire menace to adjacent improved property or to streets.
4. Weeds that are otherwise noxious or dangerous.
5. Poison oak and poison ivy when the conditions of growth are such as to constitute a menace to the public health.
6. Dry grass, stubble, brush, litter or other flammable materials that endanger the public safety by creating a fire hazard.
7. "Rubbish" means waste matter, litter, trash, refuse, debris and dirt on streets, or private property in the jurisdiction that is, or when dry may become a fire hazard.
8. "Streets" include alleys, parkways, driveways, sidewalks and areas between sidewalks and curbs.
9. "Person" includes individuals, firms, partnerships and corporations.
10. "Cost of Abatement" shall include all expenses incurred by jurisdiction, including administrative costs, in its work of abatement undertaken pursuant Section 318 of this ordinance.

11. "Superintendent" shall mean the City Manager or designee.

Section 319.3 Declaration of Policy.

The City Council, as the supervising, legislative and executive authority of this jurisdiction, hereby declares that the removal of dry grass, stubble, brush, rubbish, litter or other flammable material which creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous is a matter of extreme municipal importance. The City Council hereby adopts the following Fire Hazard Abatement Program for the purpose of abating fire hazards caused by the presence of dry grass, stubble, brush, rubbish, litter or other flammable material on private properties within the City. This program shall be conducted in accordance with the provisions of Government Code Sections 39560-39588 as those sections presently exist or as may be amended. The City Manager or designee shall be deemed the street superintendent for the purpose of carrying out the provisions of this policy.

Section 319.4 Abatement Procedures

a. The City Council of El Cerrito shall declare by resolution annually, or as often as may be necessary, those properties which are deemed public nuisances because of the presence of dry grass, stubble, brush, rubbish, litter or other flammable material which creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous.

b. The resolution may also declare that certain identified properties are seasonal and recurrent nuisances as defined by Government Code Section 39562.1

c. The resolution shall designate a date, time and place for a hearing at which the owners of the properties identified in the resolution may object to the designation of their properties as public nuisances, and object to the abatement actions proposed by the City as authorized by Government Code Sections 39560-39588.

d. Written notice shall be provided to the owners of the properties identified in the resolution informing them of the date, time and place of the hearing. This notice shall be in substantially the same form as contained in Government Code Section 39566. Notice to the owners of those properties declared seasonal and recurrent nuisances shall incorporate the provisions contained in Government Code Section 39562.1. The notice shall be served as provided for in Government Code Sections 39564-39567.1.

e. At the hearing, the City Council shall hear and consider all objections. By resolution, the City Council shall allow or overrule these objections. The City Council shall also order the City Manager or designee to abate the public nuisances conditions at the properties designated in the initial resolution by having the dry grass, stubble, brush, rubbish, litter or other flammable material which creates a fire hazard, a menace to the public health or which is otherwise noxious or dangerous removed.

f. The City Manager may abate these public nuisance conditions either through the use of

City employees or by private contract. The City Manager is authorized to execute such public contracts as may be necessary to abate these public nuisance conditions.

g. The City Manager shall keep a report of the cost of abatement for each property subject to the City Council resolution. At such time as the City Manager deems appropriate, a hearing shall be scheduled before the City Council for confirming the report. Notice shall be mailed to each property owner at least five days before the date of the hearing. The notice shall inform the property owner of the costs of abatement of the public nuisance conditions on the property; date, time and place of the hearing at which the property owner may object to the report; and a statement that if the report is confirmed by the City Council, that the costs of tax bill levied against the parcel for collection at the time and in the manner of ordinary municipal taxes. The report shall also be posted at least three days prior to the hearing date at or near the hearing place as required by Government Code Section 39575.

h. At the time fixed for the hearing, the City Council shall consider the report and hear any objections from the property owners liable to be assessed the costs of abatement. The City Council may modify the report if it is deemed necessary. The City Council may also establish installment payments for the abatement costs as provided for in Government Code Section 39581. At the conclusion of the hearing, the City Council shall confirm the report by resolution.

i. The cost of abatement upon each property and the costs incurred by the City in enforcing the abatement shall constitute a special assessment against the property as provided for in Government Code Section 39577. A lien shall attach to the property upon recordation of the order confirming the assessment by the County Recorder. On or before August 10th of each year, the City Manager shall file a certified copy of the report with the County Auditor. As authorized by Government Code Section 39581, the amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes, subject to the same penalties and procedure of foreclosure and sale provided for ordinary municipal taxes.

Section 319.5 Alternate Mitigation.

In lieu of ordering abatement of fire hazards as provided in Section 319.4, the Fire Chief may order the preparation of firebreaks/fuel breaks around parcels of property when combustible weeds, crops, or brush is present. In determining the proper width of firebreaks/fuel breaks, the Fire Chief shall consider the height of the growth, weather conditions, topography and accessibility to the property of fire protection equipment. The procedure set forth in Section 319.4 for the abatement of weeds and rubbish shall also apply to the preparation of firebreaks/fuel breaks.

Section 318.6 Alternate Procedures

The procedures provided for by this Article are an alternative to any other procedure adopted by the City Council for the abatement of public nuisances, such as Chapter 8.34 of the El Cerrito Municipal Code, or which may be authorized by the law of the State of California.

Section 318.7 Peat Fire, Penalties Therefore

a. It is the duty of each person, firm, corporation or association not to permit on their property a peat fire in, or a fire involving combustible vegetable materials under the surface of the natural ground. It is hereby declared that it is the duty of any person as herein defined to take all necessary precautions to extinguish any subsurface fire involving peat or vegetative material at his/her own cost and expense.

b. If there exists upon the lands of any person herein defined, subsurface fire involving the burning or combustion of peat or vegetative matter, and the owner or occupant thereof has not taken reasonable precautions within a reasonable time to extinguish or minimize such fire or combustion, the City of El Cerrito may, in addition to its regular duties to extinguish or minimize such fire or combustion, enter upon the lands of any person as herein defined and extinguish such fire or combustion. Any costs incurred by the Fire Department in fighting the fire and for the cost of providing rescue or emergency medical services shall be a charge against said person. The charge shall constitute a debt of that person and is collectable by the fire department incurring those costs in the same manner as in the case of an obligation under contract, express or implied. (Health & Safety Code 13009.)

16.26.170 Chapter 4 Section 401.5 Amended - Making false report

Section 401.5 is amended by adding an additional sentence:

Section 401.5 A charge may be made for excessive false alarms.

16.26.180 Chapter 5 Sections 503, 504, 505 and 507 Amended -Fire Service Features

Chapter 5 Sections 503, 504, 505 and 507 are amended as follows.

Section 503.4 is amended by adding Section 503.4.2:

Section 503.4.2 When approved, gates and barriers may be installed across or over Fire Department access roads. These installations shall meet the standards approved by the Fire Chief and design shall be approved prior to installation.

Section 504.1 is amended by adding:

504.1.1 Exterior exit pathway surfaces leading from an exit to a public way shall be maintained and suitable for pedestrian use in all weather conditions.

Section 505 is amended by adding 505.1.1

505.1.1 Approved address numbers attached to the building or the primary address of the building shall be internally or externally illuminated.

Section 507.1 is amended by adding a preface sentence to read as follows: The type of water supply provided shall meet the standards approved by the Fire Chief.

16.26.190 Chapter 6 Section 603.6 Amended - Building Services and Systems

Section 603.6 is amended by adding subsection 603.6.6:

Section 603.6.6 Spark Arrester. Chimneys used with fireplaces or heating appliances in which solid or liquid fuel is used shall be maintained with a spark arrester as required for incinerators by the mechanical code.

16.26.200 Chapter 9 Section 903.2 Amended – Automatic Fire Extinguishing Systems

Section 903.2 is amended by adding 903.2.20:

903.2.20. An automatic fire extinguishing system shall be required in all occupancies of 5000 square feet or greater.

16.26.210 Chapter 9 Section 903.2 Amended - Automatic Fire Sprinkler Systems

Section 903.2 is amended by adding subsections 903.2.20.1 through 903.2.20.6

Section 903.2.20.1 Fire Department Delivery Capability. An automatic fire sprinkler system shall be installed in all new buildings or occupancies or in existing buildings or structures that change occupancy classification or use when the required fire flow exceeds 2,000 GPM, or the total floor area exceeds 5,000 square feet.

For the purpose of this section, buildings separated by area separation walls, as set forth in Section 706 of the California Building Code, shall not be considered to create separate buildings unless such walls are constructed as specified in the California Fire Code.

Section 903.2.19.2 Undetermined Occupancy. When fire sprinkler systems are required in buildings of undetermined occupancy, they shall be designed and installed to have a sprinkler density of not less than that required for an Ordinary Hazard Group 2 use, with a minimum design area of 3,000 square feet. Occupancy is considered undetermined if not classified at the time the building permit is issued. Where a subsequent occupancy requires a fire sprinkler system of greater density than Ordinary Hazard Group 2, the system shall be upgraded to such use.

Section 903.2.20.3 Response Times. An automatic fire sprinkler system shall be installed in all new buildings or occupancies when any of the following requirements is exceeded.

Section 903.2.20.4 Run Times. A maximum running time of 3 minutes or a maximum response time of 5 minutes from the first-due station. Times shall be measured by the most direct route on surface streets.

Section 903.2.20.5 Distance from Fire Apparatus Access. The Fire Chief may require installation of automatic fire sprinkler system when the exterior wall of the 1st story is located more than 150 feet from approved fire apparatus access.

Section 903.2.20.6 Other Codes. An automatic sprinkler system shall be installed in all other occupancies as may be required by the Uniform Building Code or the California Building Code.

16.26.220 Chapter 9 Section 905.3.1 Amended - Standpipe Systems

Section 905.3.1 Subsection (2) is amended by replacing subsection (2) in its entirety:

Section 905.3.1 Subsection (2). "three stories" (3) or more in height replaces four stories (4) or more in height.

Section 905.3.1 is amended by adding subsection (5):

5. When standpipes are required and the building is equipped with automatic fire sprinklers, a class one standpipe(s) is required and the standpipe shall be interconnected with the fire sprinkler system.

16.26.230 Chapter 9 Section 907.2 Amended - Fire Alarm and Detection Systems

Section 907.2 is amended by adding subsection 907.2 A:

Section 907.2 A. At the discretion of the Fire Chief, single-station smoke alarms or multiple-station smoke alarms may be required to be connected to an approved 24-hour monitored fire alarm system.

16.26.240 Chapter 9 Section 907.8.2 Amended - Record of completion

Section 907.8.2 is amended by adding subsection 907.8.2.1

Section 907.8.2.1 Acceptance, maintenance and testing records. A copy of acceptance, maintenance and testing records shall be maintained on site and shall be available to the city upon request.

16.26.250 Chapter 10 Section 1008.1.10 Amended - Panic and fire exit hardware.

Section 1008.1.10 Exception is amended by adding the following sentence:

The use of this exception may be revoked by the Fire Chief or the Building Official for due cause.

16.26.260 Chapter 10 Section 1027.5 Amended - Exit and pathways

Section 1027.5 is amended by adding Subsection 1027.5.1:

Section 1027.5.1. Exterior Exit Pathways. Exterior exit pathway surfaces leading from an exit to a public way shall be maintained and suitable for pedestrian use in all weather conditions.

16.26.270 Chapter 50 Section 5001.2 Added - Hazardous Materials

Section 5001.1 is amended by adding subsection 5001.1.2:

Section 5001.1.2 Coordinated Enforcement. Where the Contra Costa County Health Services Department is enforcing State Health and Safety and/or County health regulations, the Fire Department will coordinate efforts to eliminate duplication of time and resources to comply with hazardous material regulations. When approved by the Fire Chief equivalent documentation and compliance may be accepted in lieu of requirements of Appendix E. Where Contra Costa County Health & Safety regulations and California Fire Code regulations conflict, the more restrictive provisions shall prevail.

Exception: Where state or county regulations specifically limit or pre-empt local regulations to be more restrictive.

16.26.280 Chapter 50 Section 5004.1 Amended - General Provisions

Section 5004.1 is amended by adding 5004.1. A, and 5004.1. B

A. The limits referred to in Section 5004.1 of the California Fire Code, in to which the storage of hazardous materials is restricted are hereby established as follows: All areas within the jurisdiction shall be for retail in group M occupancies.

B. Exception - A permit shall be obtained from the Fire Marshal approving on site Hazardous Materials for retail sales, storage or commercial/industrial use.

16.26.290 Chapter 53 Section 5304.2A Added - Compressed Gasses

Section 5304.2 is amended by adding 5304.2A

A. The limits referred to in Section 5304.2 (ch 54,58,60 through 67) of the California Fire Code, in which the storage of compressed natural gas is restricted, are hereby amended as follows: All areas within the jurisdiction without and approved permit by the Fire Marshall.

16.26.300 Chapter 56 Section 5601.1.1A Added - Explosives and Fireworks

Section 5601.1.1 is amended by adding 5601.1A and Exception:

A. The limits referred to in Section 5601.1 of the California Fire Code and Title 19 Division 1 Chapter 6 and 10 subchapter 3, in which the storage of storage of explosives and blasting agents is restricted, are hereby amended as follows: All areas within the jurisdiction.

Exception: The Fire Marshall may authorize limited amount of explosives or blasting agents with permit.

16.26.310 Chapter 57 Section 5704.2.11.6 Added - Flammable and Combustible Liquids – Below Ground Tanks

Section 5704.2.11.6 is added in its entirety to read:

Section 5704.2.11.6. Abandonment and status of tanks. Tanks taken out of service as a result of properties being abandoned or its use being changed shall be removed in accordance with Section 5704.2.14.2

Section 5704.2.13.1.3 is amended in its entirety to read:

Section 5704.2.13.1.3 Out of Service for More Than 180 Days. Underground tanks that have been out of service for a period greater than 180 days shall be removed from the ground in accordance with Section 5704.2.14 and the site shall be restored in an approved manner. Permit requirements with the Contra Costa County Health Services Department, Environmental Division shall be complied concurrently with the permit requirements of the City.

Section 5704.2.13.2.3 is deleted in its entirety.

Section 5704.2.13.2.3 is amended to replace “one year” with “more than 180 days”

Section 5704.2.13.2.3. Out of service for more than 180 days Aboveground tanks which have been out of service for a period greater than 180 days shall be removed in accordance with Section 5704.2.14 and the site shall be restored in an approved manner. Permit requirements with the Contra Costa County Health Services Department, Environmental Division shall be complied with concurrently with the permit requirements of the City.

16.26.320 Chapter 57 Section 5704 Amended - Flammable and Combustible Liquids - Above Ground Tanks

Section 5704.2.9.6.1 is amended by adding 5704.2.9.6.1A and 5704.2.9.6.1B establishment of limits of districts in which storage of flammable or combustible liquids in outside aboveground tanks is prohibited or restricted:

A. The limits referred to in Section 3406.2.4.4 of the California Fire Code, in which the storage of flammable or combustible liquids in outside above ground tanks is restricted, are hereby amended as follows: All areas within the jurisdiction without an approved permit by the Fire Marshal.

B. The limits referred to in Section 3406.4 in which new bulk plants for flammable or combustible liquids are prohibited, are hereby amended as follows: Any area which is zoned other than industrial without an approved permit from the Fire Marshal.

16.26.330 Chapter 58 Section 5803A Added - Flammable Gases and Flammable Cryogenic Fluids

Section 5803 is amended by adding 5803A and Exception:

A. Stationary containers is restricted, are hereby established as follows: All areas within the jurisdiction without an approved permit by the Fire Marshal.

Exception: The Fire Marshall may authorize limited amount of explosives or blasting agents with permit.

16.26.340 Chapter 61 Section 6103.2.1.7 Amended - Liquefied Petroleum Gases - Inside Buildings

Section 6103.2.1.7 is amended in its entirety to read:

Section 6103.2.1.7 Individual portable containers used, stored, or handled inside of buildings used for assembly or business for people cooking, display, or similar use shall be limited in size to one quart capacity and shall be of an approved type. The number of portable containers permitted will be at the discretion of the Fire Chief or authorized representative.

16.26.350 Chapter 61 Section 6104.2A Added - Liquefied Petroleum Gases - Outside Buildings

Section 6104.2 is amended by adding 6104.2 A

A. The limits referred to in Section 6104.2 of the California Fire Code, in which storage of liquefied petroleum gas is restricted, are hereby amended as follows: All areas of the jurisdiction without an approved permit from the Fire Marshal.

DIVISION IX. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

DIVISION X. SEVERABILITY CLAUSE

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

DIVISION XI. EFFECTIVE DATE

This ordinance shall take effect thirty days after passage and shall within fifteen days after passage, be posted in accordance with Section 36933 of the Government Code of the State of California with the names of these City Council members voting for and against it.

THE FOREGOING ordinance was introduced at a regular meeting of the City Council of the City of El Cerrito, held on the fifteenth day of October, 2013 and passed by the following vote:

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

ADOPTED AND ORDERED published and posted at a meeting of the City Council for the City of El Cerrito held on the ____ of _____, 2013 by the following vote:

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

APPROVED:

Gregory B. Lyman, Mayor

ATTEST:

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Urgency Ordinance is the true and correct original Ordinance No. 2013-05 of the City of El Cerrito; that

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said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ____ day of _____, 2013; and that said Ordinance has been ordered published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this _____ day of November, 2013.

Cheryl Morse, City Clerk



AGENDA BILL

Agenda Item No. 6(C)

Date: November 19, 2013
To: El Cerrito City Council
From: Sylvia M. Moir, Chief of Police
Subject: Amend El Cerrito Municipal Code Chapter 11.64 - Bicycles

Conduct a public hearing and upon conclusion, introduce by title, waive any further reading and approve an ordinance amending specified sections within El Cerrito Municipal Code Chapter 11.64.

BACKGROUND

The City has a history of supporting bicycling as both a means of transportation and recreation. In 2007, the City adopted its first Circulation Plan for Bicyclists and Pedestrians. In October 2011, City staff held a Bicycling Town Hall meeting that was attended by approximately 40 people. In May 2013, the City adopted a Climate Action Plan (CAP) which establishes a number of objectives related to improving and expanding the City's bicycling infrastructure to implement the CAP's Sustainable Community Goal #3: Continue to invest in infrastructure that invites people to walk, bike and take transit more in El Cerrito. And, the City is currently in the process of updating the Circulation Plan, which is now called the Active Transportation Plan.

ANALYSIS

Through the community input received through various planning efforts, staff recognized the need to update Title 11 Chapter 11.64 of the El Cerrito Municipal Code relative to bicycles to assure that the code provides clear and consistent policies. The ordinance amendment as proposed eliminates sections that are obsolete or otherwise appropriately governed by state law. Key ordinance changes include the following:

- All sections pertaining to the licensing and inspection of bicycles have been deleted. This is primarily because most contemporary bicycles are uniquely serial numbered making license numbers and the associated process and fees obsolete;
- The rules of the road section was examined, updated, and of particular note, the section for the towing of trailers specifically manufactured for the carrying of children, as these vessels are more common since this section was originally written; and,
- Some sections, including the wearing of helmets were deleted as they are appropriately covered under State law.

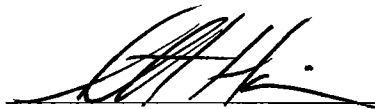
All text added or deleted is fully documented in Attachment 1.

At the culmination of the Active Transportation Plan, staff may return to Council with additional proposed changes to assure the City's code is supportive of increased bicycling while providing clear authority to assure the safest bicycling environment. These may include specific provisions for enhancing the safety for all users along the multiuse Ohlone Greenway.

LEGAL CONSIDERATIONS

The amendments have been reviewed by the city attorney who agrees that the changes are appropriate in form. This ordinance is not a "project" within the meaning of section 15378 of the State CEQA Guidelines, because it has no potential for resulting in a direct or reasonably foreseeable indirect physical change in the environment.

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. Ordinance

ORDINANCE 2013–XX

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING EL CERRITO MUNICIPAL CODE CHAPTER 11.64, BICYCLES

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT AND RENUMBERING OF SPECIFIED SECTIONS OF CHAPTER 11.64 OF THE EL CERRITO MUNICIPAL CODE

Sections 11.64.090 and 11.64.180 of Chapter 11.64 of the El Cerrito Municipal Code are hereby amended and re-numbered to read as follows (deletions indicated by ~~strikeout~~ and additions indicated by underline. Existing text is unmarked):

Section 11.64.090 Equipment prerequisite to license issuance.

Section 11.64.020 Required equipment

~~Every person desiring a bicycle license must comply with the requirements of the Vehicle Code as to equipment, and with the following requirements as to safe mechanical condition:~~
Every person operating a bicycle upon a public right-of-way or upon park or open space lands owned and/or controlled by the city of El Cerrito shall maintain a bicycle in a safe mechanical condition and in accordance with the California Vehicle Code, including but not limited to the following requirements and prohibitions:

A. Sirens and Whistles. It is unlawful to equip a bicycle with a siren or whistle except for bicycles used by members of the El Cerrito Police Department or other authorized sworn peace officer in the course and scope of employment.

B. Handlebar Grips. Every bicycle that is equipped with handlebar grips must have the grips securely fastened, glued or cemented to the handlebars.

C. Reflectors. Every bicycle shall be equipped with a reflector, pedal reflector, reflex reflector or reflectorized tire.

Section 11.64.180 ~~040~~ Rules of the road—Accident reports.

It is unlawful for any person to ride or operate a bicycle in the city in violation of any of the rules of the road as defined in the California Vehicle Code and set forth in this section as follows:

A. Riding on Sidewalks. No person shall ride or operate a bicycle on any sidewalk in the city except as herein specifically permitted.

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- B. Juveniles Riding on Sidewalks. Juveniles under the age of eighteen years exercising due care may ride and operate their bicycles upon the sidewalk, except such sidewalks as are in front of stores or other buildings used for business purposes.
- ~~C. Riding in a Group. Persons riding or operating bicycles in the city shall not ride more than two abreast except on paths or parts of a roadway set aside for the exclusive use of bicycles. Persons riding bicycles on the sidewalk or upon a portion of the roadway not set aside for the exclusive use of bicycles shall do so in single file.~~
- ~~D.C. Carrying Children.—No person shall carry any child between the ages of 1 to 4, or weighing 40 pounds or less, anywhere on a single-passenger bicycle except in a baby seat attached to the bike or in a manufactured bicycle trailer designed or intend for the use of carrying passengers. The child must be able to sit upright in the seat or trailer and must be held in the seat by a harness or seat belt. Passengers. No person riding or operating a bicycle in the city shall carry another person on the bicycle unless such person or passenger is seated upon an individual seat or carrier separate from that used by the operator. No person shall ride upon a bicycle as a passenger unless he is seated upon an individual seat or carrier separate from that used by the operator.~~
- E.D Towing. No person riding or operating a bicycle in the city shall tow any other vehicle or person, moped, motorcycle, sled, toy vehicle, or any other similar human-powered or motor-powered device including a skateboard and rider, upon a public right-of-way or upon park or open space lands owned and/or controlled by the city, except for manufactured bicycle trailers being used for their intended purpose.
- G.E Trick Riding. No person riding or operating a bicycle, moped, coaster, roller skates, sled, skateboard, toy vehicle, or motorcycle shall perform or attempt to perform any acrobatic, fancy or stunt riding upon any public highway or street in the city, right-of-way, or upon any space, land, property or facilities owned or controlled by the city of El Cerrito.
- H. ~~Parking. No person shall park any bicycle against windows or on the main-traveled portion of the sidewalk, nor in such manner as to constitute a hazard to pedestrians, traffic or property. Any merchant or person desiring to construct and erect bicycle racks may do so, provided the rack is not a hazard to public safety. If there is no bicycle rack or facility intended to be used for the parking of bicycles in the vicinity, bicycles may be parked on the sidewalk in an upright position parallel to and within twenty-four inches of the curb.~~
- I.F Parks, Playgrounds and Schools. No person shall ride or operate a bicycle upon any playground, park or school ground where children are playing without permission of the person having supervision thereof.

J.G Turns and Stops. No person shall turn a bicycle or stop a bicycle which he is riding or operating unless such movement can be made with safety, and then only after an appropriate signal during the last fifty feet traveled by the bicycle before turning or stopping.

K.H Accident Reports. The operator of any bicycle involved in an accident shall take reasonable steps to ascertain whether or not anyone was injured, and he shall give his name, address ~~and the license number of his bicycle~~ to the person with whom he was in collision, and he shall obtain the same information from the other person. It shall be the duty of the bicycle operator to make a written report of any accident resulting in death or injury to the police chief within twenty-four hours of such accident.

SECTION 2. REPEAL OF CERTAIN SECTIONS OF CHAPTER 11.64 OF THE EL CERRITO MUNICIPAL CODE.

Chapter 11.64 of the El Cerrito Municipal Code is hereby amended to repeal Sections 11.64.020, 11.64.030, 11.64.040, 11.64.070, 11.64.80, 11.64.100, 11.64.110, 11.64.120, 11.64.130, 11.64.160, 11.64.170, and 11.64.190 as indicated below:

~~Section 11.64.020 License—Required.~~

~~It is unlawful for any person to operate or use a bicycle, as defined in the Vehicle Code, upon any street in the city without first obtaining from the city a license therefor.~~

~~Section 11.64.030 License—Exception for nonresident.~~

~~Notwithstanding anything to the contrary contained in Section 11.64.020, any nonresident of the city may operate in the city any bicycle which is duly licensed and registered by another municipality and equipped with a city or state license plate or license indicia. A nonresident may operate a bicycle without a license plate or license indicia if that person resides in a jurisdiction that is exempt from licensing requirements.~~

~~Section 11.64.040 License—Application and conditions required.~~

~~Every person applying for a bicycle license shall make application to the police chief upon a form furnished by the city. Such application shall contain such information as may be required in Section 39005 of the Vehicle Code as to the applicant and the description of the bicycle to be licensed. No license shall be issued unless the bicycle to be licensed complies with the requirements of this chapter and the Vehicle Code as to its safe mechanical condition.~~

~~Section 11.64.070 License—Fees.~~

~~Every person applying for a bicycle license shall pay to the police chief a fee at the time the application is made. The fee required by this section shall be set by resolution of the council.~~

~~Section 11.64.080 License—Issuance and period of validity.~~

~~Upon approval of the application and payment of the license fee, the police chief shall issue a license plate or indicia and registration certificate. Each bicycle plate or indicia shall bear a unique license number which shall be permanently assigned to a bicycle.~~

~~Section 11.64.100 Operation without equipment or in unsafe mechanical condition prohibited.~~

- ~~A.—It is unlawful for any person to ride or operate a bicycle in the city unless the bicycle is equipped and in safe mechanical condition as provided in Section 11.64.090 of this chapter and by the Vehicle Code.~~
- ~~B.—No bicycle shall be operated after sunset unless it is equipped with lights that are lit.~~
- ~~C.—It is unlawful to ride a bicycle as an operator or passenger without wearing a safety helmet.~~

~~Section 11.64.110 License indicia and registration certificate—Issuance—Attachment and form.~~

~~It shall be the duty of the police chief to cause to be attached to the bicycle frame one California State license indicia, and to issue a registration certificate to the licensee upon the payment of the license fee. The size, form and character of the license indicia shall be designated in conformity with the Vehicle Code. The registration certificate shall be designated by the police chief.~~

~~Section 11.64.120 License indicia and registration certificate—Notice of loss or theft required—Duplicate issuance—Fee.~~

~~In the event that any bicycle license or registration certificate issued pursuant to the provisions of this chapter is lost or stolen, the licensee shall immediately notify the police chief of such loss, and shall within ten days apply to the police chief for a new bicycle license, whereupon the police chief shall cancel such license or certificate and shall issue the licensee a new one upon payment of the fee set forth in the city's master fee schedule.~~

~~Section 11.64.130 Sale or transfer of ownership—Procedures required.~~

~~It shall be the duty of every person who sells or transfers ownership of any bicycle to report such sale or transfer by returning to the police chief the registration certificate issued to such person as licensee thereof together with the name and address of the person to whom the bicycle is sold or transferred.~~

~~Such report shall be made within ten days of such sale or transfer. It shall be the duty of the purchaser or transferee of such bicycle to apply for a transfer and registration therefor within ten days of said sale or transfer.~~

~~Section 11.64.160 Rental agency bicycle licensing requirements.~~

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~~All persons engaged in renting or lending bicycles to patrons shall first obtain a license plate and registration certificate for each bicycle so used by paying the regular license fee. License plates thus obtained by bicycle renting agencies shall not be transferred from one bicycle to another.~~

~~**Section 11.64.170 Destroying bicycle numbers or licenses prohibited—Identification number placement authorized.**~~

~~It is unlawful for any person to willingly or maliciously remove, destroy, mutilate or alter the number of any bicycle frame licensed pursuant to the provisions of this chapter. It is also unlawful for any person to remove, destroy, mutilate or alter any license plate or indicia seal or registration certificate during the time in which the license plate, indicia seal or registration certificate is valid; provided, however, that nothing in this chapter shall prohibit the police chief from stamping numbers on the frames of bicycles upon which no serial number can be found or on which the numbers are illegible or insufficient for identification purposes.~~

~~**Section 11.64.190 Operation prohibited as penalty for violation.**~~

~~Where this chapter has been violated, in lieu of a fine and in lieu of filing charges, the police chief may prohibit the operation upon the streets, alleys and public places of the city, for a period not to exceed thirty days, of a bicycle so used in such violation. In such event the bicycle so used in such violation shall be impounded by the police chief and retained during the period of operation which is prohibited. The owner's registration certificate shall be held for the same period.~~

SECTION 3. This ordinance is not a “project” within the meaning of the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. (“CEQA,”) and 14 Cal. Code Reg. §§ 15000 et seq. (“CEQA Guidelines”). The ordinance enacts operating standards for bicycles within the City and therefore has no potential for resulting in a direct or reasonably foreseeable indirect physical change in the environment. Pursuant to CEQA section 21065 and section 15378 of the State CEQA Guidelines, no environmental review of the ordinance is required.

SECTION 4. This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted.

SECTION 5. This ordinance shall take effect and be enforced thirty days after the date of its adoption, and prior to the expiration of fifteen 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 November ____, 2013 and passed by the following vote:

Agenda Item No. 6(C)
Attachment 1

AYES:
NOES:
ABSENT:

ADOPTED AND ORDERED published at a regular meeting of the City Council held on the December ____, 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 December ____, 2013.

Cheryl Morse, City Clerk



AGENDA BILL

Agenda Item No. 7(A)

Date: November 12, 2013
To: El Cerrito City Council
From: City Council Subcommittee for City Manager Performance Evaluation
Subject: First Amendment of City Manager Employment Agreement

ACTION REQUESTED

Adopt resolution amending the employment contract between the City of El Cerrito and Scott Hanin, the City Manager.

BACKGROUND

The employment contract between the City and Mr. Hanin was originally approved in 2001, amended twice, and replaced with a new agreement May 2006. Since that time, his salary has been increased three times for inflation, in line with inflation adjustments provided to other management employees.

In September, the Mayor and Council initiated a process for evaluating Mr. Hanin's performance as City Manager. The Council appointed a Subcommittee of the Mayor and Mayor Pro Tem to negotiate with Mr. Hanin regarding this compensation. On the basis of the Council's evaluation and the negotiation process, the Subcommittee recommends amendments to employment contract between the City and Mr. Hanin.

ANALYSIS

The Subcommittee's recommendation is a 10% increase in base pay, starting with the first full pay period of October 2103. The proposed amendment is consistent with the Council's opinion of Mr. Hanin's work and based on the Subcommittee's review of other city manager compensation.

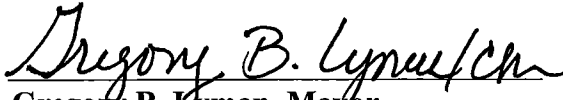
FINANCIAL CONSIDERATIONS

No changes to the current fiscal year budget are required for the proposed amendment to the employment contract with Mr. Hanin; the revised compensation will be included in future years.

LEGAL CONSIDERATIONS

The City Attorney prepared the proposed contract amendment and has reviewed this report.

Reviewed by:


Gregory B. Lyman, Mayor

Attachments:

1. Resolution approving First Amendment to City Manager Employment Agreement
2. Amended City Manager Employment Agreement

RESOLUTION 2013--XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
AMENDING CITY MANAGER EMPLOYMENT AGREEMENT

WHEREAS, the employment agreement between the City of El Cerrito and Scott Hanin, the City Manager, was approved in 2001, amended twice, and replaced with a new agreement in 2006; and

WHEREAS, in September 2013, the Mayor and City Council initiated a performance evaluation of the City Manager and appointed a Subcommittee of the Mayor and Mayor Pro Tem to negotiate a contract amendment with Scott Hanin; and

WHEREAS, as a result of the evaluation process and contract negotiations, the Subcommittee recommended an amendment to the City Manager Employment Agreement.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it approves the First Amendment to City Manager Employment Agreement, attached as Exhibit A.

BE IT FURTHER RESOLVED, the City Council hereby authorizes the Mayor to execute the amended agreement.

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

I CERTIFY that at a regular meeting on November 19, 2013, the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

APPROVED:

Gregory B. Lyman, Mayor

**FIRST AMENDMENT TO
CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF EL CERRITO AND SCOTT HANIN**

This First Amendment to the City Manager Employment Agreement dated March 20, 2006 ("Agreement") between the City of El Cerrito ("**City**"), a municipal corporation, and Scott Hanin ("**City Manager**"), an individual, is entered into as of October 1, 2013.

1. SECTION 4.A.1 AMENDED

The first sentence of Section 4.A.1 of the Agreement is hereby amended to read, "As of the first full payroll period in October 2013, the monthly salary for the position of City Manager shall be sixteen thousand and seventy-five dollars (\$16,075)."

2. REMAINDER OF AGREEMENT UNCHANGED

The remainder of the Agreement shall not be affected by this First Amendment and shall continue in full force and effect.

IN WITNESS WHEREOF the Parties have executed this First Amendment as of the day and year first written above.

CITY

CITY MANAGER

Greg Lyman, Mayor

Scott Hanin

ATTEST:

Cheryl Morse, City Clerk

APPROVED AS TO FORM:

Sky Woodruff, City Attorney



AGENDA BILL

Agenda Item No. 7(B)

Date: November 19, 2013
To: El Cerrito City Council
From: Cheryl Morse, City Clerk
Karen Pinkos, Assistant City Manager
Sky Woodruff, City Attorney
Subject: Boards, Commissions and Committees Revisions

ACTIONS REQUESTED

Based on direction received from the City Council on October 15, 2013, the City Council Subcommittee on Commission Rules Revisions seeks additional discussion, direction and action this evening on regulations regarding quorums and the minimum number of members required to take action on the City's Boards, Commissions and Committees and proposes adoption of the following legislation:

- 1) Introduce by title, waive any further reading, and approve an ordinance amending Section 2.04.220 of the El Cerrito Municipal Code – Boards, Commissions and Committees and repealing Section 2.04.290 Economic Development Board;
- 2) Adopt a resolution establishing an Economic Development Committee;
- 3) Adopt a resolution revising the policy regarding Council and staff relations with City Commissions, Boards, Committees and Task Forces by modifying the role and reporting frequency of the Council Liaison; and
- 4) Adopt a resolution establishing a policy regarding appropriate positions to receive ethics training pursuant to Government Code Section 53235. The City Council now designates that each member of the Arts and Culture Commission, Design Review Board, Financial Advisory Board, Parks and Recreation Commission and Planning Commission shall be required to complete AB 1234 Ethics Training.

BACKGROUND

At the City Council meeting of October 15, 2013, the subcommittee of Mayor Lyman and Councilmember Friedman led a study session of the City Council to discuss various ideas and recommendations based on their review of Boards, Commissions and Committees. The Council provided direction on several items that require changes to the El Cerrito Municipal Code (ECMC) as well as new legislation to incorporate the revisions proposed at that meeting. City staff and the City Attorney prepared the attached ordinance and resolutions for the City Council's consideration.

The subcommittee recommendations included other items that required further Council discussion, including the definition of a quorum and determination of conflict of interest regarding simultaneous service and members of the same household serving on Advisory Bodies. Staff and the City Attorney have worked with the subcommittee to develop options for the Council to consider on these items.

ANALYSIS

The attached legislation reflects the direction of the City Council on the items that were agreed upon by the Council at the October 15, 2013 meeting. These include:

- An ordinance amending Section 2.04 of the ECMC that includes the language regarding the service of City Boards, Commissions and Committees as directed by the Council, changes the date of terms from January 1 to March 1 for all new appointments, changes the timeframe for officer elections from January to April, limits the term of Chair of Advisory Bodies to two consecutive years, and repeals Section 2.04.290, “Economic Development Board” in its entirety.
- A resolution establishing the Economic Development Committee, which shall take the place of the Economic Development Board, effectively transitioning the Board to a Committee structure.
- A resolution that updates the City Council Policy on Advisory Bodies, incorporating the elements discussed by the Council regarding efficient and appropriate communications, defining the role of the Council Liaison, and affirming the Staff Liaison’s role.
- A resolution establishing that members of the Arts and Culture Commission, the Design Review Board, the Financial Advisory Board, Parks and Recreation Commission, and the Planning Commission shall be required to complete AB 1234 Ethics training.

Quorum

The City Council discussed problems arising from the lack of quorum and discussed options for defining a quorum. As stated in the minutes of the October 15, 2013 meeting, the Council distinguished between whether a quorum could differ in terms of the number of Advisory Body members needed to meet versus the number needed to take action.

Staff consulted with the City Attorney, who provided language for the subcommittee to consider how a quorum is reached for Boards and Commissions, with additional language specifically addressing Committees. Quorums for Committees are suggested to be handled separately because of the requirement for potential candidates for Committees to have attended meetings of the Committee before they are considered for membership. The subcommittee reviewed the language suggested by the City Attorney and recommends the following:

Board and Commission Quorum Requirements: The requirement for a quorum for the purposes of holding a meeting for Boards and Commissions would consist of a simple majority of those currently serving as members. To take action at a meeting, the action must be passed by a simple majority of the quorum present. However, there are exceptions for the Planning Commission and Design Review Board. For those two Advisory Bodies, holding a meeting requires a simple majority of those currently serving but no less than three members present, and taking action at a meeting is a simple majority of those present but no less than three members.

The draft language, as suggested by the City Attorney, is as follows:

Quorum. For boards and commissions, a quorum for the purpose of holding a meeting shall consist of a simple majority of the members then serving. A board or commission

may act by an affirmative vote of a simple majority of a quorum. Notwithstanding the foregoing, a quorum for the purposes of holding a meeting of the Planning Commission and Design Review Board shall consist of a simple majority of the members then serving, but not fewer than three members. Further, the Planning Commission or Design Review Board may act by an affirmative vote of a simple majority of a quorum, but not less than three affirmative votes shall be required.

Committee Quorum Requirements: A quorum for holding a meeting would be a simple majority of members currently serving on a Committee, but allows for a minimum of two members to be able to conduct a meeting. In order to take any action, at least three members must be currently serving and present at the meeting.

The draft language, as suggested by the City Attorney, is as follows:

For committees, a quorum for the purpose of holding a meeting shall consist of a simple majority of the members then serving. Two members may conduct a meeting for the purpose of doing the work of a committee and allowing persons interested in becoming members to attend. Formal action of a committee shall require at least three members to be present at a meeting and a simple majority of affirmative votes of a quorum.

Because quorum is currently defined in ECMC Section 2.04.220.B.5, this section would need to be revised should the City Council choose to move forward with the subcommittee's recommendation. Staff has incorporated the suggested language within the ordinance in Attachment 1 for the Council's consideration.

Conflict of Interest

The City Council also discussed at the October 15 study session whether it is currently a conflict of interest for residents of the same household (living at the same address) to serve on the same Advisory Body. There is no statutory or directly applicable judicial authority regulating the City's authority to restrict membership in City boards and commissions by virtue of residential address. However, one California case has addressed a city's authority to restrict membership in city commissions based on marital relationships. In *Kimura v. Roberts* (1979) 89 Cal.App.3d 871 the city of Woodland City Council voted to remove Marcia Kimura from that city's planning commission after her husband was elected to the City Council. Ms. Kimura sued the city, seeking reinstatement and arguing that her removal violated her constitutional right to be married and to hold public office simultaneously. The lower court agreed with her argument, but the court of appeal saw no legitimate constitutional issue. First the court correctly noted that planning commissioners serve at the pleasure of the appointing power and can be removed for any reason or no reason at all, so long as the reason for removal (if there is a reason) is not unconstitutional. Although the court agreed that removing her from office solely because of marriage would have been unconstitutional. However, the court found that she was not removed because she was married but instead because of the act of her husband running for city council and the fact that he won that election.

The court further explained that it found:

“there is no doubt that either an actual bias or conflict of interest, or the appearance thereof, would or could at times be present. An analogy exists in connection with the courts, where the law deems it necessary to prevent bias, conflicts of interest, or the appearance of either. ... Such rules have been categorized by the courts as necessary not only to guard actual impartiality but also to insure public confidence. ... A planning commissioner and a council member (with review powers) married to each other can conceivably raise a substantial question of fairness and bias, prejudice or influence in the vital county planning processes, obvious enough to have an effect on public confidence in such processes. As amply demonstrated by the record, the ‘finding’ of the trial court that no ‘conflict’ arose from the relationship between the two officeholders misses the mark. On the other hand, the finding of the mayor and the city council that an actual or implied conflict of interest existed, is eminently rational, practical and legally sound in light of the record.” (Kimura, p. 875)

The City Attorney believes that the Council may reasonably and justifiably determine that cohabitating members of advisory bodies, whether in a familial, roommate or intimate relationship, could potentially present the same level of concern and the appearance of conflict of interest, unfairness, bias, prejudice or influence as that found by the *Kimura* court to justify the removal of a Planning Commissioner after her husband was elected to the city council. Because such concerns were held to justify the removal of a sitting commissioner, they would similarly justify non-appointment or disqualification from appointment to a City board, commission, or committee in the first instance, especially where one of the advisory bodies at issue is subject to review or supervision by the other or where the two commissions share jurisdiction over the subject matter with which each is concerned.

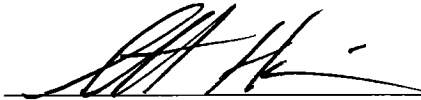
In sum, a City Council Policy could be created that states that people residing at the same address may not serve on (1) the Council and an advisory body, (2) the same advisory body, or (3) advisory bodies with overlapping subject-matter jurisdiction (e.g., Design Review Board and the Planning Commission or Tree Committee and Planning Commission).

The subcommittee reviewed the City Attorney’s research and agreed that it would be prudent to include a provision regarding the appearance of bias on Advisory Bodies within the City Council Policy as presented in Attachment 4. Staff has incorporated this language for the Council’s consideration.

LEGAL CONSIDERATIONS

The revisions to the El Cerrito Municipal Code, as well as the proposed resolutions, have been reviewed by the City Attorney. The repeal of ECMC 2.04.290 is necessary for the Council to change the structure of the Economic Development Board to that of a Committee.

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. Ordinance amending ECMC Section 2.04.220 and repealing ECMC Section 2.04.290
2. Resolution establishing an Economic Development Committee
3. Resolution establishing Ethics Training for specified Boards and Commissions
4. Resolution revising City Council Policy on Advisory Bodies

ORDINANCE NO. 2013–XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL
CERRITO AMENDING SECTION 2.04 OF THE EL CERRITO
MUNICIPAL CODE, BOARDS, COMMISSIONS AND COMMITTEES

The City Council of the City of El Cerrito hereby ordains as follows:

SECTION 1. Section 2.04.220 of Title 2 of the El Cerrito Municipal Code is hereby amended to read as follows:

2.04.220 Boards, commissions and committees.

A. Boards, commissions and committees are appointed by the council to advise and to perform any duties determined by the council in one or more aspects of city government. City boards, commissions and committees are intended to provide a valuable service to the community by providing in-depth advice to the City Council on a variety of topics and assume some of the workload from Council to research issues or gather public input.

Except as otherwise provided in state law, boards and commissions are directly responsible to the council and fill quasi-judicial roles. Commissions are made up of lay citizens, while boards are residents with special expertise. Committees sponsored by the city are intended to be working groups, do not fill quasi-judicial roles, and are established by council resolution. Appointment to boards and commissions shall be made only after:

1. Advertisement of the open position in a local paper;
2. Public interviews of selected applicants for the positions;
3. Appointment by a majority of the council.

B. Unless determined elsewhere in law, the boards and commissions shall be governed by or meet the following criteria:

1. Membership. The boards and commissions shall consist of seven members each, who shall be residents of the city, unless otherwise provided in this chapter or otherwise prescribed by state law or the ordinance or resolution establishing the board or commission or committee to represent a specified organization, agency, group, category or profession. A “member” shall be defined as a voting member of any board, commission or committee established by the City Council, notwithstanding the manner in which such voting member is appointed.

2. Appointments. The members shall be appointed by majority vote of the council. Members shall not be reappointed to the same board or commission for more than two consecutive full terms.

3. Term. Terms are four years, commencing on January–March 1st unless a member is removed from office pursuant to the provisions of subsection (B)(4) of this

section. Members appointed prior to March 1, 2014 with terms that commenced on January 1 will conclude their terms on January 1. The membership shall be divided ~~into~~ to achieve temporal distribution of terms. four, approximately equal groups, appointed in consecutive years. If a board member or commissioner fails to complete the term, the council appointment shall be for the remainder of the uncompleted term. Members are not eligible to serve on the same board or commission if they have served two consecutive full four-year terms.

4. Removal of Members.

a. Members of boards and commissions serve at the pleasure of the Council and may be removed by a majority vote of the entire council. It shall be presumed that any member who is absent for three consecutive regularly scheduled meetings without cause, or half the regular meetings in a calendar year, or who resides outside the city, has resigned. The staff liaison shall notify the City Clerk of a vacancy within five days after the staff liaison has determined that the vacancy exists. Within one week after receiving such notice from the ~~commission-staff~~ liaison, the City Clerk shall notify any member whose appointment has automatically terminated and report to the Council that a vacancy exists and that an appointment should be made to fill the vacancy.

b. An absence shall be considered excused if either: (1) the member informs the staff liaison of his/her intended absence at least 24 hours prior to the scheduled time of the meeting; ~~;~~ or (2) such absence is due to unforeseeable and unavoidable circumstances and reported and explained in writing to the staff liaison prior to the next meeting of the board or commission. Excused absences for medical reasons shall not exceed a period of 120 calendar days.

c. Nothing contained in this section shall be deemed to limit the power of the City Council to remove any member of any City board, commission or committee at any time, with or without cause.

5. Quorum. ~~A quorum of the board or commission shall consist of a simple majority of the appointed members.~~

a. For boards and commissions, a quorum for the purpose of holding a meeting shall consist of a simple majority of the members then serving. A board or commission may act by an affirmative vote of a simple majority of a quorum. Notwithstanding the foregoing, a quorum for the purposes of holding a meeting of the Planning Commission and Design Review Board shall consist of a simple majority of the members then serving, but not fewer than three members. Further, the Planning Commission or Design Review Board may act by an affirmative vote of a simple majority of a quorum, but not less than three affirmative votes shall be required.

b. For committees, a quorum for the purpose of holding a meeting shall consist of a simple majority of the members then serving. Two members may conduct a meeting for the purpose of doing the work of a committee and

allowing persons interested in becoming members to attend. Formal action of a committee shall require at least three members to be present at a meeting and a simple majority of affirmative votes of a quorum.

6. Officers. ~~At the first meeting of each calendar year, the board or commission shall select its officers~~The annual election of officers should occur during the month of April. These Officers shall be selected by a majority of the commission for a one-year term and consist of a chairperson (chair) and a vice chairperson. ~~No boardmember, commissioner or committee member shall serve as chairperson for more than two consecutive years.~~

7. Conduct of Business. The conduct of board or commission business shall be by Sturgis Standard Code of Parliamentary Procedure, or by rules of procedure adopted by the board or commission. Failure to follow the applicable rules of procedure shall not invalidate an otherwise valid action of a board or commission.

8. Minutes. The staff liaison of the board or commission shall cause minutes to be prepared for the membership and presented at the following meeting for approval by the board or commission. Minutes shall be posted on the city's website within ten days of the board or commission's approval.

9. Staff assistance. The city staff shall provide appropriate notice to the members of the agenda for each meeting, and shall provide to the members the draft minutes of the previous meeting for their approval. Each board or commission shall have access to all information possessed by the city concerning its agenda items. The City Manager will provide for staff assistance at the meetings of the various boards and commissions.

10. Meetings. Unless otherwise provided, the boards and commissions shall meet at least monthly, on a regularly scheduled basis, in a public meeting room and shall be subject to the Ralph M. Brown Act, Government Code Section 54950 et seq.

C. Committees shall be governed by the same criteria as boards and commissions unless otherwise prescribed by council resolution.

SECTION 2. Section 2.04.290 "Economic Development Board": of Title 2 of the El Cerrito Municipal Code is hereby repealed in its entirety. Members of the Economic Development Board at the time that this ordinance becomes effective shall be members of the Economic Development Committee, and their terms shall be set by the resolution establishing the Economic Development Committee.

~~2.04.290 Economic Development Board.~~

~~A. There shall be an economic development board consisting of seven members who shall be either residents of the city or own or operate businesses in the city. Persons appointed because of the ownership or operation of businesses in the city do not have~~

~~to be city residents. The economic development board shall have the powers and duties stated below, and such others as the council shall decide:~~

- ~~1. To advise the council on economic development matters, including budget, staffing levels, policies, selection criteria, project financial feasibility and suitability and investment of resources into proposed projects;~~
- ~~2. To make recommendations on the annual economic development work plan, including its priorities and evaluation measures;~~
- ~~3. To oversee the work of subcommittees established to concentrate on creating plans for high priority areas;~~
- ~~4. To provide input to other city boards and commissions on economic development matters;~~
- ~~5. To review progress toward achieving the annual work plan goals and long range economic development goals;~~
- ~~6. To encourage community involvement in economic development; and~~
- ~~7. With the advice and consent of the city council, to form a resource council of business and community members who are available to provide assistance on an ad hoc basis.~~

~~B. It is essential that this economic development board contain persons who are business owners and operators in the city based both on the expertise of such persons on economic development matters and because such persons will best represent the interests of other business owners and operators in the city. As a result, the economic development board shall contain at least two members who are business owners and operators, one of whom shall be the president of the El Cerrito Chamber of Commerce or his or her designee, in order that business interests are adequately represented on the board. The president of the Chamber of Commerce or his or her designee shall remain a member of the board during his or her tenure as chamber president and upon the installation of a new president, that person or his or her designee shall succeed to membership on the board. Pursuant to Section 18707.4 of the Rules and Regulations promulgated by the Fair Political Practices Commission, as amended, the ownership or operation of business interests by members of the economic development commission shall not be deemed a disqualifying material financial interest for conflict of interest purposes.~~

~~C. Terms for Initial Members. In order to achieve the requirements of Section 2.04.220B3 of the municipal code, that membership be divided into four approximately equal groups, appointed in consecutive years, the council shall appoint some of the new members of the economic development board to less than four year~~

~~terms in order to provide for a staggered system of appointments for future board members.~~

- D. ~~The board shall hold regular business meetings no less than quarterly, with the minimum attendance of such being no less than three in one calendar year. Additional "on-call" special meetings may be called that are project specific, and can be called by the staff liaison in conjunction with the chair, with the attendance requirement for these "on-call" meetings being that no member shall miss more than three of these meetings in a calendar year.~~

SECTION 3. If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

SECTION 4. This Ordinance shall take effect and be enforced thirty (30) days after the date of its adoption, and prior to the expiration of fifteen 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.

First read at a regular meeting of the City Council on the 19th day of November, 2013, and passed by the following vote:

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

Adopted and ordered published at a regular meeting of the City Council held on the _____, _____, 2013, and passed by the following vote:

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

APPROVED:

Gregory B. Lyman, Mayor

ATTEST:

Cheryl Morse, City Clerk

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2013-XX of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ____day of _____, 2013; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this _____ day of _____, 2013.

RESOLUTION 2013-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
CREATING THE EL CERRITO ECONOMIC DEVELOPMENT COMMITTEE**

WHEREAS, in 2000, the City's Economic Development Board was created to review the City's economic development matters including budget, staffing, policies and project feasibility, recommend annual work plans to the City Council, encourage community involvement in economic development matters, and serve as a resource council of business and community members on matters of economic development; and

WHEREAS, in 2005 and 2007, the City Council, as part of a review of all City Boards, Commissions and Committees, affirmed the mission of the Economic Development Board while making revisions to membership criteria and meeting frequency; and

WHEREAS, in 2013 the City Council conducted another review of City Boards, Commissions and Committees and indicated that with the demise of the Redevelopment Agency and the focus on economic development that arose through the City Council's Strategic Plan process, the current role, duties and configuration of the Economic Development Board could be better focused as a working group as opposed to a sitting board; and.

WHEREAS, during this review the City Council determined that a Committee structure would allow the members to be able to be utilized better as a working group that would build upon and assist City staff's efforts in Economic Development, would allow for more flexibility in its mission and duties, and would have the ability to increase the number of members from the current maximum of 7 members to 15.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito hereby establishes an Economic Development Committee, with the necessary staff liaison assigned by the City Manager, with the following duties and responsibilities:

- 1) To advise the council on economic development matters, including budget, staffing levels, policies, selection criteria, project financial feasibility and suitability and investment of resources into proposed projects;
- 2) To make recommendations on the annual economic development work plan, including its priorities and evaluation measures;
- 3) To oversee the work of subcommittees established to concentrate on creating plans for high-priority areas;
- 4) To provide input to other city boards and commissions on economic development matters;
- 5) To review progress toward achieving the annual work plan goals and long range economic development goals;
- 6) To encourage community involvement in economic development; and

Agenda Item No. 7(B)
Attachment 2

- 7) With the advice and consent of the city council, perform as a resource council of business and community members who are available to provide assistance on an ad hoc basis.

BE IT FURTHER RESOLVED, that this Committee shall meet monthly and will be open to all El Cerrito residents and business owners with knowledge of, concern about, and/or participation in issues affecting the City's economic development. Persons appointed because of the ownership or operation of businesses in the City do not have to be City residents.

BE IT FURTHER RESOLVED, that one position on this Committee shall be reserved for the president of the El Cerrito Chamber of Commerce or his or her designee, in order that business interests are adequately represented on the Committee. The president of the El Cerrito Chamber of Commerce or his or her designee shall remain a member of the Committee during his or her tenure as Chamber president and upon the installation of a new president, that person or his or her designee shall succeed to membership on the Committee.

BE IT FURTHER RESOLVED, that the terms for members of this Committee are four years, commencing on January 1st unless a member is removed from office pursuant to Section 2.04.220 of the El Cerrito Municipal Code, with the membership being divided into equal groups appointed in consecutive years. Members serve at the pleasure of the City Council and may be removed by a majority of the City Council.

BE IT FURTHER RESOLVED, that all current members of the former Economic Development Board as of the date of this resolution are hereby considered charter members of this Economic Development Committee, and that their current term status will be honored.

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

I CERTIFY that at a regular meeting on November 19, 2013 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

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

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

RESOLUTION NO. 2013-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ESTABLISHING A POLICY REGARDING APPROPRIATE POSTIONS TO RECEIVE ETHICS TRAINING PURSUANT TO GOVERNMENT CODE SECTION 53235

WHEREAS, the California Legislature enacted Government Code Section 53234 et seq. requiring, in part, that certain local agency officials receive training in specified laws relating to local government; and

WHEREAS, the El Cerrito City Council receives the training and may designate other local agency officials to receive the training; and

WHEREAS, ethics training covers but is not limited to general ethics principles and ethics laws relevant to public service, conflict- of-interest gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, government transparency laws and laws relating to due process requirements; and

WHEREAS, the City Council finds that it will benefit the City of El Cerrito to require appointed Commissioners and Board Members to receive training in specified laws relating to local government and service as a local agency official.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito designates each member of the Arts and Culture Commission, Design Review Board, Financial Advisory Board, Parks and Recreation Commission, and Planning Commission to receive training pursuant to the requirements of Government Code section 53234 et seq. and provide the original proof of participation certificate to the City Clerk upon completion.

BE IT FURTHER RESOLVED that this resolution shall become effective January 1, 2014.

I CERTIFY that at a regular meeting on November __, 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 November __, 2013.

Cheryl Morse, City Clerk

Approved:

Gregory B. Lyman, Mayor

RESOLUTION 2013–XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO REVISING A
POLICY REGARDING COUNCIL AND STAFF RELATIONS WITH CITY COMMISSIONS,
BOARDS, COMMITTEES AND TASK FORCES

WHEREAS, the City Council approved a policy on October 21, 1991 which provided guidelines for Council and staff relations with city commissions, boards, committees and task forces; and

WHEREAS, the City Council discussed the role and functions of the Council Liaison role at its October 15, 2013 meeting including ways to facilitate communication between the Council and the Boards, Commissions and Committees, due process concerns and the possibility of inadvertently influencing the decision making process; and

WHEREAS, the City Council deems it necessary to update the 1991 policy to include language regarding the individual rights of Councilmembers, Council Liaison assignments, and efficient communications.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito establishes the following policy regarding City Councilmember and staff relations with city commissions, boards, committees and task forces:

SECTION 1. CITY COUNCIL

A. A Councilmember will be assigned as liaison to each city commission, board, committee and task force (Advisory Body). Making liaison assignments is one of the first orders of business for the Mayor when a new City Council is organized each year. With the exception of the Committee on Aging, for which the Mayor may make a continuing appointment, Council Liaison (Liaison) assignments must rotate among all Councilmembers on an annual basis to ensure that Liaisons are not regarded as a regular member of any one Advisory Body, and allow each Councilmember an opportunity to experience a different Advisory Body.

B. The City Council recommends and expects each Councilmember assigned as a liaison to an Advisory Body to deliver a quarterly report to the Advisory Body at the beginning of the meeting and either leave or remove themselves to the audience and not participate in the meeting after the report. It is the policy of the City Council that a Liaison is not expected to attend the meetings of the Advisory Body to which the Liaison is assigned more often than once quarterly.

C. The Liaison will inform the Advisory Body about Council policies, priorities and significant actions taken by the Council. The Liaison represents the City Council as a whole when addressing the Advisory Body during the Liaison report.

D. Although Councilmembers do not give up their first amendment rights when they are elected and can speak on an issue as an individual, they need to understand that if they express a view on an item that they are interested in that is potentially appealable or will come to the entire Council for review, they may be precluded from participating in the issue when it

comes before the Council for a decision. It is critically important to avoid both the substance and the appearance of having pre-judged an issue which may later come before the Council for deliberation.

E. Due to the quasi-judicial or deliberative nature of the following Advisory Bodies, Liaisons to the Arts and Culture Commission, Design Review Board, Financial Advisory Board, Parks and Recreation Commission and Planning Commission are expected to leave the room after their report is delivered.

F. To avoid any possibility of the appearance of or actual conflict of interest, unfairness, bias, prejudice or influence, individuals residing at the same address cannot serve on the Council and an advisory body, the same advisory body, or advisory bodies with overlapping subject-matter jurisdiction.

SECTION 2. CITY STAFF

A. A staff liaison is assigned to each Advisory Body. The staff role is:

1. Preparing agendas and noticing meetings and hearings in conjunction with the Advisory Body Chair and posting agendas to the City's website;
2. Arrange for accommodations for disabled Advisory Body members and the public;
3. Taking and transcribing action minutes and posting approved minutes to the City's website;
4. Providing information related to Advisory Body business to Advisory Body members and the public upon request;
5. Preparing reports, including reports for the Council's consideration; and
6. Relaying reports and other information to the City Council at the request of the Advisory Body.

B. The City Council may also ask staff to relay information to an Advisory Body. The staff role is generally limited to these specific activities and any other activities defined by the City Manager as outlined in Administrative Policy and Procedure 1(A)(6).

I CERTIFY that at a regular meeting on November, __, 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 November __, 2013.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor